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108TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 108–40
Part 1

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 975

together with

DISSENTING AND ADDITIONAL DISSENTING VIEWS

MARCH 18, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2003

MARCH 18, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING AND ADDITIONAL DISSENTING VIEWS

[To accompany H.R. 975]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 975) to amend title 11 of the United States Code, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

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

(a) SHORT TITLE.—This Act may be cited as the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2003".

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

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

TITLE I—NEEDS-BASED BANKRUPTCY

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

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

Sec. 201. Promotion of alternative dispute resolution.
Sec. 202. Effect of discharge.
Sec. 203. Discouraging abuse of reaffirmation agreement practices.
Sec. 204. Preservation of claims and defenses upon sale of predatory loans.
Sec. 205. GAO study and report on reaffirmation agreement process.

Subtitle B—Priority Child Support

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

Subtitle C—Other Consumer Protections

Sec. 221. Amendments to discourage abusive bankruptcy filings.
Sec. 222. Sense of Congress.
Sec. 223. Additional amendments to title 11, United States Code.
Sec. 224. Protection of retirement savings in bankruptcy.
Sec. 225. Protection of education savings in bankruptcy.
Sec. 226. Definitions.
Sec. 227. Restrictions on debt relief agencies.
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Sec. 232. Consumer privacy ombudsman.
Sec. 233. Prohibition on disclosure of name of minor children.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

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Sec. 302. Discouraging bad faith repeat filings.
Sec. 303. Curbing abusive filings.
Sec. 304. Debtor retention of personal property security.
Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 306. Giving secured creditors fair treatment in chapter 13.
Sec. 307. Domiciliary requirements for exemptions.
Sec. 308. Reduction of homestead exemption for fraud.
Sec. 309. Protecting secured creditors in chapter 13 cases.
Sec. 310. Limitation on luxury goods.
Sec. 311. Automatic stay.
Sec. 312. Extension of period between bankruptcy discharges.
Sec. 313. Definition of household goods and antiques.
Sec. 314. Debt incurred to pay nondischargeable debts.
Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.
Sec. 316. Dismissal for failure to timely file schedules or provide required information.
Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.
Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.
Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
Sec. 320. Prompt relief from stay in individual cases.
Sec. 321. Chapter 11 cases filed by individuals.
Sec. 322. Limitations on homestead exemption.
Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.
Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.
Sec. 325. United States trustee program filing fee increase.
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Sec. 328. Defaults based on nonmonetary obligations.
Sec. 329. Clarification of postpetition wages and benefits.
Sec. 330. Delay of discharge during pendency of certain proceedings.

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TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

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TITLE I—NEEDS-BASED BANKRUPTCY

SEC. 101. CONVERSION.

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

SEC. 102. DISMISSAL OR CONVERSION.

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

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

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

(2) in subsection (b)—

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

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

(i) in the first sentence—

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

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

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

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

(C) by adding at the end the following:

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

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

"(II) $10,000.

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

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

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

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

"(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

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

"(I) 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

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

divided by 60.

"(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

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

"(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—

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

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

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

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

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

"(II) $10,000.

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

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

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

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

"(4)(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

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

"(ii) the court—

"(I) grants such motion; and

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

"(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—

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

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

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

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

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

"(I) is well grounded in fact; and

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

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

"(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

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

"(ii) the court finds that—

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

"(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

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

"(C) For purposes of this paragraph—

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

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

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

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

"(I) a parent corporation; and

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

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

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

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

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

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

"(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

"(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

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

"(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if—

"(i)(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

"(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

"(ii) the debtor files a statement under penalty of perjury—

"(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

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

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

"(10A) 'current monthly income'—

"(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

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

"(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

"(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism;".

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

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

(2) by adding at the end the following:

"(b)(1) With respect to a debtor who is an individual in a case under this chapter—

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

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

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

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

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

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

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

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

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

"(c)(1) In this subsection—

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

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

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

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

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

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

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

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

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

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

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

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

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

"(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

"(ii) for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

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

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

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

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

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

(i) SPECIAL ALLOWANCE FOR HEALTH INSURANCE.—Section 1329(a) 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) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

"(A) such expenses are reasonable and necessary;

"(B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy; or

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

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

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

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

(k) DEFINITION OF 'MEDIAN FAMILY INCOME'.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (39) the following:

"(39A) 'median family income' means for any year—

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

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

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

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

SEC. 103. SENSE OF CONGRESS AND STUDY.

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

(b) STUDY.—

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

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

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

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

SEC. 104. NOTICE OF ALTERNATIVES.

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

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

"(1) a brief description of—

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

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

"(2) statements specifying that—

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

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

SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

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

(b) TEST.—

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

(2) USE.—For an 18-month period beginning not later than 270 days after the date of 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 title 11, United States Code.

(c) EVALUATION.—

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

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

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

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

SEC. 106. CREDIT COUNSELING.

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

"(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

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

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

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

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

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

"(iii) is satisfactory to the court.

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

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

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

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

(3) by adding at the end the following:

"(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trust-

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

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

"(g)(1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

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

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

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

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

(2) by adding at the end the following:

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

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

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

(e) GENERAL PROVISIONS.—

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

"§ 111. Nonprofit budget and credit counseling agencies; financial management instructional courses

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

"(1) nonprofit budget and credit counseling agencies that provide 1 or more services described in section 109(h) currently approved by the United States trustee (or the bankruptcy administrator, if any); and

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

"(b) The United States trustee (or bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency or an instructional course concerning personal financial management as follows:

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

"(2) The United States trustee (or bankruptcy administrator, if any) shall have determined that such agency or such instructional course fully satisfies the applicable standards set forth in this section.

"(3) If a nonprofit budget and credit counseling agency or instructional course did not appear on the approved list for the district under subsection (a) immediately before approval under this section, approval under this subsection of such agency or such instructional course shall be for a probationary period not to exceed 6 months.

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

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

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

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

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

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

"(A) have a board of directors the majority of which—

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

"(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

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

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

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

"(E) provide adequate counseling with respect to a client's credit problems that includes an analysis of such client's current financial condition, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

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

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

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

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

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

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

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

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

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

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

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

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

"(e) The district court may, at any time, investigate the qualifications of a nonprofit budget and credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such agency. The district court may, at any time, remove from the approved list under subsection

(a) a nonprofit budget and credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

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

"(g)(1) No nonprofit budget and credit counseling agency may provide to a credit reporting agency information concerning whether a debtor has received or sought instruction concerning personal financial management from such agency.

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

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

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

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

"111. Nonprofit budget and credit counseling agencies; financial management instructional courses.".

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

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

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

SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY EXPENSES.

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

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 202. EFFECT OF DISCHARGE.

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

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

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

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

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

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

SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION AGREEMENT PRACTICES.

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

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

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

(2) by adding at the end the following:

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

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

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

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

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

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

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

"(ii) the total of any fees and costs accrued as of the date of the disclosure statement, related to such total amount.

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

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

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

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

"(i) if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in section 103 of the Truth in Lending Act, then—

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

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

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

"(ii) if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in section 103 of the Truth in Lending Act, then—

"(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the entering into an agreement of the kind specified in subsection (c) with respect to the debt, or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"'Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

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

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

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

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

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

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

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

"'Brief description of credit agreement:

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

"'Signature: Date:

"'Borrower:

"'Co-borrower, if also reaffirming these debts:

"'Accepted by creditor:

"'Date of creditor acceptance:'.

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

"(A) The following certification:

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

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

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

"(B) If a presumption of undue hardship has been established with respect to such agreement, such certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) LAW ENFORCEMENT.—

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

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

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

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

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

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

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

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

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

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

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

Section 363 of title 11, United States Code, is amended—

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

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

"(o) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2002), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.".

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

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the reaffirmation agreement process that occurs under title 11 of the United

States Code, to determine the overall treatment of consumers within the context of such process, and shall include in such study consideration of—

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

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

(b) REPORT TO THE CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report on the results of the study conducted under subsection (a), together with recommendations for legislation (if any) to address any abusive or coercive tactics found in connection with the reaffirmation agreement process that occurs under title 11 of the United States Code.

Subtitle B—Priority Child Support

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

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

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

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

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

"(A) owed to or recoverable by—

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

"(ii) a governmental unit;

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

"(C) established or subject to establishment before or after the date of the order for relief in a case 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 of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt;".

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

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

(1) by striking paragraph (7);

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

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

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

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

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

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

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

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

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

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

"(1) First:

"(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such

child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

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

"(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.".

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

Title 11, United States Code, is amended—

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

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

(2) in section 1208(c)—

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

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

(C) by adding at the end the following:

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

(3) in section 1222(a)—

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

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

(C) by adding at the end the following:

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

(4) in section 1222(b)—

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

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

"(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1228(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims;";

(5) in section 1225(a)—

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

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

(C) by adding at the end the following:

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

(6) in section 1228(a), in the matter preceding paragraph (1), by inserting ", and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor cer-

tifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid" after "completion by the debtor of all payments under the plan";

(7) in section 1307(c)—

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

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

(C) by adding at the end the following:

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

(8) in section 1322(a)—

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

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

(C) by adding at the end the following:

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

(9) in section 1322(b)—

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

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

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

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

(10) in section 1325(a), as amended by section 102, by inserting after paragraph (7) the following:

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

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

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

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

"(2) under subsection (a)—

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

"(i) for the establishment of paternity;

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

"(iii) concerning child custody or visitation;

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

"(v) regarding domestic violence;

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

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

"(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

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

"(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

"(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;".

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

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

(1) in subsection (a)—

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

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

(B) by striking paragraph (18);

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

(3) in paragraph (15), as added by Public Law 103–394 (108 Stat. 4133)—

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

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

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

SEC. 216. CONTINUED LIABILITY OF PROPERTY.

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

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

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

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

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

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

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

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

SEC. 218. DISPOSABLE INCOME DEFINED.

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

SEC. 219. COLLECTION OF CHILD SUPPORT.

(a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Section 704 of title 11, United States Code, as amended by section 102, is amended—

(1) in subsection (a)—

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

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

(C) by adding at the end the following:

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

(2) by adding at the end the following:

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

"(A)(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

"(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

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

"(B)(i) provide written notice to such State child support enforcement agency of such claim; and

"(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

"(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of—

"(i) the granting of the discharge;

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

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

"(iv) the name of each creditor that holds a claim that—

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

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

"(2)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

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

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

(1) in subsection (a)—

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

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

(C) by adding at the end the following:

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

(2) by adding at the end the following:

"(c)(1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall—

"(A)(i) provide written notice to the holder of the claim described in subsection (a)(8) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

"(ii) include in the notice required by clause (i) the address and telephone number of such State child support enforcement agency;

"(B)(i) provide written notice to such State child support enforcement agency of such claim; and

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

"(C) at such time as the debtor is granted a discharge under section 1141, provide written notice to such holder and to such State child support enforcement agency of—

"(i) the granting of the discharge;

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

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

"(iv) the name of each creditor that holds a claim that—

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

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

"(2)(A) The holder of a claim described in subsection (a)(8) or the State child enforcement support agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of 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 by reason of making such disclosure.".

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

(1) in subsection (b)—

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

(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 the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c)."; and

(2) by adding at the end the following:

"(c)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

"(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

"(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

"(B)(i) provide written notice to such State child support enforcement agency of such claim; and

"(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

"(C) at such time as the debtor is granted a discharge under section 1228, provide written notice to such holder and to such State child support enforcement agency of—

"(i) the granting of the discharge;

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

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

"(iv) the name of each creditor that holds a claim that—

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

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

"(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of 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 by reason of making that disclosure.".

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

(1) in subsection (b)—

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

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

(C) by adding at the end the following:

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

(2) by adding at the end the following:

"(d)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

"(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

"(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

"(B)(i) provide written notice to such State child support enforcement agency of such claim; and

"(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

"(C) at such time as the debtor is granted a discharge under section 1328, provide written notice to such holder and to such State child support enforcement agency of—

"(i) the granting of the discharge;

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

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

"(iv) the name of each creditor that holds a claim that—

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

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

"(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of 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 by reason of making that disclosure.".

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

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

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

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

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

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

Subtitle C—Other Consumer Protections

SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANKRUPTCY FILINGS.

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

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

(2) in subsection (b)—

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

"(A) sign the document for filing; and

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

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

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

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

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

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

"(iii) shall—

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

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

(3) in subsection (c)—

(A) in paragraph (2)—

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

(ii) by adding at the end the following:

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

(B) by striking paragraph (3);

(4) in subsection (d)—

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

(B) by striking paragraph (2);

(5) in subsection (e)—

(A) by striking paragraph (2); and

(B) by adding at the end the following:

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

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

"(i) whether—

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

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

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

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

"(iv) concerning—

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

"(II) the dischargeability of tax claims;

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

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

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

(6) in subsection (f)—

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

(B) by striking paragraph (2);

(7) in subsection (g)—

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

(B) by striking paragraph (2);

(8) in subsection (h)—

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

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

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

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

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

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

(iii) by adding at the end the following: "If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).";

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

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

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

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

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

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

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

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

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

(10) in subsection (j)—

(A) in paragraph (2)—

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

(ii) in subparagraph (B)—

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

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

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

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

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

(11) by adding at the end the following:

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

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

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

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

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

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

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

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

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

SEC. 222. SENSE OF CONGRESS.

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

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

Section 507(a) of title 11, United States Code, as amended by section 212, is amended by inserting after paragraph (9) the following:

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

SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

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

(1) in subsection (b)—

(A) in paragraph (2)—

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

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

(iii) by adding at the end the following:

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

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

"(3) Property listed in this paragraph is—

"(A) any property";

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

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

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

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

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

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

(G) by adding at the end the following:

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

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

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

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

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

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

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

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

(2) in subsection (d)—

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

(B) by adding at the end the following:

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

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

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

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

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

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

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

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

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

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by section 215, is amended by inserting after paragraph (17) the following:

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

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

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

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

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

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

(e) ASSET LIMITATION.—

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

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

(2) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, are amended by inserting "522(n)," after "522(d),".

SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANKRUPTCY.

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

(1) in subsection (b)—

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

(B) by redesignating paragraph (5) as paragraph (9); and

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

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

"(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

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

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

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

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

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

"(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or

stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

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

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

(2) by adding at the end the following:

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

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by section 106, is amended by adding at the end the following:

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

SEC. 226. DEFINITIONS.

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

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

"(3) 'assisted person' means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $150,000;";

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

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

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

"(12A) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

"(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

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

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

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

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

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

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

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

"§ 526. Restrictions on debt relief agencies

"(a) A debt relief agency shall not—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(4) The district courts of the United States for districts 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.

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

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

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

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

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

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525, the following:

"526. Restrictions on debt relief agencies.".

SEC. 228. DISCLOSURES.

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

"§ 527. Disclosures

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

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

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

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

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

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

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

"(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) the following statement, to the extent applicable, or one substantially similar. The 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 available under 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. A creditor is not permitted to coerce you into reaffirming your debts.

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

"'If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should 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.

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

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 227, is amended by inserting after the item relating to section 526 the following:

"527. Disclosures.".

SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.

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

"§ 528. Requirements for debt relief agencies

"(a) A debt relief agency shall—

"(1) not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously—

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

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

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

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

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

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

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

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

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

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

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

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

"528. Requirements for debt relief agencies.".

SEC. 230. GAO STUDY.

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

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

SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION.

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

", except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

"(A) such sale or such lease is consistent with such policy; or

"(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

"(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

"(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.".

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (41) the following:

"(41A) 'personally identifiable information' means—

"(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

"(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

"(ii) the geographical address of a physical place of residence of such individual;

"(iii) an electronic address (including an e-mail address) of such individual;

"(iv) a telephone number dedicated to contacting such individual at such physical place of residence;

"(v) a social security account number issued to such individual; or

"(vi) the account number of a credit card issued to such individual; or

"(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)—

"(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or

"(ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically;".

SEC. 232. CONSUMER PRIVACY OMBUDSMAN.

(a) CONSUMER PRIVACY OMBUDSMAN.—Title 11 of the United States Code is amended by inserting after section 331 the following:

"§ 332. Consumer privacy ombudsman

"(a) If a hearing is required under section 363(b)(1)(B), the court shall order the United States trustee to appoint, not later than 5 days before the commencement of the hearing, 1 disinterested person (other than the United States trustee) to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman.

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

"(1) the debtor's privacy policy;

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

"(3) the potential costs or benefits to consumers if such sale or such lease is approved by the court; and

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

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

(b) COMPENSATION OF CONSUMER PRIVACY OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended in the matter preceding subparagraph (A), by inserting "a consumer privacy ombudsman appointed under section 332," before "an examiner".

(c) CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

"332. Consumer privacy ombudsman.".

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

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

"§ 112. Prohibition on disclosure of name of minor children

"The debtor may be required to provide information regarding a minor child involved in matters under this title but may not be required to disclose in the public records in the case the name of such minor child. The debtor may be required to disclose the name of such minor child in a nonpublic record that is maintained by the court and made available by the court for examination by the United States trustee, the trustee, and the auditor (if any) serving under section 586(f) of title 28, in the case. The court, the United States trustee, the trustee, and such auditor shall not disclose the name of such minor child maintained in such nonpublic record.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, as amended by section 106, is amended by inserting after the item relating to section 111 the following:

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

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

TITLE III —DISCOURAGING BANKRUPTCY ABUSE

SEC. 301. TECHNICAL AMENDMENTS.

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

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

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

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

SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.

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

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

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

(3) by adding at the end the following:

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

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

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

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

"(i) as to all creditors, if—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(i) as to all creditors if—

"(I) 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 any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

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

SEC. 303. CURBING ABUSIVE FILINGS.

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

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

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

(3) by adding at the end the following:

"(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the 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, such real property without the consent of the secured creditor or court approval; or

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

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.".

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 224, is amended by inserting after paragraph (19), the following:

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

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

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

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

SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521(a), as so designated by section 106—

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

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

(C) by adding at the end the following:

"(6) in a case under chapter 7 of this title in which the debtor is an individual, not 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 such personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

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

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

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) is terminated with respect to the personal property of the estate 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 filed before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee."; and

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

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

Title 11, United States Code, is amended—

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

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

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

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

"(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor 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)—

"(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

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

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

(2) in section 521, as amended by sections 106 and 225—

(A) in subsection (a)(2) by striking "consumer";

(B) in subsection (a)(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)"; and

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

(C) in subsection (a)(2)(C) by inserting ", except as provided in section 362(h)" before the semicolon; and

(D) by adding at the end the following:

"(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h), 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, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement that has the effect of placing the debtor in default under such lease or agreement by reason of the occur-

rence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.".

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

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

"(i) the plan provides that—

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

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

"(bb) discharge under section 1328; and

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

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

"For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.".

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

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

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

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

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

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

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

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

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

"(C) all replacements or additions;".

SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.

Section 522(b)(3) of title 11, United States Code, as so designated by section 106, is amended—

(1) in subparagraph (A)—

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

(B) 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"; and

(2) by adding at the end the following:

"If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).".

SEC. 308. REDUCTION OF HOMESTEAD EXEMPTION FOR FRAUD.

Section 522 of title 11, United States Code, as amended by section 224, is amended—

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

(2) by adding at the end the following:

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

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

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

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

"(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.".

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

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

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

(2) in subparagraph (B)—

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

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

(3) by adding at the end the following:

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

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

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

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

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

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

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

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

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

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

(1) CONFIRMATION OF PLAN.—Section 1325(a)(5)(B) of title 11, United States Code, as amended by section 306, is amended—

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

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

(C) by adding at the end the following:

"(iii) if—

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

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

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

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

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

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

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

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

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

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

SEC. 310. LIMITATION ON LUXURY GOODS.

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

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

"(I) consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

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

"(ii) for purposes of this subparagraph—

"(I) the terms 'consumer', 'credit', and 'open end credit plan' have the same meanings as in section 103 of the Truth in Lending Act; and

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

SEC. 311. AUTOMATIC STAY.

(a) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 224 and 303, is amended by inserting after paragraph (21), the following:

"(22) subject to subsection (n), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

"(23) subject to subsection (o), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

"(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;".

(b) LIMITATIONS.—Section 362 of title 11, United States Code, as amended by sections 106 and 305, is amended by adding at the end the following:

"(*l*)(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

"(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

"(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

"(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankrupcty law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

"(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

"(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

"(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

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

"(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

"(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

"(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

"(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

"(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

"(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

"(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

"(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

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

"(m)(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

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

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

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

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

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

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

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

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

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

SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

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

(2) in section 1328, by inserting after subsection (e) the following:

"(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

"(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or

"(2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.".

SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

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

"(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term 'household goods' means—

"(i) clothing;

"(ii) furniture;

"(iii) appliances;

"(iv) 1 radio;

"(v) 1 television;

"(vi) 1 VCR;

"(vii) linens;

"(viii) china;

"(ix) crockery;

"(x) kitchenware;

"(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;

"(xii) medical equipment and supplies;

"(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

"(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and

"(xv) 1 personal computer and related equipment.

"(B) The term 'household goods' does not include—

"(i) works of art (unless by or of the debtor, or any relative of the debtor);

"(ii) electronic entertainment equipment with a fair market value of more than $500 in the aggregate (except 1 television, 1 radio, and 1 VCR);

"(iii) items acquired as antiques with a fair market value of more than $500 in the aggregate;

"(iv) jewelry with a fair market value of more than $500 in the aggregate (except wedding rings); and

"(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.".

(b) STUDY.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing its findings regarding utilization of the definition of household goods, as defined in section 522(f)(4) of title 11, United States Code, as added by subsection (a), with respect to the avoidance of nonpossessory, nonpurchase money security interests in household goods under section 522(f)(1)(B) of title 11, United States Code, and the impact such section 522(f)(4) has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to such section 522(f)(4) consistent with the Director's findings.

SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE DEBTS.

(a) IN GENERAL.—Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

"(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);".

(b) DISCHARGE UNDER CHAPTER 13.—Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

"(1) provided for under section 1322(b)(5);

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

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

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

SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7 AND 13 CASES.

(a) NOTICE.—Section 342 of title 11, United States Code, as amended by section 102, is amended—

(1) in subsection (c)—

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

(B) by striking ", but the failure of such notice to contain such information shall not invalidate the legal effect of such notice"; and

(C) by adding at the end the following:

"(2)(A) If, within the 90 days before the commencement of a voluntary case, a creditor supplies the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.

"(B) If a creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if such creditor supplies the debtor in the last 2 communications with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number."; and

(2) by adding at the end the following:

"(e)(1) In a case under chapter 7 or 13 of this title of a debtor who is an individual, a creditor at any time may both file with the court and serve on the debtor a notice of address to be used to provide notice in such case to such creditor.

"(2) Any notice in such case required to be provided to such creditor by the debtor or the court later than 5 days after the court and the debtor receive such creditor's notice of address, shall be provided to such address.

"(f)(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

"(2) In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

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

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

for receiving notices under this title and establishes reasonable procedures so that such notices receivable by such creditor are to be delivered to such person or such subdivision, then a notice provided to such creditor other than in accordance with this section (excluding this subsection) shall not be considered to have been brought to the attention of such creditor until such notice is received by such person or such subdivision.

"(2) A monetary penalty may not be imposed on a creditor for a violation of a stay in effect under section 362(a) (including a monetary penalty imposed under section 362(k)) or for failure to comply with section 542 or 543 unless the conduct that is the basis of such violation or of such failure occurs after such creditor receives notice effective under this section of the order for relief.".

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 106, 225, and 305, is amended—

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

"(1) file—

"(A) a list of creditors; and

"(B) unless the court orders otherwise—

"(i) a schedule of assets and liabilities;

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

"(iii) a statement of the debtor's financial affairs and, if section 342(b) applies, a certificate—

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

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

"(iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

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

"(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;"; and

(2) by adding at the end the following:

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

"(2)(A) The debtor shall provide—

"(i) not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and

"(ii) at the same time the debtor complies with clause (i), a copy of such return (or if elected under clause (i), such transcript) to any creditor that timely requests such copy.

"(B) If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.

"(C) If a creditor requests a copy of such tax return or such transcript and if the debtor fails to provide a copy of such tax return or such transcript to such creditor at the time the debtor provides such tax return or such transcript to the trustee, then the court shall dismiss the case unless the debtor demonstrates that the failure to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.

"(3) If a creditor in a case under chapter 13 files with the court at any time a request to receive a copy of the plan filed by the debtor, then the court shall make available to such creditor a copy of the plan—

"(A) at a reasonable cost; and

"(B) not later than 5 days after such request is filed.

"(f) At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court—

"(1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

"(2) at the same time filed with the taxing authority, each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) that had not been filed with such authority as of the date of the commencement of the case and that was subsequently filed for any tax year of the debtor ending in the 3-year period ending on the date of the commencement of the case;

"(3) a copy of each amendment to any Federal income tax return or transcript filed with the court under paragraph (1) or (2); and

"(4) in a case under chapter 13—

"(A) on the date that is either 90 days after the end of such tax year or 1 year after the date of the commencement of the case, whichever is later, if a plan is not confirmed before such later date; and

"(B) annually after the plan is confirmed and until the case is closed, not later than the date that is 45 days before the anniversary of the confirmation of the plan;

a statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

"(g)(1) A statement referred to in subsection (f)(4) shall disclose—

"(A) the amount and sources of the income of the debtor;

"(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

"(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

"(2) The tax returns, amendments, and statement of income and expenditures described in subsections (e)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003.

"(h) If requested by the United States trustee or by the trustee, the debtor shall provide—

"(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; or

"(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.".

(c)(1) Not later than 180 days after the date of the enactment of this Act, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

(3) Not later than 540 days after the date of enactment of this Act, the Director of the Administrative Office of the United States Courts shall prepare and submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report that—

(A) assesses the effectiveness of the procedures established under paragraph (1); and

(B) if appropriate, includes proposed legislation to—

(i) further protect the confidentiality of tax information; and

(ii) provide penalties for the improper use by any person of the tax information required to be provided under this section.

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

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

"(i)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.

"(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the

case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

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

"(4) Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.".

SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, is amended—

(1) by striking "After" and inserting the following:

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

(2) by adding at the end the following:

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

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

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

"(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

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

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

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

the plan may not provide for payments over a period that is longer than 5 years.

"(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

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

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

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

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.";

(2) in section 1325(b)(1)(B), by striking "three-year period" and inserting "applicable commitment period"; and

(3) in section 1325(b), as amended by section 102, by adding at the end the following:

"(4) For purposes of this subsection, the 'applicable commitment period'—

"(A) subject to subparagraph (B), shall be—

"(i) 3 years; or

"(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

"(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

"(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

"(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4; and

"(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period."; and

(4) in section 1329(c), by striking "three years" and inserting "the applicable commitment period under section 1325(b)(1)(B)".

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

It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by attorneys be submitted only after the debtors or the debtors' attorneys have made reasonable inquiry to verify that the information contained in such documents is—

(1) well grounded in fact; and

(2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

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

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

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end the following:

"(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

"(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

"(B) such 60-day period is extended—

"(i) by agreement of all parties in interest; or

"(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.".

SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—

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

"§ 1115. Property of the estate

"(a) In a case in which the debtor is an individual, property of the estate includes, in addition to the property specified in section 541—

"(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

"(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.".

"(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.".

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

"1115. Property of the estate.".

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

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

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

(3) by adding at the end the following:

"(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.".

(c) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, as amended by section 213, is amended by adding at the end the following:

"(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

"(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

"(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.".

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11, United States Code, is amended by inserting before the period at the end the following: ", except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section".

(d) EFFECT OF CONFIRMATION.—Section 1141(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "The confirmation of a plan does not discharge an individual debtor" and inserting "A discharge under this chapter does not discharge a debtor who is an individual"; and

(2) by adding at the end the following:

"(5) In a case in which the debtor is an individual—

"(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

"(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

"(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and

"(ii) modification of the plan under section 1127 is not practicable; and".

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

"(e) If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

"(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

"(2) extend or reduce the time period for such payments; or

"(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

"(f)(1) Sections 1121 through 1128 and the requirements of section 1129 apply to any modification under subsection (a).

"(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125 as the court may direct, notice and a hearing, and such modification is approved.".

SEC. 322. LIMITATIONS ON HOMESTEAD EXEMPTION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by sections 224 and 308, is amended by adding at the end the following:

"(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $125,000 in value in—

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

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

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

"(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

"(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

"(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

"(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $125,000 if—

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

"(B) the debtor owes a debt arising from—

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

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

"(iii) any civil remedy under section 1964 of title 18; or

"(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

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

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, as amended by section 224, are amended by inserting "522(p), 522(q)," after "522(n),".

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

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

"(7) any amount—

"(A) withheld by an employer from the wages of employees for payment as contributions—

"(i) to—

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

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

"(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

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

"(B) received by an employer from employees for payment as contributions—

"(i) to—

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

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

"(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

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

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

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

(1) in subsection (b), by striking "Notwithstanding" and inserting "Except as provided in subsection (e)(2), and notwithstanding"; and

(2) by striking subsection (e) and inserting the following:

"(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

"(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

"(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.".

(b) APPLICABILITY.—This section shall only apply to cases filed after the date of enactment of this Act.

SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.

(a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11, UNITED STATES CODE.—Section 1930(a) of title 28, United States Code, is amended by striking paragraph (1) and inserting the following:

"(1) For a case commenced—

"(A) under chapter 7 of title 11, $160; or

"(B) under chapter 13 of title 11, $150.".

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 589a(b) of title 28, United States Code, is amended—

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

"(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

"(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;";

(2) in paragraph (2), by striking "one-half" and inserting "three-fourths"; and

(3) in paragraph (4), by striking "one-half" and inserting "100 percent".

(c) COLLECTION AND DEPOSIT OF MISCELLANEOUS BANKRUPTCY FEES.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking "pursuant to 28 U.S.C. section 1930(b)" and all that follows through "28 U.S.C. section 1931" and inserting "under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title".

SEC. 326. SHARING OF COMPENSATION.

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

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

SEC. 327. FAIR VALUATION OF COLLATERAL.

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

(1) inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

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

SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

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

(1) in subsection (b)—

(A) 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 the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is im-

possible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;"; and

(B) in paragraph (2)(D), by striking "penalty rate or provision" and inserting "penalty rate or penalty provision";

(2) in subsection (c)—

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

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

(C) by striking paragraph (4);

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9); and

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

(4) in subsection (f)(1) by striking "; except that" and all that follows through the end of the paragraph and inserting a period.

(b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by inserting "or of a kind that section 365(b)(2) expressly does not require to be cured" before the semicolon at the end;

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

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

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

"(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and".

SEC. 329. 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—

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

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

SEC. 330. DELAY OF DISCHARGE DURING PENDENCY OF CERTAIN PROCEEDINGS.

(a) CHAPTER 7.—Section 727(a) of title 11, United States Code, as amended by section 106, is amended—

(1) in paragraph (10), by striking "or" at the end;

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

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

"(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

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

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

(b) CHAPTER 11.—Section 1141(d) of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

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

"(i) section 522(q)(1) may be applicable to the debtor; and

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

(c) CHAPTER 12.—Section 1228 of title 11, United States Code, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as",

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at", and

(3) by adding at the end the following:

"(f) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

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

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

(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking "As" and inserting "Subject to subsection (d), as",

(2) in subsection (b) by striking "At" and inserting "Subject to subsection (d), at", and

(3) by adding at the end the following:

"(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

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

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

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.

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

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

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by sections 224, 303, and 311, is amended by inserting after paragraph (24) the following:

"(25) under subsection (a), of—

"(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

"(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

"(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;".

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

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

"(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.".

SEC. 403. PROTECTION OF REFINANCE OF SECURITY INTEREST.

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are each amended by striking "10" each place it appears and inserting "30".

SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

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

"(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

"(i) the date that is 120 days after the date of the order for relief; or

"(ii) the date of the entry of an order confirming a plan.

"(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

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

(b) EXCEPTION.—Section 365(f)(1) of title 11, United States Code, is amended by striking "subsection" the first place it appears and inserting "subsections (b) and".

SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

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

"(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders. The court may order the United States trustee to increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act), if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.".

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

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

"(A) provide access to information for creditors who—

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

"(ii) are not appointed to the committee;

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

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

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

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

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

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

(3) by adding at the end the following:

"(i)(1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

"(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any State statute applicable to such lien that is similar to section 7–209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003, or any successor to such section 7–209.".

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

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

(1) in paragraph (3)—

(A) by striking "(A) In" and inserting "In"; and

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

(2) by adding at the end the following:

"(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.".

SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.

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

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

SEC. 409. PREFERENCES.

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

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

"(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

"(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

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

(2) in paragraph (8), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

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

SEC. 410. VENUE OF CERTAIN PROCEEDINGS.

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

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

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

(1) by striking "On" and inserting "(1) Subject to paragraph (2), on"; and

(2) by adding at the end the following:

"(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

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

SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

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

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

(2) by striking "ownership or" and inserting "ownership,";

(3) by striking "housing" the first place it appears; and

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

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

Section 341(c) of title 11, United States Code, is amended by inserting at the end the following: "Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.".

SEC. 414. DEFINITION OF DISINTERESTED PERSON.

Section 101(14) of title 11, United States Code, is amended to read as follows:

"(14) 'disinterested person' means a person that—

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

"(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

"(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;".

SEC. 415. FACTORS FOR COMPENSATION OF PROFESSIONAL PERSONS.

Section 330(a)(3) of title 11, United States Code, is amended—

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

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

"(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and".

SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

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

(2) by adding at the end the following:

"(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election.

"(B) Upon the filing of a report under subparagraph (A)—

"(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

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

"(C) The court shall resolve any dispute arising out of an election described in subparagraph (A).".

SEC. 417. UTILITY SERVICE.

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

(1) in subsection (a), by striking "subsection (b)" and inserting "subsections (b) and (c)"; and

(2) by adding at the end the following:

"(c)(1)(A) For purposes of this subsection, the term 'assurance of payment' means—

"(i) a cash deposit;

"(ii) a letter of credit;

"(iii) a certificate of deposit;

"(iv) a surety bond;

"(v) a prepayment of utility consumption; or

"(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

"(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

"(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

"(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

"(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider—

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

"(ii) the payment by the debtor of charges for utility service in a timely manner before the date of the filing of the petition; or

"(iii) the availability of an administrative expense priority.

"(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of the filing of the petition without notice or order of the court.".

SEC. 418. BANKRUPTCY FEES.

Section 1930 of title 28, United States Code, is amended—

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

(2) by adding at the end the following:

"(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term 'filing fee' means the filing required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

"(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

"(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.".

SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.

(a) IN GENERAL.—

(1) DISCLOSURE.—The Judicial Conference of the United States, in accordance with section 2075 of title 28 of the United States Code and after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose amended Federal Rules of Bankruptcy Procedure and in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure shall prescribe official bankruptcy forms directing debtors under chapter 11 of title 11 of United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) INFORMATION.—The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) PURPOSE.—The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

Subtitle B—Small Business Bankruptcy Provisions

SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

Section 1125 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by inserting before the semicolon "and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information"; and

(2) by striking subsection (f), and inserting the following:

"(f) Notwithstanding subsection (b), in a small business case—

"(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

"(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28; and

"(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

"(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than 25 days before the date of the hearing on confirmation of the plan; and

"(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.".

SEC. 432. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

"(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

"(51D) 'small business debtor'—

"(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than $2,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

"(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,000,000 (excluding debt owed to 1 or more affiliates or insiders);".

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting "debtor" after "small business".

(c) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting "101(51D)," after "101(3)," each place it appears.

SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

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

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

(2) economy and simplicity for debtors.

SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—

(1) IN GENERAL.—Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following:

"§ 308. Debtor reporting requirements

"(a) For purposes of this section, the term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

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

"(1) the debtor's profitability;

"(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

"(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

"(4)(A) whether the debtor is—

"(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

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

"(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

"(C) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.".

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

"308. Debtor reporting requirements.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Judicial Conference of the United States shall propose in accordance with section 2073 of title 28 of the United States Code amended Federal Rules of Bankruptcy Procedure, and shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure official bankruptcy forms, directing 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 expenses when due.

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

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

(2) a 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 such debtor to understand such debtor's financial condition and plan the such debtor's future.

SEC. 436. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Subchapter I of chapter 11 of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

"§ 1116. Duties of trustee or debtor in possession in small business cases

"In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

"(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—

"(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

"(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

"(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court, after notice and a hearing, waives that requirement upon a finding of extraordinary and compelling circumstances;

"(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

"(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

"(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

"(6)(A) timely file tax returns and other required government filings; and

"(B) subject to section 363(c)(2), timely pay all taxes entitled to administrative expense priority except those being contested by appropriate proceedings being diligently prosecuted; and

"(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, as amended by section 321, is amended by inserting after the item relating to section 1115 the following:

"1116. Duties of trustee or debtor in possession in small business cases.".

SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121 of title 11, United States Code, is amended by striking subsection (e) and inserting the following:

"(e) In a small business case—

"(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

"(A) extended as provided by this subsection, after notice and a hearing; or

"(B) the court, for cause, orders otherwise;

"(2) the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief; and

"(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—

"(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

"(B) a new deadline is imposed at the time the extension is granted; and

"(C) the order extending time is signed before the existing deadline has expired.".

SEC. 438. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

"(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).".

SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.

Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

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

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

"(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and";

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

(3) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(7) in each of such small business cases—

"(A) conduct an initial debtor interview as soon as practicable after the date of the order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—

"(i) begin to investigate the debtor's viability;

"(ii) inquire about the debtor's business plan;

"(iii) explain the debtor's obligations to file monthly operating reports and other required reports;

"(iv) attempt to develop an agreed scheduling order; and

"(v) inform the debtor of other obligations;

"(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor, ascertain the state of the debtor's books and records, and verify that the debtor has filed its tax returns; and

"(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

"(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.".

SEC. 440. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ", may"; and

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

"(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and".

SEC. 441. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by sections 106, 305, and 311, is amended—

(1) in subsection (k), as so redesignated by section 305—

(A) by striking "An" and inserting "(1) Except as provided in paragraph (2), an"; and

(B) by adding at the end the following:

"(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages."; and

(2) by adding at the end the following:

"(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

"(A) is a debtor in a small business case pending at the time the petition is filed;

"(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

"(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

"(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

"(2) Paragraph (1) does not apply—

"(A) to an involuntary case involving no collusion by the debtor with creditors; or

"(B) to the filing of a petition if—

"(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

"(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.".

SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

"(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

"(2) The relief provided in paragraph (1) shall not be granted absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest objects and establishes that—

"(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

"(B) the grounds for granting such relief include an act or omission of the debtor other than under paragraph (4)(A)—

"(i) for which there exists a reasonable justification for the act or omission; and

"(ii) that will be cured within a reasonable period of time fixed by the court.

"(3) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

"(4) For purposes of this subsection, the term 'cause' includes—

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

"(B) gross mismanagement of the estate;

"(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

"(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

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

"(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

"(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

"(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

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

"(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

"(K) failure to pay any fees or charges required under chapter 123 of title 28;

"(L) revocation of an order of confirmation under section 1144;

"(M) inability to effectuate substantial consummation of a confirmed plan;

"(N) material default by the debtor with respect to a confirmed plan;

"(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

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

"(5) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.".

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

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

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

(3) by adding at the end the following:

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

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

Not later than 2 years after the date of enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Executive Office for United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

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

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

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

SEC. 444. PAYMENT OF INTEREST.

Section 362(d)(3) of title 11, United States Code, is amended—

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

(2) by striking subparagraph (B) and inserting the following:

"(B) the debtor has commenced monthly payments that—

"(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before or after the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

"(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or".

SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or a penalty provision, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from an entity other than the debtor, 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);".

SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) IN GENERAL.—Section 521(a) of title 11, United States Code, as amended by sections 106 and 304, is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting "; and"; and

(3) by adding after paragraph (6) the following:

"(7) unless a trustee is serving in the case, continue to perform the obligations required of the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan if at the time of the commencement of the case the debtor (or any entity designated by the debtor) served as such administrator.".

(b) DUTIES OF TRUSTEES.—Section 704(a) of title 11, United States Code, as amended by sections 102 and 219, is amended—

(1) in paragraph (10), by striking "and" at the end; and

(2) by adding at the end the following:

"(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and".

(c) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, is amended to read as follows:

"(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), and (11) of section 704;".

SEC. 447. APPOINTMENT OF COMMITTEE OF RETIRED EMPLOYEES.

Section 1114(d) of title 11, United States Code, is amended—

(1) by striking "appoint" and inserting "order the appointment of", and

(2) by adding at the end the following: "The United States trustee shall appoint any such committee.".

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting "notwithstanding section 301(b)" before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "A voluntary"; and

(2) by striking the last sentence and inserting the following:

"(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.".

SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting "555, 556," after "553,"; and

(2) by inserting "559, 560, 561, 562," after "557,".

TITLE VI—BANKRUPTCY DATA

SEC. 601. IMPROVED BANKRUPTCY STATISTICS.

(a) IN GENERAL.—Chapter 6 of title 28, United States Code, is amended by adding at the end the following:

"§ 159. Bankruptcy statistics

"(a) The clerk of the district court, or the clerk of the bankruptcy court if one is certified pursuant to section 156(b) of this title, shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a standardized format prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Director').

"(b) The Director shall—

"(1) compile the statistics referred to in subsection (a);

"(2) make the statistics available to the public; and

"(3) not later than July 1, 2006, 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 debtors;

"(B) the current monthly income, average income, and average expenses of 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 cases filed during 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 date of the filing of the petition and the closing of the case for cases closed during the reporting period;

"(E) for cases closed during the reporting period—

"(i) the number of cases in which a reaffirmation agreement was filed; and

"(ii)(I) the total number of reaffirmation agreements filed;

"(II) of those cases in which a reaffirmation agreement was filed, the number of cases in which the debtor was not represented by an attorney; and

"(III) of those cases in which a reaffirmation agreement was filed, the number of cases in which the reaffirmation agreement 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 entered determining the value of property securing a claim;

"(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

"(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;

"(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

"(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's attorney or damages awarded under such Rule.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 6 of title 28, United States Code, is amended by adding at the end the following:

"159. Bankruptcy statistics.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Chapter 39 of title 28, United States Code, is amended by adding at the end the following:

"§ 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 in cases under chapter 11 of title 11.

"(b) REPORTS.—Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

"(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

"(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system;

"(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports; and

"(3) appropriate privacy concerns and safeguards.

"(d) FINAL REPORTS.—The uniform forms for final reports required under subsection (a) for use by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include with respect to a case under such title—

"(1) information about the length of time the case was pending;

"(2) assets abandoned;

"(3) assets exempted;

"(4) receipts and disbursements of the estate;

"(5) expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 13 of title 11;

"(6) claims asserted;

"(7) claims allowed; and

"(8) distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

"(e) PERIODIC REPORTS.—The uniform forms for periodic reports required under subsection (a) for use by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include—

"(1) information about the industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

"(2) length of time the case has been pending;

"(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

"(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

"(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

"(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately

reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

"(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 39 of title 28, United States Code, is amended by adding at the end the following:

"589b. Bankruptcy data.".

SEC. 603. AUDIT PROCEDURES.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROCEDURES.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information that the debtor is required to provide under sections 521 and 1322 of title 11, United States Code, and, if applicable, section 111 of such title, in cases filed under chapter 7 or 13 of such title in which the debtor is an individual. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(2) PROCEDURES.—Those procedures required by paragraph (1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform those audits;

(B) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;

(C) require audits of schedules of income and expenses that reflect greater than average variances from the statistical norm of the district in which the schedules were filed if those variances occur by reason of higher income or higher expenses than the statistical norm of the district in which the schedules were filed; and

(D) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

(b) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and inserting the following:

"(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003;"; and

(2) by adding at the end the following:

"(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003.

"(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the district court (or the clerk of the bankruptcy court if one is certified under section 156(b) of this title) shall give notice of the misstatement to the creditors in the case.

"(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

"(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

"(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11.".

(c) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as so designated by section 106, is amended in each of paragraphs (3) and (4) by inserting "or an auditor serving under section 586(f) of title 28" after "serving in the case".

(d) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "or" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(4) the debtor has failed to explain satisfactorily—

"(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

"(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public, subject to such appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

TITLE VII—BANKRUPTCY TAX PROVISIONS

SEC. 701. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting "(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)" after "under this title";

(2) in subsection (b)(2), by inserting "(except that such expenses, other than claims for wages, salaries, or commissions that arise after the date of the filing of the petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)" after "507(a)(1)"; and

(3) by adding at the end the following:

"(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

"(1) exhaust the unencumbered assets of the estate; and

"(2) in a manner consistent with section 506(c), recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of such property.

"(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subject to the requirements of subsection (e), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:

"(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(4).

"(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).".

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.".

SEC. 702. TREATMENT OF FUEL TAX CLAIMS.

Section 501 of title 11, United States Code, is amended by adding at the end the following:

"(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement (as defined in section 31701 of title 49) and, if so filed, shall be allowed as a single claim.".

SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended—

(1) in the first sentence, by inserting "at the address and in the manner designated in paragraph (1)" after "determination of such tax";

(2) by striking "(1) upon payment" and inserting "(A) upon payment";

(3) by striking "(A) such governmental unit" and inserting "(i) such governmental unit";

(4) by striking "(B) such governmental unit" and inserting "(ii) such governmental unit";

(5) by striking "(2) upon payment" and inserting "(B) upon payment";

(6) by striking "(3) upon payment" and inserting "(C) upon payment";

(7) by striking "(b)" and inserting "(2)"; and

(8) by inserting before paragraph (2), as so designated, the following:

"(b)(1)(A) The clerk shall maintain a list under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may—

"(i) designate an address for service of requests under this subsection; and

"(ii) describe where further information concerning additional requirements for filing such requests may be found.

"(B) If such governmental unit does not designate an address and provide such address to the clerk under subparagraph (A), any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of such governmental unit.".

SEC. 704. RATE OF INTEREST ON TAX CLAIMS.

(a) IN GENERAL.—Subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

"§ 511. Rate of interest on tax claims

"(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

"(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

"511. Rate of interest on tax claims.".

SEC. 705. PRIORITY OF TAX CLAIMS.

Section 507(a)(8) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by inserting "for a taxable year ending on or before the date of the filing of the petition" after "gross receipts";

(B) in clause (i), by striking "for a taxable year ending on or before the date of the filing of the petition"; and

(C) by striking clause (ii) and inserting the following:

"(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

"(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

"(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days."; and

(2) by adding at the end the following:

"An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of pro-

ceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.".

SEC. 706. PRIORITY PROPERTY TAXES INCURRED.

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking "assessed" and inserting "incurred".

SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 13.

Section 1328(a)(2) of title 11, United States Code, as amended by section 314, is amended by striking "paragraph" and inserting "section 507(a)(8)(C) or in paragraph (1)(B), (1)(C),".

SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 11.

Section 1141(d) of title 11, United States Code, as amended by sections 321 and 330, is amended by adding at the end the following:

"(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

"(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

"(B) for a tax or customs duty with respect to which the debtor—

"(i) made a fraudulent return; or

"(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.".

SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO PREPETITION TAXES.

Section 362(a)(8) of title 11, United States Code, is amended by striking "the debtor" and inserting "a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title".

SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by striking "deferred cash payments," and all that follows through the end of the subparagraph, and inserting "regular installment payments in cash—

"(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

"(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

"(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and"; and

(3) by adding at the end the following:

"(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).".

SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 545(2) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: ", except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law".

SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "Any"; and

(2) by adding at the end the following:

"(b) A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, unless—

"(1) the tax is a property tax secured by a lien against property that is abandoned under section 554 of title 11, within a reasonable period of time after the lien attaches, by the trustee in a case under title 11; or

"(2) payment of the tax is excused under a specific provision of title 11.

"(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11, if—

"(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

"(2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.".

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B)(i) of title 11, United States Code, is amended by inserting "whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both," before "except".

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by adding "and" at the end; and

(3) by adding at the end the following:

"(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;".

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting "or State statute" after "agreement"; and

(2) in subsection (c), by inserting ", including the payment of all ad valorem property taxes with respect to the property" before the period at the end.

SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.

Section 726(a)(1) of title 11, United States Code, is amended by striking "before the date on which the trustee commences distribution under this section;" and inserting the following: "on or before the earlier of—

"(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

"(B) the date on which the trustee commences final distribution under this section;".

SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a) of title 11, United States Code, as amended by sections 215 and 224, is amended—

(1) in paragraph (1)(B)—

(A) in the matter preceding clause (i), by inserting "or equivalent report or notice," after "a return,";

(B) in clause (i), by inserting "or given" after "filed"; and

(C) in clause (ii)—

(i) by inserting "or given" after "filed"; and

(ii) by inserting ", report, or notice" after "return"; and

(2) by adding at the end the following:

"For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.".

SEC. 715. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b)(2) of title 11, United States Code, as amended by section 703, is amended by inserting "the estate," after "misrepresentation,".

SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by sections 102, 213, and 306, is amended by inserting after paragraph (8) the following:

"(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.".

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—

(1) IN GENERAL.—Subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

"§ 1308. Filing of prepetition tax returns

"(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

"(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

"(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

"(B) for any return that is not past due as of the date of the filing of the petition, the later of—

"(i) the date that is 120 days after the date of that meeting; or

"(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

"(2) After notice and a hearing, and order entered before the tolling of any applicable filing period determined under this subsection, if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under this subsection for—

"(A) a period of not more than 30 days for returns described in paragraph (1); and

"(B) a period not to extend after the applicable extended due date for a return described in paragraph (2).

"(c) For purposes of this section, the term 'return' includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.".

(2) CONFORMING AMENDMENT.—The table of sections for subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

"1308. Filing of prepetition tax returns.".

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

"(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.".

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by inserting before the period at the end the following: ", and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required".

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Judicial Conference of the United States should, as soon as practicable after the date of enactment of this Act, propose amended Federal Rules of Bankruptcy Procedure that provide—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, that an objection to the confirmation of a plan filed by a governmental unit on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed before such confirmation; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, that no objection to a claim for a tax with respect to which a return is required to be filed under section 1308 of title 11, United States Code, shall be filed until such return has been filed as required.

SEC. 717. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a)(1) of title 11, United States Code, is amended—

(1) by inserting "including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case," after "records,"; and

(2) by striking "a hypothetical reasonable investor typical of holders of claims or interests" and inserting "such a hypothetical investor".

SEC. 718. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, and 401, is amended by inserting after paragraph (25) the following:

"(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);".

SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.

(a) IN GENERAL.—

(1) SPECIAL PROVISIONS.—Section 346 of title 11, United States Code, is amended to read as follows:

"§ 346. Special provisions related to the treatment of State and local taxes

"(a) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of such estate shall be taxed to or claimed by the estate, a separate taxable estate is also created for purposes of any State and local law imposing a tax on or measured by income and such income, gain, loss, deductions, and credits shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence shall not apply if the case is dismissed. The trustee shall make tax returns of income required under any such State or local law.

"(b) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax on or measured by income and may not be taxed to or claimed by the estate. The trustee shall make such tax returns of income of corporations and of partnerships as are required under any State or local law, but with respect to partnerships, shall make such returns only to the extent such returns are also required to be made under such Code. The estate shall be liable for any tax imposed on such corporation or partnership, but not for any tax imposed on partners or members.

"(c) With respect to a partnership or any entity treated as a partnership under a State or local law imposing a tax on or measured by income that is a debtor in a case under this title, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of any income, gain, loss, deduction, or credit of a partner or member that is distributed, or considered distributed, from such partnership, after the commencement of the case, is gain, loss, income, deduction, or credit, as the case may be, of the partner or member, and if such partner or member is a debtor in a case under this title, shall be subject to tax in accordance with subsection (a) or (b).

"(d) For purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor in a case under this title shall terminate only if and to the extent that the taxable period of such debtor terminates under the Internal Revenue Code of 1986.

"(e) The estate in any case described in subsection (a) shall use the same accounting method as the debtor used immediately before the commencement of the case, if such method of accounting complies with applicable nonbankruptcy tax law.

"(f) For purposes of any State or local law imposing a tax on or measured by income, a transfer of property from the debtor to the estate or from the estate to the debtor shall not be treated as a disposition for purposes of any provision assign-

ing tax consequences to a disposition, except to the extent that such transfer is treated as a disposition under the Internal Revenue Code of 1986.

"(g) Whenever a tax is imposed pursuant to a State or local law imposing a tax on or measured by income pursuant to subsection (a) or (b), such tax shall be imposed at rates generally applicable to the same types of entities under such State or local law.

"(h) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld or collected was paid.

"(i)(1) To the extent that any State or local law imposing a tax on or measured by income provides for the carryover of any tax attribute from one taxable period to a subsequent taxable period, the estate shall succeed to such tax attribute in any case in which such estate is subject to tax under subsection (a).

"(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) to the extent consistent with the Internal Revenue Code of 1986.

"(3) The estate may carry back any loss or tax attribute to a taxable period of the debtor that ended before the date of the order for relief under this title to the extent that—

"(A) applicable State or local tax law provides for a carryback in the case of the debtor; and

"(B) the same or a similar tax attribute may be carried back by the estate to such a taxable period of the debtor under the Internal Revenue Code of 1986.

"(j)(1) For purposes of any State or local law imposing a tax on or measured by income, income is not realized by the estate, the debtor, or a successor to the debtor by reason of discharge of indebtedness in a case under this title, except to the extent, if any, that such income is subject to tax under the Internal Revenue Code of 1986.

"(2) Whenever the Internal Revenue Code of 1986 provides that the amount excluded from gross income in respect of the discharge of indebtedness in a case under this title shall be applied to reduce the tax attributes of the debtor or the estate, a similar reduction shall be made under any State or local law imposing a tax on or measured by income to the extent such State or local law recognizes such attributes. Such State or local law may also provide for the reduction of other attributes to the extent that the full amount of income from the discharge of indebtedness has not been applied.

"(k)(1) Except as provided in this section and section 505, the time and manner of filing tax returns and the items of income, gain, loss, deduction, and credit of any taxpayer shall be determined under applicable nonbankruptcy law.

"(2) For Federal tax purposes, the provisions of this section are subject to the Internal Revenue Code of 1986 and other applicable Federal nonbankruptcy law.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by striking the item relating to section 346 and inserting the following:

"346. Special provisions related to the treatment of State and local taxes.".

(b) CONFORMING AMENDMENTS.—Title 11 of the United States Code is amended—

(1) by striking section 728;

(2) in the table of sections for chapter 7 by striking the item relating to section 728;

(3) in section 1146—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively; and

(4) in section 1231—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX RETURNS.

Section 521 of title 11, United States Code, as amended by sections 106, 225, 305, 315, and 316, is amended by adding at the end the following:

"(j)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

"(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.".

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

"CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

"Sec.
"1501. Purpose and scope of application.

"SUBCHAPTER I—GENERAL PROVISIONS

"1502. Definitions.
"1503. International obligations of the United States.
"1504. Commencement of ancillary case.
"1505. Authorization to act in a foreign country.
"1506. Public policy exception.
"1507. Additional assistance.
"1508. Interpretation.

"SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

"1509. Right of direct access.
"1510. Limited jurisdiction.
"1511. Commencement of case under section 301 or 303.
"1512. Participation of a foreign representative in a case under this title.
"1513. Access of foreign creditors to a case under this title.
"1514. Notification to foreign creditors concerning a case under this title.

"SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

"1515. Application for recognition.
"1516. Presumptions concerning recognition.
"1517. Order granting recognition.
"1518. Subsequent information.
"1519. Relief that may be granted upon filing petition for recognition.
"1520. Effects of recognition of a foreign main proceeding.
"1521. Relief that may be granted upon recognition.
"1522. Protection of creditors and other interested persons.
"1523. Actions to avoid acts detrimental to creditors.
"1524. Intervention by a foreign representative.

"SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

"1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.
"1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
"1527. Forms of cooperation.

"SUBCHAPTER V—CONCURRENT PROCEEDINGS

"1528. Commencement of a case under this title after recognition of a foreign main proceeding.
"1529. Coordination of a case under this title and a foreign proceeding.
"1530. Coordination of more than 1 foreign proceeding.
"1531. Presumption of insolvency based on recognition of a foreign main proceeding.
"1532. Rule of payment in concurrent proceedings.

"§ 1501. Purpose and scope of application

"(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

"(1) cooperation between—

"(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

"(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

"(2) greater legal certainty for trade and investment;

"(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested 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 pending concurrently; or

"(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

"(c) This chapter does not apply to—

"(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);

"(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

"(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

"(d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 1502. Definitions

"For the purposes of this chapter, the term—

"(1) 'debtor' means an entity that is the subject of a foreign proceeding;

"(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

"(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

"(4) 'foreign main proceeding' means a foreign proceeding pending 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, pending in a country where the debtor has an establishment;

"(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title;

"(7) 'recognition' means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter; and

"(8) 'within the territorial jurisdiction of the United States', when used with reference to property of a debtor, refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

"§ 1503. International obligations of the United States

"To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

"§ 1504. Commencement of ancillary case

"A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

"§ 1505. Authorization to act in a foreign country

"A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

"§ 1506. Public policy exception

"Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

"§ 1507. Additional assistance

"(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

"(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

"(1) just treatment of all holders of claims against or interests in the debtor's property;

"(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

"(3) prevention of preferential or fraudulent dispositions of property of the debtor;

"(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

"(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

"§ 1508. Interpretation

"In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

"SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

"§ 1509. Right of direct access

"(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.

"(b) If the court grants recognition under section 1515, and subject to any limitations that the court may impose consistent with the policy of this chapter—

"(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

"(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

"(3) a court in the United States shall grant comity or cooperation to the foreign representative.

"(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of an order granting recognition under section 1517.

"(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

"(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

"(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

"§ 1510. Limited jurisdiction

"The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

"§ 1511. Commencement of case under section 301 or 303

"(a) Upon recognition, a foreign representative may commence—

"(1) an involuntary case under section 303; or

"(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

"(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

"§ 1512. Participation of a foreign representative in a case under this title

"Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

"§ 1513. Access of foreign creditors to a case under this title

"(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

"(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

"(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

"(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

"§ 1514. Notification to foreign creditors concerning a case under this title

"(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

"(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.

"(c) When a notification of commencement of a case is to be given to foreign creditors, such notification shall—

"(1) indicate the time period for filing proofs of claim and specify the place for filing such proofs of claim;

"(2) indicate whether secured creditors need to file proofs of claim; and

"(3) contain any other information required to be included in such 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 proof of claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

"SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

"§ 1515. Application for recognition

"(a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

"(b) A petition for recognition shall be accompanied by—

"(1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;

"(2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; 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 such foreign proceeding and of the appointment of the foreign representative.

"(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

"(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

"§ 1516. Presumptions concerning recognition

"(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so presume.

"(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

"(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

"§ 1517. Order granting recognition

"(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

"(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

"(2) the foreign representative applying for recognition is a person or body; and

"(3) the petition meets the requirements of section 1515.

"(b) Such foreign proceeding shall be recognized—

"(1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests; or

"(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

"(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

"(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. A 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 a 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 such foreign proceeding or the status of the foreign representative's appointment; and

"(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

"§ 1519. Relief that may be granted upon filing petition for recognition

"(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

"(1) staying execution against the debtor's assets;

"(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

"(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

"(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

"(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

"(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

"(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

"(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

"§ 1520. Effects of recognition of a foreign main proceeding

"(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

"(1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;

"(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

"(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

"(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

"(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

"(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

"§ 1521. Relief that may be granted upon recognition

"(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

"(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

"(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

"(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

"(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

"(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

"(6) extending relief granted under section 1519(a); and

"(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

"(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

"(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

"(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

"(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

"(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

"§ 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), to conditions it considers appropriate, including the giving of security or the filing of a bond.

"(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

"(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

"§ 1523. Actions to avoid acts detrimental to creditors

"(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

"(b) When a foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

"§ 1524. Intervention by a foreign representative

"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 a foreign court or a foreign representative, either directly or through the trustee.

"(b) The court is entitled to communicate directly with, or to request information or assistance directly from, a foreign court or a foreign representative, subject to the rights of a party in interest to notice and participation.

"§ 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

"(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with a foreign court or a foreign representative.

"(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with a foreign court or a foreign representative.

"§ 1527. Forms of cooperation

"Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

"(1) appointment of a person or body, including an examiner, to act at the direction of the court;

"(2) communication of information by any means considered appropriate by the court;

"(3) coordination of the administration and supervision of the debtor's assets and affairs;

"(4) approval or implementation of agreements concerning the coordination of proceedings; and

"(5) coordination of concurrent proceedings regarding the same debtor.

"SUBCHAPTER V—CONCURRENT PROCEEDINGS

"§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding

"After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

"§ 1529. Coordination of a case under this title and a foreign proceeding

"If a foreign proceeding and a case under another chapter of this title are pending concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

"(1) If the case in the United States pending at the time the petition for recognition of such foreign proceeding is filed—

"(A) any relief granted under section 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

"(B) section 1520 does not apply even if such foreign proceeding is recognized as a foreign main proceeding.

"(2) If a case in the United States under this title commences after recognition, or after the date of the filing of the petition for recognition, of such foreign proceeding—

"(A) 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 case in the United States; and

"(B) if such foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

"(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

"(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

"§ 1530. Coordination of more than 1 foreign proceeding

"In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

"(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

"(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

"(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

"§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding

"In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

"§ 1532. Rule of payment in concurrent proceedings

"Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.".

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 13 the following:

"15. Ancillary and Other Cross-Border Cases ..... 1501".

SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: ", and this chapter, sections 307, 362(n), 555 through 557, and 559 through 562 apply in a case under chapter 15"; and

(2) by adding at the end the following:

"(k) Chapter 15 applies only in a case under such chapter, except that—

"(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

"(2) section 1509 applies whether or not a case under this title is pending.".

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

"(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

"(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding;".

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking "and" at the end;

(B) in subparagraph (O), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.".

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking "Nothing in" and inserting "Except with respect to a case under chapter 15 of title 11, nothing in".

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by striking "or 13" and inserting "13, or 15".

(4) VENUE OF CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Section 1410 of title 28, United States Code, is amended to read as follows:

"§ 1410. Venue of cases ancillary to foreign proceedings

"A case under chapter 15 of title 11 may be commenced in the district court of the United States for the district—

"(1) in which the debtor has its principal place of business or principal assets in the United States;

"(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

"(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.".

(d) OTHER SECTIONS OF TITLE 11.—Title 11 of the United States Code is amended—

(1) in section 109(b), by striking paragraph (3) and inserting the following:

"(3)(A) a foreign insurance company, engaged in such business in the United States; or

"(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 in the United States.";

(2) in section 303, by striking subsection (k);

(3) by striking section 304;

(4) in the table of sections for chapter 3 by striking the item relating to section 304;

(5) in section 306 by striking ", 304," each place it appears;

(6) in section 305(a) by striking paragraph (2) and inserting the following:

"(2)(A) a petition under section 1515 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."; and

(7) in section 508—

(A) by striking subsection (a); and

(B) in subsection (b), by striking "(b)".

TITLE IX—FINANCIAL CONTRACT PROVISIONS

SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(1) by striking "subsection—" and inserting "subsection, the following definitions shall apply:"; and

(2) in clause (i), 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, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase

transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(II) 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, mortgage 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, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.".

(c) DEFINITION OF COMMODITY CONTRACT.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

"(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

"(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

"(II) with respect to a foreign futures commission merchant, a foreign future;

"(III) with respect to a leverage transaction merchant, a leverage transaction;

"(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

"(V) with respect to a commodity options dealer, a commodity option;

"(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) any combination of the agreements or transactions referred to in this clause;

"(VIII) any option to enter into any agreement or transaction referred to in this clause;

"(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be

considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

"(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.".

(d) DEFINITION OF FORWARD CONTRACT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

"(iv) FORWARD CONTRACT.—The term 'forward contract' means—

"(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

"(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

"(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

"(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

"(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.".

(e) DEFINITION OF REPURCHASE AGREEMENT.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

"(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

"(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

"(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

"(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

"(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

"(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together

with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

"(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).".

(f) DEFINITION OF SWAP AGREEMENT.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

"(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

"(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

"(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial 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 subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any 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, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.".

(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 institution's equity of redemption.".

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (A)—

(A) by striking "paragraph (10)" and inserting "paragraphs (9) and (10)";

(B) in clause (i), by striking "to cause the termination or liquidation" and inserting "such person has to cause the termination, liquidation, or acceleration"; and

(C) by striking clause (ii) and inserting the following:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);"; and

(2) in subparagraph (E), by striking clause (ii) and inserting the following:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);".

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting "section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers," before "the Corporation".

SEC. 902. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking "other than paragraph (12) of this subsection, subsection (d)(9)" and inserting "other than subsections (d)(9) and (e)(10)"; and

(2) by adding at the end the following new subparagraphs:

"(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

"(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

"(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

"(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting "or the exercise of rights or powers by" after "the appointment of".

SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

"(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

"(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

"(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

"(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

"(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

"(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

"(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

"(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

"(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

"(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

"(D) DEFINITIONS.—For purposes of this paragraph, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.".

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking "the conservator" and all that follows through the period and inserting the following: "the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.".

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

"(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

"(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the de-

pository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

"(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

"(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

"(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or 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 conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

"(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

"(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

"(i) A bridge bank.

"(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

"(I) immediately upon the organization of the institution; or

"(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.".

SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively;

(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).";; and

(3) by adding at the end the following new paragraph:

"(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.".

SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

"(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves

qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.".

SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon ", or is exempt from such registration by order of the Securities and Exchange Commission"; and

(B) in subparagraph (B), by inserting before the period ", that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act, or that is a multilateral clearing organization (as defined in section 408 of this Act)";

(2) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

"(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;"; and

(C) by amending subparagraph (C), so redesignated, to read as follows:

"(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;";

(3) in paragraph (11), by inserting before the period "and any other clearing organization with which such clearing organization has a netting contract";

(4) by amending paragraph (14)(A)(i) to read as follows:

"(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or close out values relating to such obligations or entitlements) among the parties to the agreement; and"; and

(5) by adding at the end the following new paragraph:

"(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.".

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code)."; and

(2) by adding at the end the following new subsection:

"(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).".

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securi-

ties Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).”; and

(2) by adding at the end the following new subsection:

“(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).”.

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.—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 407A; and

(2) by inserting after section 406 the following new section:

“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.

“(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, except that for such purpose—

“(1) any reference to the ‘Corporation as receiver’ or ‘the receiver or the Corporation’ shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank;

“(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 appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank; and

“(3) any reference to an ‘insured depository institution’ or ‘depository institution’ shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act.

“(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, 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 the case of an uninsured national bank or uninsured Federal branch or agency and the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

“(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each shall ensure that the regulations

generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

"(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meanings as in section 1(b) of the International Banking Act of 1978.".

SEC. 907. BANKRUPTCY LAW AMENDMENTS.

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking "means a contract" and inserting "means—

"(A) a contract";

(ii) by striking ", or any combination thereof or option thereon;" and inserting ", or any other similar agreement;"; and

(iii) by adding at the end the following:

"(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

"(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

"(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

"(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;";

(B) in paragraph (46), by striking "on any day during the period beginning 90 days before the date of" and inserting "at any time before";

(C) by amending paragraph (47) to read as follows:

"(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

"(A) means—

"(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

"(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

"(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

"(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this

paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

"(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

"(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;";

(D) in paragraph (48), by inserting ", or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission," after "1934"; and

(E) by amending paragraph (53B) to read as follows:

"(53B) 'swap agreement'—

"(A) means—

"(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

"(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

"(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

"(III) a currency swap, option, future, or forward agreement;

"(IV) an equity index or equity swap, option, future, or forward agreement;

"(V) a debt index or debt swap, option, future, or forward agreement;

"(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

"(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

"(VIII) a weather swap, weather derivative, or weather option;

"(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

"(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference therein); and

"(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

"(iii) any combination of agreements or transactions referred to in this subparagraph;

"(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

"(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

"(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

"(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, defini-

tion, 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, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000;";

(2) in section 741(7), by striking paragraph (7) and inserting the following:

"(7) 'securities contract'—

"(A) means—

"(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

"(ii) any option entered into on a national securities exchange relating to foreign currencies;

"(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, 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, mortgage loan, interest, group or index, or option;

"(iv) any margin loan;

"(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

"(vi) any combination of the agreements or transactions referred to in this subparagraph;

"(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

"(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

"(ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial participant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

"(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan;"; and

(3) in section 761(4)—

(A) by striking "or" at the end of subparagraph (D); and

(B) by adding at the end the following:

"(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

"(G) any combination of the agreements or transactions referred to in this paragraph;

"(H) any option to enter into an agreement or transaction referred to in this paragraph;

"(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph

only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

"(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, including any guarantee or reimbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;".

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (22) and inserting the following:

"(22) 'financial institution' means—

"(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract (as defined in section 741) such customer; or

"(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940;";

(2) by inserting after paragraph (22) the following:

"(22A) 'financial participant' means—

"(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period; or

"(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991);"; and

(3) by striking paragraph (26) and inserting the following:

"(26) 'forward contract merchant' means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;".

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

"(38A) 'master netting agreement'—

"(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

"(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a);

"(38B) 'master netting agreement participant' means an entity that, at any time before the date of 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 224, 303, 311, 401, and 718, is amended—

(A) in paragraph (6), by inserting ", pledged to, under the control of," after "held by";

(B) in paragraph (7), by inserting ", pledged to, under the control of," after "held by";

(C) by striking paragraph (17) and inserting the following:

"(17) under subsection (a), of the setoff by a swap participant or financial participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant or financial participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, under the control of, or due from such swap participant or financial participant to margin, guarantee, secure, or settle any swap agreement;"; and

(D) by inserting after paragraph (26) the following:

"(27) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and".

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by sections 106, 305, 311, and 441, is amended by adding at the end the following:

"(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) 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, 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

(C) by inserting "or financial participant" after "swap participant"; and

(2) by adding at the end the following:

"(j) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.".

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.".

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract";

and

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration".

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract";

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration"; and

(3) in the second sentence, by striking "As used" and all that follows through "right," and inserting "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,".

(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";

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration"; and

(3) in the third sentence, by striking "As used" and all that follows through "right," and inserting "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,".

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement";

(2) in the first sentence, by striking "termination of a swap agreement" and inserting "liquidation, termination, or acceleration of one or more swap agreements";

(3) by striking "in connection with any swap agreement" and inserting "in connection with the termination, liquidation, or acceleration of one or more swap agreements"; and

(4) in the second sentence, by striking "As used" and all that follows through "right," and inserting "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,".

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—

(1) IN GENERAL.—Title 11, United States Code, is amended by inserting after section 560 the following:

"§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15

"(a) Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

"(1) securities contracts, as defined in section 741(7);

"(2) commodity contracts, as defined in section 761(4);

"(3) forward contracts;

"(4) repurchase agreements;

"(5) swap agreements; or

"(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

"(b)(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—

"(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under such subchapter; 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 and traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

"(3) No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

"(A) a cross-margining agreement or similar arrangement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under paragraph (1) or (2) of section 5c(c) of the Commodity Exchange Act and has not been abrogated or rendered ineffective by the Commodity Futures Trading Commission; or

"(B) any other netting agreement between a clearing organization (as defined in section 761) and another entity that has been approved by the Commodity Futures Trading Commission.

"(c) As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

"(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under chapter 15, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).".

(2) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

"561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15.".

(l) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

"§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

"Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.".

(m) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

"§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

"Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.".

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(B)(ii), by inserting before the semicolon the following: "(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)";

(2) in subsection (a)(3)(C), by inserting before the period the following: "(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)"; and

(3) in subsection (b)(1), by striking "362(b)(14)," and inserting "362(b)(17), 362(b)(27), 555, 556, 559, 560, 561,".

(o) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking "financial institutions," each place such term appears and inserting "financial institution, financial participant,";

(2) in sections 362(b)(7) and 546(f), by inserting "or financial participant" after "repo participant" each place such term appears;

(3) in section 546(e), by inserting "financial participant," after "financial institution,";

(4) in section 548(d)(2)(B), by inserting "financial participant," after "financial institution,";

(5) in section 548(d)(2)(C), by inserting "or financial participant" after "repo participant";

(6) in section 548(d)(2)(D), by inserting "or financial participant" after "swap participant";

(7) in section 555—

(A) by inserting "financial participant," after "financial institution,"; and

(B) by striking the second sentence and inserting the following: "As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.";

(8) in section 556, by inserting ", financial participant," after "commodity broker";

(9) in section 559, by inserting "or financial participant" after "repo participant" each place such term appears; and

(10) in section 560, by inserting "or financial participant" after "swap participant".

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

"555. Contractual right to liquidate, terminate, or accelerate a securities contract.
"556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.";

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

"559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.
"560. Contractual right to liquidate, terminate, or accelerate a swap agreement.";

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following:

"767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.";

and

(B) by inserting after the item relating to section 752 the following:

"753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.".

SEC. 908. RECORDKEEPING REQUIREMENTS.

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 by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).".

SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

"(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

"(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

"(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

"(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

"(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.".

SEC. 910. DAMAGE MEASURE.

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by section 907, the following:

"§ 562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements

"(a) If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

"(1) the date of such rejection; or

"(2) the date or dates of such liquidation, termination, or acceleration.

"(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be

measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

"(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

"(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

"(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates."; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by section 907) the following new item:

"562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.".

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(g)"; and

(2) by adding at the end the following:

"(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.".

SEC. 911. SIPC STAY.

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION FROM STAY.—

"(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

"(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

"(iii) As used in this subparagraph, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.".

TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN

SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—

(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Sup-

plemental Appropriations Act, 1999 (Public Law 105–277), is hereby reenacted, and as here reenacted is amended by this Act.

(2) EFFECTIVE DATE.—Subsection (a) shall take effect on the date of the enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

SEC. 1002. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting "101(18)," after "101(3)," each place it appears.

SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, as amended by section 213, is amended to read as follows:

"(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

"(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

"(B) the holder of a particular claim agrees to a different treatment of that claim;".

(b) SPECIAL NOTICE PROVISIONS.—Section 1231(b) of title 11, United States Code, as so designated by section 719, is amended by striking "a State or local governmental unit" and inserting "any governmental unit".

(c) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall not apply with respect to cases commenced under title 11 of the United States Code before such date.

SEC. 1004. DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking "$1,500,000" and inserting "$3,237,000"; and

(B) by striking "80" and inserting "50"; and

(2) in subparagraph (B)(ii)—

(A) by striking "$1,500,000" and inserting "$3,237,000"; and

(B) by striking "80" and inserting "50".

SEC. 1005. ELIMINATION OF REQUIREMENT THAT FAMILY FARMER AND SPOUSE RECEIVE OVER 50 PERCENT OF INCOME FROM FARMING OPERATION IN YEAR PRIOR TO BANKRUPTCY.

Section 101(18)(A) of title 11, United States Code, is amended by striking "for the taxable year preceding the taxable year" and inserting the following:

"for—

"(i) the taxable year preceding; or

"(ii) each of the 2d and 3d taxable years preceding;

the taxable year".

SEC. 1006. PROHIBITION OF RETROACTIVE ASSESSMENT OF DISPOSABLE INCOME.

(a) CONFIRMATION OF PLAN.—Section 1225(b)(1) 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 value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.".

(b) MODIFICATION OF PLAN.—Section 1229 of title 11, United States Code, is amended by adding at the end the following:

"(d) A plan may not be modified under this section—

"(1) to increase the amount of any payment due before the plan as modified becomes the plan;

"(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors re-

quired for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

"(3) in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.".

SEC. 1007. FAMILY FISHERMEN.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (7) the following:

"(7A) 'commercial fishing operation' means—

"(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

"(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A);

"(7B) 'commercial fishing vessel' means a vessel used by a family fisherman to carry out a commercial fishing operation;"; and

(2) by inserting after paragraph (19) the following:

"(19A) 'family fisherman' means—

"(A) an individual or individual and spouse engaged in a commercial fishing operation—

"(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

"(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

"(B) a corporation or partnership—

"(i) in which more than 50 percent of the outstanding stock or equity is held by—

"(I) 1 family that conducts the commercial fishing operation; or

"(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

"(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

"(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

"(III) if such corporation issues stock, such stock is not publicly traded;

"(19B) 'family fisherman with regular annual income' means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title;".

(b) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting "or family fisherman" after "family farmer".

(c) CHAPTER 12.—Chapter 12 of title 11, United States Code, is amended—

(1) in the chapter heading, by inserting "**OR FISHERMAN**" after "**FAMILY FARMER**";

(2) in section 1203, by inserting "or commercial fishing operation" after "farm"; and

(3) in section 1206, by striking "if the property is farmland or farm equipment" and inserting "if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel)".

(d) CLERICAL AMENDMENT.—In the table of chapters for title 11, United States Code, the item relating to chapter 12, is amended to read as follows:

"12. Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income ..... 1201".

(e) APPLICABILITY.—Nothing in this section shall change, affect, or amend the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, et seq.).

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

SEC. 1101. DEFINITIONS.

(a) HEALTH CARE BUSINESS DEFINED.—Section 101 of title 11, United States Code, as amended by section 306, is amended—

(1) by redesignating paragraph (27A) as paragraph (27B); and

(2) by inserting after paragraph (27) the following:

"(27A) 'health care business'—

"(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

"(i) the diagnosis or treatment of injury, deformity, or disease; and

"(ii) surgical, drug treatment, psychiatric, or obstetric care; and

"(B) includes—

"(i) any—

"(I) general or specialized hospital;

"(II) ancillary ambulatory, emergency, or surgical treatment facility;

"(III) hospice;

"(IV) home health agency; and

"(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

"(ii) any long-term care facility, including any—

"(I) skilled nursing facility;

"(II) intermediate care facility;

"(III) assisted living facility;

"(IV) home for the aged;

"(V) domiciliary care facility; and

"(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living;".

(b) PATIENT AND PATIENT RECORDS DEFINED.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (40) the following:

"(40A) 'patient' means any individual who obtains or receives services from a health care business;

"(40B) 'patient records' means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium;".

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) of this section shall not affect the interpretation of section 109(b) of title 11, United States Code.

SEC. 1102. DISPOSAL OF PATIENT RECORDS.

(a) IN GENERAL.—Subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

"§ 351. Disposal of patient records

"If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

"(1) The trustee shall—

"(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

"(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the most recent known address of that pa-

tient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

"(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

"(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

"(A) if the records are written, shredding or burning the records; or

"(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

"351. Disposal of patient records.".

SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF CLOSING A HEALTH CARE BUSINESS AND OTHER ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, as amended by section 445, is amended by adding at the end the following:

"(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

"(A) in disposing of patient records in accordance with section 351; or

"(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business; and".

SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PATIENT ADVOCATE.

(a) OMBUDSMAN TO ACT AS PATIENT ADVOCATE.—

(1) APPOINTMENT OF OMBUDSMAN.—Title 11, United States Code, as amended by section 232, is amended by inserting after section 332 the following:

"§ 333. Appointment of patient care ombudsman

"(a)(1) If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

"(2)(A) If the court orders the appointment of an ombudsman under paragraph (1), the United States trustee shall appoint 1 disinterested person (other than the United States trustee) to serve as such ombudsman.

"(B) If the debtor is a health care business that provides long-term care, then the United States trustee may appoint the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending to serve as the ombudsman required by paragraph (1).

"(C) If the United States trustee does not appoint a State Long-Term Care Ombudsman under subparagraph (B), the court shall notify the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending, of the name and address of the person who is appointed under subparagraph (A).

"(b) An ombudsman appointed under subsection (a) shall—

"(1) monitor the quality of patient care provided to patients of the debtor, to the extent necessary under the circumstances, including interviewing patients and physicians;

"(2) not later than 60 days after the date of appointment, and not less frequently than at 60-day intervals thereafter, report to the court after notice to the parties in interest, at a hearing or in writing, regarding the quality of patient care provided to patients of the debtor; and

"(3) if such ombudsman determines that the quality of patient care provided to patients of the debtor is declining significantly or is otherwise being materi-

ally compromised, file with the court a motion or a written report, with notice to the parties in interest immediately upon making such determination.

"(c)(1) An ombudsman appointed under subsection (a) shall maintain any information obtained by such ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. Such ombudsman may not review confidential patient records unless the court approves such review in advance and imposes restrictions on such ombudsman to protect the confidentiality of such records.

"(2) An ombudsman appointed under subsection (a)(2)(B) shall have access to patient records consistent with authority of such ombudsman under the Older Americans Act of 1965 and under non-Federal laws governing the State Long-Term Care Ombudsman program.".

(2) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, as amended by section 232, is amended by adding at the end the following:

"333. Appointment of ombudsman.".

(b) COMPENSATION OF OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended—

(1) in the matter preceding subparagraph (A), by inserting "an ombudsman appointed under section 333, or" before "a professional person"; and

(2) in subparagraph (A), by inserting "ombudsman," before "professional person".

SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO TRANSFER PATIENTS.

(a) IN GENERAL.—Section 704(a) of title 11, United States Code, as amended by sections 102, 219, and 446, is amended by adding at the end the following:

"(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

"(A) is in the vicinity of the health care business that is closing;

"(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

"(C) maintains a reasonable quality of care.".

(b) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, as amended by section 446, is amended by striking "and (11)" and inserting "(11), and (12)".

SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION NOT SUBJECT TO AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (27), as amended by sections 224, 303, 311, 401, 718, and 907, the following:

"(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).".

TITLE XII—TECHNICAL AMENDMENTS

SEC. 1201. DEFINITIONS.

Section 101 of title 11, United States Code, as hereinbefore amended by this Act, is amended—

(1) by striking "In this title—" and inserting "In this title the following definitions shall apply:";

(2) in each paragraph, by inserting "The term" after the paragraph designation;

(3) in paragraph (35)(B), by striking "paragraphs (21B) and (33)(A)" and inserting "paragraphs (23) and (35)";

(4) in each of paragraphs (35A), (38), and (54A), 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 and inserting a semicolon;

(6) by striking paragraph (54) and inserting the following:

"(54) The term 'transfer' means—

"(A) the creation of a lien;

"(B) the retention of title as a security interest;

"(C) the foreclosure of a debtor's equity of redemption; or

"(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

"(i) property; or

"(ii) an interest in property;";

(7) by indenting the left margin of paragraph (54A) 2 ems to the right; and

(8) in each of paragraphs (1) through (35), in each of paragraphs (36), (37), (38A), (38B) and (39A), and in each of paragraphs (40) through (55), by striking the semicolon at the end and inserting a period.

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting "522(f)(3)," after "522(d)," each place it appears.

SEC. 1203. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking "922" and all that follows through "or", and inserting "922, 1201, or".

SEC. 1204. TECHNICAL AMENDMENTS.

Title 11, United States Code, is amended—

(1) in section 109(b)(2), by striking "subsection (c) or (d) of"; and

(2) in section 552(b)(1), by striking "product" each place it appears and inserting "products".

SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(4) of title 11, United States Code, as so redesignated by section 221, is amended by striking "attorney's" and inserting "attorneys'".

SEC. 1206. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting "on a fixed or percentage fee basis," after "hourly basis,".

SEC. 1207. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting "of the estate" after "property" the first place it appears.

SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting "subparagraph (A), (B), (C), (D), or (E) of" before "paragraph (3)".

SEC. 1209. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, as amended by sections 215 and 314, is amended—

(1) by transferring paragraph (15), as added by section 304(e) of Public Law 103–394 (108 Stat. 4133), so as to insert such paragraph after subsection (a)(14A);

(2) in subsection (a)(9), by striking "motor vehicle" and inserting "motor vehicle, vessel, or aircraft"; and

(3) in subsection (e), by striking "a insured" and inserting "an insured".

SEC. 1210. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking "section 523" and all that follows through "or that" and inserting "section 523, 1228(a)(1), or 1328(a)(1), or that".

SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting "student" before "grant" the second place it appears; and

(2) in paragraph (2), by striking "the program operated under part B, D, or E of" and inserting "any program operated under".

SEC. 1212. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting "365 or" before "542".

SEC. 1213. PREFERENCES.

(a) IN GENERAL.—Section 547 of title 11, United States Code, as amended by section 201, is amended—

(1) in subsection (b), by striking "subsection (c)" and inserting "subsections (c) and (i)"; and

(2) by adding at the end the following:

"(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.".

(b) APPLICABILITY.—The amendments made by this section shall apply to any case that is pending or commenced on or after the date of enactment of this Act.

SEC. 1214. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting "an interest in" after "transfer of" each place it appears;

(2) by striking "such property" and inserting "such real property"; and

(3) by striking "the interest" and inserting "such interest".

SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking "1009,".

SEC. 1216. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, is amended by inserting "1123(d)," after "1123(b),".

SEC. 1217. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking "section 11347" and inserting "section 11326(a)".

SEC. 1218. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking "section 11347" and inserting "section 11326(a)".

SEC. 1219. 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. 1220. 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. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended by striking "only" and all that follows through the end of the subsection and inserting "only—

"(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

"(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.".

(b) CONFIRMATION OF PLAN OF REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by sections 213 and 321, is amended by adding at the end the following:

"(16) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.".

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, as amended by section 225, 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, or filed under that title on or after that date of enactment, except that the court shall not confirm a plan under chapter 11 of title 11, United States Code, without

considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the filing of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

SEC. 1222. 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. 1223. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the "Bankruptcy Judgeship Act of 2003".

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENTS.—The following bankruptcy judges shall be appointed 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 judge for the eastern district of California.

(B) Three additional bankruptcy judges for the central district of California.

(C) Four additional bankruptcy judges for the district of Delaware.

(D) Two additional bankruptcy judges for the southern district of Florida.

(E) One additional bankruptcy judge for the southern district of Georgia.

(F) Three additional bankruptcy judges for the district of Maryland.

(G) One additional bankruptcy judge for the eastern district of Michigan.

(H) One additional bankruptcy judge for the southern district of Mississippi.

(I) One additional bankruptcy judge for the district of New Jersey.

(J) One additional bankruptcy judge for the eastern district of New York.

(K) One additional bankruptcy judge for the northern district of New York.

(L) One additional bankruptcy judge for the southern district of New York.

(M) One additional bankruptcy judge for the eastern district of North Carolina.

(N) One additional bankruptcy judge for the eastern district of Pennsylvania.

(O) One additional bankruptcy judge for the middle district of Pennsylvania.

(P) One additional bankruptcy judge for the district of Puerto Rico.

(Q) One additional bankruptcy judge for the western district of Tennessee.

(R) One additional bankruptcy judge for the eastern district of Virginia.

(S) One additional bankruptcy judge for the district of South Carolina.

(T) One additional bankruptcy judge for the district of Nevada.

(2) VACANCIES.—

(A) DISTRICTS WITH SINGLE APPOINTMENTS.—Except as provided in subparagraphs (B), (C), (D), and (E), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1) to such office; and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(B) CENTRAL DISTRICT OF CALIFORNIA.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the central district of California—

(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(C) DISTRICT OF DELAWARE.—The 1st, 2d, 3d, and 4th vacancies in the office of bankruptcy judge in the district of Delaware—

(i) occurring 5 years or more after the respective 1st, 2d, 3d, and 4th appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(D) SOUTHERN DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of bankruptcy judge in the southern district of Florida—

(i) occurring 5 years or more after the respective 1st and 2d appointment dates of the bankruptcy judges appointed under paragraph (1)(D); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(E) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—

(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary office of bankruptcy judges authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) 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 5 years after the date of the enactment of this Act.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary office of bankruptcy judges referred to in this subsection.

(d) TECHNICAL AMENDMENTS.—Section 152(a) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking the first sentence and inserting the following: "Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located."; and

(2) in paragraph (2)—

(A) in the item relating to the middle district of Georgia, by striking "2" and inserting "3"; and

(B) in the collective item relating to the middle and southern districts of Georgia, by striking "Middle and Southern . . . . . 1".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1224. COMPENSATING TRUSTEES.

Section 1326 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking "and";

(B) in paragraph (2), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

"(A) by prorating such amount over the remaining duration of the plan; and

"(B) by monthly payments not to exceed the greater of—

"(i) $25; or

"(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan."; and

(2) by adding at the end the following:

"(d) Notwithstanding any other provision of this title—

"(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior case under this title; and

"(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).".

SEC. 1225. AMENDMENT TO SECTION 362 OF TITLE 11, UNITED STATES CODE.

Section 362(b)(18) of title 11, United States Code, is amended to read as follows:

"(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;".

SEC. 1226. JUDICIAL EDUCATION.

The Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in implementing this Act and the amendments made by this Act, including the requirements relating to the means test under section 707(b), and reaffirmation agreements under section 524, of title 11 of the United States Code, as amended by this Act.

SEC. 1227. RECLAMATION.

(a) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:

"(c)(1) Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

"(A) not later than 45 days after the date of receipt of such goods by the debtor; or

"(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

"(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).".

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by sections 445 and 1103, is amended by adding at the end the following:

"(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.".

SEC. 1228. PROVIDING REQUESTED TAX DOCUMENTS TO THE COURT.

(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual who is a debtor in a case under chapter 7 of title 11, United States Code, unless requested tax documents have been provided to the court.

(b) CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganization in the case of an individual under chapter 11 or 13 of title 11, United States Code, unless requested tax documents have been filed with the court.

(c) DOCUMENT RETENTION.—The court shall destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the date of the conclusion of a case filed by an individual under chapter 7, 11, or 13 of title 11, United States Code. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

SEC. 1229. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the indiscriminate solicitation and extension of credit by the credit industry;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

SEC. 1230. PROPERTY NO LONGER SUBJECT TO REDEMPTION.

Section 541(b) of title 11, United States Code, as amended by sections 225 and 323, is amended by adding after paragraph (7), as added by section 323, the following:

"(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

"(A) the tangible personal property is in the possession of the pledgee or transferee;

"(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

"(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b); or".

SEC. 1231. TRUSTEES.

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(d)"; and

(2) by adding at the end the following:

"(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the district court of the United States for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the district court of the United States 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 district court of the United States for the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

"(4) The Attorney General shall prescribe procedures to implement this subsection.".

SEC. 1232. BANKRUPTCY FORMS.

Section 2075 of title 28, United States Code, is amended by adding at the end the following:

"The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.".

SEC. 1233. DIRECT APPEALS OF BANKRUPTCY MATTERS TO COURTS OF APPEALS.

(a) APPEALS.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c)(1), by striking "Subject to subsection (b)," and inserting "Subject to subsections (b) and (d)(2),"; and

(2) in subsection (d)—

(A) by inserting "(1)" after "(d)"; and

(B) by adding at the end the following:

"(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

"(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

"(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

"(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

"(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

"(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

"(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

"(C) The parties may supplement the certification with a short statement of the basis for the certification.

"(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal in pending, issues a stay of such proceeding pending the appeal.

"(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.".

(b) PROCEDURAL RULES.—

(1) TEMPORARY APPLICATION.—A provision of this subsection shall apply to appeals under section 158(d)(2) of title 28, United States Code, until a rule of practice and procedure relating to such provision and such appeals is promulgated or amended under chapter 131 of such title.

(2) CERTIFICATION.—A district court, a bankruptcy court, or a bankruptcy appellate panel may make a certification under section 158(d)(2) of title 28, United States Code, only with respect to matters pending in the respective bankruptcy court, district court, or bankruptcy appellate panel.

(3) PROCEDURE.—Subject to any other provision of this subsection, an appeal authorized by the court of appeals under section 158(d)(2)(A) of title 28, United States Code, shall be taken in the manner prescribed in subdivisions (a)(1), (b), (c), and (d) of rule 5 of the Federal Rules of Appellate Procedure. For purposes of subdivision (a)(1) of rule 5—

(A) a reference in such subdivision to a district court shall be deemed to include a reference to a bankruptcy court and a bankruptcy appellate panel, as appropriate; and

(B) a reference in such subdivision to the parties requesting permission to appeal to be served with the petition shall be deemed to include a reference to the parties to the judgment, order, or decree from which the appeal is taken.

(4) FILING OF PETITION WITH ATTACHMENT.—A petition requesting permission to appeal, that is based on a certification made under subparagraph (A) or (B) of section 158(d)(2) shall—

(A) be filed with the circuit clerk not later than 10 days after the certification is entered on the docket of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken; and

(B) have attached a copy of such certification.

(5) REFERENCES IN RULE 5.—For purposes of rule 5 of the Federal Rules of Appellate Procedure—

(A) a reference in such rule to a district court shall be deemed to include a reference to a bankruptcy court and to a bankruptcy appellate panel; and

(B) a reference in such rule to a district clerk shall be deemed to include a reference to a clerk of a bankruptcy court and to a clerk of a bankruptcy appellate panel.

(6) APPLICATION OF RULES.—The Federal Rules of Appellate Procedure shall apply in the courts of appeals with respect to appeals authorized under section 158(d)(2)(A), to the extent relevant and as if such appeals were taken from final judgments, orders, or decrees of the district courts or bankruptcy appellate panels exercising appellate jurisdiction under subsection (a) or (b) of section 158 of title 28, United States Code.

SEC. 1234. INVOLUNTARY CASES.

(a) AMENDMENTS.—Section 303 of title 11, United States Code, is amended—

(1) in subsection (b)(1), by—

(A) inserting "as to liability or amount" after "bona fide dispute"; and

(B) striking "if such claims" and inserting "if such noncontingent, undisputed claims"; and

(2) in subsection (h)(1), by inserting "as to liability or amount" before the semicolon at the end.

(b) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall not apply with respect to cases commenced under title 11 of the United States Code before such date.

SEC. 1235. FEDERAL ELECTION LAW FINES AND PENALTIES AS NONDISCHARGEABLE DEBT.

Section 523(a) of title 11, United States Code, as amended by section 314, is amended by inserting after paragraph (14A) the following:

"(14B) incurred to pay fines or penalties imposed under Federal election law;".

TITLE XIII—CONSUMER CREDIT DISCLOSURE

SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) MINIMUM PAYMENT DISCLOSURES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

"(11)(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

"(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

"(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the

front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: _____.' (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

"(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 percent. Any creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

"(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

"(F)(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

"(ii)(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003, a toll-free telephone number, or provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250,000,000. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

"(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the program described in subclause (I).

"(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

"(H) The Board shall—

"(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

"(ii) establish the table required under clause (i) by assuming—

"(I) a significant number of different annual percentage rates;

"(II) a significant number of different account balances;

"(III) a significant number of different minimum payment amounts; and

"(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

"(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

"(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

"(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

"(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: 'Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: _____.' (the blank space to be filled in by the creditor).".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System (hereafter in this title referred to as the "Board") shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section.

(2) EFFECTIVE DATE.—Section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 18 months after the date of enactment of this Act; or

(B) 12 months after the publication of such final regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES.—

(1) IN GENERAL.—The Board may conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default.

(2) FACTORS FOR CONSIDERATION.—In conducting a study under paragraph (1), the Board should, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which—

(A) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider those obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(B) minimum periodic payment features offered in connection with open end credit plans impact consumer default rates;

(C) consumers make only the required minimum payment under open end credit plans;

(D) consumers are aware that making only required minimum payments will increase the cost and repayment period of an open end credit obligation; and

(E) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(3) REPORT TO CONGRESS.—Findings of the Board in connection with any study conducted under this subsection shall be submitted to Congress. Such report shall also include recommendations for legislative initiatives, if any, of the Board, based on its findings.

SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking "CONSULTATION OF TAX ADVISER.—A statement that the" and inserting the following: "TAX DEDUCTIBILITY.—A statement that—

"(A) the"; and

(B) by striking the period at the end and inserting the following: "; and

"(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Internal Revenue Code of 1986) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.".

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking "If any" and inserting the following:

"(1) IN GENERAL.—If any"; and

(B) by adding at the end the following:

"(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

"(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.".

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

(A) in subsection (a), by adding at the end the following:

"(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

"(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges."; and

(B) in subsection (b), by adding at the end the following:

"(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.".

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

"(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

"(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.".

(c) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the amendments made by this section.

(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1303. DISCLOSURES RELATED TO "INTRODUCTORY RATES".

(a) INTRODUCTORY RATE DISCLOSURES.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

"(6) ADDITIONAL NOTICE CONCERNING 'INTRODUCTORY RATES'.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is

required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

"(i) use the term 'introductory' in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

"(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

"(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c)), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

"(B) EXCEPTION.—Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

"(C) CONDITIONS FOR INTRODUCTORY RATES.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

"(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

"(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

"(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

"(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

"(D) DEFINITIONS.—In this paragraph—

"(i) the terms 'temporary annual percentage rate of interest' and 'temporary annual percentage rate' mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

"(ii) the term 'introductory period' means the maximum time period for which the temporary annual percentage rate may be applicable.

"(E) RELATION TO OTHER DISCLOSURE REQUIREMENTS.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—Section 127(c)(6) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.

(a) INTERNET-BASED SOLICITATIONS.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

"(7) INTERNET-BASED SOLICITATIONS.—

"(A) IN GENERAL.—In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

"(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

"(ii) the information described in paragraph (6).

"(B) FORM OF DISCLOSURE.—The disclosures required by subparagraph (A) shall be—

"(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

"(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

"(ii) the term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.

(a) DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

"(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

"(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

"(B) The amount of the late payment fee to be imposed if payment is made after such date.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

(a) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

"(h) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(h) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1307. DUAL USE DEBIT CARD.

(a) REPORT.—The Board may conduct a study of, and present to Congress a report containing its analysis of, consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on its findings.

(b) CONSIDERATIONS.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g), as in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), or revisions to regulations promulgated by the Board to carry out that Act, are necessary to further address adequate protection for consumers concerning unauthorized use liability.

SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

(a) STUDY.—

(1) IN GENERAL.—The Board shall conduct a study regarding the impact that the extension of credit described in paragraph (2) has on the rate of cases filed under title 11 of the United States Code.

(2) EXTENSION OF CREDIT.—The extension of credit described in this paragraph is the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled within 1 year of successfully completing all required secondary education requirements and on a full-time basis, in postsecondary educational institutions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Board shall submit to the Senate and the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.

(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Board, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration Board, and the Federal Trade Commission, shall promulgate regulations to provide guidance regarding the meaning of the term "clear and conspicuous", as used in subparagraphs (A), (B), and (C) of section 127(b)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act referred to in subsection (a).

(c) STANDARDS.—In promulgating regulations under this section, the Board shall ensure that the clear and conspicuous standard required for disclosures made under the provisions of the Truth in Lending Act referred to in subsection (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as otherwise provided in this Act and paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

(2) CERTAIN LIMITATIONS APPLICABLE TO DEBTORS.—The amendments made by sections 308, 322, and 330 shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 975, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2003," is a comprehensive package of reform measures pertaining to both consumer and business bankruptcy cases. The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system and by ensuring that the system is fair for both debtors and creditors.

With respect to the interests of creditors, the proposed reforms respond to many of the factors contributing to the increase in consumer bankruptcy filings, such as lack of personal financial accountability,[1] the proliferation of serial filings, and the absence of effective oversight to eliminate abuse in the system. The heart of the bill's consumer bankruptcy reforms consists of the implementation of an income/expense screening mechanism ("needs-based bankruptcy relief" or "means testing"), which is intended to ensure that debtors repay creditors the maximum they can afford. H.R. 975 also establishes new eligibility standards for consumer bankruptcy relief and includes provisions intended to crackdown on serial and abusive bankruptcy filings. It substantially augments the responsibilities of those charged with administering consumer bankruptcy cases as well as those who counsel debtors with respect to obtaining such relief. In addition, the bill caps the amount of homestead equity a debtor may shield from creditors, under certain circumstances.

H.R. 975 also includes various consumer protection reforms. The bill penalizes a creditor who unreasonably refuses to negotiate a pre-bankruptcy debt repayment plan with a debtor. It strengthens the disclosure requirements for reaffirmation agreements (agreements by which debtors obligate themselves to repay otherwise dischargeable debts) so that debtors will be better informed about their rights and responsibilities. The legislation requires certain

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[1] As one academic explained:

> [S]hoplifting is wrong; bankruptcy is also a moral act. Bankruptcy is a moral as well as an economic act. There is a conscious decision not to keep one's promises. It is a decision not to reciprocate a benefit received, a good deed done on the promise that you will reciprocate. Promise-keeping and reciprocity are the foundation of an economy and healthy civil society.

Bankruptcy Reform: Joint Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary and the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary, 106th Cong. 98 (1999) (statement of Prof. Todd Zywicki).

monthly credit card billing statements to include specified explanatory statements regarding the increased amount of interest and repayment time associated with making minimum payments. The bill requires certain home equity loan and credit card solicitations to include enhanced consumer disclosures. It also prohibits a creditor from terminating an open end consumer credit plan simply because the consumer has not incurred finance charges on the account. H.R. 975 allows debtors to shelter from the claims of creditors certain education IRA plans and retirement pension funds. It requires debtors to receive credit counseling *before* they can be eligible for bankruptcy relief so that they will make an informed choice about bankruptcy, its alternatives, and consequences. The bill also requires debtors, after they have filed for bankruptcy, to participate in financial management instructional courses so they can hopefully avoid future financial distress.

With respect to business bankruptcy, H.R. 975 includes several significant provisions intended to heighten administrative scrutiny and judicial oversight of small business bankruptcy cases, which often are the least likely to reorganize successfully. In addition, it contains provisions designed to reduce systemic risk in the financial marketplace, the enactment of which Federal Reserve Board Chairman Alan Greenspan described as being "extremely important."[2] The bill includes heightened protections for family farmers facing financial distress and allows family fishermen to qualify for a specialized form of bankruptcy relief currently available only to family farmers. The bill also includes provisions concerning transnational insolvencies, bankrupt health care providers, the treatment of tax claims, and data collection. In response to the exponential increase in bankruptcy filings, the bill authorizes the creation of 28 additional bankruptcy judgeships.

H.R. 975, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2003," as ordered reported in the form of a single amendment in the nature of a substitute, incorporates technical revisions adopted by unanimous consent. These revisions correct, for example, various grammatical, punctuation and spacing errors as well as other drafting errors.

BACKGROUND AND NEED FOR THE LEGISLATION

Chairman F. James Sensenbrenner, Jr. (for himself and 50 original cosponsors) introduced H.R. 975 on February 27, 2003. Except for the deletion of a controversial provision dealing with unlawful protest activities, H.R. 975, as introduced, is virtually identical to the conference report on H.R. 333, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001," considered in the last Congress.[3] A modified version of this conference report[4] was substituted for the text for H.R. 333 and the House, on the last day of the 107th Congress, passed H.R. 333, as amended, by a vote of

[2] Letter from Alan Greenspan, Chairman, Federal Reserve Board, to F. James Sensenbrenner, Jr., Chairman, Committee on the Judiciary (Sept. 3, 2002) (on file with the Committee).

[3] H. REP. NO. 107–617 (2002).

[4] The modifications consisted of the deletion of two provisions, one dealing with unlawful protest activities and the other authorizing additional bankruptcy judgeships. The text of the conference report, as modified, was introduced as H.R. 5545, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2003." H.R. 5545, 107th Cong. (2002). In turn, the text of H.R. 5545 was substituted as an amendment to H.R. 333. The House, thereafter, passed H.R. 333, as amended. 148 Cong. Rec. H8876–77 (daily ed. Nov. 14, 2002).

244 to 116.[5] The Senate did not consider H.R. 333, as passed by the House, prior to the conclusion of the last Congress.

Proposed reforms to bankruptcy law have been under consideration by Congress for nearly 6 years and have generally enjoyed broad support from the business community, banking and financial services industries as well as other groups such as family farmers and child support enforcement agencies.

In the last three Congresses, support for bankruptcy reform legislation has been overwhelming and bipartisan. The House, in fact, has passed bankruptcy reform legislation on six separate occasions over the course of the preceding three Congresses. In the 105th Congress, for example, the House passed both H.R. 3150, the "Bankruptcy Reform Act of 1998," and the conference report on that bill by veto-proof margins.[6] In the 106th Congress, the House passed H.R. 833, the successor to H.R. 3150, by a veto-proof margin of 313 to 108[7] and agreed to the conference report[8] by voice vote.[9] Although the Senate subsequently passed this legislation by a vote of 70 to 28,[10] President Clinton pocket-vetoed it.

During the last Congress, the House, again, registered its overwhelming support for bankruptcy reform on two occasions. On March 1, 2001, the House passed H.R. 333, the "Bankruptcy Abuse Prevention and Consumer Protection Act," by a vote of 306 to 108.[11] The House thereafter passed a modified version of the conference report on H.R. 333, as previously noted.[12]

Representing the most comprehensive set of reforms in nearly 25 years, H.R 975's consumer bankruptcy provisions respond to several factors. First, consumer bankruptcy filings have in recent years generally escalated and their proliferation does not appear to be just a temporary event, but part of a fairly consistent upward trend.[13] In 1998, for example, bankruptcy filings exceeded one million for the first time in our nation's history. Just 4 years later, however, the number of bankruptcy filings increased by 150% to 1.5 million cases in 2002.[14] And, the upward trend is expected to continue.[15] As a result, there is a growing perception that bankruptcy relief may be too readily available and that it sometimes is used as a first resort, rather than as a last resort.[16]

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[5] 148 Cong. Rec. H8876–77 (daily ed. Nov. 14, 2002).

[6] 144 Cong. Rec. H4442 (daily ed. June 10, 1998) (vote on final passage of H.R. 3150 was 306 to 118); 144 Cong. Rec. H10239–40 (daily ed. Oct. 9, 1998) (vote on final passage of the conference report on H.R. 3150 was 300 to 125).

[7] 145 Cong. Rec. H2771 (daily ed. May 5, 1999).

[8] H. REP. NO. 106–970 (2000).

[9] 146 Cong. Rec. H9840 (daily ed. Oct. 12, 2000).

[10] 146 Cong. Rec. S11730 (daily ed. Dec. 7, 2000).

[11] 147 Cong. Rec. H600–01 (daily ed. Mar. 1, 2001).

[12] *See supra* text accompanying notes 4–5.

[13] Press Release, Administrative Office of the U.S. Courts, Record Breaking Bankruptcy Filings Reported in Calendar Year 2002, at 1 (Feb. 14, 2003) (noting that "[b]ankruptcy filings continue to break historic records").

[14] *Id.* In the Eastern District of Michigan alone, bankruptcy filings for 2002 increased by 22 percent over the prior year. Becky Yerak, *Bankrupt Filings in E. Mich. Skyrocket; High Debt, Slow Economy Spur 22% Increase in 2002, Biggest Jump in the United States*, THE DETROIT NEWS, Feb. 24, 2003, at 1A.

[15] *See, e.g.*, Tami Luhby, *Briefcase*, NEWSDAY, Mar. 3, 2003, at F2 (noting, based on a recent report by Fitch Ratings, that "consumer bankruptcies should hit a record high in 2003" and "should rise by 7% to 1.65 million in 2003").

[16] *See, e.g.,* Becky Yerak, *Bankrupt Filings in E. Mich. Skyrocket; High Debt, Slow Economy Spur 22% Increase in 2002, Biggest Jump in the United States*, THE DETROIT NEWS, Feb. 24, 2003, at 1A (noting that "[t]he stigma of filing for bankruptcy continues to abate while, at the same time, lenders impose few if any credit restrictions").

Second, there are significant losses asserted to be associated with bankruptcy filings. According to some analyses, the increase in consumer bankruptcy filings has adverse financial consequences for our nation's economy. For instance, it has been estimated that in 1997 alone, *more than $44 billion* of debt was discharged by debtors who filed for bankruptcy relief.[17] The Committee has previously received testimony stating that this figure, when amortized on a daily basis, amounts to a loss of "at least $110 million every day."[18] These losses, according to one estimate, translate into a $400 annual "tax" on every household in our nation.[19] Earlier this year, the *Nilson Report* (a credit industry newsletter) announced that issuers of proprietary and general purpose credit cards "lost $18.9 billion in 2002 from consumer bankruptcy filings last year," an increase of 15.1 percent over the prior year.[20] The Credit Union National Association (CUNA) reported last year that credit unions have lost "nearly $3 billion from bankruptcies" since Congress began considering bankruptcy reform legislation in 1998.[21]

A third factor motivating comprehensive reform is that the present bankruptcy system has loopholes and incentives that allow and—sometimes—even encourage opportunistic personal filings and abuse. A civil enforcement initiative recently undertaken by the United States Trustee Program (a component of the Justice Department charged with administrative oversight of bankruptcy cases) has "consistently identified" such problems as "debtor misconduct and abuse, misconduct by attorneys and other professionals, problems associated with bankruptcy petition preparers, and instances where a debtor's discharge should be challenged."[22] According to the United States Trustee Program, "Abuse of the system is more widespread than many would have estimated."[23] Such abuse ultimately hurts consumers as well as creditors.

A fourth factor relates to the fact that some bankruptcy debtors can repay a significant portion of their debts, according to several studies.[24] Current law, however, has no clear mandate requiring these debtors to repay these debts. Accordingly, "[w]hile there is a

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[17] *Bankruptcy Reform Act of 1998 (Pt. I): Hearings on H.R. 3150 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 105th Cong. 147 (1998).

[18] *Bankruptcy Reform: Joint Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary and the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary*, 106th Cong. 26 (1999).

[19] *Id.; Bankruptcy Reform Act of 1998 (Pt. I): Hearings on H.R. 3150 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 105th Cong. 147 (1998).

[20] *Bankruptcy Losses on Cards*, THE NILSON REPORT, Jan. 2003, at 1.

[21] John K. McKechnie, III, Letter to Editor, CREDIT UNION J. 6 (June 24, 2002); *see* William R. Mapother, *Counseling Could Overturn Losses*, Credit Union Mag. 34 (Dec. 2002) (quoting CUNA President Dan Mica).

[22] Antonia G. Darling & Mark A. Redmiles, *Protecting the Integrity of the System: the Civil Enforcement Initiative*, AM. BANKR. INSTITUTE J. 12 (Sept. 2002).

[23] J. Christopher Marshall, *Civil Enforcement: An Early Report*, JOURNAL OF THE NAT'L ASS'N OF BANKR. TRUSTEES (NABTALK) 39 (Fall 2002).

[24] *See, e.g., Bankruptcy Reform Act of 1999 (Pt. II): Hearing on H.R. 833 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 106th Cong. 298 (1999) (statement of Thomas S. Neubig, Ernst & Young LLP—Policy Economics and Quantitative Analysis Group, concluding that "large numbers of 1997 U.S. chapter 7 filers have the ability to repay large portions of their debts"); *Id.* at 228–29 (statement of Michael E. Staten, Credit Research Center, concluding that "about 25 percent of chapter 7 debtors could have repaid at least 30 percent of their non-housing debts over a 5-year repayment plan, after accounting for monthly expenses and housing payments" and that "[a]bout 5 percent of chapter 7 filers appeared capable of repaying all of their non-housing debt over a 5-year plan," although these "calculations assumed income would remain unchanged relative to expenses over the 5 years"); Marianne B. Culhane & Michaela M. White, *Taking the New Consumer Bankruptcy Model for a Test Drive: Means-Testing Real Chapter 7 Debtors*, 7 AM. BANKR. L. J. 27, 31 (1999) (concluding that 3.6% of sampled debtors "emerged as apparent can-pays").

universal agreement among the courts that an individual debtor's ability to repay his or her debts from future earnings is, at the very least, a factor in determining whether substantial abuse would occur in a chapter 7 case, there are differences among the courts as to the extent to which they rely on a debtor's ability to repay."[25]

The Committee commenced its consideration of bankruptcy reform early in 105th Congress. On April 16, 1997, the Subcommittee on Commercial and Administrative Law (Subcommittee) conducted a hearing on the operation of the bankruptcy system that was combined with a status report from the National Bankruptcy Review Commission.[26] This would be the first of 18 hearings held on the subject of bankruptcy reform over the ensuing 6 years.[27] Eleven of these hearings were devoted solely to consideration of H.R. 975 and its predecessors, H.R. 3150 (105th Congress), H.R. 833 (106th Congress), and H.R. 333 (107th Congress). Over the course of these hearings, more than 130 witnesses, representing nearly every major constituency in the bankruptcy community, testified. With regard to H.R. 833 alone, testimony was received from 69 witnesses, representing 23 organizations, with additional material submitted by other groups. In fact, the Subcommittee's inaugural hearing on H.R. 833 was held jointly with the Senate Subcommittee on Administrative Oversight and the Courts on March 11, 1999,[28] which marked the first time in more than 60 years that a bicameral hearing was held on the subject of bankruptcy reform.[29]

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[25] Robert C. Furr & Marc P. Barmat, *11 U.S.C. Section 707(b)—The U.S. Trustee's Weapon Against Abuse*, NAT'L ASS'N BANKR. TRUSTEES (NABTALK) 11, 14 (Winter 2002–03).

[26] *Operation of the Bankruptcy System and Status Report from the National Bankruptcy Review Commission: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 105th Cong. (1997).

[27] The dates and subject matters of these hearings were as follows:

April 16, 1997: Hearing on the operation of the bankruptcy system and status report from the National Bankruptcy Review Commission.

April 30, 1997: Hearing on H.R. 764, the "Bankruptcy Amendments of 1997," and H.R. 120, the "Bankruptcy Law Technical Corrections Act of 1997."

October 9, 1997: Hearing on H.R. 2592, the "Private Trustee Reform Act of 1997" and review of post-confirmation fees in chapter 11 cases.

November 13, 1997: Hearing on the Report of the National Bankruptcy Review Commission.

February 12, 1998: Hearing on H.R. 2604, the "Religious Liberty and Charitable Donation Protection Act of 1997."

March 10–11, 18–19, 1998: Hearings on H.R. 3150, the "Bankruptcy Reform Act of 1998," H.R. 3146, the "Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998," and H.R. 2500, the "Responsible Borrower Protection Bankruptcy Act."

March 11–12, 18–19, 1999: Hearings on H.R. 833, the "Bankruptcy Reform Act of 1999."

November 2, 1999: Joint oversight hearing on additional bankruptcy judgeship needs.

April 11, 2000: Oversight hearing on the limits on regulatory powers under the Bankruptcy Code.

February 7–8, 2001: Hearings on H.R. 333, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001."

March 4, 2003: Hearing on H.R. 975, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2003" and the need for bankruptcy reform.

[28] Representatives on behalf of the Commercial Law League of America, CUNA, MBNA America Bank, N.A., National Retail Federation, and the National Consumer Law Center also testified. Some of the nation's leading jurists and academics presented testimony as well. *Bankruptcy Reform: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary and the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary*, 106th Cong. (1999).

[29] Senators testifying at the hearing included Charles Grassley (R-IA), Joseph Biden (D-DE) and Christopher Dodd (D-CT). House Members included Jim Moran (D-VA), Pete Sessions (R-TX) and Nick Smith (R-MI). *Id.* The March 16, 1999 hearing provided an opportunity for the Subcommittee to hear divergent historical perspectives of consumer bankruptcy reform. Specific topics included an analysis of the history and significance of the "fresh start" discharge under

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It is also important to note that bankruptcy reform legislation is the product of extensive negotiation and compromise. For example, conferees during the 106th Congress spent nearly 7 months engaged in what was initially an informal conference to reconcile differences between the House and Senate passed versions of bankruptcy reform legislation. In the 107th Congress, conferees formally met on three occasions and ultimately agreed—after an 11-month period of negotiations—to a bipartisan conference report.[30]

HIGHLIGHTS OF CONSUMER CREDITOR PROTECTIONS

Means test reforms. Chapter 7 is a form of bankruptcy relief by which an individual debtor receives an immediate unconditional discharge of personal liability for certain debts in exchange for relinquishing his or her nonexempt assets to a bankruptcy trustee for liquidation and distribution to creditors.[31] This "unconditional discharge" in chapter 7 contrasts with the "conditional discharge" provisions of chapter 13, under which a debtor commits to repay some portion of his or her financial obligations in exchange for retaining nonexempt assets and receiving a broader discharge of debt than is available under chapter 7. Allowing consumer debtors in financial distress to choose voluntarily an "unconditional discharge" has been a part of American bankruptcy law since the enactment of the Bankruptcy Act of 1898.[32]

The concept of needs-based bankruptcy relief has long been debated in the United States. President Herbert Hoover, for instance,

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American bankruptcy law, the impact of the Bankruptcy Reform Act of 1978, the historical underpinnings of needs-based bankruptcy relief, and how bankruptcy affects the rights of creditors. Another panel examined the need for consumer bankruptcy reform from various perspectives. *Bankruptcy Reform Act of 1999 (Pt. I): Hearings Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 106th Cong. (1999). At its third hearing, on March 17, 1999, the Subcommittee heard from many of the major organizations in the bankruptcy community, including the American Bankruptcy Institute, the American Financial Services Association, the National Association of Consumer Bankruptcy Attorneys, the National Bankruptcy Conference, the National Consumer Bankruptcy Coalition, the National Governors' Association, and the National Retail Federation, on the topic of consumer bankruptcy reform. A separate panel was devoted to judicial and administrative aspects of consumer bankruptcy reform. The hearing concluded with a statistical analysis of the needs-based reforms in H.R. 833. *Bankruptcy Reform Act of 1999 (Pt. II): Hearings Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 106th Cong. (1999). The fourth and final hearing on H.R. 833 was held on March 18, 1999. One panel focused on the treatment of domestic support obligations under the bill. Another panel offered various perspectives on business bankruptcy reform provisions in the bill from some of the major organizations in the bankruptcy community, including the AFL-CIO, American Bankers Association, American Bar Association/Business Bankruptcy Section, Commercial Law League of America, National Association of Credit Managers, and the Office of Chief Counsel for Advocacy at the Small Business Administration. The final panel examined a variety of other provisions in H.R. 833, including the treatment of tax claims in bankruptcy cases, international insolvencies, financial contracts, and chapter 12 (family farmer bankruptcy relief). *Bankruptcy Reform Act of 1999 (Pt. III): Hearings Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 106th Cong. (1999).

[30] H.R. REP. NO. 107–617 (2002). Signatories on behalf of the House included: F. James Sensenbrenner, Jr. (R-WI), Henry Hyde (R-IL), George Gekas (R-PA), Lamar Smith (R-TX), Steve Chabot (R-OH), Bob Barr (R-GA), Rick Boucher (D-VA), Michael Oxley (R-OH), Spencer Bachus (R-AL), Billy Tauzin (R-LA), Joe Barton (R-TX), John Boehner (R-OH), and Michael Castle (R-DE). Signatories on behalf of the Senate included: Patrick Leahy (D-VT), Joe Biden (D-DE), Charles Schumer (D-NY), Orrin Hatch (R-UT), Chuck Grassley (R-IA), Jon Kyl (R-AZ), Mike DeWine (R-OH), Jeff Sessions (R-AL), and Mitch McConnell (R-KY).

[31] Under the Bankruptcy Code, only an individual may obtain a chapter 7 discharge. Thus, a corporation is not eligible to receive a discharge under chapter 7. 11 U.S.C. § 727(a)(1).

[32] Bankruptcy Act of 1898, 30 Stat. 544 (1898) (repealed 1978). The rationale of an unconditional discharge was explained by Congress more than 100 years ago:

> [W]hen an honest man is hopelessly down financially, nothing is gained for the public by keeping him down, but, on the contrary, the public good will be promoted by having his assets distributed ratably as far as they will go among his creditors and letting him start anew.

H.R. REP. NO. 55–65, at 43 (1897).

recommended to Congress in 1932, "The discretion of the courts in granting or refusing discharges should be broadened, and they should be authorized to postpone discharges for a time and require bankrupts, during the period of suspension, to make some satisfaction out of after-acquired property as a condition to the granting of a full discharge."[33] In 1938, chapter XIII (the predecessor to chapter 13 of the Bankruptcy Code) was enacted as a purely voluntary form of bankruptcy relief that allowed a debtor to propose a plan to repay creditors out of future earnings.[34]

Over the ensuing years, there continued to be repeated expressions of support for and opposition to means-testing bankruptcy reform.[35] In 1967, various organizations testifying before Congress in support of such reform included the American Bar Association, the American Bankers Association, the Chamber of Commerce of the United States, CUNA, the National Federation of Independent Businesses, and the American Industrial Bankers Association.[36] The Commission on the Bankruptcy Laws of the United States, while supporting the concept that repayment plans should be "fostered," nevertheless concluded in 1973 that "forced participation by a debtor in a plan requiring contributions out of future income has so little prospect for success that it should not be adopted as a feature of the bankruptcy system."[37] The Bankruptcy Reform Act of 1978[38] retained the principle that a debtor's decision to choose relief premised on repayment to creditors should be "completely voluntary."[39]

Although the Bankruptcy Code as originally enacted in 1978 provided that a chapter 7 case could only be dismissed for "cause," the Code was amended in 1984 to permit the court to dismiss a chapter 7 case for "substantial abuse."[40] This provision, codified in section 707(b) of the Bankruptcy Code,[41] was added "as part of a package of consumer credit amendments designed to reduce perceived abuses in the use of chapter 7."[42] It was intended to respond "to concerns that some debtors who could easily pay their creditors might resort to chapter 7 to avoid their obligations."[43] In 1986, section 707(b) was further amended to allow a United States trustee (a Department of Justice official) to move for dismissal.[44]

The utility of section 707(b) is limited for several reasons. Under current law, neither the court nor the United States trustee is re-

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[33] President's Special Message to the Congress on Reform of Judicial Procedure, 69 Pub. Papers 83, 90 (Feb. 29, 1932).

[34] Chandler Act of 1938, 52 Stat. 840 (1938).

[35] *See, e.g.,* REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES—JULY 1973, H.R. DOC. NO. 93 137, pt. I, at 158 (1973) (observing that "proposals have been made to Congress from time to time that a debtor able to obtain relief under chapter XIII [predecessor of chapter 13] should be denied relief in straight bankruptcy").

[36] *Hearings on H.R. 1057 and H.R. 5771 Before the Subcomm. No. 4 of the House Comm. on the Judiciary*, 90th Cong. (1967).

[37] *See, e.g.,* REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES—JULY 1973, H.R. DOC. NO. 93 137, pt. I, at 159 (1973).

[38] Pub. L. No. 95–598, 92 Stat. 2549 (1978).

[39] H.R. REP. NO. 95–595, at 120 (1977) (observing that "[t]he thirteenth amendment prohibits involuntary servitude" and suggesting that "a mandatory chapter 13, by forcing an individual to work for creditors, would violate this prohibition").

[40] Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98–353, § 312, 98 Stat. 333, 335 (1984).

[41] 11 U.S.C. § 707(b).

[42] 6 LAWRENCE P. KING ET AL., COLLIER ON BANKRUPTCY § 707.LH[2], at 707–30 (15th ed. rev. 2002).

[43] *Id.* at § 707.04.

[44] Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99–554, § 219, 100 Stat. 3088, 3101 (1986).

quired to file a motion to dismiss a chapter 7 case for substantial abuse under section 707(b). In addition, other parties in interest, such as chapter 7 trustees and creditors, are prohibited from filing such motions. In fact, section 707(b) specifies that a motion under that provision may not even be made "at the request or suggestion of any party in interest."[45] The standard for dismissal—substantial abuse—is inherently vague, which has lead to its disparate interpretation and application by the bankruptcy bench.[46] Some courts, for example, hold that a debtor's ability to repay a significant portion of his or her debts out of future income constitutes substantial abuse and therefore is cause for dismissal;[47] others require some evidence of moral turpitude.[48] A fourth reason militating against filing section 707(b) motions is that the Bankruptcy Code codifies a presumption that favors granting a debtor a discharge.[49]

Over the course of its hearings in the last three Congresses, the Committee received testimony explaining that if means-test reforms and other measures were implemented, the rate of repayment to creditors would increase as more debtors were shifted into chapter 13 (a form of bankruptcy relief where the debtor commits to repay a portion or all of his debts in exchange for receiving a broad discharge of debt) as opposed to chapter 7 (a form of bankruptcy relief where the debtor receives an immediate discharge of personal liability on certain debts in exchange for turning over his or her nonexempt assets to the bankruptcy trustee for distribution to creditors).

Means-test reforms would amend section 707(b) of the Bankruptcy Code to permit a court, on its own motion, or on motion of the United States trustee, private trustee, bankruptcy administrator, or other party in interest (including a creditor), to dismiss a chapter 7 case for abuse if it was filed by an individual debtor whose debts are primarily consumer debts. Alternatively, the chapter 7 case could be converted to a case under chapter 11 or chapter 13 on consent of the debtor.

In addition, these reforms contemplate replacing the current law's presumption in favor of the debtor with a mandatory presumption of abuse that would arise under certain conditions. As amended, section 707(b) of the Bankruptcy Code would require a court to presume that abuse exists if the amount of the debtor's remaining income, after certain expenses and other specified amounts are deducted from the debtor's current monthly income (a

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[45] 11 U.S.C. § 707(b).

[46] *See, e.g.*, David White, *Disorder in the Court: Section 707(b) of the Bankruptcy Code*, 1995–96 ANN. SURVEY OF BANKR. L. 333, 355 (1996) (noting that the courts "have taken divergent views in an attempt to define the term" and have resorted to "a variety of methods" in applying it to specific cases); Robert C. Furr & Marc P. Barmat, *11 U.S.C. Section 707(b)—The U.S. Trustee's Weapon Against Abuse*, NAT'L ASS'N BANKR. TRUSTEES (NABTALK) 11, 14 (Winter 2002–03).

[47] *See, e.g.*, Zolg v. Kelly (*In re* Kelly), 841 F.2d 908, 913–14 (9th Cir. 1988) (observing that the "principal factor to be considered in determining substantial abuse is the debtor's ability to repay debts for which a discharge is sought").

[48] *See, e.g., In re* Braley, 103 B.R. 758 (Bankr. E.D. Va. 1989), *aff'd*, 110 B.R. 211 (E.D. Va. 1990). Notwithstanding the fact that the debtors in *Braley* had disposable monthly income of nearly $2,700, the bankruptcy court did not dismiss the case for substantial abuse. *Id.* at 760. The court concluded, "Based upon this legislative history, we are persuaded that no future income tests exists [sic] in 707(b) and if it did, as a finding of fact, the Braley family has insufficient future income to merit barring the door in light of the circumstances of this Navy family." *Id.* at 762.

[49] Section 707(b) of the Bankruptcy Code mandates that "[t]here shall be a presumption in favor of granting the relief requested by the debtor." 11 U.S.C. § 707(b).

defined term)[50] when multiplied by 60, exceeds the lower of the following: (1) 25 percent of the debtor's nonpriority unsecured claims, or $6000 (whichever is greater); or (2) $10,000. In addition to other specified expenses,[51] the debtor's monthly expenses—exclusive of any payments for debts (unless otherwise permitted)—must be the applicable monthly amounts set forth in the Internal Revenue Service Financial Analysis Handbook[52] as Necessary Expenses[53] under the National[54] and Local Standards[55] categories and the debtor's actual monthly expenditures for items categorized as Other Necessary Expenses.[56]

The means test permits the mandatory presumption of abuse to be rebutted only if: (1) the debtor demonstrates special cir-

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[50] Section 102(b) of the bill defines "current monthly income" as the average monthly income from all sources that the debtor receives (or, in a joint case, the debtor and the debtor's spouse receive), without regard to whether it is taxable income, in the 6-month period preceding the bankruptcy filing. It includes any amount paid on a regular basis by any entity (other than the debtor or, in a joint case, the debtor and the debtor's spouse) to the household expenses of the debtor or the debtor's dependents and, in a joint case, the debtor's spouse, if not otherwise a dependent. It excludes Social Security Act benefits and payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes. It also excludes payments to victims of international terrorism or domestic terrorism (as defined in 18 U.S.C. § 2331) on account of their status as victims of such terrorism.

[51] Under section 102(a), a debtor's monthly expenses may also include:

- reasonably necessary expenses incurred to maintain the safety of the debtor and the debtor's family from family violence as identified in section 309 of the Family Violence Prevention and Services Act or other applicable law;
- an additional 5 percent of the food and clothing expense allowances under the Internal Revenue Service National Standards expenses category, if demonstrated to be reasonable and necessary;
- the debtor's average monthly payments on account of secured debts, including any additional payments to secured creditors that a chapter 13 debtor must make to retain possession of a debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents that collateralizes such debts;
- claims and expenses entitled to priority under section 507 of the Bankruptcy Code, such as child support and alimony;
- the continuation of actual expenses paid by the debtor that are reasonable and necessary for the care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family who is otherwise unable to pay such expenses;
- housing and utility expenses in excess of those specified by the Internal Revenue Service, under certain circumstances;
- the actual administrative expenses (including reasonable attorneys' fees) of administering a chapter 13 plan for the district in which the debtor resides up to 10 percent of projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees; and
- the actual expenses for each dependent child under the age of 18 years up to $1,500 per year per child to attend a private elementary or secondary school, under certain circumstances.

[52] INTERNAL REVENUE SERVICE, INTERNAL REVENUE MANUAL—Financial Analysis Handbook ch. 5.15.1 (rev. July 31, 2002).

[53] The Internal Revenue Manual defines the term "necessary expenses" as expenses:

> that meet the necessary expense test: they must provide for a taxpayer's and his or her family's health and welfare and/or the production of income. The expenses must be reasonable. The total necessary expenses establish the minimum a taxpayer and family need to live.

Id. at ch. 5.15.1.3

[54] The Internal Revenue Manual's "National Standards" establish standards for five types of expenses: food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous. Except for miscellaneous expenses, these expense standards are derived from Bureau of Labor Statistics Consumer Expenditure Survey and are stratified by income and household size. *Id.* at ch. 5.15.1.3.2.1.

[55] "Local Standards," under the Internal Revenue Manual, establish expense standards for housing and transportation expenditures. Utilities are included under the housing expense category. Housing standards are established for each county within a state. Transportation standards are determined on a regional basis. *Id.* at ch. 5.15.1.3.2.2.

[56] The Internal Revenue Manual does not establish monetary amounts with regard to necessary expenses that it characterizes as "Other." Rather, it provides a non-exclusive list of these expenses. The list includes expenditures for child care, dependent care for an elderly or disabled person, taxes, health care, court-ordered payments, life insurance, disability insurance for a self-employed person, union dues, professional association dues, charitable contributions, and certain education expenses. *Id.* at ch. 5.15.1.3.2.3.

cumstances justifying any additional expense or adjustment to the debtor's current monthly income for which there is no reasonable alternative; and (2) such additional expense or income adjustment caused the debtor's current monthly income (reduced by various amounts) when multiplied by 60 to be less than the lesser of either (i) 25 percent of the debtor's nonpriority unsecured claims, or $6,000 (whichever is greater), or (ii) $10,000.[57] Where the mandatory presumption of abuse does not apply or has been rebutted, the court, in order to determine whether the granting of relief under chapter 7 would constitute an abuse, must consider: (1) whether the debtor filed the chapter 7 case in bad faith; or (2) whether the totality of circumstances of the debtor's financial situation (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection) demonstrates abuse.

Should a court grant a section 707(b) motion made by a trustee and find that the action of debtor's counsel in filing the chapter 7 case violated Federal Rule of Bankruptcy Procedure 9011,[58] H.R. 975 authorizes the court to order the attorney to reimburse the trustee for all reasonable costs in prosecuting the motion, including reasonable attorneys' fees. In addition, the court may assess an appropriate civil penalty.[59]

Two types of "safe harbors" apply to the means test. One provides that only a judge, United States trustee, bankruptcy administrator, or private trustee may file a motion to dismiss a chapter 7 case under section 707(b) of the Bankruptcy Code if the debtor's income (or in a joint case, the income of debtor and the debtor's spouse) does not exceed the state median family income for a family of equal or lesser size (adjusted for larger sized families), or the state median family income for one earner in the case of a one-person household. The second safe harbor provides that no motion under section 707(b)(2) (dismissal based on a chapter 7 debtor's ability to repay) may be filed by a judge, United States trustee, bankruptcy administrator, private trustee, or other party in interest if the debtor and the debtor's spouse combined have income that does not exceed the state median family income for a family of equal or lesser size (adjusted for larger sized families), or the state median family income for one earner in the case of a one-person household.[60]

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[57] The debtor must itemize and provide documentation of each additional expense or income adjustment as well as explain the special circumstances that make such expense or income adjustment reasonable and necessary. In addition, the debtor must attest under oath to the accuracy of any information provided to demonstrate that such additional expenses or adjustments to income are required.

[58] Fed. R. Bankr. P. 9011. This rule is the bankruptcy analog to Federal Rule of Civil Procedure 11, which authorizes a court to impose sanctions against an attorney or party who commences a frivolous action or files other inappropriate documents in violation of this Rule's requirements.

[59] Section 102(a) of H.R. 975 specifies that the signature of an attorney on a bankruptcy petition, pleading, or written motion constitutes a certification that the attorney has: (1) performed a reasonable investigation into the circumstances giving rise to such petition, pleading or motion; and (2) determined that the document is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and does not constitute an abuse under section 707(b)(1) of the Bankruptcy Code. Pursuant to section 102(a), the signature of an attorney on a bankruptcy petition constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

[60] In a case that is not a joint case, current monthly income of the debtor's spouse is not considered if the debtor and the debtor's spouse are separated under applicable nonbankruptcy law or the debtor and the debtor's spouse are living separate and apart (other than for the purpose of evading this provision) and the debtor files a statement under penalty of perjury containing certain specified information.

Other reforms dealing with abuse. H.R. 975 contains various reforms tailored to remedy certain types of fraud and abuse within the present bankruptcy system. For example, the bill substantially limits a debtor's ability to file successive bankruptcy cases. It also addresses abusive practices by consumer debtors who, for example, knowingly load up with credit card purchases or recklessly obtain cash advances and then file for bankruptcy relief. In addition, H.R. 975 prevents the discharge of debts based on fraud, embezzlement, and malicious injury in a chapter 13 case. Other abuse reforms include a provision authorizing the court to dismiss a chapter 7 case filed by an individual debtor convicted of a crime of violence or a drug trafficking crime on motion of the victim, under certain circumstances. And, the court, as a condition of confirming a chapter 13 plan, must find that the debtor filed the chapter 13 case in good faith.

The bill also restricts the so-called "mansion loophole." Under current bankruptcy law, debtors living in certain states can shield from their creditors virtually all of the equity in their homes. In light of this, some debtors actually relocate to these states just to take advantage of their "mansion loophole" laws. H.R. 975 closes this loophole for abuse by requiring a debtor to be a domiciliary in the state for at least 2 years before he or she can claim that state's homestead exemption; the current requirement can as little as 91 days.[61] The bill further reduces the opportunity for abuse by requiring a debtor to own the homestead for at least 40 months before he or she can use state exemption law—current law imposes no such requirement.[62] H.R. 975 prevents securities law violators and others who have engaged in criminal conduct from shielding their homestead assets from those whom they have defrauded or injured. If a debtor was convicted of a felony, violated a securities law, or committed a criminal act, intentional tort, or engaged in reckless misconduct that caused serious physical injury or death, the bill overrides state homestead exemption law and caps the debtor's homestead exemption at $125,000. To the extent a debtor's homestead exemption was obtained through the fraudulent conversion of nonexempt assets (e.g., cash) during the 10-year period preceding the filing of the bankruptcy case, H.R. 975 requires such exemption to be reduced by the amount attributable to the debtor's fraud.

Protections for creditors—in general. H.R. 975 includes provisions intended to provide greater protections for creditors, while ensuring that the claims of those creditors entitled to priority treatment, such as spousal and child support claimants, are not adversely impacted. These include provisions: (1) ensuring that creditors receive proper and timely notice of important events and proceedings in a bankruptcy case; (2) prohibiting abusive serial filings and extending the period between successive discharges; and (3) implementing various provisions designed to improve the accuracy of the information contained in debtors' schedules, statements of financial affairs. They also clarify that creditors holding consumer debts may par-

[61] *See* 11 U.S.C. § 522(b)(2)(2)(A).

[62] If the debtor owns the homestead for less than 40 months, the provision imposes a $125,000 homestead cap. In effect, this provision overrides state exemption law authorizing a homestead exemption in excess of this amount and allows such law to control if it authorizes a homestead exemption in a lesser amount.

ticipate without counsel at the section 341 meeting of creditors (which provides an opportunity for creditors to examine the debtor under oath).

Protection of family support obligations. H.R. 975 accords domestic and child support claimants a broad spectrum of special protections. The legislation creates a uniform and expanded definition of domestic support obligations to include debts that accrue both before or after a bankruptcy case is filed. It gives the highest payment priority for these debts (current law only accords them a seventh-level priority),[63] with allowance for the payment of trustee administrative expenses, under certain conditions. In addition, the bill mandates that a debtor must be current on postpetition domestic support obligations to confirm a chapter 11, chapter 12 (family farmer) or chapter 13 plan of reorganization. To facilitate the domestic support collection efforts by governmental units, the legislation creates various exceptions to automatic stay provisions of the Bankruptcy Code (which enjoin many forms of creditor collection activities). It also broadens the categories of nondischargeable family support obligations with the result that these debts will not be extinguished at the end of the bankruptcy process. The legislation, in addition, mandates that spousal and child support claimants as well as state child support agencies receive specified information and notices relevant to pending bankruptcy cases.

Protections for secured creditors. H.R. 975's protections for secured creditors include a prohibition against bifurcating a secured debt incurred within the 910-day period preceding the filing of a bankruptcy case if the debt is secured by a purchase money security interest in a motor vehicle acquired for the debtor's personal use. Where the collateral consists of any other type of property having value, H.R. 975 prohibits bifurcation of specified secured debts if incurred during the 1-year period preceding the filing of the bankruptcy case. The bill clarifies current law to specify that the value of a claim secured by personal property is the replacement value of such property without deduction for the secured creditor's costs of sale or marketing. In addition, the bill terminates the automatic stay with respect to personal property if the debtor does not timely reaffirm the underlying obligation or redeem the property.[64] H.R. 975 also specifies that a secured claimant retains its lien in a chapter 13 case until the underlying debt is paid or the debtor receives a discharge.

Protections for lessors. With respect to the interests of lessors, H.R. 975 requires chapter 13 debtors to remain current on their personal property leases and to provide proof of adequate insurance. The bill specifies that a lessor may condition assumption of a personal property lease on cure of any outstanding default and it provides that a lessor is not required to permit such assumption. The bill also addresses a problem faced by thousands of large and small residential landlords across the nation whose tenants file for bankruptcy relief solely for the purpose of staying pending eviction proceedings so that they can live "rent free."

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[63] 11 U.S.C. § 507(a)(7).

[64] Redemption is a method by which a chapter 7 debtor can retain certain types of personal property by paying the holder of a lien on such property the allowed amount of the holder's secured lien. 11 U.S.C. § 722.

Consumer debtor protections. The bill's consumer protections include provisions strengthening the professionalism standards for attorneys and others who assist consumer debtors with their bankruptcy cases. H.R. 975 mandates that certain services and specified notices be given to consumers by professionals and others who provide bankruptcy assistance. To ensure compliance with these provisions, the bill institutes various enforcement mechanisms.

In addition, H.R. 975 amends the Truth in Lending Act to require certain credit card solicitations, monthly billing statements, and related materials to include important disclosures and explanatory statements regarding introductory interest rates and minimum payments, among other matters. These additional disclosures are intended to give debtors important information to enable them to better manage their financial affairs.

H.R. 975 contains provisions to help debtors better understand their rights and obligations with respect to reaffirmation agreements. To enforce these protections, the bill requires the Attorney General to designate a United States Attorney for each judicial district and a FBI agent for each field office to have primary law enforcement responsibility regarding abusive reaffirmation practices, among other matters.

The legislation also expands a debtor's ability to exempt certain tax-qualified retirement accounts and pensions. It creates a new provision that allows a consumer debtor to exempt certain education IRA and state tuition plans for his or her child's postsecondary education from the claims of creditors.

Most importantly, H.R. 975 requires debtors to participate in credit counseling programs before filing for bankruptcy relief (unless special circumstances do not permit such participation). The legislation's credit counseling provisions are intended to give consumers in financial distress an opportunity to learn about the consequences of bankruptcy—such as the potentially devastating effect it can have on their credit rating[65]—and guidance about how to manage their finances, so that they can avoid future financial difficulties.

Other debtor protections include expanded notice requirements for consumers. Under the bill, individuals with primarily consumer debts must receive notice of alternatives to bankruptcy relief before they file for bankruptcy and it requires them to be informed of other matters pertaining to the integrity of the bankruptcy system. The legislation also permits certain filing fees and related charges to be waived, in appropriate cases, for individuals who lack the ability to pay these costs.

HIGHLIGHTS OF BUSINESS BANKRUPTCY REFORMS

H.R. 975 contains a comprehensive set of reforms pertinent to business bankruptcies. They include provisions addressing the special problems presented by small business bankruptcies and single asset real estate debtors as well as provisions dealing with business bankruptcy cases in general. H.R. 975 establishes a new form of bankruptcy relief for transnational insolvencies intended to promote international comity and greater certainty. It also includes

[65] Under current law, for example, a bankruptcy filing may be reported on a consumer's credit report for 10 years. 15 U.S.C. § 1681c (2002).

provisions concerning the treatment of certain financial contracts under the banking laws as well as under the Bankruptcy Code. H.R. 975 responds to the special needs of family farmers by making chapter 12 of the Bankruptcy Code (a form of bankruptcy relief available only to eligible family farmers) permanent. For the first time, it also allows certain family fishermen to qualify for chapter 12 relief.

Small business/single asset real estate debtors. H.R. 975 includes provisions with respect to small business and single asset real estate debtors largely derived from recommendations of the National Bankruptcy Review Commission.[66]

Most chapter 11 cases are filed by small business debtors. Although the Bankruptcy Code envisions that creditors should play a major role in the oversight of chapter 11 cases, this often does not occur with respect to small business debtors. The main reason is that creditors in these smaller cases do not have claims large enough to warrant the time and money to participate actively in these cases. The resulting lack of creditor oversight creates a greater need for the United States trustee to monitor these cases closely. Nevertheless, the monitoring of these debtors by United States trustees varies throughout the nation. H.R. 975 addresses the special problems presented by small business cases by instituting a variety of time frames and enforcement mechanisms designed to weed out small business debtors who are not likely to reorganize. It also requires these cases to be more actively monitored by United States trustees and the bankruptcy courts.

With regard to the Bankruptcy Code's treatment of single asset real estate debtors, H.R. 975 makes several amendments. First, it eliminates the monetary cap from the single asset real estate debtor definition. Second, it makes these debtors subject to the bill's small business reforms. Third, H.R. 975 amends the automatic stay provisions by permitting a single asset real estate debtor to make requisite interest payments out of rents or other proceeds generated by the real property.

Financial contracts. H.R. 975 contains a series of provisions pertaining to the treatment of certain financial transactions under the Bankruptcy Code and relevant banking laws.[67] These provisions are intended to reduce "systemic risk" in the banking system and financial marketplace.[68] To minimize the risk of disruption when parties to these transactions become bankrupt or insolvent, the bill amends provisions of the banking and investment laws, as well as the Bankruptcy Code, to allow the expeditious termination or net-

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[66] *See generally* REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 303–706 (Oct. 20, 1997).

[67] In addition to the Bankruptcy Code, the bill amends the Federal Deposit Insurance Act, the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Federal Deposit Insurance Corporation Improvement Act of 1991, the Federal Reserve Act, and the Securities Investor Protection Act of 1971.

[68] The report on H.R. 4393, a bill substantially similar to title IX of H.R. 975 that was introduced in the 105th Congress, explained as follows:

> Systemic risk is the risk that the failure of a firm or disruption of a market or settlement system will cause widespread difficulties at other firms, in other market segments or in the financial system as a whole. If participants in certain financial activities are unable to enforce their rights to terminate financial contracts with an insolvent entity in a timely manner, or to offset or net their various contractual obligations, the resulting uncertainty and potential lack of liquidity could increase the risk of an inter-market disruption.

H. REP. NO. 105–688, pt. 1, at 2 (1998).

ting of certain types of financial transactions. Many of these provisions are derived from recommendations issued by the President's Working Group on Financial Markets[69] and revisions espoused by the financial industry.

Family farmers. H.R. 975 helps small family farmers facing financial distress. While current bankruptcy law has a specialized form of bankruptcy relief—chapter 12—that is specifically designed for family farmers, its benefits for farmers are limited because of its restrictive eligibility requirements. H.R. 975 responds to this problem in several key respects: it more than doubles the debt eligibility limit and requires it to be periodically adjusted for inflation; it lowers the requisite percentage of a farmer's income that must be derived from farming operations; and it gives farmers more flexibility with respect to how certain creditors can be repaid. As a result, many more deserving family farmers facing financial hard times will be able to avail themselves of chapter 12. In addition, H.R. 975 makes chapter 12 a permanent component of the bankruptcy laws and extends the benefits of this form of bankruptcy relief to family fishermen.

Transnational insolvencies. In response to the increasing globalization of business enterprises and operations, H.R. 975 establishes a separate chapter under the Bankruptcy Code devoted to transnational insolvencies. These provisions are intended to provide greater legal certainty for trade and investment as well as to provide for the fair and efficient administration of these cases. They reflect consensus recommendations of the National Bankruptcy Review Commission.[70]

Protections for small business owners. Under current bankruptcy law, a business can be sued by a bankruptcy trustee and forced to pay back—as a preferential transfer—monies previously paid to it by a firm that later files for bankruptcy protection. H.R. 975 contains provisions making it easier—particularly for small businesses—to defend against these suits. These provisions largely reflect recommendations of the National Bankruptcy Review Commission.[71]

Health care providers. H.R. 975 adds a provision to the Bankruptcy Code intended to give patients of bankrupt health care providers various protections. These include provisions specifying requirements for the disposal of patient records so that a patient's privacy and the confidentiality of such records when they are in the custody of a health care business in bankruptcy are protected. In addition, the bill includes a provision according administrative expense priority to the actual, necessary costs and expenses of closing a health care business (including the disposal of patient records or transferral of patients) incurred by a trustee, Federal agency, or a department or state agency. If warranted, it also authorizes the court to order the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients. Other provisions include the requirement that a bankruptcy

[69] The Working Group's members included representatives from the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, the Securities and Exchange Commission, and the Department of the Treasury, including the Office of the Comptroller of the Currency. *Id.* at 1.

[70] REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 351–70 (Oct. 20, 1997).

[71] *Id.* at 793–803.

trustee use all reasonable and best efforts to transfer patients from a health care business that is being closed to an appropriate alternative facility that meets certain specified criteria.

OTHER PROVISIONS HAVING GENERAL IMPACT

Privacy protections. Under current law, nearly every item of information supplied by a debtor in connection with his or her bankruptcy case is made available to the public. H.R. 975 prohibits the disclosure of the names of the debtor's minor children and requires such information to be kept in a nonpublic record, which can be made available for inspection only by the court and certain other designated entities. In addition, H.R. 975 prohibits the sale of customers' personally identifiable information by a business debtor unless certain conditions are satisfied.

Protections for employees. H.R. 975 requires certain back pay awards granted as a result of a debtor's violation of Federal or state law to receive one of the highest payment priorities in a bankruptcy case. In addition, the bill streamlines the appointment of an ERISA administrator for an employee benefit plan, under certain circumstances, to minimize the disruption that results when an employer files for bankruptcy relief.

Additional bankruptcy judgeships. H.R. 975 authorizes 28 additional bankruptcy judgeships on a temporary basis and extends three currently existing temporary judgeships.[72] This provision responds to the 59 percent increase in the caseload of bankruptcy judges since 1992, reported by the Administrative Office of the United States Courts.[73]

Miscellaneous provisions. Under current law, appeals from bankruptcy court decisions must be filed in and determined by Federal district courts or bankruptcy appellate panels before such appeals may be heard by a Federal court of appeals. H.R. 975 authorizes direct appeals from bankruptcy court decisions to the court of appeals, under certain circumstances. The bill requires the United States Trustee Program to compile various statistics regarding chapter 7, 11 and 13 cases and to make these data available to the public. Other general provisions include allowing attorneys to share compensation with bona fide public service attorney referral programs, and mandating that a bankruptcy court conduct scheduling conferences in a bankruptcy case if necessary to further its expeditious and economical resolution.

HEARINGS

The Committee's Subcommittee on Commercial and Administrative Law held 1 day of hearings on H.R. 975, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2003," on March 4, 2003. The hearing provided an opportunity to review the reasons

[72] Districts authorized additional bankruptcy judgeships under H.R. 975 include the following: Eastern District of California (one), Central District of California (three), Delaware (four), Southern District of Florida (two), Southern District of Georgia (one), Maryland (three), Eastern District of Michigan (one), Southern District of Mississippi (one), New Jersey (one), Nevada (one), Eastern District of New York (one), Northern District of New York (one), Southern District of New York (one), Eastern District of North Carolina (one), Eastern District of Pennsylvania (one), Middle District of Pennsylvania (one), Puerto Rico (one), South Carolina (one), Western District of Tennessee (one), Eastern District of Virginia (one).

[73] Press Release, Administrative Office of the U.S. Courts, Record Breaking Bankruptcy Filings Reported in Calendar Year 2002 (Feb. 14, 2003) (noting that "no new bankruptcy judgeships have been created since 1992").

why the current bankruptcy system needs reform and how H.R. 975 would implement those reforms.

Testimony was received from four witnesses, representing three organizations and the United States Department of Justice, with additional material submitted by 44 individuals and organizations. Witnesses at the hearing included a representative from the Executive Office for United States Trustees (a component of the United States Department of Justice charged with administrative oversight of bankruptcy cases), a credit union representative, a representative on behalf of the Coalition for Responsible Bankruptcy Laws (a coalition of consumer creditors that includes banks, credit unions, retailers, savings institutions, mortgage and sales finance companies, and diversified financial service providers), and a representative in behalf of the Commercial Law League of America (a creditors' rights organization comprised of attorneys and other professionals engaged in the fields of bankruptcy, insolvency, reorganization, and commercial law).

Among the matters considered at the hearing were the following: (1) the adequacy of the current bankruptcy system with respect to the detection of fraud and abuse; (2) how abuse and fraud in the current bankruptcy system impact on American businesses and our nation's citizens generally; (3) whether proposed legislative reforms would assist those who are charged with administrative oversight of bankruptcy cases and law enforcement matters; and (4) whether, given current economic circumstances, the need for comprehensive bankruptcy reform still exists.

COMMITTEE CONSIDERATION

On March 12, 2003, the Committee met in open session and ordered favorably reported the bill, H.R. 975, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2003," with an amendment by a recorded vote of 18 to11, with one Member voting present, a quorum being present.

VOTE OF THE COMMITTEE

1. An amendment by Mr. Watt deleting provisions of section 311 of the bill that except from the Bankruptcy Code's automatic stay certain eviction actions and related proceedings against a debtor who is a tenant residing in residential property under a lease or rental agreement. Defeated 5 to 15.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte			
Mr. Chabot			
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Flake			
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff			
Ms. Sánchez			
Mr. Sensenbrenner, Chairman		X	
Total	5	15	

2. An amendment by Mr. Bachus striking section 414 of the bill, which eliminates the disinterestedness requirement for investment bankers retained by a trustee in a bankruptcy case. Defeated 12 to 17.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Jenkins	X		
Mr. Cannon		X	
Mr. Bachus	X		
Mr. Hostettler	X		
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers			
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Ms. Baldwin			
Mr. Weiner		X	
Mr. Schiff			
Ms. Sánchez			
Mr. Sensenbrenner, Chairman		X	
Total	12	17	

3. An amendment offered by Mr. Delahunt disallowing as an administrative expense: (1) certain transfers made to or obligations incurred for the benefit of an insider of the debtor; (2) certain severance payments to a debtor's insider; and (3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case. Defeated 7 to 18.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers			
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner	X		
Mr. Schiff			
Ms. Sánchez			
Mr. Sensenbrenner, Chairman		X	
Total	7	18	

4. An amendment offered by Mr. Delahunt modifying section 322 of the bill to limit a debtor's homestead exemption to $125,000. Defeated 7 to 19.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee		X	
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez			
Mr. Sensenbrenner, Chairman		X	
Total	7	19	

5. An amendment offered by Ms. Lofgren reducing the reachback periods for which the anti-cramdown provisions in section 306(b) of the bill would apply. Defeated 6 to 15.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Hostettler		X	
Mr. Green		X	

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King			
Mr. Carter			
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman		X	
Total	6	15	

6. An amendment by Ms. Lofgren expanding the safe harbor in section 102 of the bill (concerning motions to dismiss chapter 7 cases based on the debtors' ability to repay debts) to situations where the debtor or a debtor's spouse meet certain criteria. Defeated 8 to 16.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King			
Mr. Carter			
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		

ROLLCALL NO. 6—Continued

	Ayes	Nays	Present
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman		X	
Total	8	16	

7. An amendment offered by Mr. Nadler making certain debts arising from the violation of section 244 (relating to discrimination against a person wearing the uniform of the Armed Forces), section 245 (relating to federally protected rights), section 247 (relating to damage to religious property and obstruction of persons in the free exercise of religious belief), and section 248 (relating to the freedom of access to clinic entrances) of title 18 of the United States Code, among other specified debts, nondischargeable. Defeated 8 to 19.

ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			

ROLLCALL NO. 7—Continued

	Ayes	Nays	Present
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman		X	
Total	8	19	

8. An amendment offered by Mr. Nadler modifying section 203 of the bill to strike the provision's credit union exception to the undue hardship presumption that applies to certain reaffirmation agreements. Defeated 8 to 18.

ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Ms. Baldwin			
Mr. Weiner			
Mr. Schiff			
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman		X	
Total	8	18	

9. An amendment offered by Mr. Nadler modifying section 102 of the bill to eliminate its exception for small businesses with respect to the provision's authorization for a court to require a party to pay reasonable costs to a debtor for certain motions filed under Bankruptcy Code section 707(b) (as amended by the bill) that violate Federal Rule of Bankruptcy Procedure 9011 or are made solely

for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under the Bankruptcy Code. Defeated 10 to 18.

ROLLCALL NO. 9

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Carter		X	
Mr. Feeney		X	
Mrs. Blackburn		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott			
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Ms. Baldwin			
Mr. Weiner	X		
Mr. Schiff			
Ms. Sánchez	X		
Mr. Sensenbrenner, Chairman		X	
Total	10	18	

10. Motion to report favorably H.R. 975, as amended. Passed 18 to 11, with one present.

ROLLCALL NO. 10

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Ms. Hart	X		
Mr. Flake			

ROLLCALL NO. 10—Continued

	Ayes	Nays	Present
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Carter	X		
Mr. Feeney	X		
Mrs. Blackburn	X		
Mr. Conyers		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott			
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt		X	
Mr. Wexler		X	
Ms. Baldwin			
Mr. Weiner		X	
Mr. Schiff			X
Ms. Sánchez		X	
Mr. Sensenbrenner, Chairman	X		
Total	18	11	1

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

Performance Goals and Objectives

The bill is intended to improve the bankruptcy system by deterring abuse, setting enhanced standards for bankruptcy professionals, and streamlining case administration. It authorizes the appointment of 28 temporary bankruptcy judgeships to address the 59 percent increase in the caseload of bankruptcy judges since 1992, when additional bankruptcy judgeships were last authorized.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 975, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

MARCH 18, 2003.

Hon. F. JAMES SENSENBRENNER, Jr.,
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. 975, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal spending), Annabelle Bartsch (for federal revenues), Victoria Heid Hall (for the state and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 975—Bankruptcy Abuse Prevention and Consumer Protection Act of 2003

Summary: CBO estimates that implementing H.R. 975 would increase discretionary costs primarily to the United States Trustees (U.S. Trustees) by $280 million over the 2003–2008 period. At the same time, the bill would slightly increase the fees charged for filing a bankruptcy case and would change how some of these fees are currently recorded in the budget. We estimate that implementing the bill would increase the amount of bankruptcy fees that are treated as an offset to appropriations by $282 million over the five-year period, resulting in a net decrease in discretionary spending of $2 million over this period.

In addition, CBO estimates that enacting this bill would decrease governmental receipts (revenues) by $263 million over the 2003–2008 period because bankruptcy fees that are currently recorded as revenues would be reclassified as offsetting collections and offsetting receipts. Finally, enactment of H.R. 975 would result in filling additional judgeships, and we estimate that their mandatory pay and benefits would cost $23 million over the next five years. Assuming appropriation of the necessary amounts to implement the bill, CBO estimates that its enactment would increase budget deficits by $284 million over the 2003–2008 period.

H.R. 975 contains two intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates the costs would be insignificant and would not exceed the threshold established in that act ($59 million in 2003, 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. 975 would impose private-sector mandates as defined by UMRA on bankruptcy attorneys, creditors, bankruptcy petition preparers, debt-relief agencies, and credit and charge-card companies. CBO estimates that the direct costs of these mandates would exceed the annual threshold established by UMRA ($117 million in 2003, adjusted annually for inflation).

Major Provisions: In addition to establishing means-testing for determining eligibility for chapter 7 bankruptcy relief, H.R. 975 would:

- Require the Executive Office for the U.S. Trustees to establish a test program to educate debtors on financial management;
- Authorize 28 new temporary judgeships and extend four existing judgeships in 22 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 of every 250 bankruptcy cases under chapter 13 or chapter 7 be audited by an independent certified public accountant;
- Require the Administrative Office of the United States Courts (AOUSC) to receive and maintain tax returns for certain chapter 7 and chapter 13 debtors;
- Require the AOUSC and the U.S. Trustees to collect and publish certain statistics on bankruptcy cases; and
- Increase chapter 7 and chapter 13 bankruptcy filing fees and change the budgetary treatment of such fees.

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. 975 would result in a net decrease in discretionary spending of $2 million over the 2003–2008 period, subject to appropriation actions. In addition, we estimate that mandatory spending for the salaries and benefits of bankruptcy judges would increase by less than $500,000 in 2003 and by $23 million over the 2003–2008 period. Enacting the bill's provisions for adjusting filing fees would reduce revenues by $263 million over the next five years. That change in revenues would be more than offset, however, by increased collections to be credited against discretionary spending if future appropriation actions are consistent with the bill. (The estimated net decrease in discretionary spending of $2 million reflects an increase in spending totaling $280 million over the next five years, offset by collections of $282 million over those five years.) The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Means-Testing (Section 102):						
Estimated Authorization Level	0	12	11	11	11	10
Estimated Outlays	0	10	11	11	11	10
GAO, SBA, and U.S. Trustees Studies (Sections 103, 230, and 443):						
Estimated Authorization Level	0	1	a	0	0	0
Estimated Outlays	0	1	a	0	0	0
Debtor Financial Management Training (Section 105):						
Estimated Authorization Level	0	3	1	0	0	0
Estimated Outlays	0	2	1	a	0	0
Credit Counseling Certification (Section 106):						
Estimated Authorization Level	0	4	3	3	4	4
Estimated Outlays	0	3	3	3	4	4
Maintenance of Tax Returns (Section 315):						
Estimated Authorization Level	0	1	2	2	2	2

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
Estimated Outlays	0	1	2	2	2	2
Changes in Bankruptcy Filing Fees (Sections 325 and 418):						
Estimated Authorization Level	0	−52	−60	−60	−55	−55
Estimated Outlays	0	−52	−60	−60	−55	−55
U.S. Trustee Site Visits (Section 439):						
Estimated Authorization Level	0	3	2	2	2	3
Estimated Outlays	0	2	2	2	2	3
Compiling and Publishing Data (Sections 601–602):						
Estimated Authorization Level	0	0	9	9	8	8
Estimated Outlays	0	0	9	9	8	8
Audit Procedures (Section 603):						
Estimated Authorization Level	0	0	15	18	19	20
Estimated Outlays	0	0	15	18	19	20
Additional Judgeships—Support Costs (Section 1223):						
Estimated Authorization Level	a	9	16	17	18	17
Estimated Outlays	a	9	16	17	18	17
FTC Toll-Free Hotline (Section 1301):						
Estimated Authorization Level	0	2	1	1	1	1
Estimated Outlays	0	2	1	1	1	1
Total Discretionary Changes:						
Estimated Budget Authority	(1)	−17	0	2	9	10
Estimated Outlays	(1)	−22	−1	2	9	10
CHANGES IN DIRECT SPENDING						
Additional Judgeships (Section 1223):						
Estimated Budget Authority	a	3	5	5	5	5
Estimated Outlays	a	3	5	5	5	5
CHANGES IN REVENUES						
Changes in Revenue from Filing Fees: Estimated Revenues	0	−47	−54	−54	−54	−54

[1] Less than $500,000.

Note:—GAO = General Accounting Office; SBA = Small Business Administration; and FTC = Federal Trade Commission.

Basis of estimate: For this estimate, CBO assumes that H.R. 975 will be enacted by July 2003 and that the amounts necessary to implement the bill 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. Those increases would be more than offset by changes in bankruptcy filing fees that would be recorded as offsetting collections under the bill. CBO estimates that implementing H.R. 975 would result in a net reduction in discretionary costs of $2 million over the 2003–2008 period.

Means-Testing (Section 102). This section would establish a system of means-testing for determining a debtor's eligibility for relief under chapter 7. Under the means test, if the amount of debtor income remaining after certain expenses and other specified amounts are deducted from the debtor's current monthly income exceeds the threshold specified in section 102, then the debtor would be presumed ineligible for chapter 7 relief. A debtor who could not demonstrate "special 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 provision. The U. S. Trustees would provide in-

creased oversight of the work performed by the private trustees, file additional motions for dismissal or conversion, 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 115 additional attorneys, paralegals, and analysts to address the increased workload. As a result, CBO estimates that implementing this provision would cost $53 million over the next five years.

General Accounting Office (GAO), Small Business Administration (SBA), and U.S. Trustees Studies (Sections 103, 205, 230, and 443). Section 103 would require the U.S. Trustees to conduct a study regarding the use of Internal Revenue Service expense standards for determining a debtor's current monthly expenses and the impact of those standards on debtors and bankruptcy courts. Section 230 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 205 would require GAO to conduct a study on the treatment of consumers by creditors with respect to reaffirmation agreements. Section 443 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 U.S. Trustees, GAO, and SBA, CBO estimates that completing the necessary studies would cost about $1 million in 2004 and less than $500,000 in 2005.

Debtor Financial Management Test Training Program (Section 105). This section would require the U.S. Trustees to establish a test training program to educate debtors on financial management. The test training program would be authorized for six judicial districts over an 18-month period. 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 years 2004 and 2005. At a projected cost of about $40 per debtor, CBO estimates that implementing this provision would cost about $4 million over the 2004–2005 period.

Credit Counseling Certification (Section 106). 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 greater workload associated with certification. CBO estimates that implementing this provision would cost $20 million over the next five years.

Maintenance of Tax Returns (Section 315). This section would authorize the AOUSC to receive and retain debtors' tax returns for the year prior to the commencement of the bankruptcy for chapter 7 and chapter 13 filings. Such collection and storage of tax returns would commence only at the request of a creditor. Based on information from the AOUSC, CBO expects that creditors will request tax information in about 25 percent of such cases. CBO estimates

that implementing section 315 would cost $9 million over the next five years to store and provide access to over two million tax returns.

Changes in Bankruptcy Filing Fees (Sections 325 and 418). Section 325 would increase chapter 7 and chapter 13 bankruptcy filing fees and change the distribution of such fees. In addition, the bill would allow the U.S. Trustee System Fund to collect 75 percent of chapter 11 filing fees. Under current law, the filing fee for chapter 7 and chapter 13 is $155 and is divided between the U.S. Trustee System Fund, the AOUSC, the private trustee assigned to the case, and the remainder is recorded as a governmental receipt (i.e., revenue). Under H.R. 975, the filing fee for a chapter 7 case would be $160, and income from this fee would be recorded in two different places in the budget. Of the $160, $65 would be recorded as an offsetting collection to the appropriation for the U.S. Trustee System Fund, and $50 would be recorded as an offsetting receipt and spent without further appropriation by the AOUSC. The remainder of this fee would be spent by the private trustees assigned to each case. The bill would reduce the filing fee for a chapter 13 case to $150 and change how the fee is recorded in the budget. The U.S. Trustee System Fund would receive $105 and the AOUSC would receive $45 per case. Under H.R. 975, no portion of chapter 7, chapter 11, or chapter 13 filing fees would be recorded as governmental receipts.

Section 418 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 2004, 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 2007.

Considering the expected reduction in the use of chapter 7 because of means-testing and the provision that would allow fee waivers, CBO estimates that implementing the new fee structure and changes in fee classifications would result in an increase in offsetting collections totaling $282 million over the 2003–2008 period.

U.S. Trustee Site Visits in Chapter 11 Cases (Section 439). 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 439 would require about 20 additional analysts to conduct over 2,300 site visits each year. CBO estimates that implementing this provision would cost about $11 million over the next five years for the salaries, benefits, and travel expenses associated with those additional personnel.

Compilation and Publication of Bankruptcy Data and Statistics (Sections 601–602). Beginning 18 months after enactment, H.R. 975 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 it would cost about $34 million over the 2003–2008 period to meet these requirements. Of the total estimated cost, about $30 million would be required for additional legal clerks, analysts, and data base support. The remainder would be incurred by the U.S. Trustees for com-

piling data and providing Internet access to records pertaining to bankruptcy cases.

Audit Procedures (Section 603). Beginning 18 months after enactment, H.R. 975 would require that at least one out of every 250 bankruptcy cases under chapter 7, chapter 11, 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 1.6 million cases would be subject to audits in fiscal year 2005, increasing to about 1.9 million in fiscal year 2008. CBO assumes that about 0.8 percent of those cases would be audited and that each audit would cost roughly $1,000 (in 2003 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. We estimate that implementing this provision would cost $72 million over the 2005–2008 period.

Additional Judgeships—Support Costs (Section 1223). This provision would extend four temporary bankruptcy judgeships and authorize 28 new temporary bankruptcy judgeships for 22 federal judicial districts. Based on information from the AOUSC, CBO assumes that about half of the 28 new positions would be filled by the beginning of fiscal year 2004 and the rest would be filled by the start of fiscal year 2005. Also, we anticipate that all four temporary judgeships would be filled by fiscal year 2005. We expect that discretionary expenditures for support costs associated with each judgeship would average about $490,000 annually (in 2003 dollars). CBO estimates that the administrative support of additional bankruptcy judges would require an appropriation of less than $500,000 in fiscal year 2003 and $77 million over the 2004–2008 period. (Salaries and benefits for the judges are classified as mandatory spending, and those costs are described below.)

Federal Trade Commission Toll-Free Hotline (Section 1301). This section would require the Federal Trade Commission (FTC) to operate a toll-free number for consumers to calculate how long it would take to pay off a credit card debt if they were to make only the minimum monthly payments. Based on information from the FTC about the demand for the agency's other credit-related hotline, CBO expects that the FTC would receive about 20,000 calls each month. CBO estimates that the equipment and personnel necessary to serve this volume of inquires would cost $2 million in 2004 and $6 million over the 2004–2008 period, subject to the appropriation of the necessary amounts.

Direct Spending and Revenues

Additional Judgeships (Section 1223). CBO estimates that enacting the means-testing provision (section 102) would impose some additional workload on the courts. Section 128 would authorize 28 new temporary bankruptcy judgeships and extend four 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 $155,000 a year (in 2003 dollars), CBO estimates that the mandatory costs associated with the salaries and benefits of those additional judgeships would be less

than $500,000 in fiscal year 2003 and about $23 million over the 2004–2008 period.

Changes in Bankruptcy Filing Fees (Sections 102, 325, and 418). Section 325 would change the classification of where bankruptcy filing fees are recorded in the budget. Under current law, filing fees are divided between the U.S. Trustee System Fund, the AOUSC, the private trustee assigned to the case, and the remainder is recorded as governmental receipts (i.e., revenues). The percentage of the fees allocated to those different parts of the budget varies by chapter. Under the fee structure specified in the bill, the portions of chapter 7, chapter 11, and chapter 13 filing fees that are now recorded as governmental receipts would be recorded as offsetting collections or offsetting receipts. Therefore, CBO estimates that enacting H.R. 975 would reduce governmental receipts by $263 million over the 2004–2008 period. (The change in offsetting receipts would be matched by additional spending, resulting in no net change in direct spending.)

Tax Provisions (Title VII). Title VII of H.R. 975 would alter several provisions related to tax claims. It would alter the treatment of certain tax liens, disallow the discharge of taxes resulting from fraudulent tax returns under chapter 13 or chapter 11 of the bankruptcy code, require periodic cash payments of priority tax claims, and specify the rate of interest on tax claims. Title VII also would change the status of assessment periods for tax claims and would alter various administrative requirements. Based on information from the Internal Revenue Service and the Joint Committee on Taxation, CBO estimates that these provisions would increase revenues, but that any increase would be negligible.

Estimated impact on state, local, and tribal governments: H.R. 975 contains intergovernmental mandates as defined in UMRA, but CBO estimates that any resulting costs would not be significant and would not exceed the threshold established in UMRA ($59 million in 2003, 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.

Mandates

Section 227 of the bill would preempt state laws governing contracts between a debt relief agency and a debtor, but only to the extent that those state laws 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 that the costs to states of complying with this mandate would not be significant.

Section 719 would require state and local income tax procedures to conform to the Internal Revenue Code with regard to dividing tax liabilities and responsibilities between the estate and the debtor, the tax consequences of partnerships and transfers of property, and the taxable period of the debtor. CBO estimates that this provision would increase costs for the administration of state and local tax laws but would not require state and local tax rates to conform to the federal rates. Such administrative costs would not be significant and would likely be offset by increased collections.

Other Impacts

The changes to bankruptcy law in the bill would affect state and local governments primarily as creditors and holders of tax or child support claims against debtors. 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.

A 1996 survey, the most recent data available, of the 50 states conducted by the Federation of Tax Administrators (FTA) and the States' Association of Bankruptcy Attorneys indicated that more than 360,000 taxpayers in bankruptcy owed claims totaling about $4 billion. Of those claims, states reported collecting only about $234 million. According to FTA, total bankruptcy filings have increased since 1996, and the proportion of claims collected by states has remained constant. While CBO cannot predict how much more money might be collected under this legislation, it is likely that states and local governments would collect a greater share of future claims than they would under current law.

Domestic Support Obligations. The bill would 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 owed to individuals. The bill would make those debts nondischargeable (not able to be written-off at the end of bankruptcy). The bill also would require that filers under chapter 11 and 13 cases pay domestic support obligations owed to government agencies or individuals in order to receive a discharge of outstanding debts. In addition, under this bill, the automatic stay that is triggered by filing bankruptcy would not apply to domestic support obligations owed by debtors or withheld from regular income as it currently does. The bill also 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 it has done so. The last known address of the debtor would be a part of the notification.

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. The bill would reduce the value of a debtor's homestead exemption under certain circumstances. It also would place a monetary cap on the value of certain property that the debtor may claim as exempt under state or local law. The bill would exempt certain types of retirement and education savings, as well as contributions to specified employee benefit plans.

Those exemption standards would apply regardless of the state policy on exemptions. The new property-value limitations could make more money available to creditors in some cases, while the exemptions on some retirement, education, and other savings generally would make less money available.

Time Limits on Tax Collection. Under some circumstances, a tax claim can qualify for priority status, making it more likely that a state or local government can collect the debt. However, this status

is granted only if a tax is assessed within a specific period of time from the date of the bankruptcy filing. If that filing is subsequently dismissed and a new filing is made, the tax claim may lose its priority status. The bill would make adjustments to this provision, allowing 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 and the priority of claims reduce the funds that would otherwise be available to pay tax liens on property. The bill would increase the priority of those liens in certain circumstances against certain expenses and claims, thereby making it more likely that funds would remain available to cover tax obligations. The bill would allow state and local governments to claim administrative expenses for costs incurred by closing a health care business. The bill would provide for a more uniform interest rate on all tax claims and administrative expenses, determined in accordance with applicable nonbankruptcy law rather than at the discretion of a bankruptcy judge.

Tax Return Filing. A number of provisions in the bill would require debtors to have filed tax returns before a bankruptcy case may continue. Those provisions would help states identify potential claims in bankruptcy cases where they may be owed delinquent taxes.

Priority of Payments. In some circumstances under current law, 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 that 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 debts 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.

Municipal Bankruptcy. Title V would clarify regulations governing municipal bankruptcy actions and allow municipalities that have filed for bankruptcy to liquidate certain financial contracts.

Fuel Tax Claims. Under current law, all states owed fuel tax under the International Fuel Tax Agreement must file separate claims against debtors under the bankruptcy code. A provision in title VII would allow a state designated under the agreement to file a single claim on behalf of all states owed the fuel taxes. That provision would simplify the filing process.

Single Asset Cases. Title XII includes a provision that would allow expedited bankruptcy proceedings in certain cases where the debtor's principal asset is some form of real estate. Enacting this provision could benefit state and local governments to the extent that real property is returned to productive tax rolls earlier.

Estimated impact on the private sector: H.R. 975 would impose new private-sector mandates on bankruptcy attorneys, creditors, bankruptcy petition preparers, debt-relief agencies, and credit and

charge-card companies. Consumer bankruptcy attorneys would be required to make reasonable inquiries to confirm that the information in documents they submit to the court or to the bankruptcy trustee is well grounded in fact. Creditors would be required to make disclosures in their agreements with debtors and to provide certain notices to courts and debtors. Bankruptcy petition preparers and debt-relief agencies would also be required to provide certain notices to debtors. Credit and charge-card companies would be required to disclose specified information in monthly billing statements, new account introductory rate offers, and Internet-based solicitations. CBO estimates that the direct costs of these mandates would exceed the annual threshold established by UMRA ($117 million in 2003, adjusted annually for inflation).

Section 102 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. Completing a reasonable investigation of debtors' financial affairs and, for chapter 7 cases, computing debtor eligibility would require attorneys to expend additional effort. Information from the American Bar Association indicates that this requirement would increase attorney costs by $150 to $500 per case. Based on the 1.9 million projected filings under chapter 7 (liquidation) and chapter 13 (rehabilitation), CBO estimates that the additional costs to bankruptcy attorneys would be between $280 million and $950 million beginning in fiscal year 2004 and remaining in that range over the next four years. The additional costs for attorneys would most likely be passed on to debtors.

The bill would require certain notices to be disclosed as part of the bankruptcy process. Section 203 would require a creditor with an unsecured consumer debt seeking a reaffirmation agreement with a debtor to provide certain disclosures. A reaffirmation is an agreement between a debtor and a creditor that the debtor will pay all or a portion of the money owed despite the bankruptcy filing. Those disclosures must be made clearly and conspicuously in writing and include certain advisories and explanations. The required disclosures could be incorporated into existing standard reaffirmation agreements. Section 221 would require bankruptcy petition preparers who are not attorneys to give the debtor written notice explaining that the preparer may not provide legal advice. Section 228 would require a debt-relief agency providing bankruptcy assistance to a person to give certain written notices to the person and to execute a written contract. Such agencies also would be required to supply certain advisories and explanations regarding the bankruptcy process. Most attorneys and debt-relief counselors currently provide similar information. Based on information from attorneys and other bankruptcy practitioners, CBO estimates that the direct costs of complying with these mandates would not be substantial.

H.R. 975 also would require credit lenders to provide additional disclosures to consumers. Credit and charge-card companies would be required to include certain disclosures in billing statements with respect to various open-end credit plans regarding the disadvantages of making only the minimum payment. Other disclosures

would be required to be included in application and solicitation materials involving introductory rate offers, Internet-based credit card solicitations, and for late payment deadlines and penalties. Based on information from credit lenders, CBO estimates that the direct costs of these disclosure requirements would fall below the annual threshold.

Other Impacts

H.R. 975 also contains many provisions that would benefit creditors. Most significant for creditors are provisions that would expand the types of debts that would be nondischargeable and provisions that would shift debtors from chapter 7 to chapter 13. By expanding the types of debts that are nondischargeable, some creditors would continue to receive payments on debts that would be discharged under current law. Means-testing in the bankruptcy system would result in more individuals being required to seek relief under chapter 13 rather than chapter 7. Because chapter 13 requires debtors to develop a plan to repay creditors over a specified period, the total pool of funds available for distribution for creditors would likely increase. If the likelihood of repayment by debtors and the pool of funds increases by an amount greater than the cost to creditors of administering the new bankruptcy code, creditors would be made better off under the bill.

Under UMRA, duties arising from participation in voluntary federal programs are not mandates. The bankruptcy process is largely voluntary for debtors, and debtor-initiated bankruptcies are equivalent to participation in a voluntary federal program. Consequently, new duties imposed by the bill on individuals who file as debtors do not meet the definition of private-sector mandates, and additional cost for debtors would not be counted as direct costs for purposes of UMRA.

Estimate prepared by: Federal Spending: Mark Grabowicz, and Ken Johnson; Federal Revenues: Annabelle Bartsch; Impact on State, Local, and Tribal Governments: Victoria Heid Hall; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8,Clauses 3 and 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 1. Short Title; References; Table of Contents. The short title of this measure is the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003 (the "Act").

TITLE I. NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion. Under current law, section 706(c) of the Bankruptcy Code provides that a court may not convert a chapter 7 case unless the debtor requests such conversion. Section 101 of the Act amends this provision to allow a chapter 7 case to be con-

verted to a case under chapter 12 or chapter 13 on request or consent of the debtor.

Section 102. Dismissal or Conversion. This provision implements the legislation's principal consumer bankruptcy reforms: needs-based debt relief. Under section 707(b) of the Bankruptcy Code, a chapter 7 case filed by a debtor who is an individual may be dismissed for substantial abuse only on motion of the court or the United States Trustee. It specifically prohibits such dismissal at the suggestion of any party in interest.

Section 102 of the Act revises current law in several significant respects. First, it amends section 707(b) of the Bankruptcy Code to permit—in addition to the court and the United States trustee—a trustee, bankruptcy administrator, or a party in interest to seek dismissal or conversion of a chapter 7 case to one under chapter 11 or 13 on consent of the debtor, under certain circumstances. In addition, section 102 of the Act changes the current standard for dismissal from "substantial abuse" to "abuse." Section 102 of the Act also amends Bankruptcy Code section 707(b) to mandate a presumption of abuse if the debtor's current monthly income (reduced by certain specified amounts) when multiplied by 60 is not less than the lesser of 25 percent of the debtor's nonpriority unsecured claims or $6,000 (whichever is greater), or $10,000.

To determine whether the presumption of abuse applies under section 707(b) of the Bankruptcy Code, section 102(a) of the Act specifies certain monthly expense amounts that are to be deducted from the debtor's "current monthly income" (a defined term). These expense items include:

- the applicable monthly expenses for the debtor as well as for the debtor's dependents and spouse in a joint case (if the spouse is not otherwise a dependent) specified under the Internal Revenue Service's National Standards (with provision for an additional 5 percent for food and clothing if the debtor can demonstrate that such additional amount is reasonable and necessary) and the IRS Local Standards;
- the actual monthly expenses for the debtor, the debtor's dependents, and the debtor's spouse in a joint case (if the spouse is not otherwise a dependent) for the categories specified by the Internal Revenue Service as Other Necessary Expenses;
- reasonably necessary expenses incurred to maintain the safety of the debtor and the debtor's family from family violence as specified in section 309 of the Family Violence Prevention and Services Act or other applicable Federal law, with provision for the confidentiality of these expenses;
- the debtor's average monthly payments on account of secured debts and priority claims as explained below; and
- if the debtor is eligible to be a debtor under chapter 13, the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to 10 percent of projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

With respect to secured debts, Section 102(a)(2)(C) of the Act specifies that the debtor's average monthly payments on account of secured debts is calculated as the sum of the following divided by 60: (1) all amounts scheduled as contractually due to secured creditors for each month of the 60-month period following filing of the case; and (2) any additional payments necessary, in filing a plan under chapter 13, to maintain possession of the debtor's primary residence, motor vehicle or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts.

With respect to priority claims, section 102(a)(2)(C) of the Act specifies that the debtor's expenses for payment of such claims (including child support and alimony claims) is calculated as the total of such debts divided by 60.

The provision permits a debtor, if applicable, to deduct from current monthly income the continuation of actual expenses paid by the debtor that are reasonable and necessary for the care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (providing such individual is unable to pay for these expenses).

Under section 102, a debtor may also deduct the actual expenses for each dependent child of a debtor to attend a private or public elementary or secondary school of up to $1,500 per child if the debtor: (1) documents such expenses, and (2) provides a detailed explanation of why such expenses are reasonable and necessary. The debtor must explain why such expenses are not already accounted for under any of the Internal Revenue Service National and Local Standards, and Other Expenses categories.

Other expenses that a debtor may claim include additional housing and utilities allowances based on the debtor's actual home energy expenses if the debtor documents such expenses and demonstrates that they are reasonable and necessary.

While the Act replaces the current law's presumption in favor of granting relief requested by a chapter 7 debtor with a presumption of abuse (if applicable under the income and expense analysis previously described), this presumption may be rebutted only under certain circumstances. Section 102(a)(2)(C) of the Act amends Bankruptcy Code section 707(b) to provide that the presumption of abuse may be rebutted only if: (1) the debtor demonstrates special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative; and (2) the additional expenses or adjustments cause the product of the debtor's current monthly income (reduced by the specified expenses) when multiplied by 60 to be less than the lesser of 25 percent of the debtor's nonpriority unsecured claims, or $6,000 (whichever is greater); or $10,000. In addition, the debtor must itemize and document each additional expense or income adjustment as well as provide a detailed explanation of the special circumstances that make such expense or adjustment necessary and reasonable. In addition, the debtor must attest under oath to the accuracy of any information provided to demonstrate that such additional expense or adjustment is required.

To implement these needs-based reforms, the Act requires the debtor to file, as part of the schedules of current income and current expenditures, a statement of current monthly income. This

statement must show: (1) the calculations that determine whether a presumption of abuse arises under section 707(b) (as amended), and (2) how each amount is calculated.

In a case where the presumption of abuse does not apply or has been rebutted, section 102(a)(2)(C) of the Act amends Bankruptcy Code section 707(b) to require a court to consider whether: (1) the debtor filed the chapter 7 case in bad faith; or (2) the totality of the circumstances of the debtor's financial situation demonstrates abuse, including whether the debtor wants to reject a personal services contract and the debtor's financial need for such rejection.

Under section 102(a)(2)(C) of the Act, a court may on its own initiative or on motion of a party in interest in accordance with rule 9011 of the Federal Rules of Bankruptcy Procedure, order a debtor's attorney to reimburse the trustee for all reasonable costs incurred in prosecuting a section 707(b) motion if: (1) a trustee files such motion; (2) the motion is granted; and (3) the court finds that the action of the debtor's attorney in filing the case under chapter 7 violated rule 9011. If the court determines that the debtor's attorney violated rule 9011, it may on its own initiative or on motion of a party in interest in accordance with such rule, order the assessment of an appropriate civil penalty against debtor's counsel and the payment of such penalty to the trustee, United States trustee, or bankruptcy administrator. This provision clarifies that a motion for costs or the imposition of a civil penalty must be made by a party in interest or by the court itself in accordance with rule 9011.

Section 102(a)(2)(C) of the Act provides that the signature of an attorney on a petition, pleading or written motion shall constitute a certification that the attorney has: (1) performed a reasonable investigation into the circumstances that gave rise to such document; and (2) determined that such document is well-grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under section 707(b)(1). In addition, such attorney's signature on the petition constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

Section 102(a)(2)(C) of the Act amends section 707(b) of the Bankruptcy Code to permit a court on its own initiative or motion by a party in interest in accordance with rule 9011 of the Federal Rules of Bankruptcy Procedure to award reasonable costs (including reasonable attorneys' fees) in contesting a section 707(b) motion filed by a party in interest (other than a trustee, United States trustee or bankruptcy administrator) if the court: (1) does not grant the section 707(b) motion; and (2) finds that either the movant violated rule 9011, or the attorney (if any) who filed the motion did not comply with section 707(b)(4)(C) and such was made solely for the purpose of coercing a debtor into waiving a right guaranteed under the Bankruptcy Code to such debtor. An exception applies with respect to a movant that is a "small business" with a claim in an aggregate amount of less than $1,000. A small business, for purposes of this provision, is defined as an unincorporated business, partnership, corporation, association or organization that engages in commercial or business activities and employs less than 25 full-time employees. The number of employees of a wholly

owned subsidiary includes the employees of the parent and any other subsidiary corporation of the parent. Section 102(a)(2)(C) of the Act clarifies that the motion for costs must be made by a party in interest or by the court. The use of the phraseology in this provision, "in accordance with rule 9011 of the Federal Rules of Bankruptcy Procedure," is intended to indicate that the procedures for the motion of a party in interest or a court acting on its own initiative are the procedures outlined in rule 9011(c).

The Act includes two "safe harbors" with respect to its needs-based reforms. One safe harbor allows only a judge, United States trustee, or bankruptcy administrator to file a section 707(b) motion (based on the debtor's ability to repay, bad faith, or the totality of the circumstances) if the chapter 7 debtor's current monthly income (or in a joint case, the income of the debtor and the debtor's spouse) falls below the state median family income for a family of equal or lesser size (adjusted for larger sized families), or the state median family income for one earner in the case of a one-person household.

The Act's second safe harbor only pertains to a motion under section 707(b)(2), that is, a motion to dismiss based on a debtor's ability to repay. It does not allow a judge, United States trustee, bankruptcy administrator or party in interest to file such motion if the income of the debtor and the debtor's spouse is less than certain monetary thresholds. This provision does not consider the nonfiling spouse's income if the debtor and the debtor's spouse are separated under applicable nonbankruptcy law, or the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading section 707(b)(2). The debtor must file a statement under penalty of perjury specifying that he or she meets one of these criteria. In addition, the statement must disclose the aggregate (or best estimate) of the amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.

Section 102(b) of the Act amends section 101 of the Bankruptcy Code to define "current monthly income" as the average monthly income that the debtor receives (or in a joint case, the debtor and debtor's spouse receive) from all sources, without regard to whether it is taxable income, in a specified 6-month period preceding the filing of the bankruptcy case. The Act specifies that the 6-month period is determined as ending on the last day of the calendar month immediately preceding the filing of the bankruptcy case, if the debtor files the statement of current income required by Bankruptcy Code section 521. If the debtor does not file such schedule, the court determines the date on which current income is calculated.

"Current monthly income" includes any amount paid by any entity other than the debtor (or, in a joint case, the debtor and the debtor's spouse if not otherwise a dependent) on a regular basis for the household expenses of the debtor or the debtor's dependents (and, the debtor's spouse in a joint case, if not otherwise a dependent). It excludes Social Security Act benefits and payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes. In addition, the Act provides that current monthly income does not include payments to victims of international or domestic terrorism as defined in section 2331 of

title 18 of the United States Code on account of their status as victims of such terrorism.

Section 102(c) of the Act amends section 704 of the Bankruptcy Code to require the United States trustee or bankruptcy administrator in a chapter 7 case where the debtor is an individual to: (1) review all materials filed by the debtor; and (2) file a statement with the court (within 10 days following the meeting of creditors held pursuant to section 341 of the Bankruptcy Code) as to whether or not the debtor's case should be presumed to be an abuse under section 707(b). The court must provide a copy of such statement to all creditors within 5 days after its filing. Within 30 days of the filing of such statement, the United States trustee or bankruptcy administrator must file either: (1) a motion under section 707(b); or (2) a statement setting forth the reasons why such motion is not appropriate in any case where the debtor's filing should be presumed to be an abuse and the debtor's current monthly income exceeds certain monetary thresholds.

In a chapter 7 case where the presumption of abuse applies under section 707(b), section 102(d) of the Act amends Bankruptcy Code section 342 to require the clerk to provide written notice to all creditors within 10 days after commencement of the case stating that the presumption of abuse applies in such case.

Section 102(e) of the Act provides that nothing in the Bankruptcy Code limits the ability of a creditor to give information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee, bankruptcy administrator, or trustee.

Section 102(f) of the Act adds a provision to Bankruptcy Code section 707 to permit the court to dismiss a chapter 7 case filed by a debtor who is an individual on motion by a victim of a crime of violence (as defined in section 16 of title 18 of the United States Code) or a drug trafficking crime (as defined in section 924(c)(2) of title 18 of the United States Code). The case may be dismissed if the debtor was convicted of such crime and dismissal is in the best interest of the victims, unless the debtor establishes by a preponderance of the evidence that the filing of the case is necessary to satisfy a claim for a domestic support obligation.

Section 102(g) of the Act amends section 1325(a) of the Bankruptcy Code to require the court, as a condition of confirming a chapter 13 plan, to find that the debtor's action in filing the case was in good faith.

Section 102(h) of the Act amends section 1325(b)(1) of the Bankruptcy Code to specify that the court must find, in confirming a chapter 13 plan to which there has been an objection, that the debtor's disposable income will be paid to unsecured creditors. It also amends section 1325(b)(2)'s definition of disposable income. As defined under this provision, the term means income received by the debtor (other than child support payments, foster care payments, or certain disability payments for a dependent child) less amounts reasonably necessary to be expended for: (1) the maintenance or support of the debtor or the debtor's dependent; (2) a domestic support obligation that first becomes due after the case is filed; (3) charitable contributions (as defined in Bankruptcy Code section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in Bankruptcy Code section 548(d)(4)) in an

amount that does not exceed 15 percent of the debtor's gross income for the year in which the contributions are made; and (4) if the debtor is engaged in business, the payment of expenditures necessary for the continuation, preservation, and operation of the business. As amended, section 1325(b)(3) provides that the amounts reasonably necessary to be expended under section 1325(b)(2) are determined in accordance with section 707(b)(2)(A) and (B) if the debtor's income exceeds certain monetary thresholds.

Section 102(i) of the Act amends Bankruptcy Code section 1329(a) to require the amounts paid under a confirmed chapter 13 plan to be reduced by the actual amount expended by the debtor to purchase health insurance for the debtor and the debtor's dependents (if those dependents do not otherwise have such insurance) if the debtor documents the cost of such insurance and demonstrates such expense is reasonable and necessary, and the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b). If the debtor previously paid for health insurance, the debtor must demonstrate that the amount is not materially greater than the amount the debtor previously paid. If the debtor did not previously have such insurance, the amount may not be not materially larger than the reasonable cost that would be incurred by a debtor with similar characteristics. Upon request of any party in interest, the debtor must file proof that a health insurance policy was purchased.

Section 102(j) of the Act amends section 104 of the Bankruptcy Code to provide for the periodic adjustment of monetary amounts specified in sections 707(b) and 1325(b)(3) of the Bankruptcy Code, as amended by this Act.

Section 102(k) adds to section 101 of the Bankruptcy Code a definition of "median family income."

Sec. 103. Sense of Congress and Study. Section 103(a) of the Act expresses the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service expense standards to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of the Bankruptcy Code, as amended. Section 103(b) requires the Executive Office for United States Trustees to submit a report within 2 years from the date of the Act's enactment regarding the utilization of the Internal Revenue Service expense standards for determining the current monthly expenses of a debtor under section 707(b) and the impact that the application of these standards has had on debtors and the bankruptcy courts. The report may include recommendations for amendments to the Bankruptcy Code that are consistent with the report's findings.

Sec. 104. Notice of Alternatives. Section 104 of the Act amends section 342(b) of the Bankruptcy Code to require the clerk, before the commencement of a bankruptcy case by an individual whose debts are primarily consumer debts, to supply such individual with a written notice containing: (1) a brief description of chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of these chapters; (2) the types of services available from credit counseling agencies; (3) a statement advising that 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, imprison-

ment, or both; and (4) a statement warning that all information supplied by a debtor in connection with the case is subject to examination by the Attorney General.

Sec. 105. Debtor Financial Management Training Test Program. Section 105 of the Act requires the Director of the Executive Office for United States Trustees to: (1) consult with a wide range of debtor education experts who operate financial management education programs; and (2) develop a financial management training curriculum and materials that can be used to teach individual debtors how to manage their finances better. The Director must select six judicial districts to test the effectiveness of the financial management training curriculum and materials for an 18-month period beginning not later than 270 days after the Act's enactment date. For these six districts, the curricula and materials must be used as the instructional personal financial management course required under Bankruptcy Code section 111. Over the period of the study, the Director must evaluate the effectiveness of the curriculum and materials as well as consider a sample of existing consumer education programs (such as those described in the Report of the National Bankruptcy Review Commission) that are representative of consumer education programs sponsored by the credit industry, chapter 13 trustees, and consumer counseling groups. Not later than 3 months after concluding such evaluation, the Director must submit to Congress a report with findings regarding the effectiveness and cost of the curricula, materials, and programs.

Sec. 106. Credit Counseling. Section 106(a) of the Act amends section 109 of the Bankruptcy Code to require an individual—as a condition of eligibility for bankruptcy relief—to receive credit counseling within the 180-day period preceding the filing of a bankruptcy case by such individual. The credit counseling must be provided by an approved nonprofit budget and credit counseling agency consisting of either an individual or group briefing (which may be conducted telephonically or via the Internet) that outlined opportunities for available credit counseling and assisted the individual in performing a budget analysis. This requirement does not apply to a debtor who resides in a district where the United States trustee or bankruptcy administrator has determined that approved nonprofit budget and credit counseling agencies in that district are not reasonably able to provide adequate services to such individuals. Although such determination must be reviewed annually, the United States trustee or bankruptcy administrator may disapprove a nonprofit budget and credit counseling agency at any time.

A debtor may be temporarily exempted from this requirement if he or she submits to the court a certification that: (1) describes exigent circumstances meriting a waiver of this requirement; (2) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain such services within the 5-day period beginning on the date the debtor made the request; and (3) is satisfactory to the court. This exemption terminates when the debtor meets the requirements for credit counseling participation, but not longer than 30 days after the case is filed, unless the court, for cause, extends this period up to an additional 15 days.

Section 106(b) of the Act amends section 727(a) of the Bankruptcy Code to deny a discharge to a chapter 7 debtor who fails to

complete a personal financial management instructional course. This provision, however, does not apply if the debtor resides in a district where the United States trustee or bankruptcy administrator has determined that the approved instructional courses in that district are not adequate. Such determination must be reviewed annually by the United States trustee or bankruptcy administrator.

Section 106(c) of the Act amends section 1328 of the Bankruptcy Code to deny a discharge to a chapter 13 debtor who fails to complete a personal financial management instructional course. This requirement does not apply if the debtor resides in a district where the United States trustee or bankruptcy administrator has determined that the approved instructional courses in that district are not adequate. Such determination must be reviewed annually by the United States trustee or bankruptcy administrator.

Section 106(d) of the Act amends section 521 of the Bankruptcy Code to require a debtor who is an individual to file with the court: (1) a certificate from an approved nonprofit budget and credit counseling agency describing the services it provided the debtor pursuant to section 109(h); and (2) a copy of the repayment plan, if any, that was developed by the agency pursuant to section 109(h).

Section 106(e) of the Act adds section 111 to the Bankruptcy Code requiring the clerk to maintain a publically available list of approved: (1) credit counseling agencies that provide the services described in section 109(h) of the Bankruptcy Code; and (2) personal financial management instructional courses. Section 106(e) further provides that the United States trustee or bankruptcy administrator may only approve an agency or course provider under this provision pursuant to certain specified criteria. If such agency or provider course is approved, the approval may only be for a probationary period of up to 6 months. At the conclusion of the probationary period, the United States trustee or bankruptcy administrator may only approve such agency or instructional course for an additional 1-year period and, thereafter for successive 1-year periods, which has demonstrated during such period that it met the standards set forth in this provision and can satisfy such standards in the future.

Within 30 days after any final decision occurring after the expiration of the initial probationary period or after any subsequent 2-year period, an interested person may seek judicial review of such decision in the appropriate United States district court. In addition, the district court, at any time, may investigate the qualifications of a credit counseling agency and request the production of documents to ensure the agency's integrity and effectiveness. The district court may remove a credit counseling agency that does not meet the specified qualifications from the approved list. The United States trustee or bankruptcy administrator must notify the clerk that a credit counseling agency or instructional course is no longer approved and the clerk must remove such entity from the approved list.

Section 106(e) prohibits a credit counseling agency from providing information to a credit reporting agency as to whether an individual debtor has received or sought personal financial management instruction. A credit counseling agency that willfully or negligently fails to comply with any requirement under the Bank-

ruptcy Code with respect to a debtor shall be liable to the debtor for damages in an amount equal to: (1) actual damages sustained by the debtor as a result of the violation; and (2) any court costs or reasonable attorneys' fees incurred in an action to recover such damages.

Section 106(f) of the Act amends section 362 of the Bankruptcy Code to provide that if a chapter 7, 11, or 13 case is dismissed due to the creation of a debt repayment plan, the presumption that a case was not filed in good faith under section 362(c)(3) shall not apply to any subsequent bankruptcy case commenced by the debtor. It also provides that the court, on request of a party in interest, must issue an order under section 362(c) confirming that the automatic stay has terminated.

Sec. 107. Schedules of Reasonable and Necessary Expenses. For purposes of section 707(b) of the Bankruptcy Code, section 107 of the Act requires the Director of the Executive Office for United States Trustees to issue schedules of reasonable and necessary administrative expenses (including reasonable attorneys' fees) relating to the administration of a chapter 13 plan for each judicial district not later than 180 days after the date of enactment of the Act.

TITLE II. ENHANCED CONSUMER PROTECTION

Subtitle A. Penalties for Abusive Creditor Practices

Sec. 201. Promotion of Alternative Dispute Resolution. Subsection (a) of section 201 of the Act amends section 502 of the Bankruptcy Code to permit the court, after a hearing on motion of the debtor, to reduce a claim based in whole on an unsecured consumer debt by up to 20 percent if: (1) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency on behalf of the debtor; (2) the debtor's offer was made at least 60 days before the filing of the case; (3) the offer provided for payment of at least 60 percent of the debt over a period not exceeding the loan's repayment period or a reasonable extension thereof; and (4) no part of the debt is nondischargeable. The debtor has the burden of proving by clear and convincing evidence that: (1) the creditor unreasonably refused to consider the debtor's proposal; and (2) the proposed alternative repayment schedule was made prior to the expiration of the 60-day period. Section 201(b) amends section 547 of the Bankruptcy Code to prohibit the avoidance as a preferential transfer a payment by a debtor to a creditor pursuant to an alternative repayment plan created by an approved credit counseling agency.

Sec. 202. Effect of Discharge. Section 202 of the Act amends section 524 of the Bankruptcy Code in two respects. First, it provides that the willful failure of a creditor to credit payments received under a confirmed chapter 11, 12, or 13 plan constitutes a violation of the discharge injunction if the creditor's action to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor. This provision does not apply if the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner prescribed by the plan. Second, section 202 amends section 524 of the Bankruptcy Code to provide that the dis-

charge injunction does not apply to a creditor having a claim secured by an interest in real property that is the debtor's principal residence if the creditor communicates with the debtor in the ordinary course of business between the creditor and the debtor and such communication is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of the pursuit of *in rem* relief to enforce the lien.

Sec. 203. Discouraging Abuse of Reaffirmation Agreement Practices. Section 203 of the Act effectuates a comprehensive overhaul of the law applicable to reaffirmation agreements. Subsection (a) amends section 524 of the Bankruptcy Code to mandate that certain specified disclosures be provided to a debtor at or before the time he or she signs a reaffirmation agreement. These specified disclosures, which are the only disclosures required in connection with a reaffirmation agreement, must be in writing and be made clearly and conspicuously. In addition, the disclosure must include certain advisories and explanations. At the election of the creditor, the disclosure statement may include a repayment schedule. If the debtor is represented by counsel, section 203(a) mandates that the attorney file a certification stating that the agreement represents a fully informed and voluntary agreement by the debtor, that the agreement does not impose an undue hardship on the debtor or any dependent of the debtor, and that the attorney fully advised the debtor of the legal effect and consequences of such agreement as well as of any default thereunder. In those instances where the presumption of undue hardship applies, the attorney must also certify that the debtor is able to make the payments required under the reaffirmation agreement. Further, the debtor must submit a statement setting forth the debtor's monthly income and actual current monthly expenditures. If the debtor is represented by counsel and the debt being reaffirmed is owed to a credit union, a modified version of this statement may be used.

Notwithstanding any other provision of the Bankruptcy Code, section 203(a) permits a creditor to accept payments from a debtor: (1) before and after the filing of a reaffirmation agreement with the court; or (2) pursuant to a reaffirmation agreement that the creditor believes in good faith to be effective. It further provides that the requirements specified in subsections (c)(2) and (k) of section 524 are satisfied if the disclosures required by these provisions are given in good faith.

Where the amount of the scheduled payments due on the reaffirmed debt (as disclosed in the debtor's statement) exceeds the debtor's available income, it is presumed for 60 days from the date on which the reaffirmation agreement is filed with the court that the agreement presents an undue hardship. The court must review such presumption, which can be rebutted by the debtor by a written statement explaining the additional sources of funds that would enable the debtor to make the required payments on the reaffirmed debt. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove the reaffirmation agreement. No reaffirmation agreement may be disapproved without notice and hearing to the debtor and creditor. The hearing must be concluded before the entry of the debtor's discharge. The requirements set forth in this paragraph do not apply to reaffirmation agreements if the creditor is a credit union.

Section 203(b) amends title 18 of the United States Code to require the Attorney General to designate a United States Attorney for each judicial district and to appoint a Federal Bureau of Investigation agent for each field office to have primary law enforcement responsibilities for violations of sections 152 and 157 of title 18 with respect to abusive reaffirmation agreements and materially fraudulent statements in bankruptcy schedules that are intentionally false or misleading. In addition, section 203(b) provides that the designated United States Attorney has primary responsibility with respect to bankruptcy investigations under section 3057 of title 18. Section 203(b) further provides that the bankruptcy courts must establish procedures for referring any case in which a materially fraudulent bankruptcy schedule has been filed.

Sec. 204. Preservation of Claims and Defenses Upon Sale of Predatory Loans. Section 204 of the Act adds a provision to section 363 of the Bankruptcy Code with respect to sales of any interest in a consumer transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations). It provides that the purchaser of such interest remains subject to all claims and defenses that are related to such assets to the same extent as that person would be subject to if the sale was not conducted under section 363.

Sec. 205. GAO Study and Report on Reaffirmation Agreement Process. Section 205 of the Act directs the Comptroller General of the United States to report to Congress on how consumers are treated in connection with the reaffirmation agreement process. This report must include: (1) the policies and activities of creditors with respect to reaffirmation agreements; and (2) whether such consumers are fully, fairly, and consistently informed of their rights under the Bankruptcy Code. The report, which must be completed not later than 18 months after the date of enactment of this Act, may include recommendations for legislation to address any abusive or coercive tactics found in connection with the reaffirmation process.

Subtitle B. Priority Child Support

Sec. 211. Definition of Domestic Support Obligation. Section 211 of the Act amends section 101 of the Bankruptcy Code to define a domestic support obligation as a debt that accrues pre- or postpetition (including interest that accrues pursuant to applicable nonbankruptcy law) and is owed to or recoverable by: (1) a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative; or (2) a governmental unit. To qualify as a domestic support obligation, the debt must be in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit), without regard to whether such debt is expressly so designated. It must be established or subject to establishment either pre- or postpetition pursuant to: (1) a separation agreement, divorce decree, or property settlement agreement; (2) an order of a court of record; or (3) a determination made in accordance with applicable nonbankruptcy law by a governmental unit. It does not apply to a debt assigned to a nongovernmental entity, unless it was assigned voluntarily by the spouse,

former spouse, child, or parent solely for the purpose of collecting the debt.

Sec. 212. Priorities for Claims for Domestic Support Obligations. Section 212 of the Act amends section 507(a) of the Bankruptcy Code to accord first priority in payment to allowed unsecured claims for domestic support obligations that, as of the petition date, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether such claim is filed by the claimant or by a governmental unit on behalf of such claimant, on the condition that funds received by such unit under this provision be applied and distributed in accordance with nonbankruptcy law. Subject to these claims, section 212 accords the same payment priority to allowed unsecured claims for domestic support obligations that, as of the petition date, were assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless the claimant assigned the claim voluntarily for the purpose of collecting the debt), or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received by such unit under this provision be applied and distributed in accordance with nonbankruptcy law. Where a trustee administers assets that may be available for payment of domestic support obligations under section 507(a)(1) (as amended), administrative expenses of the trustee allowed under section 503(b)(1)(A), (2) and (6) of the Bankruptcy Code must be paid before such claims to the extent the trustee administers assets that are otherwise available for the payment of these claims.

Sec. 213. Requirements To Obtain Confirmation and Discharge in Cases Involving Domestic Support Obligations. With respect to chapter 11 cases, section 213(1) adds a condition for confirmation of a plan. It amends section 1129(a) of the Bankruptcy Code to provide that if a chapter 11 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay all amounts payable under such order or statute that became payable postpetition as a prerequisite for confirmation.

With respect to chapter 12 cases, section 213(2) of the Act amends section 1208(c) of the Bankruptcy Code to provide that the failure of a debtor to pay any domestic support obligation that first becomes payable postpetition is cause for conversion or dismissal of the case. Section 213(3) amends Bankruptcy Code section 1222(a) to permit a chapter 12 debtor to propose a plan paying less than full payment of all amounts owed for a claim entitled to priority under Bankruptcy Code section 507(a)(1)(B) if all of the debtor's projected disposable income for a 5-year period is applied to make payments under the plan. Section 213(4) of the Act amends Bankruptcy Code section 1222(b) to permit a chapter 12 debtor to propose a plan that pays postpetition interest on claims that are nondischargeable under Section 1228(a), but only to the extent that the debtor has disposable income available to pay such interest after payment of all allowed claims in full. Section 213(5) amends Bankruptcy Code section 1225(a) to provide that if a chapter 12 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay such obliga-

tions pursuant to such order or statute that became payable postpetition as a condition of confirmation. Section 213(6) amends section Bankruptcy Code section 1228(a) to condition the granting of a chapter 12 discharge upon the debtor's payment of certain postpetition domestic support obligations.

With respect to chapter 13 cases, section 213(7) of the Act amends Bankruptcy Code section 1307(c) to provide that the failure of a debtor to pay any domestic support obligation that first becomes payable postpetition is cause for conversion or dismissal of the debtor's case. Section 213(8) amends Bankruptcy Code section 1322(a) to permit a chapter 13 debtor to propose a plan paying less than the full amount of a claim entitled to priority under Bankruptcy Code section 507(a)(1)(B) if the plan provides that all of the debtor's projected disposable income over a 5-year period will be applied to make payments under the plan. Section 213(9) amends Bankruptcy Code section 1322(b) to permit a chapter 13 debtor to propose a plan that pays postpetition interest on nondischargeable debts under section 1328(a), but only to the extent that the debtor has disposable income available to pay such interest after payment in full of all allowed claims. Section 213(10) amends Bankruptcy Code section 1325(a) to provide that if a chapter 13 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay all such obligations pursuant to such order or statute that became payable postpetition as a condition of confirmation. Section 213(11) amends Bankruptcy Code section 1328(a) to condition the granting of a chapter 13 discharge on the debtor's payment of certain postpetition domestic support obligations.

Sec. 214. Exceptions To Automatic Stay in Domestic Support Proceedings. Under current law, section 362(b)(2) of the Bankruptcy Code excepts from the automatic stay the commencement or continuation of an action or proceeding: (1) for the establishment of paternity; or (2) the establishment or modification of an order for alimony, maintenance or support. It also permits the collection of such obligations from property that is not property of the estate. Section 214 makes several revisions to Bankruptcy Code section 362(b)(2). First, it replaces the reference to "alimony, maintenance or support"with "domestic support obligations." Second, it adds to section 362(b)(2) actions or proceedings concerning: (1) child custody or visitation; (2) the dissolution of a marriage (except to the extent such proceeding seeks division of property that is property of the estate); and (3) domestic violence. Third, it permits the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order as well as the withholding, suspension, or restriction of a driver's license, or a professional, occupational or recreational license under state law, pursuant to section 466(a)(16) of the Social Security Act. Fourth, it authorizes the reporting of overdue support owed by a parent to any consumer reporting agency pursuant to section 466(a)(7) of the Social Security Act. Fifth, it permits the interception of tax refunds as authorized by sections 464 and 466(a)(3) of the Social Security Act or analogous state law. Sixth, it allows medical obligations, as specified under title IV of the Social Security Act, to be enforced notwithstanding the automatic stay.

Sec. 215. Nondischargeability of Certain Debts for Alimony, Maintenance, and Support. Section 215 of the Act amends Bankruptcy Code section 523(a)(5) to provide that a "domestic support obligation" (as defined in section 211 of the Act) is nondischargeable and eliminates Bankruptcy Code section 523(a)(18). Section 215(2) amends Bankruptcy Code section 523(c) to delete the reference to section 523(a)(15) in that provision. Section 215(3) amends section 523(a)(15) to provide that obligations to a spouse, former spouse, or a child of the debtor (not otherwise described in section 523(a)(5)) incurred in connection with a divorce or separation or related action are nondischargeable irrespective of the debtor's inability to pay such debts.

Sec. 216. Continued Liability of Property. Section 216(1) of the Act amends section 522(c) of the Bankruptcy Code to make exempt property liable for nondischargeable domestic support obligations notwithstanding any contrary provision of applicable nonbankruptcy law. Section 216(2) and (3) make conforming amendments to sections 522(f)(1)(A) and 522(g)(2) of the Bankruptcy Code.

Sec. 217. Protection of Domestic Support Claims Against Preferential Transfer Motions. Section 217 of the Act makes a conforming amendment to Bankruptcy Code section 547(c)(7) to provide that a bona fide payment of a debt for a domestic support obligation may not be avoided as a preferential transfer.

Sec. 218. Disposable Income Defined. Section 218 of the Act amends section 1225(b)(2)(A) of the Bankruptcy Code to provide that disposable income in a chapter 12 case does not include payments for postpetition domestic support obligations.

Sec. 219. Collection of Child Support. Section 219 amends sections 704, 1106, 1202, and 1302 of the Bankruptcy Code to require trustees in chapter 7, 11, 12, and 13 cases to provide certain notices to child support claimants and governmental enforcement agencies. In addition, the Act conforms internal statutory cross references to Bankruptcy Code section 523(a)(14A) and deletes the reference to Bankruptcy Code section 523(a)(14) with respect to chapter 13, as this provision is inapplicable to that chapter.

Section 219(a) requires a chapter 7 trustee to provide written notice to a domestic support claimant of the right to use the services of a state child support enforcement agency established under sections 464 and 466 of the Social Security Act in the state where the claimant resides for assistance in collecting child support during and after the bankruptcy case. The notice must include the agency's address and telephone number as well as explain the claimant's right to payment under the applicable chapter of the Bankruptcy Code. In addition, the trustee must provide written notice to the claimant and the agency of such claim and include the name, address, and telephone number of the child support claimant. At the time the debtor is granted a discharge, the trustee must notify both the child support claimant and the agency that the debtor was granted a discharge as well as supply them with the debtor's last known address, the last known name and address of the debtor's employer, and the name of each creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or holding a debt that was reaffirmed pursuant to Bankruptcy Code section 524. A claimant or agency may request the debtor's last known address from a creditor holding a debt that is not discharged under section

523(a)(2), (4) or (14A) or that is reaffirmed pursuant to section 524 of the Bankruptcy Code. A creditor who discloses such information, however, is not liable to the debtor or any other person by reason of such disclosure. Subsections (b), (c), and (d) of section 219 of the Act impose comparable requirements for chapter 11, 12, and 13 trustees.

Sec. 220. Nondischargeability of Certain Educational Benefits and Loans. Section 220 of the Act amends section 523(a)(8) of the Bankruptcy Code to provide that a debt for a qualified education loan (as defined in section 221(e)(1) of the Internal Revenue Code) is nondischargeable, unless excepting such debt from discharge would impose an undue hardship on the debtor and the debtor's dependents.

Subtitle C. Other Consumer Protections

Sec. 221. Amendments To Discourage Abusive Bankruptcy Filings. Section 221 of the Act makes a series of amendments to section 110 of the Bankruptcy Code. First, section 221 clarifies that the definition of a bankruptcy petition preparer does not include an attorney for a debtor or an employee of an attorney under the direct supervision of such attorney. Second, it amends subsections (b) and (c) of section 110 to provide that if a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer must sign certain documents filed in connection with the bankruptcy case as well as state the person's name and address on such documents. Third, it requires a bankruptcy petition preparer to give the debtor written notice (as prescribed by the Judicial Conference of the United States) explaining that the preparer is not an attorney and may not practice law or give legal advice. The notice may include examples of legal advice that a preparer may not provide. Such notice must be signed by the preparer under penalty of perjury and the debtor and be filed with any document for filing. Fourth, the petition preparer is prohibited from giving legal advice, including with respect to certain specified items. Fifth, it permits the Supreme Court to promulgate rules or the Judicial Conference of the United States to issue guidelines for setting the maximum fees that a bankruptcy petition preparer may charge for services. Sixth, section 221 requires the preparer to notify the debtor of such maximum fees. Seventh, it specifies that the bankruptcy petition preparer must certify that it complied with this notification requirement. Eighth, it requires the court to order the turnover of any fees in excess of the value of the services rendered by the preparer within the 12-month period preceding the bankruptcy filing. Ninth, section 221 provides that all fees charged by a preparer may be forfeited if the preparer fails to comply with certain requirements specified in Bankruptcy Code section 110, as amended by this provision. Tenth, it allows a debtor to exempt fees recovered under this provision pursuant to Bankruptcy Code section 522(b). Eleventh, it specifically authorizes the court to enjoin a bankruptcy petition preparer who has violated a court order issued under section 110. Twelfth, it generally revises section 110's penalty provisions and requires such penalties to be paid into a special fund of the United States trustee for the purpose of funding the enforcement of section 110 on a national basis. With respect to Bankruptcy Administrator districts, the funds are

to be deposited as offsetting receipts pursuant to section 1931 of title 28 of the United States Code.

Sec. 222. Sense of Congress. Section 222 of the Act expresses the sense of Congress that the states should develop personal finance curricula for use in elementary and secondary schools.

Sec. 223. Additional Amendments to Title 11, United States Code. Section 223 of the Act amends section 507(a) of the Bankruptcy Code to accord a tenth-level priority to claims for death or personal injuries resulting from the debtor's operation of a motor vehicle or vessel while intoxicated.

Sec. 224. Protection of Retirement Savings in Bankruptcy. The intent of section 224 is to expand the protection for tax-favored retirement plans or arrangements that may not be already protected under Bankruptcy Code section 541(c)(2) pursuant to Patterson v. Shumate,[74] or other state or Federal law. Subsection (a) of section 224 of the Act amends section 522 of the Bankruptcy Code to permit a debtor to exempt certain retirement funds to the extent those monies are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code and that have received a favorable determination pursuant to Internal Revenue Code section 7805 that is in effect as of the date of the commencement of the case. If the retirement monies are in a retirement fund that has not received a favorable determination, those monies are exempt if the debtor demonstrates that no prior unfavorable determination has been made by a court or the Internal Revenue Service, and the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code. If the retirement fund fails to be in substantial compliance with applicable requirements of the Internal Revenue Code, the debtor may claim the retirement funds as exempt if he or she is not materially responsible for such failure. This section also applies to certain direct transfers and rollover distributions. In addition, this provision ensures that the specified retirement funds are exempt under state as well as Federal law.

Section 224(b) amends section 362(b) of the Bankruptcy Code to except from the automatic stay the withholding of income from a debtor's wages pursuant to an agreement authorizing such withholding for the benefit of a pension, profit-sharing, stock bonus, or other employer-sponsored plan established under Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(c) to the extent that the amounts withheld are used solely to repay a loan from a plan as authorized by section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or subject to Internal Revenue Code section 72(p) or with respect to a loan from certain thrift savings plans. Section 224(b) further provides that this exception may not be used to cause 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 to be construed to be a claim or debt within the meaning of the Bankruptcy Code.

Section 224(c) amends Bankruptcy Code section 523(a) to except from discharge any amount owed by the debtor to a pension, profit-sharing, stock bonus, or other plan established under Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(c) under

[74] 504 U.S. 753 (1992).

a loan authorized under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or subject to Internal Revenue Code section 72(p) or with respect to a loan from certain thrift savings plans. Section 224(c) further provides that this exception to discharge may not be used to cause 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 to be construed to be a claim or debt within the meaning of the Bankruptcy Code.

Section 224(d) amends Bankruptcy Code section 1322 to provide that a chapter 13 plan may not materially alter the terms of a loan described in section 362(b)(19) and that any amounts required to repay such loan shall not constitute "disposable income" under section 1325 of the Bankruptcy Code.

Section 224(e) amends section 522 of the Bankruptcy Code to impose a $1 million cap (periodically adjusted pursuant to section 104 of the Bankruptcy Code to reflect changes in the Consumer Price Index) on the value of the debtor's interest in an individual retirement account established under either section 408 or 408A of the Internal Revenue Code (other than a simplified employee pension account under section 408(k) or a simple retirement account under section 408(p) of the Internal Revenue Code) that a debtor may claim as exempt property. This limit applies without regard to amounts attributable to rollover contributions made pursuant to section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), or 403(b)(8) of the Internal Revenue Code and earnings thereon. The cap may be increased if required in the interest of justice.

Sec. 225. Protection of Education Savings in Bankruptcy. Subsection (a) of section 225 of the Act amends section 541 of the Bankruptcy Code to provide that funds placed not later than 365 days before the filing of the bankruptcy case in a education individual retirement account are not property of the estate if certain criteria are met. First, the designated beneficiary of such account must be a child, stepchild, grandchild or step-grandchild of the debtor for the taxable year during which funds were placed in the account. A legally adopted child or a foster child, under certain circumstances, may also qualify as a designated beneficiary. Second, such funds may not be pledged or promised to an entity in connection with any extension of credit and they may not be excess contributions (as described in section 4973(e) of the Internal Revenue Code). Funds deposited between 720 days and 365 days before the filing date are protected to the extent they do not exceed $5,000. Similar criteria apply with respect to funds used to purchase a tuition credit or certificate or to funds contributed to a qualified state tuition plan under section 529(b)(1)(A) of the Internal Revenue Code. Section 225(b) amends Bankruptcy Code section 521 to require a debtor to file with the court a record of any interest that the debtor has in an education individual retirement account or qualified state tuition program.

Sec. 226. Definitions. Subsection (a) of section 226 of the Act amends section 101 of the Bankruptcy Code to add certain definitions with respect to debt relief agencies. Section 226(a)(1) defines an "assisted person" as a person whose debts consist primarily of consumer debts and whose nonexempt assets are less than $150,000. Section 226(a)(2) defines "bankruptcy assistance" as any goods or services sold or otherwise provided with the express or im-

plied purpose of giving information, advice, or counsel; preparing documents for filing; or attending a meeting of creditors pursuant to section 341; appearing in a proceeding on behalf of a person; or providing legal representation in a case or proceeding under the Bankruptcy Code. Section 226(a)(3) defines a "debt relief agency" as any person (including a bankruptcy petition preparer) who provides bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration. The definition specifically excludes certain entities. First, it does not apply to a nonprofit organization exemption from taxation under section 501(c)(3) of the Internal Revenue Code. Second, it is inapplicable to a creditor who assisted such person to the extent the assistance pertained to the restructuring of any debt owed by the person to the creditor. Third, the definition does not apply to a depository institution (as defined in section 3 of the Federal Deposit Insurance Act), or any Federal or state credit union (as defined in section 101 of the Federal Credit Union Act), as well as any affiliate or subsidiary of such depository institution or credit union. Fourth, an author, publisher, distributor, or seller of works subject to copyright protection under title 17 of the United States Code when acting in such capacity is not within the ambit of this definition.

Section 226(b) amends section 104(B)(1) of the Bankruptcy Code to permit the monetary amount set forth in the definition of an "assisted person" to be automatically adjusted to reflect the change in the Consumer Price Index.

Sec. 227. Restrictions on Debt Relief Agencies. Section 227 of the Act creates a new provision in the Bankruptcy Code intended to proscribe certain activities of a debt relief agency. It prohibits such agency from: (1) failing to perform any service that it informed an assisted person it would provide; (2) advising an assisted person to make an untrue and misleading statement (or that upon the exercise of reasonable case, should have been known to be untrue or misleading) in a document filed in a bankruptcy case; (3) misrepresenting the services it provides and the benefits that an assisted person may receive as a result of bankruptcy; and (4) advising an assisted person or prospective assisted person to incur additional debt in contemplation of filing for bankruptcy relief or for the purpose of paying fees for services rendered by an attorney or petition preparer in connection with the bankruptcy case. Any waiver by an assisted person of the protections under this provision are unenforceable, except against a debt relief agency.

In addition, section 227 imposes penalties for the violation of section 526, 527 or 528 of the Bankruptcy Code. First, any contract between a debt relief agency and an assisted person that does not comply with these provisions is void and may not be enforced by any state or Federal court or by any person, except an assisted person. Second, a debt relief agency is liable to an assisted person, under certain circumstances, for any fees or charges paid by such person to the agency, actual damages, and reasonable attorneys' fees and costs. The chief law enforcement officer of a state who has reason to believe that a person has violated or is violating section 526 may seek to have such violation enjoined and recover actual damages. Third, section 227 provides that the United States district court has concurrent jurisdiction of certain actions under section 526. Fourth, section 227 provides that sections 526, 527 and

528 preempt inconsistent state law. In addition, it provides that these provisions do not limit or curtail the authority of a Federal court, a state, or a subdivision or instrumentality of a state, to determine and enforce qualifications for the practice of law before the Federal court or under the laws of that state.

Sec. 228. Disclosures. Section 228 of the Act requires a debt relief agency to provide certain specified written notices to an assisted person. These include the notice required under section 342(b)(1) (as amended by this Act) as well as a notice advising that: (1) all information the assisted person provides in connection with the case must be complete, accurate and truthful; (2) all assets and liabilities must be completely and accurately disclosed in the documents filed to commence the case, including the replacement value of each asset (if required) after reasonable inquiry to establish such value; (3) current monthly income, monthly expenses and, in a chapter 13 case, disposable income, must be stated after reasonable inquiry; and (4) the information an assisted person provides may be audited and that the failure to provide such information may result in dismissal of the case or other sanction including, in some instances, criminal sanctions. In addition, the agency must supply certain specified advisories and explanations regarding the bankruptcy process. Further, this provision requires the agency to advise an assisted person (to the extent permitted under nonbankruptcy law) concerning asset valuation, the calculation of disposable income, and the determination of exempt property.

Sec. 229. Requirements for Debt Relief Agencies. Section 229 adds a provision to the Bankruptcy Code requiring a debt relief agency—not later than five business days after the first date on which it provides any bankruptcy assistance services to an assisted person (but prior to such assisted person's bankruptcy petition being filed)—to execute a written contract with the assisted person. The contract must specify clearly and conspicuously the services the agency will provide, the basis on which fees will be charged for such services, and the terms of payment. The assisted person must be given a copy of the fully executed and completed contract in a form the person can retain. The debt relief agency must include certain specified mandatory statements in any advertisement of bankruptcy assistance services or regarding the benefits of bankruptcy that is directed to the general public whether through the general media, seminars, specific mailings, telephonic or electronic messages, or otherwise.

Sec. 230. GAO Study. Section 230 of the Act directs the Comptroller General of the United States to study and prepare a report on the feasibility, efficacy and cost of requiring trustees to supply certain specified information about a debtor's bankruptcy case to the Office of Child Support Enforcement for the purpose of determining whether a debtor has outstanding child support obligations.

Sec. 231. Protection of Personally Identifiable Information. Section 231 of the Act clarifies that it applies to personally identifiable information and does not preempt applicable nonbankruptcy law. In addition, the provision specifies that court approval must be preceded by the appointment of a privacy ombudsman to effectuate the intent of this provision.

Subsection (a) amends Bankruptcy Code section 363(b)(1) to provide that if a debtor, in connection with offering a product or serv-

ice, discloses to an individual a policy prohibiting the transfer of personally identifiable information to persons unaffiliated with the debtor, and the policy is in effect at the time of the bankruptcy filing, then the trustee may not sell or lease such information unless either of the following conditions is satisfied: (1) the sale is consistent with such policy; or (2) the court, after appointment of a consumer privacy ombudsman (pursuant to section 332 of the Bankruptcy Code, as amended) and notice and hearing, the court approves the sale or lease upon due consideration of the facts, circumstances, and conditions of the sale or lease.

Section 231(b) amends Bankruptcy Code section 101 to add a definition of "personally identifiable information." The term applies to information provided by an individual to the debtor in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes. It includes the individual's: (1) first name or initial and last name (whether given at birth or adoption or legally changed); (2) physical home address; (3) electronic address, including an e-mail address; (4) home telephone number; (5) Social Security account number; or (vi) credit card account number. The term also includes information if it is identified in connection with the above items: (1) an individual's birth date, birth or adoption certificate number, or place of birth; or (2) any other information concerning an identified individual that, if disclosed, will result in the physical or electronic contacting or identification of that person.

Sec. 232. Consumer Privacy Ombudsman. Section 232 implements the preceding provision of the Act with respect to the appointment and responsibilities of a consumer privacy ombudsman. It provides that if a hearing is required under section 363(b)(1)(B) (as amended), the court must order the United States trustee to appoint a disinterested person to serve as the consumer privacy ombudsman and to provide timely notice of the hearing to such person. It permits the ombudsman to appear and be heard at such hearing. The ombudsman must provide the court with information to assist its consideration of the facts, circumstances and conditions of the proposed sale or lease of personally identifiable information. The information may include a presentation of the debtor's privacy policy, potential losses or gains of privacy to consumers if the sale or lease is approved, potential costs or benefits to consumers if the sale or lease is approved, and possible alternatives that would mitigate potential privacy losses or costs to consumers. Section 232 prohibits the ombudsman from disclosing any personally identifiable information obtained in the case by such individual. In addition, the provision amends Bankruptcy Code section 330(a)(1) to permit an ombudsman to be compensated.

Sec. 233. Prohibition on Disclosure of Name of Minor Children. Section 233 of the Act adds a new provision to the Bankruptcy Code (section 112) specifying that a debtor may be required to provide information regarding his or her minor child in connection with the bankruptcy case, but such debtor may not be required to disclose in the public records the child's name. It provides, however, that the debtor may be required to disclose this information in a nonpublic record maintained by the court, which must be available for inspection by the United States trustee, trustee or an auditor, if any. Section 233 prohibits the court, United States trust-

ee, trustee, or auditor from disclosing such minor child's name. Section 233 clarifies that the prohibition against disclosure pertains to the minor child's name.

TITLE III. DISCOURAGING BANKRUPTCY ABUSE

Sec. 301. Technical Amendments. Section 301 of the Act makes a clarifying amendment to section 523(a)(17) of the Bankruptcy Code concerning the dischargeability of court fees incurred by prisoners. Section 523(a)(17) was added to the Bankruptcy Code by the Omnibus Consolidated Rescissions and Appropriations Act of 1996[75] to except from discharge the filing fees and related costs and expenses assessed by a court in a civil case or appeal. As the result of a drafting error, however, this provision might be construed to apply to filing fees, costs or expenses incurred by any debtor, not solely by those who are prisoners. The amendment eliminates this ambiguity and makes other conforming changes to narrow its application in accordance with its original intent.

Sec. 302. Discouraging Bad Faith Repeat Filings. Section 302 of the Act amends section 362(c) of the Bankruptcy Code to terminate the automatic stay within 30 days in a chapter 7, 11, or 13 case filed by or against an individual if such individual was a debtor in a previously dismissed case pending within the preceding 1-year period. The provision does not apply to a case refiled under a chapter other than chapter 7 after dismissal of the prior chapter 7 case pursuant to section 707(b) of the Bankruptcy Code. Upon motion of a party in interest, the court may continue the automatic stay after notice and a hearing completed prior to the expiration of the 30-day period if such party demonstrates that the latter case was filed in good faith as to the creditors who are stayed by the filing.

For purposes of this provision, a case is presumptively not filed in good faith as to all creditors (but such presumption may be rebutted by clear and convincing evidence) if: (1) more than one bankruptcy case under chapter 7, 11 or 13 was previously filed by the debtor within the preceding 1-year period; (2) the prior chapter 7, 11, or 13 case was dismissed within the preceding year for the debtor's failure to (a) file or amend without substantial excuse a document required under the Bankruptcy Code or the court, (b) provide adequate protection ordered by the court, or (c) perform the terms of a confirmed plan; or (3) there has been no substantial change in the debtor's financial or personal affairs since the dismissal of the prior case, or there is no reason to conclude that the pending case will conclude either with a discharge (if a chapter 7 case) or confirmation (if a chapter 11 or 13 case). In addition, section 302 provides that a case is presumptively deemed not to be filed in good faith as to any creditor who obtained relief from the automatic stay in the prior case or sought such relief in the prior case and such action was pending at the time of the prior case's dismissal. The presumption may be rebutted by clear and convincing evidence. A similar presumption applies if two or more bankruptcy cases were pending in the 1-year preceding the filing of the pending case.

Sec. 303. Curbing Abusive Filings. Section 303 of the Act is intended to reduce abusive filings. Subsection (a) amends Bankruptcy

[75] PUB. L. NO. 104–134, § 804(b) (1996).

Code section 362(d) to add a new ground for relief from the automatic stay. Under this provision, cause for relief from the automatic stay may be established for a creditor whose claim is secured by an interest in real property, if the court finds that the filing of the bankruptcy case was part of a scheme to delay, hinder and defraud creditors that involved either: (1) a transfer of all or part of an ownership interest in real property without such creditor's consent or without court approval; or (2) multiple bankruptcy filings affecting the real property. If recorded in compliance with applicable state law governing notice of an interest in or a lien on real property, an order entered under this provision is binding in any other bankruptcy case for 2 years from the date of entry of such order. A debtor in a subsequent case may move for relief based upon changed circumstances or for good cause shown after notice and a hearing. Section 303(a) further provides that any federal, state or local governmental unit that accepts a notice of interest or a lien in real property, must accept a certified copy of an order entered under this provision.

Section 303(b) amends Bankruptcy Code section 362(b) to except from the automatic stay an act to enforce any lien against or security interest in real property within 2 years following the entry of an order entered under section 362(d)(4). A debtor, in a subsequent case, may move for relief from such order based upon changed circumstances or for other good cause shown after notice and a hearing. Section 303(b) also provides that the automatic stay does not apply in a case where the debtor: (1) is ineligible to be a debtor in a bankruptcy case pursuant to section 109(g) of the Bankruptcy Code; or (2) filed the bankruptcy case in violation of an order issued in a prior bankruptcy case prohibiting the debtor from being a debtor in a subsequent bankruptcy case.

Sec. 304. Debtor Retention of Personal Property Security. Section 304(1) of the Act amends section 521(a) of the Bankruptcy Code to provide that an individual who is a chapter 7 debtor may not retain possession of personal property securing, in whole or in part, a purchase money security interest unless the debtor, within 45 days after the first meeting of creditors, enters into a reaffirmation agreement with the creditor, or redeems the property. If the debtor fails to so act within the prescribed period, the property is not subject to the automatic stay and is no longer property of the estate. An exception applies if the court: (1) determines on motion of the trustee filed before the expiration of the 45-day period that the property has consequential value or would benefit the bankruptcy estate; (2) orders adequate protection of the creditor's interest; and (iii) directs the debtor to deliver any collateral in the debtor's possession. Section 304(2) amends section 722 to clarify that a chapter 7 debtor must pay the redemption value in full at the time of redemption.

Sec. 305. Relief from the Automatic Stay When the Debtor Does Not Complete Intended Surrender of Consumer Debt Collateral. Paragraph (1) of section 305 of the Act amends Bankruptcy Code section 362 to terminate the automatic stay with respect to personal property of the estate or of the debtor in a chapter 7, 11, or 13 case (where the debtor is an individual) that secures a claim (in whole or in part) or is subject to an unexpired lease if the debtor fails to: (1) file timely a statement of intention as required by sec-

tion 521(a)(2) of the Bankruptcy Code with respect to such property; or (2) indicate in such statement whether the property will be surrendered or retained, and if retained, whether the debtor will redeem the property or reaffirm the debt, or assume an unexpired lease, if the trustee does not. Likewise, the automatic stay is terminated if the debtor fails to take the action specified in the statement of intention in a timely manner, unless the statement specifies reaffirmation and the creditor refuses to enter into the reaffirmation agreement on the original contract terms. In addition to terminating the automatic stay, this provision renders such property no longer property of the estate An exception pertains where the court determines, on the motion of the trustee made prior to the expiration of the applicable time period under section 521(a)(2), and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders adequate protection of the creditor's interest, and directs the debtor to deliver any collateral in the debtor's possession.

Section 305(2) amends section 521 of the Bankruptcy Code to make the requirement to file a statement of intention applicable to all secured debts, not just secured consumer debts. In addition, it requires the debtor to effectuate his or her stated intention within 30 days from the first date set for the meeting of creditors. If the debtor fails to timely undertake certain specified actions with respect to property that a lessor or bailor owns and has leased, rented or bailed to the debtor or in which a creditor has a security interest (not otherwise avoidable under section 522(f), 544, 545, 547, 548 or 549 of the Bankruptcy Code), then nothing in the Bankruptcy Code shall prevent or limit the operation of a provision in a lease or agreement that places the debtor in default by reason of the debtor's bankruptcy or insolvency.

Sec. 306. Giving Secured Creditors Fair Treatment in Chapter 13. Subsection (a) of section 306 of the Act amends Bankruptcy Code section 1325(a)(5)(B)(i) to require—as a condition of confirmation—that a chapter 13 plan provide that a secured creditor retain its lien until the earlier of when the underlying debt is paid or the debtor receives a discharge. If the case is dismissed or converted prior to completion of the plan, the secured creditor is entitled to retain its lien to the extent recognized under applicable nonbankruptcy law.

Section 306(b) adds a new paragraph to section 1325(a) of the Bankruptcy Code specifying that Bankruptcy Code section 506 does not apply to a debt incurred within the two and one-half year period preceding the filing of the bankruptcy case if the debt is secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor. Where the collateral consists of any other type of property having value, section 306(b) provides that section 506 of the Bankruptcy Code does not apply if the debt was incurred during the 1-year period preceding the filing of the bankruptcy case.

Section 306(c)(1) amends section 101 of the Bankruptcy Code to define the term "debtor's principal residence" as a residential structure (including incidental property) without regard to whether or not such structure is attached to real property. The term includes an individual condominium or cooperative unit as well as a mobile or manufactured home, and a trailer.

Section 306(c)(2) amends section 101 of the Bankruptcy Code to define the term "incidental property" as property commonly conveyed with a principal residence in the area where the real property is located. The term includes all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, and insurance proceeds. Further, the term encompasses all replacements and additions.

Sec. 307. Domiciliary Requirements for Exemptions. Section 307 of the Act amends section 522(b)(2)(A) of the Bankruptcy Code to extend the time that a debtor must be domiciled in a state from 180 days to 730 days before he or she may claim that state's exemptions. If the debtor's domicile has not been located in a single state for the 730-day period, then the state where the debtor was domiciled in the 180-day period preceding the 730-day period (or the longer portion of such 180-day period) controls. If the effect of this provision is to render the debtor ineligible for any exemption, the debtor may elect to exempt property of the kind described in the Federal exemption notwithstanding state opt out.

Sec. 308. Reduction of Homestead Exemption for Fraud. Section 308 amends section 522 of the Bankruptcy Code to reduce the value of a debtor's interest in the following property that may be claimed as exempt under certain circumstances: (i) real or personal property that the debtor or a dependent of the debtor uses as a residence, (ii) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, (iii) a burial plot, or (iv) real or personal property that the debtor or dependent of the debtor claims as a homestead. Where nonexempt property is converted to the above-specified exempt property within the 10-year period preceding the filing of the bankruptcy case, the exemption must be reduced to the extent such value was acquired with the intent to hinder, delay or defraud a creditor.

Sec. 309. Protecting Secured Creditors in Chapter 13 Cases. Section 309(a) of the Act amends Bankruptcy Code section 348(f)(1)(B) to provide that valuations of property and allowed secured claims in a chapter 13 case only apply if the case is subsequently converted to one under chapter 11 or 12. If the chapter 13 case is converted to one under chapter 7, then the creditor holding security as of the petition date shall continue to be secured unless its claim was paid in full as of the conversion date. In addition, unless a prebankruptcy default has been fully cured at the time of conversion, then the default in any bankruptcy proceeding shall have the effect given under applicable nonbankruptcy law.

Section 309(b) amends section 365 of the Bankruptcy Code to provide that if a lease of personal property is rejected or not assumed by the trustee in a timely manner, such property is no longer property of the estate and the automatic stay under section 362 with respect to such property is terminated. With regard to a chapter 7 case in which the debtor is an individual, the debtor may notify the creditor in writing of his or her desire to assume the lease. Upon being so notified, the creditor may, at its option, inform the debtor that it is willing to have the lease assumed and condition such assumption on cure of any outstanding default on terms set by the contract. If within 30 days after such notice the debtor gives written notice to the lessor that the lease is assumed, the debtor (not the bankruptcy estate) assumes the liability under the

lease. Section 309(b) provides that the automatic stay of section 362 and the discharge injunction of section 524 are not violated if the creditor notifies the debtor and negotiates a cure under section 365(p)(2) (as amended). In a chapter 11 or 13 case where the debtor is an individual lessee with respect to a personal property lease and the lease is not assumed in the confirmed plan, the lease is deemed rejected as of the conclusion of the confirmation hearing. If the lease is rejected, the automatic stay under section 362 as well as the chapter 13 codebtor stay under section 1301 are automatically terminated with respect to such property.

Section 309(c)(1) amends Bankruptcy Code section 1325(a)(5)(B) to require that periodic payments pursuant to a chapter 13 plan with respect to a secured claim be made in equal monthly installments. Where the claim is secured by personal property, the amount of such payments shall not be less than the amount sufficient to provide adequate protection to the holder of such claim. Section 309(c)(2) amends section 1326(a) of the Bankruptcy Code to require a chapter 13 debtor to commence making payments within 30 days after the filing of the plan or the order for relief, whichever is earlier. The amount of such payment must be the amount proposed in the plan, scheduled in a personal property lease for that portion of the obligation that becomes due postpetition (which amount shall reduce the payment required to be made to such lessor pursuant to the plan), and provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property (which amount shall reduce the payment required to be made to such secured creditor pursuant to the plan). Payments made pursuant to a plan must be retained by the chapter 13 trustee until confirmation or denial of confirmation. Section 309(c)(2) provides that if the plan is confirmed, the trustee must distribute payments received from the debtor as soon as practicable in accordance with the plan. If the plan is not confirmed, the trustee must return to the debtor payments not yet due and owing to creditors. Pending confirmation and subject to section 363, the court, after notice and a hearing, may modify the payments required under this provision. Section 309(c)(2) requires the debtor, within 60 days following the filing of the bankruptcy case, to provide reasonable evidence of any required insurance coverage with respect to the use or ownership of leased personal property or property securing, in whole or in part, a purchase money security interest.

Sec. 310. Limitation on Luxury Goods. Section 310 amends section 523(a)(2)(C) of the Bankruptcy Code. Under current law, consumer debts owed to a single creditor that, in the aggregate, exceed $1,075 for luxury goods or services incurred within 60 days before the commencement of the case are presumed to be nondischargeable. As amended, the presumption applies if the aggregate amount of consumer debts for luxury goods or services is more than $500 for luxury goods or services incurred by an individual debtor within 90 days before the order for relief. With respect to cash advances, current law provides that cash advances aggregating more than $1,075 that are extensions of consumer credit under an open-end credit plan obtained by an individual debtor within 60 days before the case is filed are presumed to be nondischargeable. As amended, section 523(a)(2)(C) presumes that cash advances aggregating more

than $750 and that are incurred within 70 days are nondischargeable. The term, "luxury goods or services," does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor. In addition, "an extension of consumer credit under an open-end credit plan" has the same meaning as this term has under the Consumer Credit Protection Act.

Sec. 311. Automatic Stay. Section 311 of the Act amends section 362(b) of the Bankruptcy Code to except from the automatic stay a judgment of eviction with respect to a residential leasehold. It is the intent of this provision to create an exception to the automatic stay of section 362(a)(3) to permit the recovery of possession by rental housing providers of their property in certain circumstances where a judgment for possession has been obtained against a debtor/resident before the filing of the petition for bankruptcy. Section 311 is intended to apply to manufactured housing communities, where tenants own their own homes and pay monthly rent to community owners for the land upon which their home sits. Tenants who fail to pay rent for the land beneath their homes located in manufactured housing communities would no longer be able to avoid their rental obligations under the protection of the automatic stay. It is also the intent of this section to permit eviction actions based on illegal use of controlled substances or endangering property to continue or to be commenced after the filing of the petition, in certain circumstances.

Section 311 gives tenants a reasonable amount of time after filing the petition to cure the default giving rise to the judgment for possession as long as there are circumstances in which applicable non-bankruptcy law allows a default to be cured after a judgment has been obtained. Where non-bankruptcy law applicable in the jurisdiction does not permit a tenant to cure a monetary default after the judgment for possession has been obtained, the automatic stay of section 362(a)(3) does not operate to limit action by a rental housing provider to proceed with, or a marshal, sheriff, or similar local officer to execute, the judgment for possession. Where the debtor claims that applicable law permits a tenant to cure after the judgment for possession has been obtained, the automatic stay operates only where the debtor files a certification with the bankruptcy petition asserting that applicable law permits such action and that the debtor or an adult dependent of the debtor has paid to the court all rent that will come due during the 30 days following the filing of the petition. If, within thirty days following the filing of the petition, the debtor or an adult dependent of the debtor certifies that the entire monetary default that gave rise to the judgment for possession has been cured, the automatic stay remains in effect. If a lessor has filed or wishes to file an eviction action based on the use of illegal controlled substances or property endangerment, the section allows the lessor in certain cases to file a certification of such circumstance with the court and obtain an exception to the stay.

For both the judgment based on monetary default and the controlled substance or endangerment exceptions, the section provides an opportunity for challenge by either the lessor or the tenant to certifications filed by the other party and a timely hearing for the court to resolve any disputed facts and rule on the factual or legal

sufficiency of the certifications. Where the court finds for the lessor, the clerk shall immediately serve upon the parties a copy of the court's order confirming that an exception to the automatic stay is applicable. Where the court finds for the tenant, the stay shall remain in effect. It is the intent of this section that the clerk's certified copy of the docket or order shall be sufficient evidence that the exception under paragraph 22 or paragraph 23 is applicable for a marshal, sheriff, or similar local officer to proceed immediately to execute the judgment for possession if applicable law otherwise permits such action, or for an eviction action for use of illegal controlled substances or property endangerment to proceed. This section does not provide any new right to either landlords or tenants relating to evictions or defenses to eviction under otherwise applicable law.

Section 311 also excepts from the automatic stay a transfer that is not avoidable under Bankruptcy Code section 544 and that is not avoidable under Bankruptcy Code section 548. This amendment responds to a 1997 Ninth Circuit case in which two purchase money lenders (without knowledge that the debtor had recently filed and undisclosed chapter 11 case that was later converted to chapter 7), funded the debtor's acquisition of an apartment complex and recorded their purchase-money deed of trust immediately following recordation of the deed to the debtors.[76]

Sec. 312. Extension of Period Between Bankruptcy Discharges. Section 312 of the Act amends section 727(a)(8) of the Bankruptcy Code to extend the period before which a chapter 7 debtor may receive a subsequent chapter 7 discharge from six to 8 years. It also amends section 1328 to prohibit the issuance of a discharge in a subsequent chapter 13 case if the debtor received a discharge in a prior chapter 7, 11, or 12 case within 4 years preceding the filing of the subsequent chapter 13 case.

Sec. 313. Definition of Household Goods and Antiques. Subsection (a) of section 313 of the Act amends section 522(f) of the Bankruptcy Code to codify a modified version of the Federal Trade Commission's definition of "household goods" for purposes of the avoidance of a nonpossessory, nonpurchase money lien in such property. It also specifies various items that are expressly not household goods. Section 313(b) requires the Director of the Executive Office for United States Trustees to prepare a report containing findings with respect to the use of this definition. The report may include recommendations for amendments to the definition of "household

[76] *Thompson* v. *Margen* (*In re* McConville), 110 F.3d 47 (9th Cir.), *cert. denied*, 522 U.S. 966 (1997). The bankruptcy trustee sought to avoid the lien created by the lenders' deed of trust by asserting that the deed was an unauthorized, postpetition transfer under Bankruptcy Code section 549(a). The lenders claimed that the voluntary transfer to them was a transfer of real property to good faith purchasers for value, which thereby excepted it, under Bankruptcy Code section 549(c) from avoidance. The bankruptcy court held that the postpetition recordation of the lenders' deed of trust was without authorization under the Bankruptcy Code or by the court and was therefore avoidable under section 549(a) and that the lenders did not qualify under the section 549(c) exception as good faith purchasers of real property for value. The District Court subsequently affirmed the bankruptcy court's ruling granting the trustee the authority to avoid the lenders' lien. McConville v. David Margen and Lawton Associates (*In re* McConville), No. C 94–3308, 1994 U.S. Dist. LEXIS 18095 (N.D. Cal. Dec. 14, 1994). On appeal, the lower court's decision in *McConville* was initially affirmed. *Thompson* v. *Margen* (*In re* McConville), 84 F.3d 340 (9th Cir. 1996). The Ninth Circuit, however, subsequently issued an amended opinion, also affirming the lower court, *Thompson* v. *Margen* (**In re** McConville), 97 F.3d 316 (9th Cir. 1996), and finally issued an opinion withdrawing its prior opinion and deciding the case on other grounds. It held that by obtaining secured credit from the lenders after filing but before the appointment of a trustee, the debtors violated their fiduciary responsibility to their creditors. *Thompson* v. *Margen* (*In re* McConville), 110 F.3d 47 (9th Cir. 1997).

goods" as codified in section 522(f)(4). Section 313 specifies a monetary threshold for the exclusions pertaining to electronic entertainment equipment, antiques, and jewelry. In addition, it provides that works of art are not household goods, unless by or of the debtor or by any relative of the debtor.

Sec. 314. Debt Incurred To Pay Nondischargeable Debts. Subsection (a) of section 314 of the Act amends section 523(a) of the Bankruptcy Code to make a debt incurred to pay a nondischargeable tax owed to a governmental unit (other than a tax owed to the United States) nondischargeable. Section 314(b) amends section 1328(a) of the Bankruptcy Code to make the following additional debts nondischargeable in a chapter 13 case: (1) debts for money, property, services, or extensions of credit obtained through fraud or by a false statement in writing under section 523(a)(2)(A) and (B) of the Bankruptcy Code; (2) consumer debts owed to a single creditor that aggregate to more than $500 for luxury goods or services incurred by an individual debtor within 90 days before the filing of the bankruptcy case, and cash advances aggregating more than $750 that are extensions of consumer credit obtained by a debtor under an open-end credit plan within 70 days before the order for relief under section 523(a)(2)(C) (as amended); (3) pursuant to section 523(a)(3) of the Bankruptcy Code, debts that require timely request for a dischargeability determination, if the creditor lacks notice or does not have actual knowledge of the case in time to make such request; (4) debts resulting from fraud or defalcation by the debtor acting as a fiduciary under section 523(a)(4) of the Bankruptcy Code; and (5) debts for restitution or damages, awarded in a civil action against the debtor as a result of willful or malicious conduct by the debtor that caused personal injury to an individual or the death of an individual.

Sec. 315. Giving Creditors Fair Notice in Chapters 7 and 13 Cases. Section 315 of the Act amends several provisions of the Bankruptcy Code. Subsection (a) amends Bankruptcy Code section 342(c) to delete the provision specifying that the failure of a notice to include certain information required to be given by a debtor to a creditor does not invalidate the notice's legal effect. It adds a provision requiring a debtor to send any notice he or she must provide under the Bankruptcy Code to the address stated by the creditor and to include in such notice the current account number, if within 90 days prior to the date that the debtor filed for bankruptcy relief the creditor in at least two communications sent to the debtor set forth such address and account number. If the creditor would be in violation of applicable nonbankruptcy law by sending any such communication during this time period, then the debtor must send the notice to the address provided by the creditor stated in the last two communications containing the creditor's address and such notice shall include the current account number. Section 315(a) also permits a creditor in a chapter 7 or 13 case (where the debtor is an individual) to file with the court and serve on the debtor the address to be used to notify such creditor in that case. Five days after receipt of such notice, the court and the debtor, respectively, must use the address so specified to provide notice to such creditor. In addition, section 315(a) specifies that if an entity files a notice with the court stating an address to be used generally by all bankruptcy courts for chapter 7 and 13 cases, or by particular bankruptcy

courts, as specified by such entity. This address must be used by the court to supply notice in such cases within 30 days following the filing of such notice where the entity is a creditor. Notice given other than as provided in section 342 is not effective until it has been brought to the creditor's attention. If the creditor has designated a person or organizational subdivision to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that these notices will be delivered to such person or subdivision, a notice will not be deemed to have been received by the creditor until it has been received by such person or subdivision. This provision also prohibits the imposition of any monetary penalty for violation of the automatic stay or for the failure to comply with the Bankruptcy Code sections 542 and 543 unless the creditor has received effective notice under section 342.

Section 315(b) amends section 521 to specify additional duties of a debtor. This provision requires the debtor to file a certificate executed by the debtor's attorney or bankruptcy petition preparer stating that the attorney or preparer supplied the debtor with the notice required under Bankruptcy Code section 342(b). If the debtor is not represented by counsel and did not use the services of a bankruptcy petition preparer, then the debtor must sign a certificate stating that he or she obtained and read such notice. In addition, the debtor must file: (1) copies of all payment advices or other evidence of payment, if any, from any employer within 60 days preceding the bankruptcy filing; (2) a statement of the amount of monthly net income, itemized to show how such amount is calculated; and (3) a statement disclosing any reasonably anticipated increase in income or expenditures in the 12-month period following the date of filing. Upon request of a creditor, section 315(b) of the Act requires the court to make the petition, schedules, and statement of financial affairs of an individual who is a chapter 7 or 13 debtor available to such creditor.

In addition, section 315(b) requires such debtor to provide the trustee not later than 7 days before the date first set for the meeting of creditors a copy of his or her Federal income tax return or transcript (at the election of the debtor) for the latest taxable period ending prior to the filing of the bankruptcy case for which a tax return was filed. Should the debtor fail to comply with this requirement, the case must be dismissed unless the debtor demonstrates that such failure was due to circumstances beyond the debtor's control. In addition, the debtor must file copies of any amendments to such tax returns. Upon request, the debtor must provide a copy of the tax return or transcript to the requesting creditor at the time the debtor supplies the return or transcript to the trustee. A creditor in a chapter 13 case may, at any time, file a notice with the court requesting a copy of the plan. The court must supply a copy of the chapter 13 plan at a reasonable cost not later than 5 days after such request. In addition, the Act clarifies that this provision applies to Federal income tax returns.

During the pendency of a chapter 7, 11 or 13 case, the debtor must file with the court, at the request of the judge, United States trustee, or any party in interest, at the time filed with the taxing authority, copies of any Federal income tax returns (or transcripts thereof) that were not filed for the 3-year period preceding the date

on which the order for relief was entered. In addition, the debtor must file copies of any amendments to such tax returns.

In a chapter 13 case, the debtor must file a statement, under penalty of perjury, of income and expenditures in the preceding tax year and monthly income showing how the amounts were calculated. The statement must be filed on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed. Thereafter, the statement must be filed on or before the date that is 45 days before the anniversary date of the plan's confirmation, until the case is closed. The statement must disclose the amount and sources of the debtor's income, the identity of any persons responsible with the debtor for the support of the debtor's dependents, the identity of any persons who contributed to the debtor's household expenses, and the amount of any such contributions.

Section 315(b)(2) mandates that the tax returns, amendments thereto, and the statement of income and expenditures of an individual who is a chapter 7 or chapter 13 debtor be made available to the United States trustee or bankruptcy administrator, the trustee, and any party in interest for inspection and copying, subject to procedures established by the Director of the Administrative Office for United States Courts within 180 days from the date of enactment of this Act. The procedures must safeguard the confidentiality of any tax information required under this provision and include restrictions on creditor access to such information. In addition, the Director must, within 540 days from the Act's enactment date, prepare and submit to Congress a report that assesses the effectiveness of such procedures and, if appropriate, includes recommendations for legislation to further protect the confidentiality of such tax information and to impose penalties for its improper use. If requested by the United States trustee or trustee, the debtor must provide a document establishing the debtor's identity, which may include a driver's license, passport, or other document containing a photograph of the debtor, and such other personal identifying information relating to the debtor.

Sec. 316. Dismissal for Failure To Timely File Schedules or Provide Required Information. Section 316 of the Act amends section 521 of the Bankruptcy Code to provide that if an individual debtor in a voluntary chapter 7 or chapter 13 case fails to file all of the information required under section 521(a)(1) within 45 days of the date on which the case is filed, the case must be automatically dismissed, effective on the 46th day. The 45-day period may be extended for an additional 45-day period providing the debtor requests such extension prior to the expiration of the original 45-day period and the court finds justification for such extension. Upon request of a party in interest, the court must enter an order of dismissal within 5 days of such request. Section 316 provides that a court may decline to dismiss the case if: (1) the trustee files a motion before the stated time periods; (2) the court finds, after notice and a hearing, that the debtor in good faith attempted to file all the information required under section 521(a)(1)(B)(iv); and (3) the court finds that the best interests of creditors would be served by continued administration of the case.

Sec. 317. Adequate Time To Prepare for Hearing on Confirmation of the Plan. Section 317 of the Act amends section 1324 of the

Bankruptcy Code to require the chapter 13 confirmation hearing to be held not earlier than 20 days following the first date set for the meeting of creditors and not later than 45 days from this date, unless the court determines that it would be in the best interests of creditor and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.

Sec. 318. Chapter 13 Plans To Have a 5-Year Duration in Certain Cases. Paragraph (1) of section 318 of the Act amends Bankruptcy Code sections 1322(d) and 1325(b) to specify that a chapter 13 plan may not provide for payments over a period that is not less than 5 years if the current monthly income of the debtor and the debtor's spouse combined exceeds certain monetary thresholds. If the current monthly income of the debtor and the debtor's spouse fall below these thresholds, then the duration of the plan may not be longer than 3 years, unless the court, for cause, approves a longer period up to 5 years. The applicable commitment period may be less if the plan provides for payment in full of all allowed unsecured claims over a shorter period. Section 318(2), (3), and (4) make conforming amendments to sections 1325(b) and 1329(c) of the Bankruptcy Code.

Sec. 319. Sense of Congress Regarding Expansion of Rule 9011 of the Federal Rules of Bankruptcy Procedure. Section 319 of the Act expresses a sense of the Congress that Federal Rule of Bankruptcy Procedure 9011 be modified to require that any document, whether signed or unsigned, including schedules, supplied to the court or the trustee by a debtor may be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such documents is well-grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

Sec. 320. Prompt Relief from Stay in Individual Cases. Section 320 of the Act amends section 362(e) of the Bankruptcy Code to terminate the automatic stay in a chapter 7, 11, or 13 case of an individual debtor within 60 days following a request for relief from the stay, unless the bankruptcy court renders a final decision prior to the expiration of the 60-day time period, such period is extended pursuant to agreement of all parties in interest, or a specific extension of time is required for good cause as described in findings made by the court.

Sec. 321. Chapter 11 Cases Filed by Individuals. Section 321(a) of the Act creates a new provision under chapter 11 of the Bankruptcy Code specifying that property of the estate of an individual debtor includes, in addition to that identified in section 541 of the Bankruptcy Code, all property of the kind described in section 541 that the debtor acquires after commencement of the case, but before the case is closed, dismissed or converted to a case under chapter 7, 12, or 13 (whichever occurs first). In addition, it includes earnings from services performed by the debtor after commencement of the case, but before the case is closed, dismissed or converted to a case under chapter 7, 12, or 13. Except as provided in section 1104 of the Bankruptcy Code or the order confirming a chapter 11 plan, section 321(a) provides that the debtor remains in possession of all property of the estate.

Section 321(b) amends Bankruptcy Code section 1123 to require the chapter 11 plan of an individual debtor to provide for the pay-

ment to creditors of all or such portion of the debtor's earnings from personal services performed after commencement of the case or other future income that is necessary for the plan's execution.

Section 321(c) amends Bankruptcy Code section 1129(a) to include an additional requirement for confirmation in a chapter 11 case of an individual debtor upon objection to confirmation by a holder of an allowed unsecured claim. In such instance, the value of property to be distributed under the plan on account of such claim, as of the plan's effective date, must not be less than the amount of such claim; or be not less than the debtor's projected disposable income (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan or during the plan's term, whichever is longer. Section 321(c) also amends section 1129(b)(2)(B)(ii) of the Bankruptcy Code to provide that an individual chapter 11 debtor may retain property included in the estate under section 1115 (as added by the Act), subject to section 1129(a)(14).

Section 321(d)(1) amends Bankruptcy Code section 1141(d) to provide that a discharge under chapter 11 does not discharge a debtor who is an individual from any debt excepted from discharge under Bankruptcy Code section 523. Section 321(d)(2) of the Act provides that in a chapter 11 individual debtor is not discharged until all plan payments have been made. The court may grant a hardship discharge if the value of property actually distributed under the plan—as of the plan's effective date—is not less than the amount that would have been available for distribution if the case was liquidated under chapter 7 on such date, and modification of the plan is not practicable.

Section 321(e) of the Act amends section 1127 to permit a plan in a chapter 11case of an individual debtor to be modified postconfirmation for the purpose of increasing or reducing the amount of payments, extending or reducing the time period for such payments, or altering the amount of distribution to a creditor whose claim is provided for by the plan. Such modification may be made at any time on request of the debtor, trustee, United States trustee, or holder of an allowed unsecured claim, if the plan has not been substantially consummated.

Section 321(f) specifies that sections 1121 through 1129 apply to such modification. In addition, it provides that the modified plan shall become the confirmed plan only if: (1) there has been disclosure pursuant to section 1125 (as the court directs); (2) notice and a hearing; and (3) such modification is approved.

Sec. 322. Limitations on Homestead Exemption. Section 322(a) amends section 522 of the Bankruptcy Code to impose an aggregate monetary limitation of $125,000, subject to Bankruptcy Code sections 544 and 548, on the value of property that the debtor may claim as exempt under State or local law pursuant to section 522(b)(3)(A) under certain circumstances. The monetary cap applies if the debtor acquired such property within the 1215-day period preceding the filing of the petition and the property consists of any of the following: (1) real or personal property of the debtor or that a dependent of the debtor uses as a residence; (2) an interest in a cooperative that owns property, which the debtor or the debtor's dependent uses as a residence; (3) a burial plot for the debtor or the debtor's dependent; or (4) real or personal property that the debtor

or dependent of the debtor claims as a homestead. This limitation does not apply to a principal residence claimed as exempt by a family farmer. In addition, the limitation does not apply to any interest transferred from a debtor's principal residence (which was acquired prior to the beginning of the specified time period) to the debtor's current principal residence, if both the previous and current residences are located in the same State.

Section 322(a) further amends section 522 to add a provision that does not allow a debtor to exempt any amount of an interest in property described in the preceding paragraph in excess of $125,000 if any of the following applies:

(1) court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of the Bankruptcy Code; or

(2) debtor owes a debt arising from:

(a) any violation of the Federal securities laws defined in section 3(a)(47) of the Securities and Exchange Act of 1934, any state securities laws, or any regulation or order issued under Federal securities laws or state securities laws;

(b) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934, or under section 6 of the Securities Act of 1933;

(c) any civil remedy under section 1964 of title 18 of the United States Code; or

(d) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

An exception to the monetary limit applies to the extent the value of the homestead property is reasonably necessary for the support of the debtor and any dependent of the debtor. The monetary limitation set forth in section 322(a) is subject to automatic adjustment pursuant to section 104 of the Bankruptcy Code.

Sec. 323. Excluding Employee Benefit Plan Participant Contributions and Other Property from the Estate. Section 323 of the Act amends section 541(b) of the Bankruptcy Code to exclude as property of the estate funds withheld or received by an employer from its employees' wages for payment as contributions to specified employee retirement plans, deferred compensation plans, and tax-deferred annuities. Such contributions do not constitute disposable income as defined in section 1325(b)(2) of the Bankruptcy Code. Section 323 also excludes as property of the estate funds withheld by an employer from the wages of its employees for payment as contributions to health insurance plans regulated by State law.

Sec. 324. Exclusive Jurisdiction in Matters Involving Bankruptcy Professionals. Section 324 of the Act amends section 1334 of title 28 of the United State Code to give a district court exclusive jurisdiction of all claims or causes of action involving the construction

of section 327 of the Bankruptcy Code or rules relating to disclosure requirements under such provision.

Sec. 325. United States Trustee Program Filing Fee Increase. Section 325 of the Act amends section 1930(a) of title 28 of the United States Code to increase the filing fee for chapter 7 to $160 and decrease the filing fee for chapter 13 to $150. Subsections 325(b) and (c) amend section 589a of title 28 of the United States Code and section 406(b) of the Judiciary Appropriations Act of 1990 to increase the percentage of the fees collected under section 1930 of title 28 of the United States Code that are paid to the United States Trustee System Fund.

Sec. 326. Sharing of Compensation. Section 326 amends Bankruptcy Code section 504 to create a limited exception to the prohibition against fee sharing. The provision allows the sharing of compensation with bona fide public service attorney referral programs that operate in accordance with non-federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.

Sec. 327. Fair Valuation of Collateral. Section 327 of the Act amends section 506(a) of the Bankruptcy Code to provide that the value of an allowed claim secured by personal property that is an asset in an individual debtor's chapter 7 or 13 case is determined based on the replacement value of such property as of the filing date of the bankruptcy case without deduction for selling or marketing costs. With respect to property acquired for personal, family, or household purposes, replacement value is the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time its value is determined.

Sec. 328. Defaults Based on Nonmonetary Obligations. Subsection (a)(1) of section 328 of the Act amends section 365(b) to provide that a trustee does not have to cure a default that is a breach of a provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform a nonmonetary obligation under an unexpired lease of real property, if it is impossible for the trustee to cure the default by performing such nonmonetary act at and after the time of assumption. If the default arises from a failure to operate in accordance with a nonresidential real property lease, the default must be cured by performance at and after the time of assumption in accordance with the lease. Pecuniary losses resulting from such default must be compensated pursuant to section 365(b)(1). In addition, section 328(a)(1) amends section 365(b)(2)(D) to clarify that it applies to penalty provisions. Section 328(a)(2) through (4) make technical revisions to section 365(c), (d) and (f) by deleting language that is no longer effective pursuant to the Rail Safety Enforcement and Review Act.[77]

Section 328(b) amends section 1124(2)(A) of the Bankruptcy Code to clarify that a claim is not impaired if section 365(b)(2) (as amended by this Act) expressly does not require a default with respect to such claim to be cured. In addition, it provides that any claim or interest that arises from the failure to perform a nonmonetary obligation (other than a default arising from the failure to operate a nonresidential real property lease subject to section 365(b)(1)(A)), is impaired unless the holder of such claim or interest

[77] Pub. L. No. 102–365, 106 Stat. 972 (1992).

(other than the debtor or an insider) is compensated for any actual pecuniary loss incurred by the holder as a result of such failure.

Sec. 329. Clarification of Postpetition Wages and Benefits. Section 329 amends Bankruptcy Code section 503(b)(1)(A) to accord administrative expense status to certain back pay awards. This provision applies to a back pay award attributable to any period of time occurring postpetition as a result of a violation of Federal or state law by the debtor pursuant to an action brought in a court or before the National Labor Relations Board, providing the bankruptcy court determines that the award will not substantially increase the probability of layoff or termination of current employees or of nonpayment of domestic support obligations.

Sec. 330. Delay of Discharge During Pendency of Certain Proceedings. Section 330 of the Act amends section 727(a) of the Bankruptcy Code to require the court to withhold the entry of a debtor's discharge order if the court, after notice and a hearing, finds that there is reasonable cause to believe that there is pending a proceeding in which the debtor may be found guilty of a felony of the kind described in Bankruptcy Code section 522(q)(1) or liable for a debt of the kind described in Bankruptcy Code section 522(q)(2).

TITLE IV. GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A. General Business Bankruptcy Provisions

Sec. 401. Adequate Protection for Investors. Subsection (a) of section 401 of the Act amends section 101 of the Bankruptcy Code to define "securities self regulatory organization" as a securities association or national securities exchange registered with the Securities and Exchange Commission. Section 401(b) amends section 362 of the Bankruptcy Code to except from the automatic stay certain enforcement actions by a securities self regulatory organization.

Sec. 402. Meetings of Creditors and Equity Security Holders. Section 402 amends section 341 of the Bankruptcy Code to permit a court, on request of a party in interest and after notice and a hearing, to order the United States trustee not to convene a meeting of creditors or equity security holders if a debtor has filed a plan for which the debtor solicited acceptances prior to the commencement of the case.

Sec. 403. Protection of Refinance of Security Interest. Section 403 amends section 547(e)(2) of the Bankruptcy Code to increase the perfection period from ten to 30 days for the purpose of determining whether a transfer is an avoidable preference.

Sec. 404. Executory Contracts and Unexpired Leases. Subsection (a) of section 404 of the Act amends section 365(d)(4) of the Bankruptcy Code to establish a firm, bright line deadline by which an unexpired lease of nonresidential real property must be assumed or rejected. If such lease is not assumed or rejected by such deadline, then such lease shall be deemed rejected, and the trustee shall immediately surrender such property to the lessor. Section 404(a) permits a bankruptcy trustee to assume or reject a lease on a date which is the earlier of the date of confirmation of a plan or the date which is 120 days after the date of the order for relief. A further extension of time may be granted, within the 120 day period, for an additional 90 days, for cause, upon motion of the trustee or lessor. Any subsequent extension can only be granted by the judge

upon the prior written consent of the lessor either by the lessor's motion for an extension or on motion of the trustee, provided that the trustee has the prior written approval of the lessor. This provision is designed to remove the bankruptcy judge's discretion to grant extensions of the time for the retail debtor to decide whether to assume or reject a lease after a maximum possible period of 210 days from the time of entry of the order of relief. Beyond that maximum period, the judge has no authority to grant further time unless the lessor has agreed in writing to the extension.

Section 404(b) amends section 365(f)(1) to assure that section 365(f) does not override any part of section 365(b). Thus, section 404(b) makes a trustee's authority to assign an executory contract or unexpired lease subject not only to section 365(c), but also to section 365(b), which is given full effect. Therefore, for example, assumption or assignment of a lease of real property in a shopping center must be subject to the provisions of the lease, such as use clauses.

Sec. 405. Creditors and Equity Security Holders Committees. Subsection (a) of section 405 of the Act amends section 1102(a)(2) of the Bankruptcy Code to permit, after notice and a hearing, a court, on its own motion or on motion of a party in interest, to order a change in a committee's membership to ensure adequate representation of creditors or equity security holders in a chapter 11 case. It specifies that the court may direct the United States trustee to increase the membership of a committee for the purpose of including a small business concern if the court determines that such creditor's claim is of the kind represented by the committee and that, in the aggregate, is disproportionately large when compared to the creditor's annual gross revenue.

Section 405(b) requires the committee to give creditors having claims of the kind represented by the committee access to information. In addition, the committee must solicit and receive comments from these creditors and, pursuant to court order, make additional reports or disclosures available to them.

Sec. 406. Amendment to Section 546 of Title 11, United States Code. Section 406 of the Act corrects an erroneous subsection designation in section 546 of the Bankruptcy Code. It redesignates the second subsection (g) as subsection (i). In addition, section 406 amends section 546(i) (as redesignated) to subject that provision to the prior rights of security interest holders. Further, section 406 adds a new provision to section 546 that prohibits a trustee from avoiding a warehouse lien for storage, transportation, or other costs incidental to the storage and handling of goods. It specifies that this prohibition must be applied in a manner consistent with any applicable state statute that is similar to section 7–209 of the Uniform Commercial Code.

Sec. 407. Amendments to Section 330(a) of Title 11, United States Code. Section 407 amends section 330(a)(3) of the Bankruptcy Code to clarify that this provision applies to examiners, chapter 11 trustees, and professional persons. This section also amends section 330(a) to add a provision that requires a court, in determining the amount of reasonable compensation to award to a trustee, to treat such compensation as a commission pursuant to section 326 of the Bankruptcy Code.

Sec. 408. Postpetition Disclosure and Solicitation. Section 408 amends section 1125 of the Bankruptcy Code to permit an acceptance or rejection of a chapter 11 plan to be solicited from the holder of a claim or interest if the holder was solicited before the commencement of the case in a manner that complied with applicable nonbankruptcy law.

Sec. 409. Preferences. Section 409 amends section 547(c)(2) of the Bankruptcy Code to provide that a trustee may not avoid a transfer to the extent such transfer was in payment of a debt incurred by the debtor in the ordinary course of the business or financial affairs of the debtor and the transferee and such transfer was made either: (1) in the ordinary course of the debtor's and the transferee's financial affairs or business; or (2) in accordance with ordinary business terms. Present law requires the recipient of a preferential transfer to establish both of these grounds in order to sustain a defense to a preferential transfer proceeding. In a case in which the debts are not primarily consumer debts, section 409 provides that a transfer may not be avoided if the aggregate amount of all property constituting or affected by the transfer is less than $5,000.

Sec. 410. Venue of Certain Proceedings. Section 410 amends section 1409(b) of title 28 of the United States Code to provide that a preferential transfer action in the amount of $10,000 or less pertaining to a nonconsumer debt against a noninsider defendant must be filed in the district where such defendant resides. This amount is presently fixed at $1,000.

Sec. 411. Period for Filing Plan under Chapter 11. Section 411 amends section 1121(d) of the Bankruptcy Code to mandate that a chapter 11 debtor's exclusive period for filing a plan may not be extended beyond a date that is 18 months after the order for relief. In addition, it provides that the debtor's exclusive period for obtaining acceptances of the plan may not be extended beyond 20 months after the order for relief.

Sec. 412. Fees Arising from Certain Ownership Interests. Section 412 amends section 523(a)(16) of the Bankruptcy Code to broaden the protections accorded to community associations with respect to fees or assessments arising from the debtor's interest in a condominium, cooperative, or homeowners' association. Irrespective of whether or not the debtor physically occupies such property, fees or assessments that accrue during the period the debtor or the trustee has a legal, equitable, or possessory ownership interest in such property are nondischargeable.

Sec. 413. Creditor Representation at First Meeting of Creditors. Section 413 amends section 341(c) of the Bankruptcy Code to permit a creditor holding a consumer debt or any representative of such creditor, notwithstanding any local court rule, provision of a state constitution, or any other Federal or state nonbankruptcy law, to appear and participate at the meeting of creditors in chapter 7 and chapter 13 cases either alone or in conjunction with an attorney. In addition, the provision clarifies that it cannot be construed to require a creditor to be represented by counsel at any meeting of creditors.

Sec. 414. Definition of Disinterested Person. Section 414 amends section 101(14) of the Bankruptcy Code to eliminate the requirement that an investment banker be a disinterested person.

Sec. 415. Factors for Compensation of Professional Persons. Section 415 amends section 330(a)(3) of the Bankruptcy Code to permit the court to consider, in awarding compensation to a professional person, whether such person is board certified or otherwise has demonstrated skill and experience in the practice of bankruptcy law.

Sec. 416. Appointment of Elected Trustee. Section 416 of the Act amends section 1104(b) of the Bankruptcy Code to clarify the procedure for the election of a trustee in a chapter 11 case. Section 1104(b) permits creditors to elect an eligible, disinterested person to serve as the trustee in the case, provided certain conditions are met. Section 416 amends this provision to require the United States trustee to file a report certifying the election of a chapter 11 trustee. Upon the filing of the report, the elected trustee is deemed to be selected and appointed for purposes of section 1104 and the service of any prior trustee appointed in the case is terminated. Section 416 also clarifies that the court shall resolve any dispute arising out of a chapter 11 trustee election.

Sec. 417. Utility Service. Section 417 amends section 366 of the Bankruptcy Code to provide that assurance of payment, for purposes of this provision, includes a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or other form of security that is mutually agreed upon by the debtor or trustee and the utility. It also specifies that an administrative expense priority does not constitute an assurance of payment. With respect to chapter 11 cases, section 417 permits a utility to alter, refuse or discontinue service if it does not receive adequate assurance of payment that is satisfactory to the utility within 30 days of the filing of the petition. The court, upon request of a party in interest, may modify the amount of this payment after notice and a hearing. In determining the adequacy of such payment, a court may not consider: (1) the absence of security before the case was filed; (2) the debtor's timely payment of utility service charges before the case was filed; or (3) the availability of an administrative expense priority. Notwithstanding any other provision of law, section 417 permits a utility to recover or set off against a security deposit provided prepetition by the debtor to the utility without notice or court order.

Sec. 418. Bankruptcy Fees. Section 418 of the Act amends section 1930 of title 28 of the United States Code to permit a district court or a bankruptcy court, pursuant to procedures prescribed by the Judicial Conference of the United States, to waive the chapter 7 filing fee for an individual and certain other fees under subsections (b) and (c) of section 1930 if such individual's income is less than 150 percent of the official poverty level (as defined by the Office of Management and Budget) and the individual is unable to pay such fee in installments. Section 418 also clarifies that section 1930, as amended, does not prevent a district or bankruptcy court from waiving other fees for creditors and debtors, if in accordance with Judicial Conference policy.

Sec. 419. More Complete Information Regarding Assets of the Estate. Section 419 of the Act directs the Judicial Conference of the United States, after consideration of the views of the Director of the Executive Office for United States Trustees, to propose official rules and forms directing chapter 11 debtors to disclose information

concerning the value, operations, and profitability of any closely held corporation, partnership, or other entity in which the debtor holds a substantial or controlling interest. Section 419 is intended to ensure that the debtor's interest in any of these entities is used for the payment of allowed claims against debtor.

Subtitle B. Small Business Bankruptcy Provisions

Sec. 431. Flexible Rules for Disclosure Statement and Plan. Section 431 of the Act amends section 1125 of the Bankruptcy Code to streamline the disclosure statement process and to provide for more flexibility. Section 431(1) amends section 1125(a)(1) of the Bankruptcy Code to require a bankruptcy court, in determining whether a disclosure statement supplies adequate information, to consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing such additional information. With regard to a small business case, section 431(2) amends section 1125(f) to permit the court to dispense with a disclosure statement if the plan itself supplies adequate information. In addition, it provides that the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28 of the United States Code. Further, section 431(2) provides that the court may conditionally approve a disclosure statement, subject to final approval after notice and a hearing, and allow the debtor to solicit acceptances of the plan based on such disclosure statement. The hearing on the disclosure statement may be combined with the confirmation hearing.

Sec. 432. Definitions. Section 432 of the Act amends section 101 of the Bankruptcy Code to define a "small business case" as a chapter 11 case in which the debtor is a small business debtor. Section 432, in turn, defines a "small business debtor" as a person engaged in commercial or business activities (including an affiliate of such person that is also a debtor, but excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) having aggregate noncontingent, liquidated secured and unsecured debts of not more than $2 million (excluding debts owed to affiliates or insiders of the debtor) as of the date of the petition or the order for relief. This monetary definition applies only in a case where the United States trustee has not appointed a creditors' committee or where the court has determined that the creditors' committee is not sufficiently active and representative to provide effective oversight of the debtor. It does not apply to any member of a group of affiliated debtors that has aggregate noncontingent, liquidated secured and unsecured debts in excess of $2 million (excluding debts owed to one or more affiliates or insiders). This provision also requires this monetary figure to be periodically adjusted for inflation pursuant to section 104 of the Bankruptcy Code.

Sec. 433. Standard Form Disclosure Statement and Plan. Section 433 of the Act directs the Judicial Conference of the United States to propose for adoption standard form disclosure statements and reorganization plans for small business debtors. The provision requires the forms to achieve a practical balance between the needs of the court, case administrators, and other parties in interest to

have reasonably complete information as well as the debtor's need for economy and simplicity.

Sec. 434. Uniform National Reporting Requirements. Subsection (a) of section 434 of the Act adds a provision to the Bankruptcy Code mandating additional reporting requirements for small business debtors. It requires a small business debtor to file periodic financial reports and other documents containing the following information with respect to the debtor's business operations: (1) profitability; (2) reasonable approximations of projected cash receipts and disbursements; (3) comparisons of actual cash receipts and disbursements with projections in prior reports; (4) whether the debtor is complying with postpetition requirements pursuant to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure; (5) whether the debtor is timely filing tax returns and other government filings; and (6) whether the debtor is paying taxes and other administrative expenses when due. In addition, the debtor must report on such other matters that are in the best interests of the debtor and the creditors and in the public interest. If the debtor is not in compliance with any postpetition requirements pursuant to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, or is not filing tax returns or other required governmental filings, paying taxes and other administrative expenses when due, the debtor must report: (1) what the failures are, (2) how they will be cured; (3) the cost of their cure; and (4) when they will be cured. Section 434(b) specifies that the effective date of this provision is 60 days after the date on which the rules required under this provision are promulgated.

Sec. 435. Uniform Reporting Rules and Forms for Small Business Cases. Subsection (a) of section 435 of the Act directs the Judicial Conference of the United States to propose official rules and forms with respect to the periodic financial reports and other information that a small business debtor must file concerning its profitability, cash receipts and disbursements, filing of its tax returns, and payment of its taxes and other administrative expenses.

Section 435(b) requires the rules and forms to achieve a practical balance between the need for reasonably complete information by the bankruptcy court, United States trustee, creditors and other parties in interest, and the small business debtor's interest in having such forms be easy and inexpensive to complete. The forms should also be designed to help the small business debtor better understand its financial condition and plan its future.

Sec. 436. Duties in Small Business Cases. Section 436 of the Act is intended to implement greater administrative oversight and controls over small business chapter 11 cases, the provision requires a chapter 11 trustee or debtor to:

(1) file with a voluntary petition (or in an involuntary case, within 7 days from the date of the order for relief) the debtor's most recent financial statements (including a balance sheet, statement of operations, cash flow statement, and Federal income tax return) or a statement explaining why such information is not available;

(2) attend, through its senior management personnel and counsel, meetings scheduled by the bankruptcy court or the United States trustee (including the initial debtor inter-

view and meeting of creditors pursuant to section 341 of the Bankruptcy Code), unless the court waives this requirement after notice and a hearing upon a finding of extraordinary and compelling circumstances;

(3) timely file all requisite schedules and the statement of financial affairs, unless the court, after notice and a hearing, grants an extension of up to 30 days from the order of relief, absent extraordinary and compelling circumstances;

(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

(5) maintain insurance that is customary and appropriate for the industry, subject to section 363(c)(2);

(6) timely file tax returns and other required government filings;

(7) timely pay all administrative expense taxes (except for certain contested claims), subject to section 363(c)(2); and

(8) permit the United States trustee to inspect the debtor's business premises, books, and records at reasonable hours after appropriate prior written notice, unless notice is waived by the debtor.

Sec. 437. Plan Filing and Confirmation Deadlines. Section 437 of the Act amends section 1121(e) of the Bankruptcy Code with respect to the period of time within which a small business debtor must file and confirm a plan of reorganization. This provision provides that a small business debtor's exclusive period to file a plan is 180 days from the date of the order for relief, unless the period is extended after notice and a hearing, or the court, for cause, orders otherwise. It further provides that a small business debtor must file a plan and any disclosure statement not later than 300 days after the order for relief. These time periods and the time fixed in section 1129(e) may be extended only if: (1) the debtor, after providing notice to parties in interest, demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time; (2) a new deadline is imposed at the time the extension is granted; and (3) the order granting such extension is signed before the expiration of the existing deadline.

Sec. 438. Plan Confirmation Deadline. Section 438 of the Act amends Bankruptcy Code section 1129 to require the court to confirm a plan not later than 45 days after it is filed if the plan complies with the applicable provisions of the Bankruptcy Code, unless this period is extended pursuant to section 1121(e)(3). Section 438 clarifies that the plan must otherwise comply with applicable provisions of the Bankruptcy Code and includes a cross-reference to section 1121(e)(3), as added by section 437 of this Act.

Sec. 439. Duties of the United States Trustee. Section 439 of the Act amends section 586(a) of title 28 of the United States Code to require the United States trustee to perform the following additional duties with respect to small business debtors:

(1) conduct an initial debtor interview before the meeting of creditors for the purpose of (a) investigating the debtor's viability, (b) inquiring about the debtor's business plan, (c)

explaining the debtor's obligation to file monthly operating reports, (d) attempting to obtain an agreed scheduling order setting various time frames (such as the date for filing a plan and effecting confirmation), and (e) informing the debtor of other obligations;

(2) if determined to be appropriate and advisable, inspect the debtor's business premises for the purpose of reviewing the debtor's books and records and verifying that the debtor has filed its tax returns;

(3) review and monitor diligently the debtor's activities to determine as promptly as possible whether the debtor will be unable to confirm a plan; and

(4) promptly apply to the court for relief in any case in which the United States trustee finds material grounds for dismissal or conversion of the case.

Sec. 440. Scheduling Conferences. Section 440 amends section 105(d) of the Bankruptcy Code to mandate that a bankruptcy court hold status conferences as are necessary to further the expeditious and economical resolution of a bankruptcy case.

Sec. 441. Serial Filer Provisions. Paragraph (1) of section 441 of the Act amends section 362 of the Bankruptcy Code to provide that a court may award only actual damages for a violation of the automatic stay committed by an entity in the good faith belief that subsection (h) of section 362 (as amended) applies to the debtor. Section 441(2) adds a new subsection to section 362 of the Bankruptcy Code specifying that the automatic stay does not apply where the chapter 11 debtor: (1) is a debtor in a small business case pending at the time the subsequent case is filed; (2) was a debtor in a small business case dismissed for any reason pursuant to an order that became final in the 2-year period ending on the date of the order for relief entered in the pending case; (3) was a debtor in small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered in the pending case; or (4) is an entity that has acquired substantially all of the assets or business of a small business debtor described in the preceding paragraphs, unless such entity establishes by a preponderance of the evidence that it acquired the assets or business in good faith and not for the purpose of evading this provision.

An exception to this provision applies to a chapter 11 case that is commenced involuntarily and involves no collusion between the debtor and the petitioning creditors. Also, it does not apply if the debtor proves by a preponderance of the evidence that: (1) the filing of the subsequent case resulted from circumstances beyond the debtor's control and which were not foreseeable at the time the prior case was filed; and (2) it is more likely than not that the court will confirm a feasible plan of reorganization (but not a liquidating plan) within a reasonable time.

Sec. 442. Expanded Grounds for Dismissal or Conversion and Appointment of Trustee. Subsection (a) of section 442 of the Act amends section 1112(b) of the Bankruptcy Code to mandate that the court convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, if the movant establishes cause, absent unusual circumstances. In this regard, the court must specify the circumstances that support the court's finding

that conversion or dismissal is not in the best interests of creditors and the estate.

In addition, the provision specifies an exception to the provision's mandatory requirement applies if: (1) the debtor or a party in interest objects and establishes that there is a reasonable likelihood that a plan will be confirmed within the time period set forth in section 1121(e) and 1129(e), or if these provisions are inapplicable, within a reasonable period of time; (2) the grounds for granting such relief include an act or omission of the debtor for which there exists a reasonable justification for such act or omission; and (3) such act or omission will be cured within a reasonable period of time.

The court must commence the hearing on a section 1112(b) motion within 30 days of its filing and decide the motion not later than 15 days after commencement of the hearing unless the movant expressly consents to a continuance for a specified period of time or compelling circumstances prevent the court from meeting these time limits. Section 442 provides that the term "cause" under section 1112(b), as amended by this provision, includes the following:

(1) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
(2) gross mismanagement of the estate;
(3) failure to maintain appropriate insurance that poses a material risk to the estate or the public;
(4) unauthorized use of cash collateral that is harmful to one or more creditors;
(5) failure to comply with a court order;
(6) unexcused failure to timely satisfy any filing or reporting requirement under the Bankruptcy Code or applicable rule;
(7) failure to attend the section 341 meeting of creditors or an examination pursuant to rule 2004 of the Federal Rules of Bankruptcy Procedure, without good cause shown by the debtor;
(8) failure to timely provide information or to attend meetings reasonably requested by the United States trustee or bankruptcy administrator;
(9) failure to timely pay taxes owed after the order for relief or to file tax returns due postpetition;
(10) failure to file a disclosure statement or to confirm a plan within the time fixed by the Bankruptcy Code or pursuant to court order;
(11) failure to pay any requisite fees or charges under chapter 123 of title 28 of the United States Code;
(12) revocation of a confirmation order;
(13) inability to effectuate substantial consummation of a confirmed plan;
(14) material default by the debtor with respect to a confirmed plan;

(15) termination of a plan by reason of the occurrence of a condition specified in the plan; and

(16) the debtor's failure to pay any domestic support obligation that first becomes payable postpetition.

Section 442(b) creates additional grounds for the appointment of a chapter 11 trustee under section 1104(a). It provides that should the bankruptcy court determine cause exists to convert or dismiss a chapter 11 case, it may appoint a trustee or examiner if in the best interests of creditors and the bankruptcy estate.

Sec. 443. Study of Operation of Title 11, United States Code, with Respect to Small Businesses. Section 443 of the Act directs the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Executive Office for United States Trustees, and the Director of the Administrative Office of the United States Courts, to conduct a study to determine: (1) the internal and external factors that cause small businesses (particularly sole proprietorships) to seek bankruptcy relief and the factors that cause small businesses to successfully complete their chapter 11 cases; and (2) how the bankruptcy laws may be made more effective and efficient in assisting small business to remain viable.

Sec. 444. Payment of Interest. Paragraph (1) of section 444 of the Act amends section 362(d)(3) of the Bankruptcy Code to require a court to grant relief from the automatic stay within 30 days after it determines that a single asset real estate debtor is subject to this provision. Section 444(2) amends section 362(d)(3)(B) to specify that relief from the automatic stay shall be granted unless the single asset real estate debtor has commenced making monthly payments to each creditor secured by the debtor's real property (other than a claim secured by a judgment lien or unmatured statutory lien) in an amount equal to the interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate. It allows a debtor in its sole discretion to make the requisite interest payments out of rents or other proceeds generated by the real property, notwithstanding section 363(c)(2).

Sec. 445. Priority for Administrative Expenses. Section 445 of the Act amends section 503(b) of the Bankruptcy Code to add a new administrative expense priority for a nonresidential real property lease that is assumed under section 365 and then subsequently rejected. The amount of the priority is the sum of all monetary obligations due under the lease (excluding penalties and obligations arising from or relating to a failure to operate) for the 2-year period following the rejection date or actual turnover of the premises (whichever is later), without reduction or setoff for any reason, except for sums actually received or to be received from a nondebtor. Any remaining sums due for the balance of the term of the lease are treated as a claim under section 502(b)(6) of the Bankruptcy Code.

Sec. 446. Duties with Respect to a Debtor Who Is a Plan Administrator of an Employee Benefit Plan. Subsection (a) of section 446 of the Act amends Bankruptcy Code section 521(a) to require a debtor, unless a trustee is serving in the case, to serve as the administrator (as defined in the Employee Retirement Income Security Act) of an employee benefit plan if the debtor served in such capacity

at the time the case was filed. Section 446(b) amends Bankruptcy Code section 704 to require the chapter 7 trustee to perform the obligations of such administrator in a case where the debtor or an entity designated by the debtor was required to perform such obligations. Section 446(c) amends Bankruptcy Code section 1106(a) to require a chapter 11 trustee to perform these obligations.

Sec. 447. Appointment of Committee of Retired Employees. This provision amends section 1114(d) of the Bankruptcy Code to clarify that it is the responsibility of the United States trustee to appoint members to a committee of retired employees.

TITLE V. MUNICIPAL BANKRUPTCY PROVISIONS

Sec. 501. Petition and Proceedings Related to Petition. Section 501 amends sections 921(d) and 301 of the Bankruptcy Code to clarify that the court must enter the order for relief in a chapter 9 case.

Sec. 502. Applicability of Other Sections to Chapter 9. Section 502 of the of the Act amends section 901 of the Bankruptcy Code to make the following sections applicable to chapter 9 cases:

(1) section 555 (contractual right to liquidate, terminate or accelerate a securities contract);
(2) section 556 (contractual right to liquidate, terminate or accelerate a commodities or forward contract);
(3) section 559 (contractual right to liquidate, terminate or accelerate a repurchase agreement);
(4) section 560 (contractual right to liquidate, terminate or accelerate a swap agreement);
(5) section 561 (contractual right to liquidate, terminate, accelerate, or offset under a master netting agreement and across contracts); and
(6) section 562 (damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreement).

TITLE VI. BANKRUPTCY DATA

Sec. 601. Improved Bankruptcy Statistics. This provision amends chapter 6 of title 28 of the United States Code to require the clerk for each district (or the bankruptcy court clerk if one has been certified pursuant to section 156(b) of title 28 of the United States Code) to collect certain statistics for chapter 7, 11, and 13 cases in a standardized format prescribed by the Director of the Administrative Office of the United States Courts and to make this information available to the public. Not later than July 1, 2006, the Director must submit a report to Congress concerning the statistical information collected and then must report annually thereafter. The statistics must be itemized by chapter of the Bankruptcy Code and be presented in the aggregate for each district. The specific categories of information that must be gathered include the following:

(1) scheduled total assets and liabilities of debtors who are individuals with primarily consumer debts under chapters 7, 11 and 13 by category;

(2) such debtors' current monthly income, average income, and average expenses;

(3) the aggregate amount of debts discharged during the reporting period based on the difference between the total amount of scheduled debts and by categories that are predominantly nondischargeable;

(4) the average time between the filing of the bankruptcy case and the closing of the case;

(5) the number of cases in which reaffirmation agreements were filed, the total number of reaffirmation agreements filed, the number of cases in which the debtor was *pro se* and a reaffirmation agreement was filed, and the number of cases in which the reaffirmation agreement was approved by the court;

(6) for chapter 13 cases, information on the number of: (a) orders determining the value of secured property in an amount less than the amount of the secured claim, (b) final orders that determined the value of property securing a claim, (c) cases dismissed, (d) cases dismissed for failure to make payments under the plan, (e) cases refiled after dismissal, (f) cases in which the plan was completed (separately itemized with respect to the number of modifications made before completion of the plan, and (g) cases in which the debtor had previously sought bankruptcy relief within the 6 years preceding the filing of the present case;

(7) the number of cases in which creditors were fined for misconduct and the amount of any punitive damages awarded for creditor misconduct; and

(8) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against a debtor's counsel and the damages awarded under this rule.

Section 601 provides that the amendments in this provision take effect 18 months after the date of enactment of this Act.

Sec. 602. Uniform Rules for the Collection of Bankruptcy Data. Section 602 of the Act amends chapter 39 of title 28 of the United States Code to require the Attorney General to promulgate rules mandating the establishment of uniform forms for final reports in chapter 7, 12 and 13 cases and periodic reports in chapter 11 cases. This provision also specifies that these reports be designed to facilitate compilation of data and to provide maximum public access by physical inspection at one or more central filing locations and by electronic access through the Internet or other appropriate media. The information should enable an evaluation of the efficiency and practicality of the bankruptcy system. In issuing rules, the Attorney General must consider: (1) the reasonable needs of the public for information about the Federal bankruptcy system; (2) the economy, simplicity, and lack of undue burden on persons obligated to file the reports; and (3) appropriate privacy concerns and safeguards.

Section 602 provides that final reports by trustees in chapter 7, 12, and 13 cases include the following information: (1) the length of time the case was pending; (2) assets abandoned; (3) assets ex-

empted; (4) receipts and disbursements of the estate; (5) administrative expenses, including those associated with section 707(b) of the Bankruptcy Code, and the actual costs of administering chapter 13 cases; (6) claims asserted; (7) claims allowed; and (8) distributions to claimants and claims discharged without payment. With regard to chapter 11 cases, section 602 provides that periodic reports include the following information regarding:

(1) the industry classification for businesses conducted by the debtor, as published by the Department of Commerce;
(2) the length of time that the case was pending;
(3) the number of full-time employees as of the date of the order for relief and at the end of each reporting period;
(4) cash receipts, cash disbursements, and profitability of the debtor for the most recent period and cumulatively from the date of the order for relief;
(5) the debtor's compliance with the Bankruptcy Code, including whether tax returns have been filed and taxes have been paid;
(6) professional fees approved by the court for the most recent period and cumulatively from the date of the order for relief; and
(7) plans filed and confirmed, including the aggregate recoveries of holders by class and as a percentage of total claims of an allowed class.

Sec. 603. Audit Procedures. Subsection (a)(1) of section 603 of the Act requires the Attorney General (for judicial districts served by United States trustees) and the Judicial Conference of the United States (for judicial districts served by bankruptcy administrators) to establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules and other information filed by debtors pursuant to sections 111, 521 and 1322 of the Bankruptcy Code. Section 603(a)(1) requires the audits to be conducted in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants. It permits the Attorney General and the Judicial Conference to develop alternative auditing standards not later than 2 years after the date of enactment of this Act. Section 603(a)(2) requires these procedures to: (1) establish a method of selecting appropriate qualified contractors to perform these audits; (2) establish a method of randomly selecting cases for audit, and that a minimum of at least one case out of every 250 cases be selected for audit; (3) require audits in cases where the schedules of income and expenses reflect greater than average variances from the statistical norm for the district if they occur by reason of higher income or higher expenses than the statistical norm in which the schedules were filed; and (4) require the aggregate results of such audits, including the percentage of cases by district in which a material misstatement of income or expenditures is reported, to be made available to the public on an annual basis.

Section 603(b) amends section 586 of title 28 of the United States Code to require the United States trustee to submit reports as directed by the Attorney General, including the results of audits performed under section 603(a). In addition, it authorizes the United

States trustee to contract with auditors to perform the audits specified in this provision. Further, it requires the report of each audit to be filed with the court and transmitted to the United States trustee. The report must specify material misstatements of income, expenditures or assets. In a case where a material misstatement has been reported, the clerk must provide notice of such misstatement to creditors and the United States trustee must report it to the United States Attorney, if appropriate, for possible criminal prosecution. If advisable, the United States trustee must also take appropriate action, such as revoking the debtor's discharge.

Section 603(c) amends section 521 of the Bankruptcy Code to make it a duty of the debtor to cooperate with an auditor. Section 603(d) amends section 727 of the Bankruptcy Code to add, as a ground for revocation of a chapter 7 discharge the debtor's failure to: (a) satisfactorily explain a material misstatement discovered as the result of an audit pursuant to this provision; or (b) make available for inspection all necessary documents or property belonging to the debtor that are requested in connection with such audit. Section 603(e) provides that the amendments made by this provision take effect 18 months after the Act's date of enactment.

Sec. 604. Sense of Congress Regarding Availability of Bankruptcy Data. Section 604 expresses a sense of the Congress that it is a national policy of the United States that all data collected by bankruptcy clerks in electronic form (to the extent such data relates to public records pursuant to section 107 of the Bankruptcy Code) should be made available to the public in a useable electronic form in bulk, subject to appropriate privacy concerns and safeguards as determined by the Judicial Conference of the United States. It also states that a uniform bankruptcy data system should be established that uses a single set of data definitions and forms to collect such data and that data for any particular bankruptcy case should be aggregated in electronic format.

TITLE VII. BANKRUPTCY TAX PROVISIONS

Sec. 701. Treatment of Certain Tax Liens. Subsection (a) of section 701 of the Act makes several amendments to section 724 of the Bankruptcy Code to provide greater protection for holders of *ad valorem* tax liens on real or personal property of the estate. Many school boards obtain liens on real property to ensure collection of unpaid *ad valorem* taxes. Under current law, local governments are sometimes unable to collect these taxes despite the presence of a lien because they may be subordinated to certain claims and expenses as a result of section 724. Section 701(a) is intended to protect the holders of these tax liens from, among other things, erosion of their claims' status by expenses incurred under chapter 11 of the Bankruptcy Code. Pursuant to section 701(a), subordination of *ad valorem* tax liens is still possible under section 724(b), but limited to the payment of : (1) claims incurred under chapter 7 for wages, salaries, or commissions (but not expenses incurred under chapter 11); (2) claims for wages, salaries, and commissions entitled to priority under section 507(a)(4); and (3) claims for contributions to employee benefit plans entitled to priority under section 507(a)(5). Before a tax lien on real or personal property may be subordinated pursuant to section 724, the chapter 7 trustee must exhaust all

other unencumbered estate assets and, consistent with section 506, recover reasonably necessary costs and expenses of preserving or disposing of such property.

Section 701(b) amends section 505(a)(2) of the Bankruptcy Code to prevent a bankruptcy court from determining the amount or legality of an ad valorem tax on real or personal property if the applicable period for contesting or redetermining the amount of the claim under nonbankruptcy law has expired.

Sec. 702. Treatment of Fuel Tax Claims. Section 702 of the Act amends section 501 of the Bankruptcy Code to simplify the process for filing of claims by states for certain fuel taxes. Rather than requiring each state to file a claim for these taxes (as is the case under current law), section 702 permits the designated "base jurisdiction" under the International Fuel Tax Agreement to file a claim on behalf of all states, which would then be allowed as a single claim.

Sec. 703. Notice of Request for a Determination of Taxes. Under current law, a trustee or debtor in possession may request a governmental unit to determine administrative tax liabilities in order to receive a discharge of those liabilities. There are no requirements as to the content or form of such notice to the government. Section 703 of the Act amends section 505(b) of the Bankruptcy Code to require the clerk of each district to maintain a list of addresses designated by governmental units for service of section 505 requests. In addition, the list may also include information concerning filing requirements specified by such governmental units. If a governmental entity does not designate an address and provide that address to the bankruptcy court clerk, any request made under section 505(b) of the Bankruptcy Code may be served at the address of the appropriate taxing authority of that governmental unit.

Sec. 704. Rate of Interest on Tax Claims. Under current law, there is no uniform rate of interest applicable to tax claims. As a result, varying standards have been used to determine the applicable rate. Section 704 of the Act amends the Bankruptcy Code to add section 511 for the purpose of simplifying the interest rate calculation. It provides that for all tax claims (federal, state, and local), including administrative expense taxes, the interest rate shall be determined in accordance with applicable nonbankruptcy law. With respect to taxes paid under a confirmed plan, the rate of interest is determined as of the calendar month in which the plan is confirmed.

Sec. 705. Priority of Tax Claims. Under current law, a tax claim is entitled to be treated as a priority claim if it arises within certain specified time periods. In the case of income taxes, a priority arises, among other time periods, if the tax return was due within 3 years of the filing of the bankruptcy petition or if the assessment of the tax was made within 240 days of the filing of the petition. The 240-day period is tolled during the time that an offer in compromise is pending (plus 30 days). Though the statute is silent, most courts have also held that the 3-year and 240-day time periods are tolled during the pendency of a previous bankruptcy case. Section 705 amends section 507(a)(8) of the Bankruptcy Code to codify the rule tolling priority periods during the pendency of a previous bankruptcy case during that 240-day period together with an

additional 90 days. It also includes tolling provisions to adjust for the collection due process rights provided by the Internal Revenue Service Restructuring and Reform Act of 1998. During any period in which the government is prohibited from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken against the debtor, the priority is tolled, plus 90 days. Also, during any time in which there was a stay of proceedings in a prior bankruptcy case or collection of an income tax was precluded by a confirmed bankruptcy plan, the priority is tolled, plus 90 days.

Sec. 706. Priority Property Taxes Incurred. Under current law, many provisions of the Bankruptcy Code are keyed to the word "assessed." While this term has an accepted meaning in the Federal system, it is not used in many state and local statutes and has created some confusion. To eliminate this problem with respect to real property taxes, section 706 amends section 507(a)(8)(B) of the Bankruptcy Code by replacing the word "assessed" with "incurred."

Sec. 707. No Discharge of Fraudulent Taxes in Chapter 13. Under current law, a debtor's ability to discharge tax debts varies depending on whether the debtor is in chapter 7 or chapter 13. In a chapter 7 case, taxes from a return due within 3 years of the petition date, taxes assessed within 240 days, or taxes related to an unfiled return or false return are not dischargeable. Chapter 13, on the other hand, allows these obligations to be discharged. Section 707 of the Act amends Bankruptcy Code section 1328(a)(2) to prohibit the discharge of tax claims described in section 523(a)(1)(B) and (C) as well as claims for a tax required to be collected or withheld and for which the debtor is liable in whatever capacity pursuant to section 507(a)(8)(C).

Sec. 708. No Discharge of Fraudulent Taxes in Chapter 11. Under current law, the confirmation of a chapter 11 plan discharges a corporate debtor from most debts. Section 708 amends section 1141(d) of the Bankruptcy Code to except from discharge in corporate chapter 11 case a debt specified in subsections 523(a)(2)(A) and (B) of the Bankruptcy Code owed to a domestic governmental unit. In addition, it excepts from discharge a debt owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 of the United States Code or any similar state statute. Section 708 excepts from discharge a debt for a tax or customs duty with respect to which the debtor made a fraudulent tax return or willfully attempted in any manner to evade or defeat such tax.

Sec. 709. Stay of Tax Proceedings Limited to Prepetition Taxes. Under current law, the filing of a petition for relief under the Bankruptcy Code activates an automatic stay that enjoins the commencement or continuation of a case in the Federal tax court. This rule was arguably extended in *Halpern* v. *Commissioner*,[78] which held that the tax court did not have jurisdiction to hear a case involving a postpetition year. To address this issue, section 709 of the Act amends section 362(a)(8) of the Bankruptcy Code to specify that the automatic stay is limited to an individual debtor's prepetition taxes (taxes incurred before entering bankruptcy). The amendment clarifies that the automatic stay does not apply to an individual debtor's postpetition taxes. In addition, section 709 al-

[78] 96 T.C. 895 (1991).

lows the bankruptcy court to determine whether the automatic stay applies to the postpetition tax liabilities of a corporate debtor.

Sec. 710. Periodic Payment of Taxes in Chapter 11 Cases. Section 710 of the Act amends section 1129(a)(9) of the Bankruptcy Code to provide that the allowed amount of priority tax claims (as of the plan's effective date) must be paid in regular cash installments within 5 years from the entry of the order for relief. The manner of payment may not be less favorable than that accorded the most favored nonpriority unsecured class of claims under section 1122(b). In addition, it requires the same payment treatment to be accorded to secured section 507(a)(8) claims of a governmental unit.

Sec. 711. Avoidance of Statutory Liens Prohibited. The Internal Revenue Code gives special protections to certain purchasers of securities and motor vehicles notwithstanding the existence of a filed tax lien. Section 711 of the Act amends section 545(2) of the Bankruptcy Code to prevent that provision's special protections from being used to avoid an otherwise valid lien. Specifically, it prevents the avoidance of unperfected liens against a bona fide purchaser, if the purchaser qualifies as such under section 6323 of the Internal Revenue Code or a similar provision under state or local law.

Sec. 712. Payment of Taxes in the Conduct of Business. Although current law generally requires trustees and receivers to pay taxes in the ordinary course of the debtor's business, the payment of administrative expenses must first be authorized by the court. Section 712(a) of the Act amends section 960 of title 28 of the United States Code to clarify that postpetition taxes in the ordinary course of business must be paid on or before when such tax is due under applicable nonbankruptcy law, with certain exceptions. This requirement does not apply if the obligation is a property tax secured by a lien against property that is abandoned under section 554 within a reasonable time after the lien attaches. In addition, the requirement does not pertain where the payment is excused under the Bankruptcy Code. With respect to chapter 7 cases, section 712(a) provides that the payment of a tax claim may be deferred until final distribution pursuant to section 726 if the tax was not incurred by a chapter 7 trustee or if the court, prior to the due date of the tax, finds that the estate has insufficient funds to pay all administrative expenses in full. Section 712(b) amends section 503(b)(1)(B)(i) of the Bankruptcy Code to clarify that this provision applies to secured as well as unsecured tax claims, including property taxes based on liability that is *in rem, in personam* or both. Section 712(c) amends section 503(b)(1) to exempt a governmental unit from the requirement to file a request for payment of an administrative expense. Section 712(d)(1) amends section 506(b) to provide that to the extent that an allowed claim is oversecured, the holder is entitled to interest and any reasonable fees, costs, or charges provided for under state law. Section 712(d)(2), in turn, amends section 506(c) to permit a trustee to recover from a secured creditor the payment of all *ad valorem* property taxes.

Sec. 713. Tardily Filed Priority Tax Claims. Section 713 of the Act amends section 726(a)(1) of the Bankruptcy Code to require a claim under section 507 that is not timely filed pursuant to section 501 to be entitled to a distribution if such claim is filed the earlier of the date that is 10 days following the mailing to creditors of the

summary of the trustee's final report or before the trustee commences final distribution.

Sec. 714. Income Tax Returns Prepared by Tax Authorities. Section 714 of the Act amends section 523(a) of the Bankruptcy Code to provide that a return filed on behalf of a taxpayer who has provided information sufficient to complete a return constitutes filing a return (and the debt can be discharged), but that a return filed on behalf of a taxpayer based on information the Secretary obtains through testimony or otherwise does not constitute filing a return (and the debt cannot be discharged).

Sec. 715. Discharge of the Estate's Liability for Unpaid Taxes. Under the Bankruptcy Code, a trustee or debtor in possession may request a prompt audit to determine postpetition tax liabilities. If the government does not make a determination or request an extension of time to audit, then the trustee or debtor in possession's determination of taxes will be final. Several court cases have held that while this protects the debtor and the trustee, it does not necessarily protect the estate. Section 715 of the Act amends section 505(b) of the Bankruptcy Code to clarify that the estate is also protected if the government does not request an audit of the debtor's tax returns. Therefore, if the government does not make a determination of postpetition tax liabilities or request extension of time to audit, then the estate's liability for unpaid taxes is discharged.

Sec. 716. Requirement to File Tax Returns to Confirm Chapter 13 Plans. Under current law, a debtor may enjoy the benefits of chapter 13 even if delinquent in the filing of tax returns. Section 716 of the Act responds to this problem. Subsection (a) amends section 1325(a) of the Bankruptcy Code to require a chapter 13 debtor to file all applicable Federal, state, and local tax returns as a condition of confirmation as required by section 1308 (as added by section 716(b)). Section 716(b) adds section 1308 to chapter 13 to require a chapter 13 debtor to be current on the filing of tax returns for the 4-year period preceding the filing of the case. If the returns are not filed by the date on which the meeting of creditors is first scheduled, the trustee may hold open that meeting for a reasonable period of time to allow the debtor to file any unfiled returns. The additional period of time may not extend beyond 120 days after the date of the meeting of the creditors or beyond the date on which the return is due under the last automatic extension of time for filing. The debtor, however, may obtain an extension of time from the court if the debtor demonstrates by a preponderance of the evidence that the failure to file was attributable to circumstances beyond the debtor's control.

Section 716(c) amends section 1307 of the Bankruptcy Code to provide that if a chapter 13 debtor fails to file a tax return as required by section 1308, the court must dismiss the case or convert it to one under chapter 7 (whichever is in the best interests of creditors and the estate) on request of a party in interest or the United States trustee after notice and a hearing.

Section 716(d) amends section 502(b)(9) of the Bankruptcy Code to provide that in a chapter 13 case, a governmental unit's tax claim based on a return filed under section 1308 shall be deemed to be timely filed if the claim is filed within 60 days from the date on which such return is filed. Section 716(e) states the sense of the Congress that the Judicial Conference of the United States should

propose for adoption official rules with respect an objection by a governmental unit to confirmation of a chapter 13 plan when such claim pertains to a tax return filed pursuant to section 1308.

Sec. 717. Standards for Tax Disclosure. Before creditors and stockholders may be solicited to vote on a chapter 11 plan, the plan proponent must file a disclosure statement that provides adequate information to holders of claims and interests so they can make a decision as to whether or not to vote in favor of the plan. As the tax consequences of a plan can have a significant impact on the debtor's reorganization prospects, section 717 amends section 1125(a) of the Bankruptcy Code to require that a chapter 11 disclosure statement discuss the plan's potential material Federal tax consequences to the debtor, any successor to the debtor, and to a hypothetical investor that is representative of the claimants and interest holders in the case.

Sec. 718. Setoff of Tax Refunds. Under current law, the filing of a bankruptcy petition automatically stays the setoff of a prepetition tax refund against a prepetition tax obligation unless the bankruptcy court approves the setoff. Interest and penalties that may continue to accrue may also be nondischargeable pursuant to section 523(a)(1) of the Bankruptcy Code and cause individual debtors undue hardship. Section 718 of the Act amends section 362(b) of the Bankruptcy Code to create an exception to the automatic stay whereby such setoff could occur without court order unless it would not be permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of the tax liability. In that circumstance, the governmental authority may hold the refund pending resolution of the action, unless the court, on motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection pursuant to section 361.

Sec. 719. Special Provisions Related to the Treatment of State and Local Taxes. Section 719 of the Act conforms state and local income tax administrative issues to the Internal Revenue Code. For example, under Federal law, a bankruptcy petitioner filing on March 5 has two tax years—January 1 to March 4, and March 5 to December 31. Under the Bankruptcy Code, however, state and local tax years are divided differently—January 1 to March 5, and March 6 to December 31. Section 719 requires the states to follow the Federal convention. It conforms state and local tax administration to the Internal Revenue Code in the following areas: division of tax liabilities and responsibilities between the estate and the debtor, tax consequences with respect to partnerships and transfers of property, and the taxable period of a debtor. Section 719 does not conform state and local tax rates to Federal tax rates.

Sec. 720. Dismissal for Failure to Timely File Tax Returns. Under existing law, there is no definitive rule with respect to whether a bankruptcy court may dismiss a bankruptcy case if the debtor fails to file returns for taxes incurred postpetition. Section 720 of the Act amends section 521 of the Bankruptcy Code to allow a taxing authority to request that the court dismiss or convert a bankruptcy case if the debtor fails to file a postpetition tax return or obtain an extension. If the debtor does not file the required return or obtain the extension within 90 days from the time of the request by the taxing authority to file the return, the court must convert or dis-

miss the case, whichever is in the best interest of creditors and the estate.

TITLE VIII. ANCILLARY AND OTHER CROSS-BORDER CASES

Title VIII of the Act adds a new chapter to the Bankruptcy Code for transnational bankruptcy cases. It incorporates the Model Law on Cross-Border Insolvency to encourage cooperation between the United States and foreign countries with respect to transnational insolvency cases. Title VIII is intended to provide greater legal certainty for trade and investment as well as to provide for the fair and efficient administration of cross-border insolvencies, which protects the interests of creditors and other interested parties, including the debtor. In addition, it serves to protect and maximize the value of the debtor's assets.

Sec. 801. Amendment to Add Chapter 15 to Title 11, United States Code. Section 801 introduces chapter 15 to the Bankruptcy Code, which is the Model Law on Cross-Border Insolvency ("Model Law") promulgated by the United Nations Commission on International Trade Law ("UNCITRAL") at its Thirtieth Session on May 12–30, 1997.[79] Cases brought under chapter 15 are intended to be ancillary to cases brought in a debtor's home country, unless a full United States bankruptcy case is brought under another chapter. Even if a full case is brought, the court may decide under section 305 to stay or dismiss the United States case under the other chapter and limit the United States' role to an ancillary case under this chapter.[80] If the full case is not dismissed, it will be subject to the provisions of this chapter governing cooperation, communication and coordination with the foreign courts and representatives. In any case, an order granting recognition is required as a prerequisite to the use of sections 301 and 303 by a foreign representative.

Sec. 1501. Purpose and scope of application. Section 1501 combines the Preamble to the Model Law (subsection (1)) with its article 1 (subsections (2) and (3))[81]. It largely tracks the language of the Model Law with appropriate United States references. However, it adds in subsection (3) an exclusion of certain natural persons who may be considered ordinary consumers. Although the consumer exclusion is not in the text of the Model Law, the discussions at UNCITRAL recognized that such exclusion would be necessary in countries like the United States where there are special provisions for consumer debtors in the insolvency laws.[82]

The reference to section 109(e) essentially defines "consumer debtors" for purposes of the exclusion by incorporating the debt limitations of that section, but not its requirement of regular income. The exclusion adds a requirement that the debtor or debtor couple be citizens or long-term legal residents of the United States.

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[79] The text of the Model Law and the Report of UNCITRAL on its adoption are found at U.N. G.A., 52d Sess., Supp. No. 17 (A/52/17) ("Report"). That Report and the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, U.N. Gen. Ass., UNCITRAL 30th Sess. U.N. Doc. A/CN.9/442 (1997) ("Guide"), which was discussed in the negotiations leading to the Model Law and published by UNCITRAL as an aid to enacting countries, should be consulted for guidance as to the meaning and purpose of its provisions. The development of the provisions in the negotiations at UNCITRAL, in which the United States was an active participant, is recounted in the interim reports of the Working Group that are cited in the Report.

[80] *See* section 1529 and commentary.

[81] Guide at 16–19.

[82] *See id.* at 18, ¶60; 19 ¶66.

This ensures that residents of other countries will not be able to manipulate this exclusion to avoid recognition of foreign proceedings in their home countries or elsewhere.

The first exclusion in subsection (c) constitutes, for the United States, the exclusion provided in article 1, subsection (2), of the Model Law.[83] Foreign representatives of foreign proceedings which are excluded from the scope of chapter 15 may seek comity from courts other than the bankruptcy court since the limitations of section 1509(b)(2) and (3) would not apply to them.

The reference to section 109(b) interpolates into chapter 15 the entities governed by specialized insolvency regimes under United States law which are currently excluded from liquidation proceedings under title 11. Section 1501 contains an exception to the section 109(b) exclusions so that foreign proceedings of foreign insurance companies are eligible for recognition and relief under chapter 15 as they had been under section 304. However, section 1501(d) has the effect of leaving to State regulation any deposit, escrow, trust fund or the like posted by a foreign insurer under State law.

Sec. 1502. Definitions. "Debtor" is given a special definition for this chapter. This definition does not come from the Model Law, but is necessary to eliminate the need to refer repeatedly to "the same debtor as in the foreign proceeding." With certain exceptions, the term "person" used in the Model Law has been replaced with "entity," which is defined broadly in section 101(15) to include natural persons and various legal entities, thus matching the intended breadth of the term "person" in the Model Law. The exceptions include contexts in which a natural person is intended and those in which the Model Law language already refers to both persons and entities other than persons. The definition of "trustee" for this chapter ensures that debtors in possession and debtors, as well as trustees, are included in the term.[84]

The definition of "within the territorial jurisdiction of the United States" in subsection (7) is not taken from the Model Law. It has been added because the United States, like some other countries, asserts insolvency jurisdiction over property outside its territorial limits under appropriate circumstances. Thus a limiting phrase is useful where the Model Law and this chapter intend to refer only to property within the territory of the enacting state. In addition, a definition of "recognition" supplements the Model Law definitions and merely simplifies drafting of various other sections of chapter 15.

Two key definitions of "foreign proceeding" and "foreign representative," are found in sections 101(23) and (24), which have been amended consistent with Model Law article 2.[85] The definitions of "establishment," "foreign court," "foreign main proceeding," and "foreign non-main proceeding" have been taken from Model Law article 2, with only minor language variations necessary to comport with United States terminology. Additionally, defined

[83] *Id.* at 17.
[84] *See* section 1505.
[85] Guide at 19–21, ¶¶67–68.

terms have been placed in alphabetical order.[86] In order to be recognized as a foreign non-main proceeding, the debtor must at least have an establishment in that foreign country.[87]

Sec. 1503. International obligations of the United States. This section is taken exactly from the Model Law with only minor adaptations of terminology.[88] Although this section makes an international obligation prevail over chapter 15, the courts will attempt to read the Model Law and the international obligation so as not to conflict, especially if the international obligation addresses a subject matter less directly related than the Model Law to a case before the court.

Sec. 1504. Commencement of ancillary case. Article 4 of the Model Law is designed for designation of the competent court which will exercise jurisdiction under the Model Law. In United States law, section 1334(a) of title 28 gives exclusive jurisdiction to the district courts in a "case" under this title.[89] Therefore, since the competent court has been determined in title 28, this section instead provides that a petition for recognition commences a "case," an approach that also invokes a number of other useful procedural provisions. In addition, a new subsection (P) to section 157 of title 28 makes cases under this chapter part of the core jurisdiction of bankruptcy courts if referred by the district courts, thus completing the designation of the competent court. Finally, the particular bankruptcy court that will rule on the petition is determined pursuant to a revised section 1410 of title 28 governing venue and transfer.[90]

The title "ancillary" in this section and in the title of this chapter emphasizes the United States policy in favor of a general rule that countries other than the home country of the debtor, where a main proceeding would be brought, should usually act through ancillary proceedings in aid of the main proceedings, in preference to a system of full bankruptcies (often called "secondary" proceedings) in each state where assets are found. Under the Model Law, notwithstanding the recognition of a foreign main proceeding, full bankruptcy cases are permitted in each country (see sections 1528 and 1529). In the United States, the court will have the power to suspend or dismiss such cases where appropriate under section 305.

Sec. 1505. Authorization to act in a foreign country. The language in this section varies from the wording of article 5 of the Model Law as necessary to comport with United States law and terminology. The slight alteration to the language in the last sentence is meant to emphasize that the identification of the trustee or other

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[86] *See* Guide at 19, (Model Law) 21 ¶75 (concerning establishment); 21 ¶74 (concerning foreign court); 21 ¶¶72, 73 and 75 (concerning foreign main and non-main proceedings).

[87] *See id.* at 21, ¶75.

[88] *See id.* at 22, Art. 3.

[89] *See id.* at 23, Art. 4.

[90] New section 1410 of title 28 provides as follows:

A case under chapter 15 of title 11 may be commenced in the district court for the district——

(1) in which the debtor has its principal place of business or principal assets in the United States;

(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding or enforcement of judgment in a Federal or State court; or

(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties having regard to the relief sought by the foreign representative.

entity entitled to act is under United States law, while the scope of actions that may be taken by the trustee or other entity under foreign law is limited by the foreign law.[91]

The related amendment to section 586(a)(3) of title 28 makes acting pursuant to authorization under this section an additional power of a trustee or debtor in possession. While the Model Law automatically authorizes an administrator to act abroad, this section requires all trustees and debtors to obtain court approval before acting abroad. That requirement is a change from the language of the Model Law, but one that is purely internal to United States law.[92] Its main purpose is to ensure that the court has knowledge and control of possibly expensive activities, but it will have the collateral benefit of providing further assurance to foreign courts that the United States debtor or representative is under judicial authority and supervision. This requirement means that the first-day orders in reorganization cases should include authorization to act under this section where appropriate.

This section also contemplates the designation of an examiner or other natural person to act for the estate in one or more foreign countries where appropriate. One instance might be a case in which the designated person had a special expertise relevant to that assignment. Another might be where the foreign court would be more comfortable with a designated person than with an entity like a debtor in possession. Either are to be recognized under the Model Law.[93]

Sec. 1506. Public policy exception. This provision follows the Model Law article 5 exactly, is standard in UNCITRAL texts, and has been narrowly interpreted on a consistent basis in courts around the world. The word "manifestly" in international usage restricts the public policy exception to the most fundamental policies of the United States.[94]

Sec. 1507. Additional assistance. Subsection (1) follows the language of Model Law article 7.[95] Subsection (2) makes the authority for *additional* relief (beyond that permitted under sections 1519–1521, below) subject to the conditions for relief heretofore specified in United States law under section 304, which is repealed. This section is intended to permit the further development of international cooperation begun under section 304, but is not to be the basis for denying or limiting relief otherwise available under this chapter. The additional assistance is made conditional upon the court's consideration of the factors set forth in the current subsection 304(c) in a context of a reasonable balancing of interests following current case law. The references to "estate" in section 304 have been changed to refer to the debtor's property, because many foreign systems do not create an estate in insolvency proceedings of the sort recognized under this chapter. Although the case law construing section 304 makes it clear that comity is the central consideration, its physical placement as one of six factors in subsection (c) of section 304 is misleading, since those factors are essentially elements of the grounds for granting comity. Therefore, in

[91] *See* Guide at 24.
[92] *See id.* at 24, Art. 5.
[93] *See id.* at 23–24, ¶82.
[94] *See id.* at 25.
[95] *Id.* at 26.

subsection (2) of this section, comity is raised to the introductory language to make it clear that it is the central concept to be addressed.[96]

Sec. 1508. Interpretation. This provision follows conceptually Model Law article 8 and is a standard one in recent UNCITRAL treaties and model laws. Changes to the language were made to express the concepts more clearly in United States vernacular.[97] Interpretation of this chapter on a uniform basis will be aided by reference to the Guide and the Reports cited therein, which explain the reasons for the terms used and often cite their origins as well. Uniform interpretation will also be aided by reference to CLOUT, the UNCITRAL Case Law On Uniform Texts, which is a service of UNCITRAL. CLOUT receives reports from national reporters all over the world concerning court decisions interpreting treaties, model laws, and other text promulgated by UNCITRAL. Not only are these sources persuasive, but they advance the crucial goal of uniformity of interpretation. To the extent that the United States courts rely on these sources, their decisions will more likely be regarded as persuasive elsewhere.

Sec. 1509. Right of direct access. This section implements the purpose of article 9 of the Model Law, enabling a foreign representative to commence a case under this chapter by filing a petition directly with the court without preliminary formalities that may delay or prevent relief. It varies the language to fit United States procedural requirements and it imposes recognition of the foreign proceeding as a condition to further rights and duties of the foreign representative. If recognition is granted, the foreign representative will have full capacity under United States law (subsection (b)(1)), may request such relief in a state or Federal court other than the bankruptcy court (subsection (b)(2)), and may be granted comity or cooperation by such non-bankruptcy court (subsection (b)(3) and (c)). Subsections (b)(2), (b)(3), and (c) make it clear that chapter 15 is intended to be the exclusive door to ancillary assistance to foreign proceedings. The goal is to concentrate control of these questions in one court. That goal is important in a Federal system like that of the United States with many different courts, state and federal, that may have pending actions involving the debtor or the debtor's property. This section, therefore, completes for the United States the work of article 4 of the Model Law ("competent court") as well as article 9.[98]

Although a petition under current section 304 is the proper method for achieving deference by a United States court to a foreign insolvency under present law, some cases in state and Federal courts under current law have granted comity suspension or dismissal of cases involving foreign proceedings without requiring a section 304 petition or even referring to the requirements of that section. Even if the result is correct in a particular case, the procedure is undesirable, because there is room for abuse of comity. Parties would be free to avoid the requirements of this chapter and the expert scrutiny of the bankruptcy court by applying directly to a state or Federal court unfamiliar with the statutory requirements. Such an application could be made after denial of a petition under

[96] *Id.*
[97] *Id.* at 26, ¶91.
[98] *See id.* at 23, Art. 4, ¶¶79–83; 27 Art. 9, ¶93.

this chapter. This section concentrates the recognition and deference process in one United States court, ensures against abuse, and empowers a court that will be fully informed of the current status of all foreign proceedings involving the debtor.[99]

Subsection (d) has been added to ensure that a foreign representative cannot seek relief in courts in the United States after being denied recognition by the court under this chapter. Subsection (e) makes activities in the United States by a foreign representative subject to applicable United States law, just as 28 U.S.C. section 959 does for a domestic trustee in bankruptcy.[100] Subsection (f) provides a limited exception to the prior recognition requirement so that collection of a claim which is property of the debtor, for example an account receivable, by a foreign representative may proceed without commencement of a case or recognition under this chapter.

Sec. 1510. Limited jurisdiction. Section 1510, article 10 of the Model Law, is modeled on section 306 of the Bankruptcy Code. Although the language referring to conditional relief in section 306 is not included, the court has the power under section 1522 to attach appropriate conditions to any relief it may grant. Nevertheless, the authority in section 1522 is not intended to permit the imposition of jurisdiction over the foreign representative beyond the boundaries of the case under this chapter and any related actions the foreign representative may take, such as commencing a case under another chapter of this title.

Sec. 1511. Commencement of Case Under Section 301 or 303. This section reflects the intent of article 11 of the Model Law, but adds language that conforms to United States law or that is otherwise necessary in the United States given its many bankruptcy court districts and the importance of full information and coordination among them.[101] Article 11 does not distinguish between voluntary and involuntary proceedings, but seems to have implicitly assumed an involuntary proceeding.[102] Subsection 1(a)(2) goes farther and permits a voluntary filing, with its much simpler requirements, if the foreign proceeding that has been recognized is a main proceeding.

Sec. 1512. Participation of a foreign representative in a case under this title. This section tracks article 12 of the Model Law with a slight alteration to tie into United States procedural terminology.[103] The effect of this section is to make the recognized foreign representative a party in interest in any pending or later commenced United States bankruptcy case.[104] Throughout this chapter, the word "case" has been substituted for the word "proceeding" in the Model Law when referring to cases under the United States Bankruptcy Code, to conform to United States usage.

Sec. 1513. Access of foreign creditors to a case under this title. This section mandates nondiscriminatory or "national" treatment for foreign creditors, except as provided in subsection (b) and section 1514. It follows the intent of Model Law article 13, but the

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[99] *See id.* at 27, Art. 9; 34–35, Art. 15 and ¶¶116–119; 39–40, Art. 18, ¶¶133–134; see also sections 1515(3), 1518.
[100] *Id.* at 27, ¶93.
[101] *See id.* at 28, Art. 11.
[102] *Id.* at 38, ¶¶97–99.
[103] *Id.* at 29, Art. 12.
[104] *Id.* at 29, ¶¶10–102.

language required alteration to fit into the Bankruptcy Code.[105] The law as to priority for foreign claims that fit within a class given priority treatment under section 507 (for example, foreign employees or spouses) is unsettled. This section permits the continued development of case law on that subject and its general principle of national treatment should be an important factor to be considered. At a minimum, under this section, foreign claims must receive the treatment given to general unsecured claims without priority, unless they are in a class of claims in which domestic creditors would also be subordinated.[106] The Model Law allows for an exception to the policy of nondiscrimination as to foreign revenue and other public law claims.[107] Such claims (such as tax and Social Security claims) have been traditionally denied enforcement in the United States, inside and outside of bankruptcy. The Bankruptcy Code is silent on this point, so the rule is purely a matter of traditional case law. It is not clear if this policy should be maintained or modified, so this section leaves this question to developing case law. It also allows the Department of the Treasury to negotiate reciprocal arrangements with our tax treaty partners in this regard, although it does not mandate any restriction of the evolution of case law pending such negotiations.

Sec. 1514. Notification of foreign creditors concerning a case under title 11. This section ensures that foreign creditors receive proper notice of cases in the United States.[108] As a "foreign creditor" is not a defined term, foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure ("Rules") should be amended to conform to the requirements of this section, including a special form for initial notice to such creditors. In particular, the Rules must provide additional time for such creditors to file proofs of claim where appropriate and require the court to make specific orders in that regard in proper circumstances. The notice must specify that secured claims must be asserted, because in many countries such claims are not affected by an insolvency proceeding and need not be filed.[109] If a foreign creditor has made an appropriate request for notice, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. Subsection (d) replaces the reference to "a reasonable time period" in Model Law article 14(3)(a).[110] It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time periods and bar dates so that foreign creditors have a reasonable time within which to receive notice or take an action.

Sec. 1515. Application for recognition of a foreign proceeding. This section follows article 15 of the Model Law with minor changes.[111] The Rules will require amendment to provide forms for some or all of the documents mentioned in this section, to make necessary additions to Rules 1000 and 2002 to facilitate appropriate notices of the hearing on the petition for recognition, and to require filing of lists of creditors and other interested persons who

[105] *Id.* at 30, ¶103.
[106] *See id.* at 30, ¶104.
[107] *See id.* at 31, ¶105.
[108] *See* Model Law, Art. 14; Guide at 31–32, ¶¶106–109.
[109] Guide at 33, ¶111.
[110] *Id.* at 31, Art. 14(3)(a).
[111] *Id.* at 33.

should receive notices. Throughout the Model Law, the question of notice procedure is left to the law of the enacting state.[112]

Sec. 1516. Presumptions concerning recognition. This section follows article 16 of the Model Law with minor changes.[113] Although sections 1515 and 1516 are designed to make recognition as simple and expedient as possible, the court may hear proof on any element stated. The ultimate burden as to each element is on the foreign representative, although the court is entitled to shift the burden to the extent indicated in section 1516. The word "proof" in subsection (3) has been changed to "evidence" to make it clearer using United States terminology that the ultimate burden is on the foreign representative.[114] "Registered office" is the term used in the Model Law to refer to the place of incorporation or the equivalent for an entity that is not a natural person.[115] The presumption that the place of the registered office is also the center of the debtor's main interest is included for speed and convenience of proof where there is no serious controversy.

Sec. 1517. Order granting recognition. This section closely tracks article 17 of the Model Law, with a few exceptions.[116] The decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of this section, which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition. Reciprocity was specifically suggested as a requirement for recognition on more than one occasion in the negotiations that resulted in the Model Law. It was rejected by overwhelming consensus each time. The United States was one of the leading countries opposing the inclusion of a reciprocity requirement.[117] In this regard, the Model Law conforms to section 304, which has no such requirement.

The drafters of the Model Law understood that only a main proceeding or a non-main proceeding meeting the standards of section 1502 (that is, one brought where the debtor has an establishment) were entitled to recognition under this section. The Model Law has been slightly modified to make this point clear by referring to the section 1502 definition of main and non-main proceedings, as well as to the general definition of a foreign proceeding in section 101(23). A petition under section 1515 must show that proceeding is a main or a qualifying non-main proceeding in order to obtain recognition under this section.

Consistent with the position of various civil law representatives in the drafting of the Model Law, recognition creates a status with the effects set forth in section 1520, so those effects are not viewed as orders to be modified, as are orders granting relief under sections 1519 and 1521. Subsection (4) states the grounds for modifying or terminating recognition. On the other hand, the effects of recognition (found in section 1520 and including an automatic stay) are subject to modification under section 362(d), made applicable

[112] *See id.* at 36, ¶121.
[113] *Id.* at 36.
[114] *Id.* at 36, Art. 16(3).
[115] *Id.*
[116] *Id.* at 37.
[117] Report of the Working Group on Insolvency Law on the Work of Its Twentieth Session (Vienna, 7–18 Oct. 1996), at 6, ¶¶16–20.

by section 1520(2), which permits relief from the automatic stay of section 1520 for cause.

Paragraph 1(d) of section 17 of the Model Law has been omitted as an unnecessary requirement for United States purposes, because a petition submitted to the wrong court will be dismissed or transferred under other provisions of United States law.[118] The reference to section 350 refers to the routine closing of a case that has been completed and will invoke requirements including a final report from the foreign representative in such form as the Rules may provide or a court may order.[119]

Sec. 1518. Subsequent information. This section follows the Model Law, except to eliminate the word "same", which is rendered unnecessary by the definition of "debtor" in section 1502, and to provide for a formal document to be filed with the court.[120] Judges in several jurisdictions, including the United States, have reported a need for a requirement of complete and candid reports to the court of all proceedings, worldwide, involving the debtor. This section will ensure that such information is provided to the court on a timely basis. Any failure to comply with this section will be subject to the sanctions available to the court for violations of the statute. The section leaves to the Rules the form of the required notice and related questions of notice to parties in interest, the time for filing, and the like.

Sec. 1519. Relief may be granted upon petition for recognition of a foreign proceeding. This section generally follows article 19 of the Model Law.[121] The bankruptcy court will have jurisdiction to grant emergency relief under Rule 7065 pending a hearing on the petition for recognition. This section does not expand or reduce the scope of section 105 as determined by cases under section 105 nor does it modify the sweep of sections 555 to 560. Subsection (d) precludes injunctive relief against police and regulatory action under section 1519, leaving section 105 as the only avenue for such relief. Subsection (e) makes clear that this section contemplates injunctive relief and that such relief is subject to specific rules and a body of jurisprudence. Subsection (f) was added to complement amendments to the Bankruptcy Code provisions dealing with financial contracts.

Sec. 1520. Effects of recognition of a foreign main proceeding. In general, this chapter sets forth all the relief that is available as a matter of right based upon recognition hereunder, although additional assistance may be provided under section 1507 and this chapter have no effect on any relief currently available under section 105. The stay created by article 20 of the Model Law is imported to chapter 15 from existing provisions of the Code. Subsection (a)(1) combines subsections 1(a) and (b) of article 20 of the Model Law, because section 362 imposes the restrictions required by those two subsections as well as additional restrictions.[122]

Subsections (a)(2) and (4) apply the Bankruptcy Code sections that impose the restrictions called for by subsection 1(c) of the Model Law. In both cases, the provisions are broader and more

[118] Guide at 37, Art. 17(1)(d).
[119] *Id.*
[120] *Id.* at 39–40, ¶¶133, 134.
[121] *Id.* at 40.
[122] *Id.* at 42, Art. 20 1(a), (b).

complete than those contemplated by the Model Law, but include all the restraints the Model Law provisions would impose.[123] As the foreign proceeding may or may not create an "estate" similar to that created in cases under this title, the restraints are applicable to actions against the debtor under section 362(a) and with respect to the property of the debtor under the remaining sections. The only property covered by this section is property within the territorial jurisdiction of the United States as defined in section 1502. To achieve effects on property of the debtor which is not within the territorial jurisdiction of the United States, the foreign representative would have to commence a case under another chapter of this title.

By applying sections 361 and 362, subsection (a) makes applicable the United States exceptions and limitations to the restraints imposed on creditors, debtors, and other in a case under this title, as stated in article 20(2) of the Model Law.[124] It also introduces the concept of adequate protection provided in sections 362 and 363. These exceptions and limitations include those set forth in sections 362(b), (c) and (d). As a result, the court has the power to terminate the stay pursuant to section 362(d), for cause, including a failure of adequate protection.[125]

Subsection (a)(2), by its reference to sections 363 and 552 adds to the powers of a foreign representative of a foreign main proceeding an automatic right to operate the debtor's business and exercise the power of a trustee under sections 363 and 542, unless the court orders otherwise. A foreign representative of a foreign main proceeding may need to continue a business operation to maintain value and granting that authority automatically will eliminate the risk of delay. If the court is uncomfortable about this authority in a particular situation, it can "order otherwise" as part of the order granting recognition.

Two special exceptions to the automatic stay are embodied in subsections (b) and (c). To preserve a claim in certain foreign countries, it may be necessary to commence an action. Subsection (b) permits the commencement of such an action, but would not allow for its further prosecution. Subsection (c) provides that there is no stay of the commencement of a full United States bankruptcy case. This essentially provides an escape hatch through which any entity, including the foreign representative, can flee into a full case. The full case, however, will remain subject to subchapters IV and V on cooperation and coordination of proceedings and to section 305 providing for stay or dismissal. Section 108 of the Bankruptcy Code provides the tolling protection intended by Model Law article 20(3), so no exception is necessary for claims that might be extinguished under United States law.[126]

Sec. 1521. Relief that may be granted upon recognition of a foreign proceeding. This section follows article 21 of the Model Law, with detailed changes to conform to United States law.[127] The exceptions in subsection (a)(7) relate to avoiding powers. The foreign representative's status as to such powers is governed by section

[123] *Id.* at 42, 45.
[124] *Id.* at 42, Art. 20(2); 44, ¶¶148, 150.
[125] *Id.* at 42, Art. 20(3); 44–45, ¶¶151 152.
[126] *Id.*
[127] *Id.* at 45–46, Art. 21.

1523 below. The avoiding power in section 549 and the exceptions to that power are covered by section 1520(a)(2). The word "adequately" in the Model Law, articles 21(2) and 22(1), has been changed to "sufficiently" in sections 1521(b) and 1522(a) to avoid confusion with a very specialized legal term in United States bankruptcy, "adequate protection."[128] Subsection (c) is designed to limit relief to assets having some direct connection with a non-main proceeding, for example where they were part of an operating division in the jurisdiction of the non-main proceeding when they were fraudulently conveyed and then brought to the United States.[129] Subsections (d), (e) and (f) are identical to those same subsections of section 1519. This section does not expand or reduce the scope of relief currently available in ancillary cases under sections 105 and 304 nor does it modify the sweep of sections 555 through 560.

Sec. 1522. Protection of creditors and other interested persons. This section follows article 22 of the Model Law with changes for United States usage and references to relevant Bankruptcy Code sections.[130] It gives the bankruptcy court broad latitude to mold relief to meet specific circumstances, including appropriate responses if it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors. For a response to a showing that the conditions necessary to recognition did not actually exist or have ceased to exist, see section 1517. Concerning the change of "adequately" in the Model Law to "sufficiently" in this section, see section 1521. Subsection (d) is new and simply makes clear that an examiner appointed in a case under chapter 15 shall be subject to certain duties and bonding requirements based on those imposed on trustees and examiners under other chapters of this title.

Sec. 1523. Actions to avoid acts detrimental to creditors. This section follows article 23 of the Model Law, with wording to fit it within procedure under this title.[131] It confers standing on a recognized foreign representative to assert an avoidance action but only in a pending case under another chapter of this title. The Model Law is not clear about whether it would grant standing in a recognized foreign proceeding if no full case were pending. This limitation reflects concerns raised by the United States delegation during the UNCITRAL debates that a simple grant of standing to bring avoidance actions neglects to address very difficult choice of law and forum issues. This limited grant of standing in section 1523 does not create or establish any legal right of avoidance nor does it create or imply any legal rules with respect to the choice of applicable law as to the avoidance of any transfer of obligation.[132] The courts will determine the nature and extent of any such action and what national law may be applicable to such action.

Sec. 1524. Intervention by a foreign representative. The wording is the same as the Model Law, except for a few clarifying words.[133] This section gives the foreign representative whose foreign proceeding has been recognized the right to intervene in United States cases, state or federal, where the debtor is a party. Recognition

[128] *Id.* at 46, Art. 21(2); 47, Art. 22(1).
[129] *See id.* at 46–47, ¶¶158, 160.
[130] *Id.* at 47.
[131] *Id.* at 48–49.
[132] *See id.* at 49, ¶166.
[133] *Id.* at 49.

being an act under Federal bankruptcy law, it must take effect in state as well as Federal courts. This section does not require substituting the foreign representative for the debtor, although that result may be appropriate in some circumstances.

Sec. 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives. The wording of this provision is nearly identical to that of the Model Law.[134] The right of courts to communicate with other courts in worldwide insolvency cases is of central importance. This section authorizes courts to do so. This right must be exercised, however, with due regard to the rights of the parties. Guidelines for such communications are left to the Federal rules of bankruptcy procedure.

Sec. 1526 Cooperation and direct communication between the trustee and foreign courts or foreign representatives. This section closely tracks the Model Law.[135] The language in Model Law article 26 concerning the trustee's function was eliminated as unnecessary because it is always implied under United States law. The section authorizes the trustee, including a debtor in possession, to cooperate with other proceedings. Subsection (3) is not taken from the Model Law but is added so that any examiner appointed under this chapter will be designated by the United States Trustee and will be bonded.

Sec. 1527. Forms of cooperation. This section is identical to the Model Law.[136] United States bankruptcy courts already engage in most of the forms of cooperation described here, but they now have explicit statutory authorization for acts like the approval of protocols of the sort used in cases.[137]

Sec. 1528. Commencement of a case under title 11 after recognition of a foreign main proceeding. This section follows the Model Law, with specifics of United States law replacing the general clause at the end of the section to cover assets normally included within the jurisdiction of the United States courts in bankruptcy cases, except where assets are subject to the jurisdiction of another recognized proceeding.[138] In a full bankruptcy case, the United States bankruptcy court generally has jurisdiction over assets outside the United States. Here that jurisdiction is limited where those assets are controlled by another recognized proceeding, if it is a main proceeding.

The court may use section 305 of this title to dismiss, stay, or limit a case as necessary to promote cooperation and coordination in a cross-border case. In addition, although the jurisdictional limitation applies only to United States bankruptcy cases commenced after recognition of a foreign proceeding, the court has ample authority under the next section and section 305 to exercise its discretion to dismiss, stay, or limit a United States case filed after a petition for recognition of a foreign main proceeding has been filed but before it has been approved, if recognition is ultimately granted.

Sec. 1529. Coordination of a case under title 11 and a foreign proceeding. This section follows the Model Law almost exactly, but subsection (4) adds a reference to section 305 to make it clear the

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[134] *Id.* at 50.
[135] *Id.* at 51.
[136] Guide at 51, 53.
[137] *See e.g., In re* Maxwell Communication Corp., 93 F.2d 1036 (2d Cir. 1996).
[138] Guide at 54–55.

bankruptcy court may continue to use that section, as under present law, to dismiss or suspend a United States case as part of coordination and cooperation with foreign proceedings.[139] This provision is consistent with United States policy to act ancillary to a foreign main proceeding whenever possible.

Sec. 1530. Coordination of more than one foreign proceeding. This section follows exactly article 30 of the Model Law.[140] It ensures that a foreign main proceeding will be given primacy in the United States, consistent with the overall approach of the United States favoring assistance to foreign main proceedings.

Sec. 1531. Presumption of insolvency based on recognition of a foreign main proceeding. This section follows the Model Law exactly, inserting a reference to the standard for an involuntary case under this title.[141] Where an insolvency proceeding has begun in the home country of the debtor, and in the absence of contrary evidence, the foreign representative should not have to make a new showing that the debtor is in the sort of financial distress requiring a collective judicial remedy. The word "proof" in this provision here means "presumption." The presumption does not arise for any purpose outside this section.

Sec. 1532. Rule of payment in concurrent proceeding. This section follows the Model Law exactly and is very similar to prior section 508(a), which is repealed. The Model Law language is somewhat clearer and broader than the equivalent language of prior section 508(a).[142]

Sec. 802. Other Amendments to Titles 11 and 28, United States Code. Section 802(a) amends section 103 of the Bankruptcy Code to clarify the provisions of the Code that apply to chapter 15 and to specify which portions of chapter 15 apply in cases under other chapters of title 11. Section 802(b) amends the Bankruptcy Code's definitions of foreign proceeding and foreign representative in section 101. The new definitions are nearly identical to those contained in the Model Law but add to the phrase "under a law relating to insolvency" the words "or debt adjustment." This addition emphasizes that the scope of the Model Law and chapter 15 is not limited to proceedings involving only debtors which are technically insolvent, but broadly includes all proceedings involving debtors in severe financial distress, so long as those proceedings also meet the other criteria of section 101(24).[143]

Section 802(c) amends section 157(b)(2) of title 28 to provide that proceedings under chapter 15 will be core proceedings while other amendments to title 28 provide that the United States trustee's standing extends to cases under chapter 15 and that the United States trustee's duties include acting in chapter 15 cases. Although the United States will continue to assert worldwide jurisdiction over property of a domestic or foreign debtor in a full bankruptcy case under chapters 7 and 13 of this title, subject to deference to foreign proceedings under chapter 15 and section 305, the situation is different in a case commenced under chapter 15. There the

[139] *Id.* at 55–56.
[140] *Id.* at 57.
[141] *Id.* at 58.
[142] *Id.* at 59.
[143] *Id.* at 51–52, 71.

United States is acting solely in an ancillary position, so jurisdiction over property is limited to that stated in chapter 15.

Section 802(d) amends section 109 of the Bankruptcy Code to permit recognition of foreign proceedings involving foreign insurance companies and involving foreign banks which do not have a branch or agency in the United States (as defined in 12 U.S.C. 3101). While a foreign bank not subject to United States regulation will be eligible for chapter 15 as a consequence of the amendment to section 109, section 303 prohibits the commencement of a full involuntary case against such a foreign bank unless the bank is a debtor in a foreign proceeding.

While section 304 is repealed and replaced by chapter 15, access to the jurisprudence which developed under section 304 is preserved in the context of new section 1507. On deciding whether to grant the additional assistance contemplated by section 1507, the court must consider the same factors specified in former section 304. The venue provisions for cases ancillary to foreign proceedings have been amended to provide a hierarchy of choices beginning with principal place of business in the United States, if any. If there is no principal place of business in the United States, but there is litigation against a debtor, then the district in which the litigation is pending would be the appropriate venue. In any other case, venue must be determined with reference to the interests of justice and the convenience of the parties.

TITLE IX. FINANCIAL CONTRACT PROVISIONS

Sec. 901. Treatment of Certain Agreements by Conservators of Receivers of Insured Depository Institutions. Subsections (a) through (f) of section 901 of the Act amend the Federal Deposit Insurance Act's (FDIA) definitions of "qualified financial contract," "securities contract," "commodity contract," "forward contract," "repurchase agreement" and "swap agreement" to make them consistent with the definitions in the Bankruptcy Code and to reflect the enactment of the Commodity Futures Modernization Act of 2000 (CFMA). It is intended that the legislative history and case law surrounding those terms, to the date of this amendment, be incorporated into the legislative history of the FDIA.

Subsection (b) amends the definition of "securities contract" expressly to encompass margin loans, to clarify the coverage of securities options and to clarify the coverage of repurchase and reverse repurchase transactions. The reference in subsection (b) to a "guarantee by or to any securities clearing agency" is intended to cover other arrangements, such as novation, that have an effect similar to a guarantee. The reference to a "loan" of a security in the definition is intended to apply to loans of securities, whether or not for a "permitted purpose" under margin regulations. The reference to "repurchase and reverse repurchase transactions" is intended to eliminate any inquiry under the qualified financial contract provisions of the FDIA as to whether a repurchase or reverse repurchase transaction is a purchase and sale transaction or a secured financing. Repurchase and reverse repurchase transactions meeting certain criteria are already covered under the definition of "repurchase agreement" in the FDIA (and a regulation of the Federal Deposit Insurance Corporation (FDIC)). Repurchase and reverse repurchase transactions on all securities (including, for example, eq-

uity securities, asset-backed securities, corporate bonds and commercial paper) are included under the definition of "securities contract." Subsection (b) also specifies that purchase, sale and repurchase obligations under a participation in a commercial mortgage loan do not constitute "securities contracts." While a contract for the purchase, sale or repurchase of a participation may constitute a "securities contract," the purchase, sale or repurchase obligation embedded in a participation agreement does not make that agreement a "securities contract."

A number of terms used in the qualified financial contract provisions, but not defined therein, are intended to have the meanings set forth in the analogous provisions of the Bankruptcy Code or Federal Deposit Insurance Corporation Improvement Act ("FDICIA"), such as, for example, "securities clearing agency". The term "person," however, is not intended to be so interpreted. Instead, "person" is intended to have the meaning set forth in section 1 of title 1 of the United States Code.

Section 901(c) amends the definition of "commodity contract" in section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act. It clarifies the reference to guarantee or reimbursement obligation. Section 901(d) amends section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act with respect to its definition of a "forward contract." It also clarifies the reference to guarantee or reimbursement obligation.

Subsection (e) amends the definition of "repurchase agreement" to codify the substance of the FDIC's 1995 regulation defining repurchase agreement to include those on qualified foreign government securities.[144] The term "qualified foreign government securities" is defined to include those that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development (OECD). Subsection (e) reflects developments in the repurchase agreement markets, which increasingly use foreign government securities as the underlying asset. The securities are limited to those issued by or guaranteed by full members of the OECD, as well as countries that have concluded special lending arrangements with the International Monetary Fund associated with the Fund's General Arrangements to Borrow.

Subsection (e) also amends the definition of "repurchase agreement" to include those on mortgage-related securities, mortgage loans and interests therein, and expressly to include principal and interest-only U.S. government and agency securities as securities that can be the subject of a "repurchase agreement." The reference in the definition to United States government- and agency-issued or fully guaranteed securities is intended to include obligations issued or guaranteed by Fannie Mae and the Federal Home Loan Mortgage Corporation (Freddie Mac) as well as all obligations eligible for purchase by Federal Reserve banks under the similar language of section 14(b) of the Federal Reserve Act. This amendment is not intended to affect the status of repos involving securities or commodities as securities contracts, commodity contracts, or forward contracts, and their consequent eligibility for similar treatment under the qualified financial contract provisions. In par-

[144] *See* 12 C.F.R. § 360.5.

ticular, an agreement for the sale and repurchase of a security would continue to be a securities contract as defined in the FDIA, even if not a "repurchase agreement" as defined in the FDIA. Similarly, an agreement for the sale and repurchase of a commodity, even though not a "repurchase agreement" as defined in the FDIA, would continue to be a forward contract for purposes of the FDIA.

Subsection (e), like subsection (b) for "securities contracts," specifies that repurchase obligations under a participation in a commercial mortgage loan do not make the participation agreement a "repurchase agreement." Such repurchase obligations embedded in participations in commercial loans (such as recourse obligations) do not constitute a "repurchase agreement." A repurchase agreement involving the transfer of participations in commercial mortgage loans with a simultaneous agreement to repurchase the participation on demand or at a date certain 1 year or less after such transfer, however, would constitute a "repurchase agreement" as well as a "securities contract".

Section 901(f) of the Act amends the definition of "swap agreement" to include an "interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option." As amended, the definition of "swap agreement" will update the statutory definition and achieve contractual netting across economically similar transactions.

The definition of "swap agreement" originally was intended to provide sufficient flexibility to avoid the need to amend the definition as the nature and uses of swap transactions matured. To that end, the phrase "or any other similar agreement" was included in the definition. (The phrase "or any similar agreement" has been added to the definitions of "forward contract," "commodity contract," "repurchase agreement" and "securities contract" for the same reason.) To clarify this, subsection (f) expands the definition of "swap agreement" to include "any agreement or transaction that is similar to any other agreement or transaction referred to in [section 11(e)(8)(D)(vi) of the FDIA] and is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets . . . and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value."

The definition of "swap agreement," however, should not be interpreted to permit parties to document non-swaps as swap transactions. Traditional commercial arrangements, such as supply agreements, or other non-financial market transactions, such as commercial, residential or consumer loans, cannot be treated as

"swaps" under either the FDIA or the Bankruptcy Code simply because the parties purport to document or label the transactions as "swap agreements." In addition, these definitions apply only for purposes of the FDIA and the Bankruptcy Code. These definitions, and the characterization of a certain transaction as a "swap agreement," are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f). Similarly, Section 17 and a new paragraph of Section 11(e) of the FDIA provide that the definitions of "securities contract," "repurchase agreement," "forward contract," and "commodity contract," and the characterization of certain transactions as such a contract or agreement, are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f).

The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement, including any guarantee or reimbursement obligation related to a swap agreement. This ensures that any such agreement, arrangement or enhancement is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the FDIA and the Bankruptcy Code. Similar changes are made in the definitions of "forward contract," "commodity contract," "repurchase agreement" and "securities contract."

The use of the term "forward" in the definition of "swap agreement" is not intended to refer only to transactions that fall within the definition of "forward contract." Instead, a "forward" transaction could be a "swap agreement" even if not a "forward contract."

Section 901(f) clarifies that the definition pertains to an agreement or transaction is "of a type that" has been, presently, or in the future becomes, the subject of recurrent dealings in the swap markets.

Section 901(g) amends the FDIA by adding a definition for "transfer," which is a key term used in the FDIA, to ensure that it is broadly construed to encompass dispositions of property or interests in property. The definition tracks that in section 101 of the Bankruptcy Code.

Section 901(h) makes clarifying technical changes to conform the receivership and conservatorship provisions of the FDIA. It also clarifies that the FDIA expressly protects rights under security agreements, arrangements or other credit enhancements related to one or more qualified financial contracts (QFCs). An example of a security arrangement is a right of setoff, and examples of other credit enhancements are letters of credit, guarantees, reimbursement obligations and other similar agreements.

Section 901(i) of the Act clarifies that no provision of Federal or state law relating to the avoidance of preferential or fraudulent transfers (including the anti-preference provision of the National Bank Act) can be invoked to avoid a transfer made in connection with any QFC of an insured depository institution in conservator-

ship or receivership, absent actual fraudulent intent on the part of the transferee.

Sec. 902. Authority of the Corporation with Respect to Failed and Failing Institutions. Section 902 of the Act provides that no provision of law, including FDICIA, shall be construed to limit the power of the FDIC to transfer or to repudiate any QFC in accordance with its powers under the FDIA. As discussed below, there has been some uncertainty regarding whether or not FDICIA limits the authority of the FDIC to transfer or to repudiate QFCs of an insolvent financial institution. Section 902, as well as other provisions in the Act, clarify that FDICIA does not limit the transfer powers of the FDIC with respect to QFCs. Section 902 denies enforcement to "walkaway" clauses in QFCs. A walkaway clause is defined as a provision that, after calculation of a value of a party's position or an amount due to or from one of the parties upon termination, liquidation or acceleration of the QFC, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a non-defaulting party.

Sec. 903. Amendments Relating to Transfers of Qualified Financial Contracts. Section 903 of the Act amends the FDIA to expand the transfer authority of the FDIC to permit transfers of QFCs to "financial institutions" as defined in FDICIA or in regulations. This provision will allow the FDIC to transfer QFCs to a non-depository financial institution, provided the institution is not subject to bankruptcy or insolvency proceedings.

The new FDIA provision specifies that when the FDIC transfers QFCs that are cleared on or subject to the rules of a particular clearing organization, the transfer will not require the clearing organization to accept the transferee as a member of the organization. This provision gives the FDIC flexibility in resolving QFCs cleared on or subject to the rules of a clearing organization, while preserving the ability of such organizations to enforce appropriate risk reducing membership requirements. The amendment does not require the clearing organization to accept for clearing any QFCs from the transferee, except on the terms and conditions applicable to other parties permitted to clear through that clearing organization. "Clearing organization" is defined to mean a "clearing organization" within the meaning of FDICIA (as amended both by the CFMA and by Section 906 of the Act).

The new FDIA provision also permits transfers to an eligible financial institution that is a non-U.S. person, or the branch or agency of a non-U.S. person or a U.S. financial institution that is not an FDIC-insured institution if, following the transfer, the contractual rights of the parties would be enforceable substantially to the same extent as under the FDIA. It is expected that the FDIC would not transfer QFCs to such a financial institution if there were an impending change of law that would impair the enforceability of the parties' contractual rights.

Section 903(b) amends the notification requirements following a transfer of the QFCs of a failed depository institution to require the FDIC to notify any party to a transferred QFC of such transfer by 5:00 p.m. (Eastern Time) on the business day following the date of the appointment of the FDIC acting as receiver or following the date of such transfer by the FDIC acting as a conservator. This

amendment is consistent with the policy statement on QFCs issued by the FDIC on December 12, 1989.

Section 903(c) amends the FDIA to clarify the relationship between the FDIA and FDICIA. There has been some uncertainty whether FDICIA permits counterparties to terminate or liquidate a QFC before the expiration of the time period provided by the FDIA during which the FDIC may repudiate or transfer a QFC in a conservatorship or receivership. Subsection (c) provides that a party may not terminate a QFC based solely on the appointment of the FDIC as receiver until 5:00 p.m. (Eastern Time) on the business day following the appointment of the receiver or after the person has received notice of a transfer under FDIA section 11(d)(9), or based solely on the appointment of the FDIC as conservator, notwithstanding the provisions of FDICIA. This provides the FDIC with an opportunity to undertake an orderly resolution of the insured depository institution.

Section 903(c) also prohibits the enforcement of rights of termination or liquidation that arise solely because of the insolvency of the institution or are based on the "financial condition" of the depository institution in receivership or conservatorship. For example, termination based on a cross-default provision in a QFC that is triggered upon a default under another contract could be rendered ineffective if such other default was caused by an acceleration of amounts due under that other contract, and such acceleration was based solely on the appointment of a conservator or receiver for that depository institution. Similarly, a provision in a QFC permitting termination of the QFC based solely on a downgraded credit rating of a party will not be enforceable in an FDIC receivership or conservatorship because the provision is based solely on the financial condition of the depository institution in default. However, any payment, delivery or other performance-based default, or breach of a representation or covenant putting in question the enforceability of the agreement, will not be deemed to be based solely on financial condition for purposes of this provision. The amendment is not intended to prevent counterparties from taking all actions permitted and recovering all damages authorized upon repudiation of any QFC by a conservator or receiver, or from taking actions based upon a receivership or other financial condition-triggered default in the absence of a transfer (as contemplated in Section 11(e)(10) of the FDIA). The amendment allows the FDIC to meet its obligation to provide notice to parties to transferred QFCs by taking steps reasonably calculated to provide notice to such parties by the required time. This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Finally, the amendment permits the FDIC to transfer QFCs of a failed depository institution to a bridge bank or a depository institution organized by the FDIC for which a conservator is appointed either (i) immediately upon the organization of such institution or (ii) at the time of a purchase and assumption transaction between the FDIC and the institution. This provision clarifies that such institutions are not to be considered financial institutions that are ineligible to receive such transfers under FDIA section 11(e)(9). This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Sec. 904. Amendments Relating to Disaffirmance or Repudiation of Qualified Financial Contracts. Section 904 of the Act limits the disaffirmance and repudiation authority of the FDIC with respect to QFCs so that such authority is consistent with the FDIC's transfer authority under FDIA section 11(e)(9). This ensures that no disaffirmance, repudiation or transfer authority of the FDIC may be exercised to "cherry-pick" or otherwise treat independently all the QFCs between a depository institution in default and a person or any affiliate of such person. The FDIC has announced that its policy is not to repudiate or disaffirm QFCs selectively. This unified treatment is fundamental to the reduction of systemic risk.

Sec. 905. Clarifying Amendment Relating to Master Agreements. Section 905 of the Act specifies that a master agreement for one or more securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements will be treated as a single QFC under the FDIA (but only to the extent the underlying agreements are themselves QFCs). This provision ensures that cross-product netting pursuant to a master agreement, or pursuant to an umbrella agreement for separate master agreements between the same parties, each of which is used to document one or more qualified financial contracts, will be enforceable under the FDIA. Cross-product netting permits a wide variety of financial transactions between two parties to be netted, thereby maximizing the present and potential future risk-reducing benefits of the netting arrangement between the parties. Express recognition of the enforceability of such cross-product master agreements furthers the policy of increasing legal certainty and reducing systemic risks in the case of an insolvency of a large financial participant.

Sec. 906. Federal Deposit Insurance Corporation Improvement Act of 1991. Subsection (a)(1) of section 906 of the Act amends the definition of "clearing organization" to include clearinghouses that are subject to exemptions pursuant to orders of the Securities and Exchange Commission or the Commodity Futures Trading Commission and to include multilateral clearing organizations (the definition of which was added to FDICIA by the CFMA).

FDICIA provides that a netting arrangement will be enforced pursuant to its terms, notwithstanding the failure of a party to the agreement. The current netting provisions of FDICIA, however, limit this protection to "financial institutions," which include depository institutions. Section 906(a)(2) amends the FDICIA definition of covered institutions to include (i) uninsured national and State member banks, irrespective of their eligibility for deposit insurance and (ii) foreign banks (including the foreign bank and its branches or agencies as a combined group, or only the foreign bank parent of a branch or agency). The latter change will extend the protections of FDICIA to ensure that U.S. financial organizations participating in netting agreements with foreign banks are covered by the Act, thereby enhancing the safety and soundness of these arrangements. It is intended that a non-defaulting foreign bank and its branches and agencies be considered to be a single financial institution for purposes of the bilateral netting provisions of FDICIA (except to the extent that the non-defaulting foreign bank and its branches and agencies on the one hand, and the defaulting financial institution, on the other, have entered into agreements that clearly evidence an intention that the non-defaulting foreign bank

and its branches and agencies be treated as separate financial institutions for purposes of the bilateral netting provisions of FDICIA).

Subsection (a)(3) amends the FDICIA to provide that, for purposes of FDICIA, two or more clearing organizations that enter into a netting contract are considered "members" of each other. This assures the enforceability of netting arrangements involving two or more clearing organizations and a member common to all such organizations, thus reducing systemic risk in the event of the failure of such a member. Under the current FDICIA provisions, the enforceability of such arrangements depends on a case-by-case determination that clearing organizations could be regarded as members of each other for purposes of FDICIA.

Section 906(a)(4) of the Act amends the FDICIA definition of netting contract and the general rules applicable to netting contracts. The current FDICIA provisions require that the netting agreement must be governed by the law of the United States or a State to receive the protections of FDICIA. Many of these agreements, however, particularly netting arrangements covering positions taken in foreign exchange dealings, are governed by the laws of a foreign country. This subsection broadens the definition of "netting contract" to include those agreements governed by foreign law, and preserves the FDICIA requirement that a netting contract not be invalid under, or precluded by, Federal law.

Section 906(b) and (c) establish two exceptions to FDICIA's protection of the enforceability of the provisions of netting contracts between financial institutions and among clearing organization members. First, the termination provisions of netting contracts will not be enforceable based solely on (i) the appointment of a conservator for an insolvent depository institution under the FDIA or (ii) the appointment of a receiver for such institution under the FDIA, if such receiver transfers or repudiates QFCs in accordance with the FDIA and gives notice of a transfer by 5:00 p.m. on the business day following the appointment of a receiver. This change is made to confirm the FDIC's flexibility to transfer or repudiate the QFCs of an insolvent depository institution in accordance with the terms of the FDIA. This modification also provides important legal certainty regarding the treatment of QFCs under the FDIA, because the current relationship between the FDIA and FDICIA is unclear.

The second exception provides that FDICIA does not override a stay order under SIPA with respect to foreclosure on securities (but not cash) collateral of a debtor (section 911 of the Act makes a conforming change to SIPA). There is also an exception relating to insolvent commodity brokers. Subsections (b) and (c) also clarify that a security agreement or other credit enhancement related to a netting contract is enforceable to the same extent as the underlying netting contract.

Section 906(d) of the Act adds a new section 407 to FDICIA. This new section provides that, notwithstanding any other law, QFCs with uninsured national banks, uninsured Federal branches or agencies, or Edge Act corporations, or uninsured State member banks that operate, or operate as, a multilateral clearing organization and that are placed in receivership or conservatorship will be treated in the same manner as if the contract were with an insured

national bank or insured Federal branch for which a receiver or conservator was appointed. This provision will ensure that parties to QFCs with these institutions will have the same rights and obligations as parties entering into the same agreements with insured depository institutions. The new section also specifically limits the powers of a receiver or conservator for such an institution to those contained in 12 U.S.C. §§ 1821(e)(8), (9), (10), and (11), which address QFCs.

While the amendment would apply the same rules to such institutions that apply to insured institutions, the provision would not change the rules that apply to insured institutions. Nothing in this section would amend the International Banking Act, the Federal Deposit Insurance Act, the National Bank Act, or other statutory provisions with respect to receiverships of insured national banks or Federal branches.

Sec. 907. Bankruptcy Law Amendments. Section 907 of the Act makes a series of amendments to the Bankruptcy Code. Subsection (a)(1) amends the Bankruptcy Code definitions of "repurchase agreement" and "swap agreement" to conform with the amendments to the FDIA contained in sections 2(e) and 2(f) of the Act.

In connection with the definition of "repurchase agreement," the term "qualified foreign government securities" is defined to include securities that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development (OECD). This language reflects developments in the repurchase agreement markets, which increasingly use foreign government securities as the underlying asset. The securities are limited to those issued by or guaranteed by full members of the OECD, as well as countries that have concluded special lending arrangements with the International Monetary Fund associated with the Fund's General Arrangements to Borrow. The term "stockbroker," as defined in Bankruptcy Code section 101(53A), is intended to include within its scope an "OTC derivatives dealer", as that term is defined in Rule 3b-12 of the Securities Exchange Act of 1934, as amended, which is the new class of broker-dealer created by the Securities and Exchange Commission in 1999 to engage in over-the-counter derivatives transactions that are securities.

Subsection (a)(1) also amends the definition of "repurchase agreement" to include those on mortgage-related securities, mortgage loans and interests therein, and expressly to include principal and interest-only U.S. government and agency securities as securities that can be the subject of a "repurchase agreement." The reference in the definition to United States government- and agency-issued or fully guaranteed securities is intended to include obligations issued or guaranteed by Fannie Mae and the Federal Home Loan Mortgage Corporation (Freddie Mac) as well as all obligations eligible for purchase by Federal Reserve banks under the similar language of section 14(b) of the Federal Reserve Act.

This amendment is not intended to affect the status of repos involving securities or commodities as securities contracts, commodity contracts, or forward contracts, and their consequent eligibility for similar treatment under other provisions of the Bankruptcy Code. In particular, an agreement for the sale and repurchase of a security would continue to be a securities contract as de-

fined in the Bankruptcy Code and thus also would be subject to the Bankruptcy Code provisions pertaining to securities contracts, even if not a "repurchase agreement" as defined in the Bankruptcy Code. Similarly, an agreement for the sale and repurchase of a commodity, even though not a "repurchase agreement" as defined in the Bankruptcy Code, would continue to be a forward contract for purposes of the Bankruptcy Code and would be subject to the Bankruptcy Code provisions pertaining to forward contracts.

Subsection (a)(1) specifies that repurchase obligations under a participation in a commercial mortgage loan do not make the participation agreement a "repurchase agreement." Such repurchase obligations embedded in participations in commercial loans (such as recourse obligations) do not constitute a "repurchase agreement." However, a repurchase agreement involving the transfer of participations in commercial mortgage loans with a simultaneous agreement to repurchase the participation on demand or at a date certain 1 year or less after such transfer would constitute a "repurchase agreement" (as well as a "securities contract").

The definition of "swap agreement" is amended to include an "interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option." As amended, the definition of "swap agreement" will update the statutory definition and achieve contractual netting across economically similar transactions.

The definition of "swap agreement" originally was intended to provide sufficient flexibility to avoid the need to amend the definition as the nature and uses of swap transactions matured. To that end, the phrase "or any other similar agreement" was included in the definition. (The phrase "or any similar agreement" has been added to the definitions of "forward contract," "commodity contract," "repurchase agreement," and "securities contract" for the same reason.) To clarify this, subsection (a)(1) expands the definition of "swap agreement" to include "any agreement or transaction that is similar to any other agreement or transaction referred to in [Section 101(53B) of the Bankruptcy Code] and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets' and [that] is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value."

The definition of "swap agreement" in this subsection should not be interpreted to permit parties to document non-swaps as swap transactions. Traditional commercial arrangements, such as supply

agreements, or other non-financial market transactions, such as commercial, residential or consumer loans, cannot be treated as "swaps" under either the FDIA or the Bankruptcy Code because the parties purport to document or label the transactions as "swap agreements." These definitions, and the characterization of a certain transaction as a "swap agreement," are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (a)(1)(C). The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement, including any guarantee or reimbursement obligation related to a swap agreement. This ensures that any such agreement, arrangement or enhancement is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the Bankruptcy Code and the FDIA. Similar changes are made in the definitions of "forward contract," "commodity contract," "repurchase agreement," and "securities contract." An example of a security arrangement is a right of setoff; examples of other credit enhancements are letters of credit and other similar agreements. A security agreement or arrangement or guarantee or reimbursement obligation related to a "swap agreement," "forward contract," "commodity contract," "repurchase agreement" or "securities contract" will be such an agreement or contract only to the extent of the damages in connection with such agreement measured in accordance with Section 562 of the Bankruptcy Code (added by the Act). This limitation does not affect, however, the other provisions of the Bankruptcy Code (including Section 362(b)) relating to security arrangements in connection with agreements or contracts that otherwise qualify as "swap agreements," "forward contracts," "commodity contracts," "repurchase agreements" or "securities contracts."

The use of the term "forward" in the definition of "swap agreement" is not intended to refer only to transactions that fall within the definition of "forward contract." Instead, a "forward" transaction could be a "swap agreement" even if not a "forward contract."

Subsections (a)(2) and (a)(3) amend the Bankruptcy Code definitions of "securities contract" and "commodity contract," respectively, to conform them to the definitions in the FDIA.

Subsection (a)(2), like the amendments to the FDIA, amends the definition of "securities contract" expressly to encompass margin loans, to clarify the coverage of securities options and to clarify the coverage of repurchase and reverse repurchase transactions. The reference in subsection (b) to a "guarantee" by or to a "securities clearing agency" is intended to cover other arrangements, such as novation, that have an effect similar to a guarantee. The reference to a "loan" of a security in the definition is intended to apply to loans of securities, whether or not for a "permitted purpose" under margin regulations. The reference to "repurchase and reverse repurchase transactions" is intended to eliminate any inquiry under section 555 and related provisions as to whether a repurchase or reverse repurchase transaction is a purchase and sale transaction or a secured financing. Repurchase and reverse repurchase transactions meeting certain criteria are already covered under the defi-

nition of "repurchase agreement" in the Bankruptcy Code. Repurchase and reverse repurchase transactions on all securities (including, for example, equity securities, asset-backed securities, corporate bonds and commercial paper) are included under the definition of "securities contract". A repurchase or reverse repurchase transaction which is a "securities contract" but not a "repurchase agreement" would thus be subject to the "counterparty limitations" contained in section 555 of the Bankruptcy Code (i.e., only stockbrokers, financial institutions, securities clearing agencies and financial participants can avail themselves of section 555 and related provisions).

Subsection (a)(2) also specifies that purchase, sale and repurchase obligations under a participation in a commercial mortgage loan do not constitute "securities contracts." While a contract for the purchase, sale or repurchase of a participation may constitute a "securities contract," the purchase, sale or repurchase obligation embedded in a participation agreement does not make that agreement a "securities contract." Section 907(a) clarifies the reference to guarantee or reimbursement obligation.

Section 907(b) amends the Bankruptcy Code definitions of "financial institution" and "forward contract merchant." The definition for "financial institution" includes Federal Reserve Banks and the receivers or conservators of insolvent depository institutions. With respect to securities contracts, the definition of "financial institution" expressly includes investment companies registered under the Investment Company Act of 1940.

Subsection (b) also adds a new definition of "financial participant" to limit the potential impact of insolvencies upon other major market participants. This definition will allow such market participants to close-out and net agreements with insolvent entities under sections 362(b)(6), 555, and 556 even if the creditor could not qualify as, for example, a commodity broker. Sections 362(b)(6), 555 and 556 preserve the limitations of the right to close-out and net such contracts, in most cases, to entities who qualify under the Bankruptcy Code's counterparty limitations. However, where the counterparty has transactions with a total gross dollar value of at least $1 billion 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 million (aggregated across counterparties) in one or more agreements or transactions on any day during the previous 15-month period, sections 362(b)(6), 555 and 556 and corresponding amendments would permit it to exercise netting and related rights irrespective of its inability otherwise to satisfy those counterparty limitations. This change will help prevent systemic impact upon the markets from a single failure, and is derived from threshold tests contained in Regulation EE promulgated by the Federal Reserve Board in implementing the netting provisions of the Federal Deposit Insurance Corporation Improvement Act. It is intended that the 15-month period be measured with reference to the 15 months preceding the filing of a petition by or against the debtor.

"Financial participant" is also defined to include "clearing organizations" within the meaning of FDICIA (as amended by the CFMA and Section 906 of the Act). This amendment, together with the inclusion of "financial participants" as eligible counterparties in con-

nection with "commodity contracts," "forward contracts" and "securities contracts" and the amendments made in other Sections of the Act to include "financial participants" as counterparties eligible for the protections in respect of "swap agreements" and "repurchase agreements", take into account the CFMA and will allow clearing organizations to benefit from the protections of all of the provisions of the Bankruptcy Code relating to these contracts and agreements. This will further the goal of promoting the clearing of derivatives and other transactions as a way to reduce systemic risk. The definition of "financial participant" (as with the other provisions of the Bankruptcy Code relating to "securities contracts," "forward contracts," "commodity contracts," "repurchase agreements" and "swap agreements") is not mutually exclusive, i.e., an entity that qualifies as a "financial participant" could also be a "swap participant," "repo participant," "forward contract merchant," "commodity broker," "stockbroker," "securities clearing agency" and/or "financial institution."

Section 907(c) of the Act adds to the Bankruptcy Code new definitions for the terms "master netting agreement" and "master netting agreement participant." The definition of "master netting agreement" is designed to protect the termination and close-out netting provisions of cross-product master agreements between parties. Such an agreement may be used (i) to document a wide variety of securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements or (ii) as an umbrella agreement for separate master agreements between the same parties, each of which is used to document a discrete type of transaction. The definition includes security agreements or arrangements or other credit enhancements related to one or more such agreements and clarifies that a master netting agreement will be treated as such even if it documents transactions that are not within the enumerated categories of qualifying transactions (but the provisions of the Bankruptcy Code relating to master netting agreements and the other categories of transactions will not apply to such other transactions). A "master netting agreement participant" is any entity that is a party to an outstanding master netting agreement with a debtor before the filing of a bankruptcy petition.

Subsection (d) amends section 362(b) of the Bankruptcy Code to protect enforcement, free from the automatic stay, of setoff or netting provisions in swap agreements and in master netting agreements and security agreements or arrangements related to one or more swap agreements or master netting agreements. This provision parallels the other provisions of the Bankruptcy Code that protect netting provisions of securities contracts, commodity contracts, forward contracts, and repurchase agreements. Because the relevant definitions include related security agreements, the references to "setoff" in these provisions, as well as in section 362(b)(6) and (7) of the Bankruptcy Code, are intended to refer also to rights to foreclose on, and to set off against obligations to return, collateral securing swap agreements, master netting agreements, repurchase agreements, securities contracts, commodity contracts, or forward contracts. Collateral may be pledged to cover the cost of replacing the defaulted transactions in the relevant market, as well as other costs and expenses incurred or estimated to be incurred for the purpose of hedging or reducing the risks arising out

of such termination. Enforcement of these agreements and arrangements free from the automatic stay is consistent with the policy goal of minimizing systemic risk.

Subsection (d) also clarifies that the provisions protecting setoff and foreclosure in relation to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, and master netting agreements free from the automatic stay apply to collateral pledged by the debtor but that cannot technically be "held by" the creditor, such as receivables and book-entry securities, and to collateral that has been repledged by the creditor and securities re-sold pursuant to repurchase agreements.

Subsections (e) and (f) of section 907 of the Act amend sections 546 and 548(d) of the Bankruptcy Code to provide that transfers made under or in connection with a master netting agreement may not be avoided by a trustee except where such transfer is made with actual intent to hinder, delay or defraud and not taken in good faith. This amendment provides the same protections for a transfer made under, or in connection with, a master netting agreement as currently is provided for margin payments, settlement payments and other transfers received by commodity brokers, forward contract merchants, stockbrokers, financial institutions, securities clearing agencies, repo participants, and swap participants under sections 546 and 548(d), except to the extent the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.

Subsections (g), (h), (i), and (j) of section 907 clarify that the provisions of the Bankruptcy Code that protect (i) rights of liquidation under securities contracts, commodity contracts, forward contracts and repurchase agreements also protect rights of termination or acceleration under such contracts, and (ii) rights to terminate under swap agreements also protect rights of liquidation and acceleration.

Section 907(k) of the Act adds a new section 561 to the Bankruptcy Code to protect the contractual right of a master netting agreement participant to enforce any rights of termination, liquidation, acceleration, offset or netting under a master netting agreement. Such rights include rights arising (i) from the rules of a derivatives clearing organization, multilateral clearing organization, securities clearing agency, securities exchange, securities association, contract market, derivatives transaction execution facility or board of trade, (ii) under common law, law merchant or (iii) by reason of normal business practice. This reflects the enactment of the CFMA and the current treatment of rights under swap agreements under section 560 of the Bankruptcy Code. Similar changes to reflect the enactment of the CFMA have been made to the definition of "contractual right" for purposes of Sections 555, 556, 559 and 560 of the Bankruptcy Code.

Subsections (b)(2)(A) and (b)(2)(B) of new Section 561 limit the exercise of contractual rights to net or to offset obligations where the debtor is a commodity broker and one leg of the obligations sought to be netted relates to commodity contracts traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act. Under subsection (b)(2)(A) netting or offsetting is not permitted in these circumstances if the party seeking to net or to offset has no positive

net equity in the commodity accounts at the debtor. Subsection (b)(2)(B) applies only if the debtor is a commodity broker, acting on behalf of its own customer, and is in turn a customer of another commodity broker. In that case, the latter commodity broker may not net or offset obligations under such commodity contracts with other claims against its customer, the debtor. Subsections (b)(2)(A) and (b)(2)(B) limit the depletion of assets available for distribution to customers of commodity brokers. Subsection (b)(2)(C) provides an exception to subsections (b)(2)(A) and (b)(2)(B) for cross-margining and other similar arrangements approved by, or submitted to and not rendered ineffective by, the Commodity Futures Trading Commission, as well as certain other netting arrangements.

For the purposes of Bankruptcy Code sections 555, 556, 559, 560 and 561, it is intended that the normal business practice in the event of a default of a party based on bankruptcy or insolvency is to terminate, liquidate or accelerate securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements with the bankrupt or insolvent party. The protection of netting and offset rights in sections 560 and 561 is in addition to the protections afforded in sections 362(b)(6), (b)(7), (b)(17) and (b)(28) of the Bankruptcy Code.

Under the Act, the termination, liquidation or acceleration rights of a master netting agreement participant are subject to limitations contained in other provisions of the Bankruptcy Code relating to securities contracts and repurchase agreements. In particular, if a securities contract or repurchase agreement is documented under a master netting agreement, a party's termination, liquidation and acceleration rights would be subject to the provisions of the Bankruptcy Code relating to orders authorized under the provisions of SIPA or any statute administered by the SEC. In addition, the netting rights of a party to a master netting agreement would be subject to any contractual terms between the parties limiting or waiving netting or set off rights. Similarly, a waiver by a bank or a counterparty of netting or set off rights in connection with QFCs would be enforceable under the FDIA.

New Section 561 of the Bankruptcy Code clarifies that the provisions of the Bankruptcy Code related to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements apply in a proceeding ancillary to a foreign insolvency proceeding under new section 304 of the Bankruptcy Code.

Subsections (l) and (m) of section 907 of the Act clarify that the exercise of termination and netting rights will not otherwise affect the priority of the creditor's claim after the exercise of netting, foreclosure and related rights.

Subsection (n) amends section 553 of the Bankruptcy Code to clarify that the acquisition by a creditor of setoff rights in connection with swap agreements, repurchase agreements, securities contracts, forward contracts, commodity contracts and master netting agreements cannot be avoided as a preference. This subsection also adds setoff of the kinds described in sections 555, 556, 559, 560, and 561 of the Bankruptcy Code to the types of setoff excepted from section 553(b).

Section 907(o), as well as other subsections of the Act, adds references to "financial participant" in all the provisions of the Bank-

ruptcy Code relating to securities, forward and commodity contracts and repurchase and swap agreements.

Sec. 908. Recordkeeping Requirements. Section 908 of the Act amends section 11(e)(8) of the Federal Deposit Insurance Act to explicitly authorize the FDIC, in consultation with appropriate Federal banking agencies, to prescribe regulations on recordkeeping by any insured depository institution with respect to QFCs only if the insured financial institution is in a troubled condition (as such term is defined in the FDIA).

Sec. 909. Exemptions from Contemporaneous Execution Requirement. Section 909 of the Act amends FDIA section 13(e)(2) to provide that an agreement for the collateralization of governmental deposits, bankruptcy estate funds, Federal Reserve Bank or Federal Home Loan Bank extensions of credit or one or more QFCs shall not be deemed invalid solely because such agreement was not entered into contemporaneously with the acquisition of the collateral or because of pledges, delivery or substitution of the collateral made in accordance with such agreement.

The amendment codifies portions of policy statements issued by the FDIC regarding the application of section 13(e), which codifies the "D'Oench Duhme" doctrine. With respect to QFCs, this codification recognizes that QFCs often are subject to collateral and other security arrangements that may require posting and return of collateral on an ongoing basis based on the mark-to-market values of the collateralized transactions. The codification of only portions of the existing FDIC policy statements on these and related issues should not give rise to any negative implication regarding the continued validity of these policy statements.

Sec. 910. Damage Measure. Section 910 of the Act adds a new section 562 to the Bankruptcy Code providing that damages under any swap agreement, securities contract, forward contract, commodity contract, repurchase agreement or master netting agreement will be calculated as of the earlier of (i) the date of rejection of such agreement by a trustee or (ii) the date or dates of liquidation, termination or acceleration of such contract or agreement.

Section 562 provides an exception to the rules in (i) and (ii) if there are no commercially reasonable determinants of value as of such date or dates, in which case damages are to be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value. Although it is expected that in most circumstances damages would be measured as of the date or dates of either rejection or liquidation, termination or acceleration, in certain unusual circumstances, such as dysfunctional markets or liquidation of very large portfolios, there may be no commercially reasonable determinants of value for liquidating any such agreements or contracts or for liquidating all such agreements and contracts in a large portfolio on a single day.

The party determining damages is given limited discretion to determine the dates as of which damages are to be measured. Its actions are circumscribed unless there are no "commercially reasonable" determinants of value for it to measure damages on the date or dates of either rejection or liquidation, termination or acceleration. The references to "commercially reasonable" are intended to reflect existing state law standards relating to a creditor's actions in determining damages. New section 562 provides that if damages

are not measured as of either the date of rejection or the date or dates of liquidation, termination or acceleration and the other party challenges the timing of the measurement of damages by the party determining the damages, that party has the burden of proving the absence of any commercially reasonable determinants of value.

New section 562 is not intended to have any impact on the determination under the Bankruptcy Code of the timing of damages for contracts and agreements other than those specified in section 562. Also, section 562 does not apply to proceedings under the FDIA, and it is not intended that Section 562 have any impact on the interpretation of the provisions of the FDIA relating to timing of damages in respect of QFCs or other contracts.

Sec. 911. SIPC Stay. Section 911 of the Act amends SIPA to provide that an order or decree issued pursuant to SIPA shall not operate as a stay of any right of liquidation, termination, acceleration, offset or netting under one or more securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements or master netting agreements (as defined in the Bankruptcy Code and including rights of foreclosure on collateral), except that such order or decree may stay any right to foreclose on or dispose of securities (but not cash) collateral pledged by the debtor or sold by the debtor under a repurchase agreement or lent by the debtor under a securities lending agreement. A corresponding amendment to FDICIA is made by section 906. A creditor that was stayed in exercising rights against such securities would be entitled to post-insolvency interest to the extent of the value of such securities.

TITLE X. PROTECTION OF FAMILY FARMERS

Sec. 1001. Permanent Reenactment of Chapter 12. Chapter 12 is a specialized form of bankruptcy relief available only to a "family farmer with regular annual income,"[145] a defined term.[146] This form of bankruptcy relief permits eligible family farmers, under the supervision of a bankruptcy trustee,[147] to reorganize their debts pursuant to a repayment plan.[148] The special attributes of chapter 12 make it better suited to meet the particularized needs of family farmers in financial distress than other forms of bankruptcy relief, such as chapter 11[149] and chapter 13.[150]

Chapter 12 was enacted on a temporary 7-year basis as part of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986[151] in response to the farm financial crisis of the early- to mid-1980's.[152] It was subsequently reenacted

[145] 11 U.S.C. § 109(f).
[146] 11 U.S.C. § 101(19).
[147] 11 U.S.C. § 1202.
[148] 11 U.S.C. § 1222.
[149] For example, chapter 12 is typically less complex and expensive than chapter 11, a form of bankruptcy relief generally utilized to effectuate large corporate reorganizations.
[150] Chapter 13, a form of bankruptcy relief for individuals seeking to reorganize their debts, limits its eligibility to debtors with debts in lower amounts than permitted for eligibility purposes under chapter 12. *Cf.* 11 U.S.C. §§ 109(e), 101(18).
[151] Pub. L. No. 99–554, § 255, 100 Stat. 3088, 3105 (1986).
[152] *See* U.S. DEPT. OF AGRICULTURE, INFO. BULL. NO. 724–09, ISSUES IN AGRICULTURAL AND RURAL FINANCE: DO FARMERS NEED A SEPARATE CHAPTER IN THE BANKRUPTCY CODE? (Oct. 1997). As one of the principal proponents of this legislation explained:

Continued

and extended on several occasions. The most recent extension provides that chapter remains in effect until June 30, 2003.[153]

Section 1001(a) of the Act reenacts chapter 12 of the Bankruptcy Code and provides that such reenactment takes effect as of the date of enactment. Section 1001(b) makes a conforming amendment to section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986. As a result of this provision, chapter 12 becomes a permanent form of relief under the Bankruptcy Code.

Sec. 1002. Debt Limit Increase. Section 1002 of the Act amends section 104(b) of the Bankruptcy Code to provide for periodic adjustments for inflation of the debt eligibility limit for family farmers.

Sec. 1003. Certain Claims Owed to Governmental Units. Subsection (a) of section 1003 of the Act amends section 1222(a) of the Bankruptcy Code to add an exception with respect to payments to a governmental unit for a debt entitled to priority under section 507 if such debt arises from the sale, transfer, exchange, or other disposition of an asset used in the debtor's farming operation, but only if the debtor receives a discharge. Section 1003(b) amends section 1231(b) of the Bankruptcy Code to have it apply to any governmental unit. Subsection (c) provides that section 1003 becomes effective on the date of enactment of this Act and applies to cases commenced after such effective date.

Sec. 1004. Definition of Family Farmer. Section 1004 of the Act amends the definition of "family farmer" in section 101(18) of the Bankruptcy Code to increase the debt eligibility limit from $1,500,000 to $3,237,000. It also reduces the percentage of the farmer's liabilities that must arise out of the debtor's farming operation for eligibility purposes from 80 percent to 50 percent.

Sec. 1005. Elimination of Requirement that Family Farmer and Spouse Receive over 50 Percent of Income from Farming Operation in Year Prior to Bankruptcy. Section 1005 of the Act amends the Bankruptcy Code's definition of "family farmer" with respect to the determination of the farmer's income. Current law provides that a debtor, in order to be eligible to be a family farmer, must derive a specified percentage of his or her income from farming activities for the taxable year preceding the commencement of the bankruptcy case. Section 1005 adjusts the threshold percentage to be met during either: (1) the taxable year preceding the filing of the bankruptcy case; or (2) the taxable year in the second and third taxable years preceding the filing of the bankruptcy case.

Sec. 1006. Prohibition of Retroactive Assessment of Disposable Income. Section 1006 of the Act amends the Bankruptcy Code in two respects concerning chapter 12 plans. Section 1006(a) amends

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I doubt there will be anything that we do that will have such an immediate impact in the grassroots of our country with respect to the situation that exists in most of the heartland, and that is in the agricultural sector. . . .

. . .

You know, William Jennings Bryan in his famous speech, the Cross of Gold, almost 60 years ago [sic], stated these words: "Destroy our cities and they will spring up again as if by magic; but destroy our farms, and the grass will grow in every city in our country."

This legislation will hopefully stem the tide that we have seen so recently in the massive bankruptcies in the family farm area.

132 CONG. REC. 28,147 (1986) (statement of Rep. Mike Synar (D-Okla.)).

[153] Pub. L. No. 107–377 (2002).

Bankruptcy Code section 1225(b) to permit the court to confirm a plan even if the distribution proposed under the plan equal or exceed the debtor's projected disposable income for that period, providing the plan otherwise satisfies the requirements for confirmation. Section 1006(b) amends Bankruptcy Code section 1229 to restrict the bases for modifying a confirmed chapter 12 plan. Specifically, Section 1006(b) to provide that a confirmed chapter 12 plan may not be modified to increase the amount of payments due prior to the date of the order modifying the confirmation of the plan. Where the modification is based on an increase in the debtor's disposable income, the plan may not be modified to require payments to unsecured creditors in any particular month in an amount greater than the debtor's disposable income for that month, unless the debtor proposes such a modification. Section 1006(b) further provides that a modification of a plan shall not require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed, unless the debtor proposes such a modification.

Sec. 1007. Family Fishermen. Subsection (a) of section 1007 of the Act amends Bankruptcy Code section 101 to add definitions of "commercial fishing operation," "commercial fishing vessel," "family fisherman" and "family fisherman with regular annual income." The definition of "commercial fishing operation" includes the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products. The term "commercial fishing vessel" is defined as a vessel used by a fisher to "carry out a commercial fishing operation." The term "family fisherman" is defined as an individual engaged in a commercial fishing operation, with an aggregate debt limit of $1.5 million. The definition specifies that at least 80 percent of those debts must be derived from a commercial fishing operation. The percentage of income that must be derived from such operation is specified to be more than 50 percent of the individual's gross income for the taxable year preceding the taxable year in which the case was filed. Similar provisions are included for corporations and partnerships. The term "family fisherman with regular annual income" is defined as a family fisherman whose annual income is sufficiently stable and regular to enable such person to make payments under a chapter 12 plan. Section 1007(b) amends Bankruptcy Code section 109 to provide that a family fisherman is eligible to be a debtor under chapter 12. Section 1007(c) amends the heading of chapter 12 to include a reference to family fisherman and makes conforming revisions to Sections 1203 and 1206.

TITLE XI. HEALTH CARE AND EMPLOYEE BENEFITS

Sec. 1101. Definitions. Subsection (a) of section 1101 of the Act amends section 101 of the Bankruptcy Code to add a definition of "health care business." The definition includes any public or private entity (without regard to whether that entity is for or not for profit) that is primarily engaged in offering to the general public facilities and services for diagnosis or treatment of injury, deformity or disease; and surgical, drug treatment, psychiatric or obstetric care. It also includes the following entities: (1) a general or specialized hospital; (2) an ancillary ambulatory, emergency, or surgical treatment facility; (3) a hospice; (d) a home health agency; (e) other

health care institution that is similar to an entity referred to in (a) through (d); and other long-term care facility. These include a skilled nursing facility, intermediate care facility; assisted living facility, home for the aged, domiciliary care facility, and health care institution that is related to an aforementioned facility. Section 1101(b) amends Bankruptcy Code section 101 to add a definition of "patient." The term means an individual who obtains or receives services from a health care business. Section 1101(c) amends section 101 of the Bankruptcy Code to add a definition of "patient records." The term means any written document relating to a patient or record recorded in a magnetic, optical, or other form of electronic medium. Section 1101(d) specifies that the amendments effected by new section 101(27A) do not affect the interpretation of section 109(b).

Sec. 1102. Disposal of Patient Records. Section 1102 of the Act adds a provision to the Bankruptcy Code specifying requirements for the disposal of patient records in a chapter 7, 9, or 11 case of a health care business where the trustee lacks sufficient funds to pay for the storage of such records in accordance with applicable Federal or state law. The requirements chiefly consist of providing notice to the affected patients and specifying the method of disposal for unclaimed records. They are intended to protect the privacy and confidentiality of a patient's medical records when they are in the custody of a health care business in bankruptcy. The provision specifies the following requirements:

(1) The trustee shall: (a) publish notice in one or more appropriate newspapers stating that if the records are not claimed by the patient or an insurance provider (if permitted under applicable law) within 90 days of the date of such notice, then the trustee will destroy such records; and (b) during such 90-day period, attempt to directly notify by mail each patient and appropriate insurance carrier of the claiming or disposing of such records.

(2) If after providing such notice patient records are not claimed within the specified period, the trustee shall, upon the expiration of such period, send a request by certified mail to each appropriate Federal agency to request permission from such agency to deposit the records with the agency.

(3) If after providing the notice as set forth above, patient records are not claimed, the trustee shall destroy such records as follows: (a) by shredding or burning, if the records are written; or (b) by destroying the records so that their information cannot be retrieved, if the records are magnetic, optical or electronic.

It is anticipated that if the estate of the debtor lacks the funds to pay for the costs and expenses related to the above, the trustee may recover such costs and expenses under section 506(c) of the Bankruptcy Code.

Sec. 1103. Administrative Expense Claim for Costs of Closing a Health Care Business and Other Administrative Expenses. Section 1103 of the Act amends section 503(b) of the Bankruptcy Code to provide that the actual, necessary costs and expenses of closing a health care business (including the disposal of patient records or

transferral of patients) incurred by a trustee, Federal agency, or a department or agency of a state are allowed administrative expenses.

Sec. 1104. Appointment of Ombudsman to Act as Patient Advocate. Section 1104 of the Act adds a provision to the Bankruptcy Code requiring the court to order the appointment of an ombudsman to monitor the quality of patient care within 30 days after commencement of a chapter 7, 9, or 11 health care business bankruptcy case, unless the court finds that such appointment is not necessary for the protection of patients under the specific facts of the case. The ombudsman must be a disinterested person. If the health care business is a long-term care facility, a person who is serving as a State Long-Term Care Ombudsman of the Older Americans Act of 1965 may be appointed as the ombudsman in such case. The ombudsman must: (1) monitor the quality of patient care to the extent necessary under the circumstances, including interviewing patients and physicians; (2) report to the court, not less than 60 days from the date of appointment and then every 60 days thereafter, at a hearing or in writing regarding the quality of patient care at the health care business involved; and (3) notify the court by motion or written report (with notice to appropriate parties in interest) if the ombudsman determines that the quality of patient care is declining significantly or is otherwise being materially compromised. The provision requires the ombudsman to maintain any information obtained that relates to patients (including patient records) as confidential. Section 1104(b) amends section 330(a)(1) of the Bankruptcy Code to authorize the payment of reasonable compensation to an ombudsman.

Sec. 1105. Debtor in Possession; Duty of Trustee to Transfer Patients. Section 1105 of the Act amends section 704(a) of the Bankruptcy Code to require a trustee or debtor in possession to use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business. The transferee health care business should be in the vicinity of the transferor health care business, provide the patient with services that are substantially similar to those provided by the transferor health care business, and maintain a reasonable quality of care.

Sec. 1106. Exclusion from Program Participation Not Subject to Automatic Stay. Section 1106 amends section 362(b) of the Bankruptcy Code to except from the automatic stay the exclusion by the Secretary of Health and Human Services of a debtor from participation in the Medicare program or other specified Federal health care programs.

TITLE XII. TECHNICAL AMENDMENTS

Sec. 1201. Definitions. Section 1201 of the Act amends the definitions contained in section 101 of the Bankruptcy Code. Paragraphs (1), (2), (4), and (7) of section 1201 make technical changes to section 101 to convert each definition into a sentence (thereby facilitating future amendments to the separate paragraphs) and to redesignate the definitions in correct and completely numerical sequence. Paragraph (3) of section 1101 makes necessary and conforming amendments to cross references to the newly redesignated definitions.

Paragraph (5) of section 1201 concerns single asset real estate debtors. A single asset real estate chapter 11 case presents special concerns. As the name implies, the principal asset in this type of case consists of some form of real estate, such as undeveloped land. Typically, the form of ownership of a single asset real estate debtor is a corporation or limited partnership. The largest creditor in a single asset real estate case is typically the secured lender who advanced the funds to the debtor to acquire the real property. Often, a single asset real estate debtor resorts to filing for bankruptcy relief for the sole purpose of staying an impending foreclosure proceeding or sale commenced by the secured lender. Foreclosure actions are filed when the debtor lacks sufficient cash flow to service the debt and maintain the property. Taxing authorities may also have liens against the property. Based on the nature of its principal asset, a single asset real estate debtor often has few, if any, unsecured creditors. If unsecured creditors exist, they may have only nominal claims against the single asset real estate debtor. Depending on the nature and ownership of any business operating on the debtor's real property, the debtor may have few, if any, employees. Accordingly, there may be little interest on behalf of unsecured creditors in a single asset real estate case to serve on a creditors' committee.

In 1994, the Bankruptcy Code was amended to accord special treatment for single asset real estate debtors. It defined this type of debtor as a bankruptcy estate comprised of a single piece of real property or project, other than residential real property with fewer than four residential units. The property or project must generate substantially all of the debtor's gross income. A debtor that conducts substantial business on the property beyond that relating to its operation is excluded from this definition. In addition, the definition fixed a monetary cap. To qualify as a single asset real estate debtor, the debtor could not have noncontingent, liquidated secured debts in excess of $4 million. Subparagraph (5)(A) amends the definition of "single asset real estate" to exclude family farmers from this definition. Paragraph (5)(B) amends section 101(51B) of the Bankruptcy Code to eliminate the $4 million debt limitation on single asset real estate. The present $4 million cap prevents the use of the expedited relief procedure in many commercial property reorganizations, and effectively provides an opportunity for a number of debtors to abusively file for bankruptcy in order to obtain the protection of the automatic stay against their creditors. As a result of this amendment, creditors in more cases will be able to obtain the expedited relief from the automatic stay which is made available under section 362(d)(3) of the Bankruptcy Code.

Paragraph (6) of section 1201, together with section 1214, respond to a 1997 Ninth Circuit case, in which two purchase money lenders (without knowledge that the debtor had recently filed an undisclosed chapter 11 case that was subsequently converted to chapter 7), funded the debtor's acquisition of an apartment complex and recorded their purchase-money deed of trust immediately following recordation of the deed to the debtors.[154] Specifically, it amends the definition of "transfer" in section 101(54) of the Bank-

[154] Thompson v. Margen (*In re* McConville), 110 F.3d 47 (9th Cir.), *cert. denied*, 522 U.S. 966 (1997).

ruptcy Code to include the "creation of a lien." This amendment gives expression to a widely held understanding since the enactment of the Bankruptcy Reform Act of 1978,[155] that is, a transfer includes the creation of a lien.

Sec. 1202. Adjustment of Dollar Amounts. Section 1202 of the Act corrects an omission in section 104(b) of the Bankruptcy Code to include a reference to section 522(f)(3).

Sec. 1203. Extension of Time. Section 1203 of the Act makes a technical amendment to correct a reference error described in amendment notes contained in the United States Code. As specified in the amendment note relating to subsection (c)(2) of section 108 of the Bankruptcy Code, the amendment made by section 257(b)(2)(B) of Public Law 99–554 could not be executed as stated.

Sec. 1204. Technical Amendments. Section 1204 of the Act makes technical amendments to Bankruptcy Code sections 109(b)(2) (to strike an statutory cross reference), 541(b)(2) (to add "or" to the end of this provision), and 522(b)(1) (to replace "product" with "products").

Sec. 1205. Penalty for Persons Who Negligently or Fraudulently Prepare Bankruptcy Petitions. Section 1205 of the Act amends section 110(j)(4) of the Bankruptcy Code to change the reference to attorneys from the singular possessive to the plural possessive.

Sec. 1206. Limitation on Compensation of Professional Persons. Section 328(a) of the Bankruptcy Code provides that a trustee or a creditors' and equity security holders' committee may, with court approval, obtain the services of a professional person on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Section 1206 of the Act amends section 328(a) to include compensation "on a fixed or percentage fee basis" in addition to the other specified forms of reimbursement.

Sec. 1207. Effect of Conversion. Section 1207 of the Act makes a technical correction in section 348(f)(2) of the Bankruptcy Code to clarify that the first reference to property, like the subsequent reference to property, is a reference to property of the estate.

Sec. 1208. Allowance of Administrative Expenses. Section 1208 of the Act amends section 503(b)(4) of the Bankruptcy Code to limit the types of compensable professional services rendered by an attorney or accountant that can qualify as administrative expenses in a bankruptcy case. Expenses for attorneys or accountants incurred by individual members of creditors' or equity security holders' committees are not recoverable, but expenses incurred for such professional services incurred by such committees themselves would be.

Sec. 1209. Exceptions to Discharge. Section 1209 of the Act amends section 523(a) of the Bankruptcy Code to correct a technical error in the placement of paragraph (15), which was added to section 523 by section 304(e)(1) of the Bankruptcy Reform Act of 1994. Section 1209 also amends section 523(a)(9), which makes nondischargeable any debt resulting from death or personal injury arising from the debtor's unlawful operation of a motor vehicle while intoxicated, to add "watercraft, or aircraft" after "motor vehicle." Neither additional term should be defined or included as a "motor vehicle" in section 523(a)(9) and each is intended to com-

[155] Pub. L. No. 95–598, 92 Stat. 2549 (1978).

prise unpowered as well as motor-powered craft. Congress previously made the policy judgment that the equities of persons injured by drunk drivers outweigh the responsible debtor's interest in a fresh start, and here clarifies that the policy applies not only on land but also on the water and in the air. Viewed from a practical standpoint, this provision closes a loophole that gives intoxicated watercraft and aircraft operators preferred treatment over intoxicated motor vehicle drivers and denies victims of alcohol and drug related boat and plane accidents the same rights accorded to automobile accident victims under current law. Finally, this section corrects a grammatical error in section 523(e).

Sec. 1210. Effect of Discharge. Section 1210 of the Act makes technical amendments to correct errors in section 524(a)(3) of the Bankruptcy Code caused by section 257(o)(2) of Public Law 99–554 and section 501(d)(14)(A) of Public Law 103–394.[156]

Sec. 1211. Protection Against Discriminatory Treatment. Section 1211 of the Act conforms a reference to its antecedent reference in section 525(c) of the Bankruptcy Code. The omission of "student" before "grant" in the second place it appears in section 525(c) made possible the interpretation that a broader limitation on lender discretion was intended, so that no loan could be denied because of a prior bankruptcy if the lending institution was in the business of making student loans. Section 1211 is intended to make clear that lenders involved in making government guaranteed or insured student loans are not barred by this Bankruptcy Code provision from denying other types of loans based on an applicant's bankruptcy history; only student loans and grants, therefore, cannot be denied under section 525(c) because of a prior bankruptcy.

Sec. 1212. Property of the Estate. Production payments are royalties tied to the production of a certain volume or value of oil or gas, determined without regard to production costs. They typically would be paid by an oil or gas operator to the owner of the underlying property on which the oil or gas is found. Under section 541(b)(4)(B)(ii) of the Bankruptcy Code, added by the Bankruptcy Reform Act of 1994, production payments are generally excluded from the debtor's estate, provided they could be included only by virtue of section 542 of the Bankruptcy Code, which relates generally to the obligation of those holding property which belongs in the estate to turn it over to the trustee. Section 1212 of the Act adds to this proviso a reference to section 365 of the Bankruptcy Code, which authorizes the trustee to assume or reject an executory contract or unexpired lease. It thereby clarifies the original Congressional intent to generally exclude production payments from the debtor's estate.

Sec. 1213. Preferences. Section 547 of the Bankruptcy Code authorizes a trustee to avoid a preferential payment made to a creditor by a debtor within 90 days of filing, whether the creditor is an insider or an outsider. To address the concern that a corporate insider (such as an officer or director who is a creditor of his or her own corporation has an unfair advantage over outside creditors, section 547 also authorizes a trustee to avoid a preferential payment made to an insider creditor between 90 days and 1 year be-

[156] For a description of these errors, see the appropriate footnote and amendment notes in the United States Code.

fore filing. Several recent cases, including *DePrizio*,[157] allowed the trustee to "reach-back" and avoid a transfer to a noninsider creditor made within the 90-day to 1-year time frame if an insider benefitted from the transfer in some way. This had the effect of discouraging lenders from obtaining loan guarantees, lest transfers to the lender be vulnerable to recapture by reason of the debtor's insider relationship with the loan guarantor. Section 202 of the Bankruptcy Reform Act of 1994 addressed the *DePrizio* problem by inserting a new section 550(c) into the Bankruptcy Code to prevent avoidance or recovery from a noninsider creditor during the 90-day to 1-year period even though the transfer to the noninsider benefitted an insider creditor. The 1994 amendments, however, failed to make a corresponding amendment to section 547, which deals with the avoidance of preferential transfers. As a result, a trustee could still utilize section 547 to avoid a preferential lien given to a noninsider bank, more than 90 days but less than 1 year before bankruptcy, if the transfer benefitted an insider guarantor of the debtor's debt. Accordingly, section 1213 of the Act makes a perfecting amendment to section 547 to provide that if the trustee avoids a transfer given by the debtor to a noninsider for the benefit of an insider creditor between 90 days and 1 year before filing, that avoidance is valid only with respect to the insider creditor. Thus both the previous amendment to section 550 and the perfecting amendment to section 547 protect the noninsider from the avoiding powers of the trustee exercised with respect to transfers made during the 90-day to 1 year pre-filing period. This provision is intended to apply to any case, including any adversary proceeding, that is pending or commenced on or after the date of enactment of this Act.

Sec. 1214. Postpetition Transactions. Section 1214 of the Act amends section 549(c) of the Bankruptcy Code to clarify its application to an interest in real property. This amendment should be construed in conjunction with section 1201 of the Act.[158]

Sec. 1215. Disposition of Property of the Estate. Section 1215 of the Act amends section 726(b) of the Bankruptcy Code to strike an erroneous reference.[159]

Sec. 1216. General Provisions. Section 1216 of the Act amends section 901(a) of the Bankruptcy Code to correct an omission in a list of sections applicable to cases under chapter 9 of title 11 of the United States Code.

Sec. 1217. Abandonment of Railroad Line. Section 1217 of the Act amends section 1170(e)(1) of the Bankruptcy Code to reflect the fact that section 11347 of title 49 of the United States Code was repealed by section 102(a) of Public Law 104–88 and that provisions comparable to section 11347 appear in section 11326(a) of title 49 of the United States Code.

Sec. 1218. Contents of Plan. Section 1218 of the Act amends section 1172(c)(1) of the Bankruptcy Code to reflect the fact that section 11347 of title 49 of the United States Code was repealed by section 102(a) of Public Law 104–88 and that provisions com-

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[157] Levit v. Ingersoll Rand Fin. Corp., 874 F.2d 1186 (7th Cir. 1989); *see, e.g., Ray* v. *City Bank and Trust Co.* (*In re* C-L Cartage Co.), 899 F.2d 1490 (6th Cir. 1990); *Manufacturers Hanover Leasing Corp.* v. *Lowrey* (*In re* Robinson Bros. Drilling, Inc.), 892 F.2d 850 (10th Cir. 1989).

[158] *See supra* notes 76 and 154 and accompanying text.

[159] For a description of the error, see the appropriate footnote and amendment notes in the United States Code.

parable to section 11347 appear in section 11326(a) of title 49 of the United States Code.

Sec. 1219. Bankruptcy Cases and Proceedings. Section 1219 of the Act amends section 1334(d) of title 28 of the United States Code to make clarifying references.[160]

Sec. 1220. Knowing Disregard of Bankruptcy Law or Rule. Section 1220 of the Act amends section 156(a) of title 18 of the United States Code to make stylistic changes and correct a reference to the Bankruptcy Code.

Sec. 1221. Transfers Made by Nonprofit Charitable Corporations. Section 1221 of the Act amends section 363(d) of the Bankruptcy Code to restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust. First, the use, sell or lease of such property must be in accordance with applicable nonbankruptcy law and to the extent it is not inconsistent with any relief granted under certain specified provisions of section 362 of the Bankruptcy Code concerning the applicability of the automatic stay. Second, section 1221 imposes similar restrictions with regard to plan confirmation requirements for chapter 11 cases. Third, it amends section 541 of the Bankruptcy Code to provide that any property of a bankruptcy estate in which the debtor is a nonprofit corporation (as described in certain provisions of the Internal Revenue Code) may not be transferred to an entity that is not a corporation, but only under the same conditions that would apply if the debtor was not in bankruptcy. The amendments made by this section apply to cases pending on the date of enactment or to cases filed after such date. Section 1221 provides that a court may not confirm a plan without considering whether this provision would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor postpetition. Nothing in this provision may be construed to require the court to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

Sec. 1222. Protection of Valid Purchase Money Security Interests. Section 1222 of the Act extends the applicable perfection period for a security interest in property of the debtor in section 547(c)(3)(B) of the Bankruptcy Code from 20 to 30 days.

Sec. 1223. Bankruptcy Judgeships. The substantial increase in bankruptcy case filings clearly creates a need for additional bankruptcy judgeships. In the 105th Congress, the House responded to this need by passing H.R. 1596, which would have created additional permanent and temporary bankruptcy judgeships and extended an existing temporary position. Section 1223 extends four existing temporary judgeships and authorizes 28 additional bankruptcy judgeships.

Sec. 1224. Compensating Trustees. Section 1224 of the Act amends section 1326 of the Bankruptcy Code to provide that if a chapter 7 trustee has been allowed compensation as a result of the conversion or dismissal of the debtor's prior case pursuant to section 707(b) and some portion of that compensation remains unpaid, the amount of any such unpaid compensation must be repaid in the debtor's subsequent chapter 13 case. This payment must be pro-

[160] For a description of the errors, see the appropriate footnote and amendment notes in the United States Code.

rated over the term of the plan and paid on a monthly basis. The amount of the monthly payment may not exceed the greater of $25 or the amount payable to unsecured nonpriority creditors as provided by the plan, multiplied by 5 percent and the result divided by the number of months of the plan.

Sec. 1225. Amendment to Section 362 of Titile11, United States Code. Section 1225 of the Act amends section 362(b) of the Bankruptcy Code to except from the automatic stay the creation or perfection of a statutory lien for an *ad valorem* property tax or for a special tax or special assessment on real property (whether or not *ad valorem*) that is imposed by a governmental unit, if such tax or assessment becomes due after the filing of the petition.

Sec. 1226. Judicial Education. Section 1226 of the Act requires the Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, to develop materials and conduct training as may be useful to the courts in implementing this Act, including the needs-based reforms under section 707(b) (as amended by this Act) and amendments pertaining to reaffirmation agreements.

Sec. 1227. Reclamation. Section 1227 of the Act amends section 546(c) of the Bankruptcy Code to provide that the rights of a trustee under sections 544(a), 545, 547, and 549 are subject to the rights of a seller of goods to reclaim goods sold in the ordinary course of business to the debtor if: (1) the debtor received these goods while insolvent not later than 45 days prior to the commencement of the case, and (2) written demand for reclamation of the goods is made not later than 45 days after receipt of such goods by the debtor or not later than 20 days after the commencement of the case, if the 45-day period expires after the commencement of the case. If the seller fails to provide notice in the manner provided in this provision, the seller may still assert the rights set forth in section 503(b)(7) of the Bankruptcy Code. Section 1227(b) amends Bankruptcy Code section 503(b) to provide that the value of any goods received by a debtor not later than within 20 days prior to the commencement of a bankruptcy case in which the goods have been sold to the debtor in the ordinary course of the debtor's business is an allowed administrative expense.

Sec. 1228. Providing Requested Tax Documents to the Court. Subsection (a) of section 1228 of the Act provides that the court may not grant a discharge to an individual in a case under chapter 7 unless requested tax documents have been provided to the court. Section 1228(b) similarly provides that the court may not confirm a chapter 11 or 13 plan unless requested tax documents have been filed with the court. Section 1228(c) directs the court to destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the date of the conclusion of a bankruptcy case filed by an individual debtor under chapter 7, 11, or 13. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

Sec. 1229. Encouraging Creditworthiness. Subsection (a) of section 1229 of the Act expresses the sense of the Congress that certain lenders may sometimes offer credit to consumers indiscriminately and that resulting consumer debt may be a major contributing factor leading to consumer insolvency. Section 1229(b) directs the Board of Governors of the Federal Reserve to study certain con-

sumer credit industry solicitation and credit granting practices as well as the effect of such practices on consumer debt and insolvency. The specified practices involve the solicitation and extension of credit on an indiscriminate basis that encourages consumers to accumulate additional debt and where the lender fails to ensure that the consumer borrower is capable of repaying the debt. Section 1229(c) requires the study described in subsection (b) to be prepared within 12 months from the date of the Act's enactment. This provision authorizes the Board to issue regulations requiring additional disclosures to consumers and permits it to undertake any other actions consistent with its statutory authority, which are necessary to ensure responsible industry practices and to prevent resulting consumer debt and insolvency.

Sec. 1230. Property No Longer Subject to Redemption. Section 1230 of the Act amends section 541(b) of the Bankruptcy Code to provide that, under certain circumstances, an interest of the debtor in tangible personal property (other than securities, or written or printed evidences of indebtedness or title) that the debtor pledged or sold as collateral for a loan or advance of money given by a person licensed under law to make such loan or advance is not property of the estate. Subject to subchapter III of chapter 5 of the Bankruptcy Code, the provision applies where: (1) the property is in the possession of the pledgee or transferee; (2) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and (3) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law in a timely manner as provided under state law and section 108(b) of the Bankruptcy Code.

Sec. 1231. Trustees. Section 1231 of the Act establishes a series of procedural protections for chapter 7 and chapter 13 trustees concerning final agency decisions relating to trustee appointments and future case assignments. Section 1231(a) amends section 586(d) of title 28 of the United States Code to allow a chapter 7 or chapter 13 trustee to obtain judicial review of such decisions by commencing an action in the United States district court after the trustee exhausts all available administrative remedies. Unless the trustee elects an administrative hearing on the record, the trustee is deemed to have exhausted all administrative remedies under this provision if the agency fails to make a final agency decision within 90 days after the trustee requests an administrative remedy. The provision requires the Attorney General to promulgate procedures to implement this provision. It further provides that the agency's decision must be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.

Section 1231(b) amends section 586(e) of title 28 of the United States Code to permit a chapter 13 trustee to obtain judicial review of certain final agency actions relating to claims for actual, necessary expenses under section 586(e). The trustee may commence an action in the United States district court where the trustee resides. The agency's decision must be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency. It directs the Attorney General to prescribe procedures to implement this provision.

Sec. 1232. Bankruptcy Forms. Section 1232 of the Act amends section 2075 of title 28 of the United States Code to a form to be prescribed for the statement specified under section 707(b)(2)(C) of the Bankruptcy Code and to promulgate general rules on the content of such statement.

Sec. 1233. Direct Appeals of Bankruptcy Matters to Courts of Appeals. Under current law, appeals from decisions rendered by the bankruptcy court are either heard by the district court or a bankruptcy appellate panel. In addition to the time and cost factors attendant to the present appellate system, decisions rendered by a district court as well as a bankruptcy appellate panel are generally not binding and lack *stare decisis* value.

To address these problems, section 1233 of the Act amends section 158(d) of title 28 to establish a procedure to facilitate appeals of certain decisions, judgments, orders and decrees of the bankruptcy courts to the circuit courts of appeals by means of a two-step certification process. The first step is a certification by the bankruptcy court, district court, or bankruptcy appellate panel (acting on its own motion or on the request of a party, or the appellants and appellees acting jointly). Such certification must be issued by the lower court if: (1) the bankruptcy court, district court, or bankruptcy appellate panel determines that one or more of certain specified standards are met; or (2) a majority in number of the appellants and a majority in number of the appellees request certification and represent that one or more of the standards are met. The second step is authorization by the circuit court of appeals. Jurisdiction for the direct appeal would exist in the circuit court of appeals only if the court of appeals authorizes the direct appeal.

This procedure is intended to be used to settle unresolved questions of law where there is a need to establish clear binding precedent at the court of appeals level, where the matter is one of public importance, where there is a need to resolve conflicting decisions on a question of law, or where an immediate appeal may materially advance the progress of the case or proceeding. The courts of appeals are encouraged to authorize direct appeals in these circumstances. While fact-intensive issues may occasionally offer grounds for certification even when binding precedent already exists on the general legal issue in question, it is anticipated that this procedure will rarely be used in that circumstance or in an attempt to bring to the circuit courts of appeals matters that can appropriately be resolved initially be district court judges or bankruptcy appellate panels.

Sec. 1234. Involuntary Cases. Section 1234 of the Act amends the Bankruptcy Code's criteria for commencing an involuntary bankruptcy case. Current law renders a creditor ineligible if its claim is contingent as to liability or the subject of a bona fide dispute. This provision amends section 303(b)(1) to specify that a creditor would be ineligible to file an involuntary petition if the creditor's claim was the subject of a bona fide dispute as to liability or amount. It further provides that the claims needed to meet the monetary threshold must be undisputed. The provision makes a conforming revision to section 303(h)(1). Section 1234 becomes effective on the date of enactment of this Act and applies to cases commenced after such date.

Sec. 1235. Federal Election Law Fines and Penalties as Nondischargeable Debt. Section 1235 of the Act amends section 523(a) of the Bankruptcy Code to make debts incurred to pay fines or penalties imposed under Federal election law nondischargeable.

TITLE XIII. CONSUMER CREDIT DISCLOSURE

Sec. 1301. Enhanced Disclosures under an Open End Credit Plan. Section 1301 of the Act amends section 127(b) of the Truth in Lending Act to mandate the inclusion of certain specified disclosures in billing statements with respect to various open end credit plans. In general, these statements must contain an example of the time it would take to repay a stated balance at a specified interest rate. In addition, they must warn the borrower that making only the minimum payment will increase the amount of interest that must be paid and the time it takes to repay the balance. Further, a toll-free telephone number must be provided where the borrower can obtain an estimate of the time it would take to repay the balance if only minimum payments are made. With respect to a creditor whose compliance with title 15 of the United States Code is enforced by the Federal Trade Commission (FTC), the billing statement must advise the borrower to contact the FTC at a toll-free telephone number to obtain an estimate of the time it would take to repay the borrower's balance. Section 1301(a) permits the creditor to substitute an example based on a higher interest rate. As necessary, the provision requires the Board of Governors of the Federal Reserve System ("Board"), to periodically recalculate by rule the interest rate and repayment periods specified in Section 1301(a). With respect to the toll-free telephone number, section 1301(a) permits a third party to establish and maintain it. Under certain circumstances, the toll-free number may connect callers to an automated device.

For a period not to exceed 24 months from the effective date of the Act, the Board is required to establish and maintain a toll-free telephone number (or provide a toll-free telephone number established and maintained by a third party) for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal or state credit union (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250 million. Not later than 6 months prior to the expiration of the 24-month period, the Board must submit a report on this program to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives. In addition, section 1301(a) requires the Board to establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum month payments and if no other advances are made. The table should reflect a significant number of different annual percentage rates, and account balances, minimum payment amounts. The Board must also promulgate regulations providing instructional guidance regarding the manner in which the information contained in the tables should be used to respond to a request by an obligor under this provision. Section 1301(a) provides that the disclosure requirements of this provision are inapplicable to any charge card

account where the primary purpose of which is to require payment of charges in full each month.

Section 1301(b)(1) requires the Federal Reserve Board to promulgate regulations implementing section 1301(a)'s amendments to section127. Section 1301(b)(2) specifies that the effective date of the amendments under subsection (a) and the regulations required under this provision shall not take effect until the later of 18 months after the date of enactment of this Act or 12 months after the publication of final regulations by the Board.

Section 1301(c) authorizes the Federal Reserve Board to conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default. The provision specifies the factors that should be considered. The study's findings must be submitted to Congress and include recommendations for legislative initiatives, based on the Board's findings.

Sec. 1302. Enhanced Disclosure for Credit Extensions Secured by a Dwelling. Subsection (a)(1) of section 1302 of the Act amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds the fair market value of a dwelling specifying that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes. Section 1302(a)(2) amends section 147(b) of the Truth in Lending Act to require an advertisement relating to an extension of credit that may exceed the fair market value of a dwelling and such advertisement is disseminated in paper form to the public or through the Internet (as opposed to dissemination by radio or television) to include a specified statement. The statement must disclose that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes and that the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.

With respect to non-open end credit extensions, section 1302(b)(1) amends section 128 of the Truth in Lending Act to require that a consumer receive a specified statement at the time he or she applies for credit with respect to a consumer credit transaction secured by the consumer's principal dwelling and where the credit extension may exceed the fair market value of the dwelling must contain a specified statement. The statement must disclose that the interest on the portion of the credit extension that exceeds the dwelling's fair market value is not tax deductible for Federal income tax purposes and that the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges. Section 1302(b)(2) requires certain advertisements disseminated in paper form to the public or through the Internet that relate to a consumer credit transaction secured by a consumer's principal dwelling where the extension of credit may exceed the dwelling's fair market value to contain specified statements. These statements advise that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes and that the

consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.

Section 1302(c)(1) requires the Federal Reserve Board to promulgate regulations implementing the amendments effectuated by this provision. Section 1302(c)(2) provides that these regulations shall not take effect until the later of 12 months following the Act's enactment date or 12 months after the date of publication of such final regulations by the Board.

Sec. 1303. Disclosures Related to "Introductory Rates". Subsection (a) of section 1303 of the Act amends section 127(c) of the Truth in Lending Act by adding a provision to add further requirements for applications, solicitations and related materials that are subject to section 127(c)(1). With respect to an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation involving an "introductory rate" offer, such materials must do the following if they offer a temporary annual percentage rate of interest:

(1) the term "introductory" in immediate proximity to each listing of the temporary annual percentage interest rate applicable to such account;

(2) if the annual percentage interest rate that will apply after the end of the temporary rate period will be a fixed rate, the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period must be clearly and conspicuously stated in a prominent location closely proximate to the first listing of the temporary annual percentage rate;

(3) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect 60 days before the date of mailing of the application or solicitation must be clearly and conspicuously stated in a prominent location closely proximate to the first listing of the temporary annual percentage rate.

The second and third provisions described above do not apply to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed. With respect to an application or solicitation to open a credit card account for which disclosure is required pursuant to section 127(c)(1) of the Truth in Lending Act, section 1303(a) specifies that certain statements be made if the rate of interest is revocable under any circumstance or upon any event. The statements must clearly and conspicuously appear in a prominent manner on or with the application or solicitation. The disclosures include a general description of the circumstances that may result in the revocation of the temporary annual percentage rate and an explanation of the type of interest rate that will apply upon revocation of the temporary rate.

To implement this provision, section 1303(b) amends section 127(c) of the Truth in Lending Act to define various relevant terms and requires the Board to promulgate regulations. The provision does not become effective until the earlier of 12 months after the

Act's enactment date or 12 months after the date of publication of such final regulations.

Sec. 1304. Internet-Based Credit Card Solicitations. Subsection (a) of section 1304 of the Act amends section 127(c) of the Truth in Lending Act to require any solicitation to open a credit card account for an open end consumer credit plan through the Internet or other interactive computer service to clearly and conspicuously include the disclosures required under section 127(c)(1)(A) and (B). It also specifies that the disclosure required pursuant to section 127(c)(1)(A) be readily accessible to consumers in close proximity to the solicitation and be updated regularly to reflect current policies, terms, and fee amounts applicable to the credit card account. Section 1304(a) defines terms relevant to the Internet.

Section 1304(b) requires the Federal Reserve Board to promulgate regulations implementing this provision. It also provides that the amendments effectuated by section 1304 do not take effect until the later of 12 months after the Act's enactment date or 12 months after the date of publication of such regulations.

Sec. 1305. Disclosures Related to Late Payment Deadlines and Penalties. Subsection (a) of section 1305 of the Act amends section 127(b) of the Truth in Lending Act to provide that if a late payment fee is to be imposed due to the obligor's failure to make payment on or before a required payment due date, the billing statement must specify the date on which that payment is due (or if different the earliest date on which a late payment fee may be charged) and the amount of the late payment fee to be imposed if payment is made after such date.

Section 1305(b) requires the Federal Reserve Board to promulgate regulations implementing this provision. The amendments effectuated by this provision and the regulations promulgated thereunder shall not take effect until the later of 12 months after the Act's enactment date or 12 months after the date of publication of the regulations.

Sec. 1306. Prohibition on Certain Actions for Failure to Incur Finance Charges. Subsection (a) of section 1306 of the Act amends section 127 of the Truth in Lending Act to add a provision prohibiting a creditor of an open end consumer credit plan from terminating an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. The provision does not prevent the creditor from terminating such account for inactivity for three or more consecutive months.

Section 1306(b) requires the Federal Reserve Board to promulgate regulations implementing the amendments effectuated by section 1306(a) and provides that they do not become effective until the later of 12 months after the Act's enactment date or 12 months after the date of publication of such final regulations.

Sec. 1307. Dual Use Debit Card. Subsection (a) of section 1307 of the act provides that the Federal Reserve Board may conduct a study and submit a report to Congress containing its analysis of consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. The report must include recommendations for legislative initiatives, if any, based on its findings.

Section 1307(b) provides that the Federal Reserve Board, in preparing its report, may include analysis of section 909 of the Elec-

tronic Fund Transfer Act to the extent this provision is in effect at the time of the report and the implementing regulations. In addition, the analysis may pertain to whether any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers in connection with such unauthorized use liability and whether amendments to the Electronic Fund Transfer Act or implementing regulations are necessary to further address adequate protection for consumers concerning unauthorized use liability.

Sec. 1308. Study of Bankruptcy Impact of Credit Extended to Dependent Students. Section 1308 of the Act directs the Board of Governors of the Federal Reserve to study the impact that the extension of credit to dependents (defined under the Internal Revenue Code of 1986) who are enrolled in postsecondary educational institutions has on the rate of bankruptcy cases filed. The report must be submitted to the Senate and House of Representatives no later than 1 year from the Act's enactment date.

Sec. 1309. Clarification of Clear and Conspicuous. Subsection (a) of section 1309 of the Act requires the Board (in consultation with other Federal banking agencies, the National Credit Union Administration Board, and the Federal Trade Commission) to promulgate regulations not later than 6 months after the Act's enactment date to provide guidance on the meaning of the term "clear and conspicuous" as it is used in section 127(b)(11)(A), (B) and (C) and section 127(c)(6)(A)(ii) and (iii) of the Truth in Lending Act.

Section 1309(b) provides that regulations promulgated under section 1309(a) shall include examples of clear and conspicuous model disclosures for the purpose of disclosures required under the Truth in Lending Act provisions set forth therein.

Section 1309(c) requires the Federal Reserve Board, in promulgating regulations under this provision, to ensure that the clear and conspicuous standard required for disclosures made under the Truth in Lending Act provisions set forth in section 1309(a) can be implemented in a manner that results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

TITLE XIV. GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Sec. 1401. Effective Date; Application of Amendments. Subsection (a) of section 1401 of the Act states that the Act shall take effect 180 days after the date of enactment, unless otherwise specified in this Act. Section 1401(b) provides that the amendments made by this Act shall not apply to cases commenced under the Bankruptcy Code before the Act's effective date, unless otherwise specified in this Act. The provision specifies that the amendments made by sections 308, 322 and 330 shall apply to cases commenced on or after the date of enactment of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 11, UNITED STATES CODE

Chap.		Sec.
1.	**General Provisions**	**101**
*	*	*
[12.	**Adjustment of Debts of Family Farmers with Regular Annual Income**	**1201]**
12.	***Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income***	***1201***
*	*	*
15.	***Ancillary and Other Cross-Border Cases***	***1501***

CHAPTER 1—GENERAL PROVISIONS

Sec.
101. Definitions.

* * * * * * *

111. Nonprofit budget and credit counseling agencies; financial management instructional courses.
112. Prohibition on disclosure of name of minor children.

§ 101. Definitions

[In this title—**]** *In this title the following definitions shall apply:*

(1) *The term* "accountant" means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized**[**;**]**.

(2) *The term* "affiliate" means—

(A) * * *

* * * * * * *

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement**[**;**]**.

(3) The term "assisted person" means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $150,000.

(4) *The term* "attorney" means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law**[**;**]**.

(4A) The term "bankruptcy assistance" means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.

(5) *The term* "claim" means—

(A) * * *

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured**[**;**]**.

(6) *The term* "commodity broker" means futures commission merchant, foreign futures commission merchant, clearing

organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title**[**;**]**.

(7) *The term* "community claim" means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case**[**;**]**.

(7A) The term "commercial fishing operation" means—

(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A).

(7B) The term "commercial fishing vessel" means a vessel used by a family fisherman to carry out a commercial fishing operation.

(8) *The term* "consumer debt" means debt incurred by an individual primarily for a personal, family, or household purpose**[**;**]**.

(9) *The term* "corporation"—

(A) * * *

(B) does not include limited partnership**[**;**]**.

(10) *The term* "creditor" means—

(A) * * *

* * * * * * *

(C) entity that has a community claim**[**;**]**.

(10A) The term "current monthly income"—

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism.

(11) *The term* "custodian" means—

(A) * * *

* * * * * * *

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors**[**;**]**.

(12) *The term* "debt" means liability on a claim**[**;**]**.

[(12A) "debt for child support" means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor;**]**

(12A) The term "debt relief agency" means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.

(13) *The term* "debtor" means person or municipality concerning which a case under this title has been commenced**[**;**]**.

(13A) The term "debtor's principal residence"—

(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer.

[(14) "disinterested person" means person that—

[(A) is not a creditor, an equity security holder, or an insider;

[(B) is not and was not an investment banker for any outstanding security of the debtor;

[(C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

[(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and

[(E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason;]

(14) The term "disinterested person" means a person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

(14A) The term "domestic support obligation" means a debt that accrues before or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before or after the date of the order for relief in a case 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 of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

(15) *The term* "entity" includes person, estate, trust, governmental unit, and United States trustee[;].

(16) *The term* "equity security" means—

(A) * * *

* * * * * * *

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph[;].

(17) *The term* "equity security holder" means holder of an equity security of the debtor[;].

(18) *The term* "family farmer" means—

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed [$1,500,000] *$3,237,000* and not less than [80] *50* percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income [for the taxable year preceding the taxable year] *for—*

(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding; the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) * * *

(ii) its aggregate debts do not exceed [$1,500,000] *$3,237,000* and not less than [80] *50* percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded[;].

(19) *The term* "family farmer with regular annual income" means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title[;].

(19A) The term "family fisherman" means—

(A) an individual or individual and spouse engaged in a commercial fishing operation—

(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is

filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) a corporation or partnership—

(i) in which more than 50 percent of the outstanding stock or equity is held by—

(I) 1 family that conducts the commercial fishing operation; or

(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

(III) if such corporation issues stock, such stock is not publicly traded.

(19B) The term "family fisherman with regular annual income" means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title.

(20) *The term* "farmer" means (except when such term appears in the term "family farmer") person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person**[**;**]**.

(21) *The term* "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state**[**;**]**.

(21A) *The term* "farmout agreement" means a written agreement in which—

(A) * * *

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property**[**;**]**.

(21B) *The term* "Federal depository institutions regulatory agency" means—

(A) * * *

* * * * * * *

(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation**[**;**]**.

[(22) the term "financial institution"—

[(A) means—

[(i) 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, the customer; or

[(ii) 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; and

[(B) includes any person described in subparagraph (A) which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991;

[(23) "foreign proceeding" means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization;

[(24) "foreign representative" means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding;**]**

(22) The term "financial institution" means—

(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract (as defined in section 741) such customer; or

(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940.

(22A) The term "financial participant" means—

(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or

(6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period; or

(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991).

(23) The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

(24) The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

(25) *The term* "forward contract" **[**means a contract**]** *means—*

(A) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction**[**, or any combination thereof or option thereon;**]***, or any other similar agreement;*

(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including

any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562.

[(26) "forward contract merchant" means a person whose business consists in whole or in part of entering into forward contracts as or with merchants in a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;**]**

(26) The term "forward contract merchant" means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade.

(27) *The term* "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government**[**;**]**.

(27A) The term "health care business"—

(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

(i) the diagnosis or treatment of injury, deformity, or disease; and

(ii) surgical, drug treatment, psychiatric, or obstetric care; and

(B) includes—

(i) any—

(I) general or specialized hospital;

(II) ancillary ambulatory, emergency, or surgical treatment facility;

(III) hospice;

(IV) home health agency; and

(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

(ii) any long-term care facility, including any—

(I) skilled nursing facility;

(II) intermediate care facility;

(III) assisted living facility;

(IV) home for the aged;

(V) domiciliary care facility; and

(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assist-

ance with activities of daily living and incidentals to activities of daily living.

(27B) The term "incidental property" means, with respect to a debtor's principal residence—

(A) property commonly conveyed with a principal residence in the area where the real property is located;

(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

(C) all replacements or additions.

(28) *The term* "indenture" means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor**[**;**]**.

(29) *The term* "indenture trustee" means trustee under an indenture**[**;**]**.

(30) *The term* "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker**[**;**]**.

(31) *The term* "insider" includes—

(A) * * *

* * * * * * *

(F) managing agent of the debtor**[**;**]**.

(32) *The term* "insolvent" means—

(A) * * *

* * * * * * *

(C) with reference to a municipality, financial condition such that the municipality is—

(i) * * *

(ii) unable to pay its debts as they become due**[**;**]**.

(33) *The term* "institution-affiliated party"—

(A) * * *

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act**[**;**]**.

(34) *The term* "insured credit union" has the meaning given it in section 101(7) of the Federal Credit Union Act**[**;**]**.

(35) *The term* "insured depository institution"—

(A) * * *

(B) includes an insured credit union (except in the case of **[**paragraphs (21B) and (33)(A)**]** *paragraphs (23) and (35)* of this subsection)**[**;**]**.

(35A) *The term* "intellectual property" means—

(A) * * *

* * * * * * *

to the extent protected by applicable nonbankruptcy law**[**; and**]**.

(36) *The term* "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding**[**;**]**.

(37) *The term* "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation**[**;**]**.

(38) *The term* "margin payment" means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments**[**; and**]**.

(38A) The term "master netting agreement"—

(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a).

(38B) The term "master netting agreement participant" means an entity that, at any time before the date of the filing of the petition, is a party to an outstanding master netting agreement with the debtor.

(39) *The term* "mask work" has the meaning given it in section 901(a)(2) of title 17.

(39A) The term "median family income" means for any year—

(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and

(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year.

(40) *The term* "municipality" means political subdivision or public agency or instrumentality of a State**[**;**]**.

(40A) The term "patient" means any individual who obtains or receives services from a health care business.

(40B) The term "patient records" means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium.

(41) *The term* "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) * * *

* * * * * * *

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit**[**;**]**.

(41A) The term "personally identifiable information" means—

(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

(ii) the geographical address of a physical place of residence of such individual;

(iii) an electronic address (including an e-mail address) of such individual;

(iv) a telephone number dedicated to contacting such individual at such physical place of residence;

(v) a social security account number issued to such individual; or

(vi) the account number of a credit card issued to such individual; or

(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)—

(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or

(ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically.

(42) *The term* "petition" means petition filed under section 301, 302, 303, or 304 of this title, as the case may be, commencing a case under this title**[**;**]**.

(42A) *The term* "production payment" means a term overriding royalty satisfiable in cash or in kind—

(A) * * *

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs**[**;**]**.

(43) *The term* "purchaser" means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee**[**;**]**.

(44) *The term* "railroad" means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier**[**;**]**.

(45) *The term* "relative" means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree**[**;**]**.

(46) *The term* "repo participant" means an entity that, **[**on any day during the period beginning 90 days before the date of**]** *at any time before* the filing of the petition, has an outstanding repurchase agreement with the debtor**[**;**]**.

[(47) "repurchase agreement" (which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds;]

(47) The term "repurchase agreement" (which definition also applies to a reverse repurchase agreement)—

(A) means—

(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

(v) any security agreement or arrangement or other credit enhancement related to any agreement or trans-

action referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

(B) does not include a repurchase obligation under a participation in a commercial mortgage loan.

(48) *The term* "securities clearing agency" means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934*, or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission,* or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A**[**;**]**.

(48A) The term "securities self regulatory organization" means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934.

(49) *The term* "security"—

(A) * * *

* * * * * * *

(B) does not include—

(i) * * *

* * * * * * *

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered**[**;**]**.

(50) *The term* "security agreement" means agreement that creates or provides for a security interest**[**;**]**.

(51) *The term* "security interest" means lien created by an agreement**[**;**]**.

(51A) *The term* "settlement payment" means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade**[**;**]**.

(51B) *The term* "single asset real estate" means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor *who is not a family farmer* and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental **[**thereto having aggregate noncontingent, liquidated secured debts in an amount no more than $4,000,000;**]**.

[(51C) "small business" means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating

real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed $2,000,000;]

(51C) The term "small business case" means a case filed under chapter 11 of this title in which the debtor is a small business debtor.

(51D) The term "small business debtor"—

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than $2,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,000,000 (excluding debt owed to 1 or more affiliates or insiders).

(52) *The term* "State" includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title[;].

(53) *The term* "statutory lien" means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute[;].

(53A) *The term* "stockbroker" means person—

(A) * * *

(B) that is engaged in the business of effecting transactions in securities—

(i) * * *

(ii) with members of the general public, from or for such person's own account[;].

[(53B) "swap agreement" means—

[(A) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);

[(B) any combination of the foregoing; or

[(C) a master agreement for any of the foregoing together with all supplements;]

(53B) The term "swap agreement"—

(A) means—

(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

(III) a currency swap, option, future, or forward agreement;

(IV) an equity index or equity swap, option, future, or forward agreement;

(V) a debt index or debt swap, option, future, or forward agreement;

(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

(VIII) a weather swap, weather derivative, or weather option;

(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference therein); and

(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(iii) any combination of agreements or transactions referred to in this subparagraph;

(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the

master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.

(53C) *The term* "swap participant" means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor**[**;**]**.

(56A) *The term* "term overriding royalty" means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized**[**;**]**.

(53D) *The term* "timeshare plan" means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A "timeshare interest" is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan**[**;**]**.

[(54) "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption;**]**

(54) The term "transfer" means—

(A) the creation of a lien;

(B) the retention of title as a security interest;

(C) the foreclosure of a debtor's equity of redemption; or

(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

(i) property; or

(ii) an interest in property.

(54A) *The term* the term "uninsured State member bank" means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation**[**; and**]**.

(55) *The term* "United States", when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States**[**;**]**.

§ 103. Applicability of chapters

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title*, and this chapter, sections 307, 362(n), 555 through 557, and 559 through 562 apply in a case under chapter 15*.

* * * * * * *

(k) Chapter 15 applies only in a case under such chapter, except that—

(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

(2) section 1509 applies whether or not a case under this title is pending.

§ 104. Adjustment of dollar amounts

(a) * * *

(b)(1) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections *101(3), 101(18), 101(51D),* 109(e), 303(b), 507(a), 522(d), **[**and 523(a)(2)(C)**]** *522(n), 522(p), 522(q), 522(f)(3), 523(a)(2)(C), 707(b), and 1325(b)(3)* immediately before such April 1 shall be adjusted—

(A) * * *

* * * * * * *

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections *101(3), 101(18), 101(51D),* 109(e), 303(b), 507(a), 522(d), **[**and 523(a)(2)(C)**]** *522(n), 522(p), 522(q), 522(f)(3), 523(a)(2)(C), 707(b), and 1325(b)(3)* of this title.

* * * * * * *

§ 105. Power of court

(a) * * *

* * * * * * *

(d) The court, on its own motion or on the request of a party in interest**[**, may**]**—

[(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and**]**

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

* * * * * * *

§ 107. Public access to papers

(a) Except as provided in subsection (b) of this section *and subject to section 112*, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.

* * * * * * *

§ 108. Extension of time

(a) * * *

* * * * * * *

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

(1) * * *

(2) 30 days after notice of the termination or expiration of the stay under section 362, [922, 1201, or] *922, 1201, or* 1301 of this title, as the case may be, with respect to such claim.

§ 109. Who may be a debtor

(a) * * *

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the Small Business Administration under [subsection (c) or (d) of] section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or

[(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan

association, homestead association, or credit union, engaged in such business in the United States.]

(3)(A) a foreign insurance company, engaged in such business in the United States; or

(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 in the United States.

* * * * * * *

(f) Only a family farmer *or family fisherman* with regular annual income may be a debtor under chapter 12 of this title.

* * * * * * *

(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 such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from such agencies by reason of the requirements of paragraph (1).

(B) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in subparagraph (A) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee (or the bankruptcy administrator, if any) at any time.

(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.

§ 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

(a) In this section—

(1) "bankruptcy petition preparer" means a person, other than an attorney [or an employee of an attorney] *for the debtor or an employee of such attorney under the direct supervision of such attorney*, who prepares for compensation a document for filing; and

* * * * * * *

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address. *If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the bankruptcy petition preparer shall be required to—*

(A) sign the document for filing; and

(B) print on the document the name and address of that officer, principal, responsible person, or partner.

[(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.]

(2)(A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice which shall be on an official form prescribed by the Judicial Conference of the United States in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure.

(B) The notice under subparagraph (A)—

(i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

(ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

(iii) shall—

(I) be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer; and

(II) be filed with any document for filing.

(c)(1) * * *

[(2) For purposes] *(2)(A) Subject to subparagraph (B), for purposes* of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.

[(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.]

[(d)(1)] *(d)* A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

[(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.]

(e)(1) * * *

[(2) A bankruptcy petition preparer may be fined not more than $500 for each document executed in violation of paragraph (1).]

(2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

(B) The legal advice referred to in subparagraph (A) includes advising the debtor—

(i) whether—

(I) to file a petition under this title; or

(II) commencing a case under chapter 7, 11, 12, or 13 is appropriate;

(ii) whether the debtor's debts will be discharged in a case under this title;

(iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;

(iv) concerning—

(I) the tax consequences of a case brought under this title; or

(II) the dischargeability of tax claims;

(v) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

(vi) concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or

(vii) concerning bankruptcy procedures and rights.

[(f)(1)] *(f)* A bankruptcy petition preparer shall not use the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term.

[(2) A bankruptcy petition preparer shall be fined not more than $500 for each violation of paragraph (1).]

[(g)(1)] *(g)* A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

[(2) A bankruptcy petition preparer shall be fined not more than $500 for each violation of paragraph (1).]

(h)*(1) The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor.*

[(1) Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a] *(2) A* declaration under penalty of perjury *by the bankruptcy petition preparer shall be filed together with the petition,* disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. *If rules or*

guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).

[(2) The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).**]**

(3)(A) The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2) found to be in excess of the value of any services—

(i) rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition; or

(ii) found to be in violation of any rule or guideline promulgated or prescribed under paragraph (1).

(B) All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

(C) An individual may exempt any funds recovered under this paragraph under section 522(b).

[(3)**]** *(4)* The debtor, the trustee, a creditor, **[**or the United States trustee**]** *the United States trustee (or the bankruptcy administrator, if any) or the court, on the initiative of the court,* may file a motion for an order under paragraph (2).

[(4)**]** *(5)* A bankruptcy petition preparer shall be fined not more than $500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

[(i)(1) If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—**]**

(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor—

(A) * * *

* * * * * * *

(j)(1) * * *

(2)(A) In an action under paragraph (1), if the court finds that—

(i) a bankruptcy petition preparer has—

(I) engaged in conduct in violation of this section or of any provision of this title [a violation of which subjects a person to criminal penalty];

* * * * * * *

(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, [or has not paid a penalty] *has not paid a penalty* imposed under this section, *or failed to disgorge all fees ordered by the court* the court may enjoin the person from acting as a bankruptcy petition preparer.

(3) The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued on the motion of the court, the trustee, or the United States trustee (or the bankruptcy administrator, if any).

[(3)] *(4)* The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable [attorney's] *attorneys'* fees and costs of the action, to be paid by the bankruptcy petition preparer.

* * * * * * *

(l)(1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than $500 for each such failure.

(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer—

(A) advised the debtor to exclude assets or income that should have been included on applicable schedules;

(B) advised the debtor to use a false Social Security account number;

(C) failed to inform the debtor that the debtor was filing for relief under this title; or

(D) prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.

(3) A debtor, trustee, creditor, or United States trustee (or the bankruptcy administrator, if any) may file a motion for an order imposing a fine on the bankruptcy petition preparer for any violation of this section.

(4)(A) Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustee, who shall deposit an amount equal to such fines in a special account of the United States Trustee System Fund referred to in section 586(e)(2) of title 28. Amounts deposited under this subparagraph shall be available to fund the enforcement of this section on a national basis.

(B) Fines imposed under this subsection in judicial districts served by bankruptcy administrators shall be deposited as offsetting receipts to the fund established under section 1931 of title 28, and shall remain available until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the operation and maintenance of the courts of the United States.

§ 111. Nonprofit budget and credit counseling agencies; financial management instructional courses

(a) The clerk shall maintain a publicly available list of—

(1) nonprofit budget and credit counseling agencies that provide 1 or more services described in section 109(h) currently approved by the United States trustee (or the bankruptcy administrator, if any); and

(2) instructional courses concerning personal financial management currently approved by the United States trustee (or the bankruptcy administrator, if any), as applicable.

(b) The United States trustee (or bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency or an instructional course concerning personal financial management as follows:

(1) The United States trustee (or bankruptcy administrator, if any) shall have thoroughly reviewed the qualifications of the nonprofit budget and credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the services or instructional courses that will be offered by such agency or such provider, and may require such agency or such provider that has sought approval to provide information with respect to such review.

(2) The United States trustee (or bankruptcy administrator, if any) shall have determined that such agency or such instructional course fully satisfies the applicable standards set forth in this section.

(3) If a nonprofit budget and credit counseling agency or instructional course did not appear on the approved list for the district under subsection (a) immediately before approval under this section, approval under this subsection of such agency or such instructional course shall be for a probationary period not to exceed 6 months.

(4) At the conclusion of the applicable probationary period under paragraph (3), the United States trustee (or bankruptcy administrator, if any) may only approve for an additional 1-year period, and for successive 1-year periods thereafter, an agency or instructional course that has demonstrated during the probationary or applicable subsequent period of approval that such agency or instructional course—

(A) has met the standards set forth under this section during such period; and

(B) can satisfy such standards in the future.

(5) Not later than 30 days after any final decision under paragraph (4), an interested person may seek judicial review of such decision in the appropriate district court of the United States.

(c)(1) The United States trustee (or the bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides.

(2) To be approved by the United States trustee (or the bankruptcy administrator, if any), a nonprofit budget and credit counseling agency shall, at a minimum—

(A) have a board of directors the majority of which—

(i) are not employed by such agency; and

(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

(D) provide full disclosures to a client, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by such client and how such costs will be paid;

(E) provide adequate counseling with respect to a client's credit problems that includes an analysis of such client's current financial condition, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

(F) provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services provided by such agency, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

(G) demonstrate adequate experience and background in providing credit counseling; and

(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

(d) The United States trustee (or the bankruptcy administrator, if any) shall only approve an instructional course concerning personal financial management—

(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

(A) trained personnel with adequate experience and training in providing effective instruction and services;

(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course;

(C) adequate facilities situated in reasonably convenient locations at which such instructional course is offered, except that such facilities may include the provision of such instructional course by telephone or through the Internet, if such instructional course is effective; and

(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such instructional course, including any evaluation of satisfaction of in-

structional course requirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee (or the bankruptcy administrator, if any), or the chief bankruptcy judge for the district in which such instructional course is offered; and

(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

(B) is otherwise likely to increase substantially the debtor's understanding of personal financial management.

(e) The district court may, at any time, investigate the qualifications of a nonprofit budget and credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such agency. The district court may, at any time, remove from the approved list under subsection (a) a nonprofit budget and credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

(f) The United States trustee (or the bankruptcy administrator, if any) shall notify the clerk that a nonprofit budget and credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

(g)(1) No nonprofit budget and credit counseling agency may provide to a credit reporting agency information concerning whether a debtor has received or sought instruction concerning personal financial management from such agency.

(2) A nonprofit budget and credit counseling agency that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

(A) any actual damages sustained by the debtor as a result of the violation; and

(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.

§ 112. Prohibition on disclosure of name of minor children

The debtor may be required to provide information regarding a minor child involved in matters under this title but may not be required to disclose in the public records in the case the name of such minor child. The debtor may be required to disclose the name of such minor child in a nonpublic record that is maintained by the court and made available by the court for examination by the United States trustee, the trustee, and the auditor (if any) serving under section 586(f) of title 28, in the case. The court, the United States trustee, the trustee, and such auditor shall not disclose the name of such minor child maintained in such nonpublic record.

CHAPTER 3—CASE ADMINISTRATION

SUBCHAPTER I—COMMENCEMENT OF A CASE

Sec.
301. Voluntary cases.

* * * * * * *

[304. Cases ancillary to foreign proceedings.]

* * * * * * *

308. Debtor reporting requirements.

SUBCHAPTER II—OFFICERS

321. Eligibility to serve as trustee.

* * * * * * *

332. Consumer privacy ombudsman.
333 Appointment of ombudsman.

SUBCHAPTER III—ADMINISTRATION

341. Meetings of creditors and equity security holders.

* * * * * * *

[346. Special tax provisions.]
346. Special provisions related to the treatment of State and local taxes.

* * * * * * *

351. Disposal of patient records.

SUBCHAPTER I—COMMENCEMENT OF A CASE

§ 301. Voluntary cases

(a) A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter. [The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.]

(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.

* * * * * * *

§ 303. Involuntary cases

(a) * * *

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute *as to liability or amount*, or an indenture trustee representing such a holder, [if such claims] *if such noncontingent, undisputed claims* aggregate at least $10,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

* * * * * * *

(h) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if—

(1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute *as to liability or amount*; or

* * * * * * *

[(k) Notwithstanding subsection (a) of this section, an involuntary case may be commenced against a foreign bank that is not engaged in such business in the United States only under chapter 7 of this title and only if a foreign proceeding concerning such bank is pending.

[§ 304. Cases ancillary to foreign proceedings

[(a) A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of a petition under this section by a foreign representative.

[(b) Subject to the provisions of subsection (c) of this section, if a party in interest does not timely controvert the petition, or after trial, the court may—

[(1) enjoin the commencement or continuation of—

[(A) any action against—

[(i) a debtor with respect to property involved in such foreign proceeding; or

[(ii) such property; or

[(B) the enforcement of any judgment against the debtor with respect to such property, or any act or the commencement or continuation of any judicial proceeding to create or enforce a lien against the property of such estate;

[(2) order turnover of the property of such estate, or the proceeds of such property, to such foreign representative; or

[(3) order other appropriate relief.

[(c) In determining whether to grant relief under subsection (b) of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with—

[(1) just treatment of all holders of claims against or interests in such estate;

[(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

[(3) prevention of preferential or fraudulent dispositions of property of such estate;

[(4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;

[(5) comity; and

[(6) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.]

§ 305. Abstention

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

(1) * * *

[(2)(A) there is pending a foreign proceeding; and

[(B) the factors specified in section 304(c) of this title warrant such dismissal or suspension.]

(2)(A) a petition under section 1515 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.

* * * * * * *

§ 306. Limited appearance

An appearance in a bankruptcy court by a foreign representative in connection with a petition or request under section 303[, 304,] or 305 of this title does not submit such foreign representative to the jurisdiction of any court in the United States for any other purpose, but the bankruptcy court may condition any order under section 303[, 304,] or 305 of this title on compliance by such foreign representative with the orders of such bankruptcy court.

* * * * * * *

§ 308. Debtor reporting requirements

(a) For purposes of this section, the term "profitability" means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

(b) A small business debtor shall file periodic financial and other reports containing information including—

(1) the debtor's profitability;

(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

(4)(A) whether the debtor is—

(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

(ii) timely filing tax returns and other required government filings and paying taxes and other administrative expenses when due;

(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

(C) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.

SUBCHAPTER II—OFFICERS

* * * * * * *

§ 328. Limitation on compensation of professional persons

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and condi-

tions of employment, including on a retainer, on an hourly basis, *on a fixed or percentage fee basis,* or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

* * * * * * *

§ 330. Compensation of officers

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, *a consumer privacy ombudsman appointed under section 332,* an examiner, *an ombudsman appointed under section 333, or* a professional person employed under section 327 or 1103—

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, *ombudsman,* professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(3)**[**(A) In**]** *In* determining the amount of reasonable compensation to be awarded *to an examiner, trustee under chapter 11, or professional person*, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) * * *

* * * * * * *

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; **[**and**]**

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

[(E)**]** *(F)* whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

* * * * * * *

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

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§ 332. Consumer privacy ombudsman

(a) If a hearing is required under section 363(b)(1)(B), the court shall order the United States trustee to appoint, not later than 5 days before the commencement of the hearing, 1 disinterested person (other than the United States trustee) to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman.

(b) The consumer privacy ombudsman may appear and be heard at such hearing and shall provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of personally identifiable information under section 363(b)(1)(B). Such information may include presentation of—

(1) the debtor's privacy policy;

(2) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court;

(3) the potential costs or benefits to consumers if such sale or such lease is approved by the court; and

(4) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

(c) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.

§ 333. Appointment of patient care ombudsman

(a)(1) If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

(2)(A) If the court orders the appointment of an ombudsman under paragraph (1), the United States trustee shall appoint 1 disinterested person (other than the United States trustee) to serve as such ombudsman.

(B) If the debtor is a health care business that provides long-term care, then the United States trustee may appoint the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending to serve as the ombudsman required by paragraph (1).

(C) If the United States trustee does not appoint a State Long-Term Care Ombudsman under subparagraph (B), the court shall notify the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending, of the name and address of the person who is appointed under subparagraph (A).

(b) An ombudsman appointed under subsection (a) shall—

(1) monitor the quality of patient care provided to patients of the debtor, to the extent necessary under the circumstances, including interviewing patients and physicians;

(2) not later than 60 days after the date of appointment, and not less frequently than at 60-day intervals thereafter, report to the court after notice to the parties in interest, at a hearing or in writing, regarding the quality of patient care provided to patients of the debtor; and

(3) if such ombudsman determines that the quality of patient care provided to patients of the debtor is declining significantly or is otherwise being materially compromised, file with the court a motion or a written report, with notice to the parties in interest immediately upon making such determination.

(c)(1) An ombudsman appointed under subsection (a) shall maintain any information obtained by such ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. Such ombudsman may not review confidential patient records unless the court approves such review in advance and imposes restrictions on such ombudsman to protect the confidentiality of such records.

(2) An ombudsman appointed under subsection (a)(2)(B) shall have access to patient records consistent with authority of such ombudsman under the Older Americans Act of 1965 and under non-Federal laws governing the State Long-Term Care Ombudsman program.

SUBCHAPTER III—ADMINISTRATION

§ 341. Meetings of creditors and equity security holders

(a) * * *

* * * * * * *

(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors. *Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.*

* * * * * * *

(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.

§ 342. Notice

(a) * * *

[(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed.**]**

(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing—

(1) a brief description of—

(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and

(B) the types of services available from credit counseling agencies; and

(2) statements specifying that—

(A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case under this title shall be subject to fine, imprisonment, or both; and

(B) all information supplied by a debtor in connection with a case under this title is subject to examination by the Attorney General.

(c)*(1)* If notice is required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court, such notice shall contain the name, address, and taxpayer identification number of the debtor**[**, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice**]**.

(2)(A) If, within the 90 days before the commencement of a voluntary case, a creditor supplies the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.

(B) If a creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if such creditor supplies the debtor in the last 2 communications with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.

(d) In a case under chapter 7 of this title in which the debtor is an individual and in which the presumption of abuse arises under section 707(b), the clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the petition that the presumption of abuse has arisen.

(e)(1) In a case under chapter 7 or 13 of this title of a debtor who is an individual, a creditor at any time may both file with the court and serve on the debtor a notice of address to be used to provide notice in such case to such creditor.

(2) Any notice in such case required to be provided to such creditor by the debtor or the court later than 5 days after the court and the debtor receive such creditor's notice of address, shall be provided to such address.

(f)(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

(2) In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

(3) A notice filed under paragraph (1) may be withdrawn by such entity.

(g)(1) Notice provided to a creditor by the debtor or the court other than in accordance with this section (excluding this subsection) shall not be effective notice until such notice is brought to the attention of such creditor. If such creditor designates a person or an organizational subdivision of such creditor to be responsible for receiving notices under this title and establishes reasonable procedures so that such notices receivable by such creditor are to be delivered to such person or such subdivision, then a notice provided to such creditor other than in accordance with this section (excluding this subsection) shall not be considered to have been brought to the attention of such creditor until such notice is received by such person or such subdivision.

(2) A monetary penalty may not be imposed on a creditor for a violation of a stay in effect under section 362(a) (including a monetary penalty imposed under section 362(k)) or for failure to comply with section 542 or 543 unless the conduct that is the basis of such violation or of such failure occurs after such creditor receives notice effective under this section of the order for relief.

* * * * * * *

[§ 346. Special tax provisions

[(a) Except to the extent otherwise provided in this section, subsections (b), (c), (d), (e), (g), (h), (i), and (j) of this section apply notwithstanding any State or local law imposing a tax, but subject to the Internal Revenue Code of 1986.

[(b)(1) In a case under chapter 7, 12, or 11 of this title concerning an individual, any income of the estate may be taxed under a State or local law imposing a tax on or measured by income only to the estate, and may not be taxed to such individual. Except as provided in section 728 of this title, if such individual is a partner in a partnership, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of income, gain, loss, deduction, or credit of such individual that is distributed, or considered distributed, from such partnership, after the commencement of the case is gain, loss, income, deduction, or credit, as the case may be, of the estate.

[(2) Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such a case, and any State or local tax on or measured by such income, shall be computed in the same manner as the income and the tax of an estate.

[(3) The estate in such a case shall use the same accounting method as the debtor used immediately before the commencement of the case.

[(c)(1) The commencement of a case under this title concerning a corporation or a partnership does not effect a change in the status of such corporation or partnership for the purposes of any State or local law imposing a tax on or measured by income. Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such case may be taxed only as though such case had not been commenced.

[(2) In such a case, except as provided in section 728 of this title, the trustee shall make any tax return otherwise required by State or local law to be filed by or on behalf of such corporation

or partnership in the same manner and form as such corporation or partnership, as the case may be, is required to make such return.

[(d) In a case under chapter 13 of this title, any income of the estate or the debtor may be taxed under a State or local law imposing a tax on or measured by income only to the debtor, and may not be taxed to the estate.

[(e) A claim allowed under section 502(f) or 503 of this title, other than a claim for a tax that is not otherwise deductible or a capital expenditure that is not otherwise deductible, is deductible by the entity to which income of the estate is taxed unless such claim was deducted by another entity, and a deduction for such a claim is deemed to be a deduction attributable to a business.

[(f) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld was paid.

[(g)(1) Neither gain nor loss shall be recognized on a transfer—

[(A) by operation of law, of property to the estate;

[(B) other than a sale, of property from the estate to the debtor; or

[(C) in a case under chapter 11 or 12 of this title concerning a corporation, of property from the estate to a corporation that is an affiliate participating in a joint plan with the debtor, or that is a successor to the debtor under the plan, except that gain or loss may be recognized to the same extent that such transfer results in the recognition of gain or loss under section 371 of the Internal Revenue Code of 1986.

[(2) The transferee of a transfer of a kind specified in this subsection shall take the property transferred with the same character, and with the transferor's basis, as adjusted under subsection (j)(5) of this section, and holding period.

[(h) Notwithstanding sections 728(a) and 1146(a) of this title, for the purpose of determining the number of taxable periods during which the debtor or the estate may use a loss carryover or a loss carryback, the taxable period of the debtor during which the case is commenced is deemed not to have been terminated by such commencement.

[(i)(1) In a case under chapter 7, 12, or 11 of this title concerning an individual, the estate shall succeed to the debtor's tax attributes, including—

[(A) any investment credit carryover;

[(B) any recovery exclusion;

[(C) any loss carryover;

[(D) any foreign tax credit carryover;

[(E) any capital loss carryover; and

[(F) any claim of right.

[(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) of this subsection but that was not utilized by the estate. The debtor may utilize such tax attributes as though any

applicable time limitations on such utilization by the debtor were suspended during the time during which the case was pending.

[(3) In such a case, the estate may carry back any loss of the estate to a taxable period of the debtor that ended before the order for relief under such chapter the same as the debtor could have carried back such loss had the debtor incurred such loss and the case under this title had not been commenced, but the debtor may not carry back any loss of the debtor from a taxable period that ends after such order to any taxable period of the debtor that ended before such order until after the case is closed.

[(j)(1) Except as otherwise provided in this subsection, income is not realized by the estate, the debtor, or a successor to the debtor by reason of forgiveness or discharge of indebtedness in a case under this title.

[(2) For the purposes of any State or local law imposing a tax on or measured by income, a deduction with respect to a liability may not be allowed for any taxable period during or after which such liability is forgiven or discharged under this title. In this paragraph, "a deduction with respect to a liability" includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset.

[(3) Except as provided in paragraph (4) of this subsection, for the purpose of any State or local law imposing a tax on or measured by income, any net operating loss of an individual or corporate debtor, including a net operating loss carryover to such debtor, shall be reduced by the amount of indebtedness forgiven or discharged in a case under this title, except to the extent that such forgiveness or discharge resulted in a disallowance under paragraph (2) of this subsection.

[(4) A reduction of a net operating loss or a net operating loss carryover under paragraph (3) of this subsection or of basis under paragraph (5) of this subsection is not required to the extent that the indebtedness of an individual or corporate debtor forgiven or discharged—

[(A) consisted of items of a deductible nature that were not deducted by such debtor; or

[(B) resulted in an expired net operating loss carryover or other deduction that—

[(i) did not offset income for any taxable period; and

[(ii) did not contribute to a net operating loss in or a net operating loss carryover to the taxable period during or after which such indebtedness was discharged.

[(5) For the purposes of a State or local law imposing a tax on or measured by income, the basis of the debtor's property or of property transferred to an entity required to use the debtor's basis in whole or in part shall be reduced by the lesser of—

[(A)(i) the amount by which the indebtedness of the debtor has been forgiven or discharged in a case under this title; minus

[(ii) the total amount of adjustments made under paragraphs (2) and (3) of this subsection; and

[(B) the amount by which the total basis of the debtor's assets that were property of the estate before such forgiveness or

discharge exceeds the debtor's total liabilities that were liabilities both before and after such forgiveness or discharge.

[(6) Notwithstanding paragraph (5) of this subsection, basis is not required to be reduced to the extent that the debtor elects to treat as taxable income, of the taxable period in which indebtedness is forgiven or discharged, the amount of indebtedness forgiven or discharged that otherwise would be applied in reduction of basis under paragraph (5) of this subsection.

[(7) For the purposes of this subsection, indebtedness with respect to which an equity security, other than an interest of a limited partner in a limited partnership, is issued to the creditor to whom such indebtedness was owed, or that is forgiven as a contribution to capital by an equity security holder other than a limited partner in the debtor, is not forgiven or discharged in a case under this title—

[(A) to any extent that such indebtedness did not consist of items of a deductible nature; or

[(B) if the issuance of such equity security has the same consequences under a law imposing a tax on or measured by income to such creditor as a payment in cash to such creditor in an amount equal to the fair market value of such equity security, then to the lesser of—

[(i) the extent that such issuance has the same such consequences; and

[(ii) the extent of such fair market value.]

§ 346. Special provisions related to the treatment of State and local taxes

(a) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of such estate shall be taxed to or claimed by the estate, a separate taxable estate is also created for purposes of any State and local law imposing a tax on or measured by income and such income, gain, loss, deductions, and credits shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence shall not apply if the case is dismissed. The trustee shall make tax returns of income required under any such State or local law.

(b) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax on or measured by income and may not be taxed to or claimed by the estate. The trustee shall make such tax returns of income of corporations and of partnerships as are required under any State or local law, but with respect to partnerships, shall make such returns only to the extent such returns are also required to be made under such Code. The estate shall be liable for any tax imposed on such corporation or partnership, but not for any tax imposed on partners or members.

(c) With respect to a partnership or any entity treated as a partnership under a State or local law imposing a tax on or measured

by income that is a debtor in a case under this title, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of any income, gain, loss, deduction, or credit of a partner or member that is distributed, or considered distributed, from such partnership, after the commencement of the case, is gain, loss, income, deduction, or credit, as the case may be, of the partner or member, and if such partner or member is a debtor in a case under this title, shall be subject to tax in accordance with subsection (a) or (b).

(d) For purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor in a case under this title shall terminate only if and to the extent that the taxable period of such debtor terminates under the Internal Revenue Code of 1986.

(e) The estate in any case described in subsection (a) shall use the same accounting method as the debtor used immediately before the commencement of the case, if such method of accounting complies with applicable nonbankruptcy tax law.

(f) For purposes of any State or local law imposing a tax on or measured by income, a transfer of property from the debtor to the estate or from the estate to the debtor shall not be treated as a disposition for purposes of any provision assigning tax consequences to a disposition, except to the extent that such transfer is treated as a disposition under the Internal Revenue Code of 1986.

(g) Whenever a tax is imposed pursuant to a State or local law imposing a tax on or measured by income pursuant to subsection (a) or (b), such tax shall be imposed at rates generally applicable to the same types of entities under such State or local law.

(h) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld or collected was paid.

(i)(1) To the extent that any State or local law imposing a tax on or measured by income provides for the carryover of any tax attribute from one taxable period to a subsequent taxable period, the estate shall succeed to such tax attribute in any case in which such estate is subject to tax under subsection (a).

(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) to the extent consistent with the Internal Revenue Code of 1986.

(3) The estate may carry back any loss or tax attribute to a taxable period of the debtor that ended before the date of the order for relief under this title to the extent that—

(A) applicable State or local tax law provides for a carryback in the case of the debtor; and

(B) the same or a similar tax attribute may be carried back by the estate to such a taxable period of the debtor under the Internal Revenue Code of 1986.

(j)(1) For purposes of any State or local law imposing a tax on or measured by income, income is not realized by the estate, the

debtor, or a successor to the debtor by reason of discharge of indebtedness in a case under this title, except to the extent, if any, that such income is subject to tax under the Internal Revenue Code of 1986.

(2) Whenever the Internal Revenue Code of 1986 provides that the amount excluded from gross income in respect of the discharge of indebtedness in a case under this title shall be applied to reduce the tax attributes of the debtor or the estate, a similar reduction shall be made under any State or local law imposing a tax on or measured by income to the extent such State or local law recognizes such attributes. Such State or local law may also provide for the reduction of other attributes to the extent that the full amount of income from the discharge of indebtedness has not been applied.

(k)(1) Except as provided in this section and section 505, the time and manner of filing tax returns and the items of income, gain, loss, deduction, and credit of any taxpayer shall be determined under applicable nonbankruptcy law.

(2) For Federal tax purposes, the provisions of this section are subject to the Internal Revenue Code of 1986 and other applicable Federal nonbankruptcy law.

* * * * * * *

§ 348. Effect of conversion

(a) * * *

* * * * * * *

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion; **[**and**]**

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply **[**in the converted case, with allowed secured claims**]** *only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12* reduced to the extent that they have been paid in accordance with the chapter 13 plan**[**.**]***; and*

(C) with respect to cases converted from chapter 13—

(i) the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the

property *of the estate* in the converted case shall consist of the property of the estate as of the date of conversion.

* * * * * * *

§ 351. Disposal of patient records

If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

(1) The trustee shall—

(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the most recent known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

(A) if the records are written, shredding or burning the records; or

(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.

SUBCHAPTER IV—ADMINISTRATIVE POWERS

* * * * * * *

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) * * *

* * * * * * *

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning [the debtor] *a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.*

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) * * *

[(2) under subsection (a) of this section—

[(A) of the commencement or continuation of an action or proceeding for—

[(i) the establishment of paternity; or

[(ii) the establishment or modification of an order for alimony, maintenance, or support; or

[(B) of the collection of alimony, maintenance, or support from property that is not property of the estate;]

(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

* * * * * * *

(6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker, [financial institutions,] *financial institution, financial participant,* or securities clearing agency of any mutual debt and

claim under or in connection with commodity contracts, as defined in section 761 of this title, forward contracts, or securities contracts, as defined in section 741 of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, arising out of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by*, pledged to, under the control of,* or due from such commodity broker, forward contract merchant, stockbroker, ⟦financial institutions,⟧ *financial institution, financial participant,* or securities clearing agency to margin, guarantee, secure, or settle commodity contracts, forward contracts, or securities contracts;

(7) under subsection (a) of this section, of the setoff by a repo participant *or financial participant*, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, arising out of repurchase agreements against cash, securities, or other property held by*, pledged to, under the control of,* or due from such repo participant *or financial participant* to margin, guarantee, secure or settle repurchase agreements;

* * * * * * *

⟦(17) under subsection (a) of this section, of the setoff by a swap participant, of any mutual debt and claim under or in connection with any swap agreement that constitutes the setoff of a claim against the debtor for any payment due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property of the debtor held by or due from such swap participant to guarantee, secure or settle any swap agreement; or

⟦(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax imposed by the District of Columbia, or a political subdivision of a State, if such tax comes due after the filing of the petition.⟧

(17) under subsection (a), of the setoff by a swap participant or financial participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant or financial participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, under the control of, or due from such swap participant or financial participant to margin, guarantee, secure, or settle any swap agreement;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valo-

rem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (n), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (o), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered

property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of—

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

(27) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), **[**(e), and (f)**]** *(e), (f), and (h)* of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; **[**and**]**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) * * *

* * * * * * *

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied**[**.**]***;*

(3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

(I) 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 any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) * * *

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) * * *

(B) such property is not necessary to an effective reorganization; **[**or**]**

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) *or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—*

(A) * * *

[(B) the debtor has commenced monthly payments to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at a current fair market rate on the value of the creditor's interest in the real estate.**]**

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before or after the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing

of the 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, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)*(1)* Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended—

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

* * * * * * *

(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor 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)—

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

[(h) An**]** *(k)(1) Except as provided in paragraph (2), an* individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(l)(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor)

complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankrupcty law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

(A) is a debtor in a small business case pending at the time the petition is filed;

(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired sub-

stantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply—

(A) to an involuntary case involving no collusion by the debtor with creditors; or

(B) to the filing of a petition if—

(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

§ 363. Use, sale, or lease of property

(a) * * *

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate**[**.**]***, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—*

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

* * * * * * *

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section **[**only to the extent not inconsistent with any relief granted under section 362(c), 362(d), 362(e), or 362(f) of this title.**]** *only—*

(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.

* * * * * * *

(o) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as de-

fined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2002), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.

[(o)**]** *(p)* In any hearing under this section—

(1) * * *

* * * * * * *

§ 365. Executory contracts and unexpired leases

(a) * * *

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default**[**;**]** *other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;*

* * * * * * *

(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to—

(A) * * *

* * * * * * *

(D) the satisfaction of any **[**penalty rate or provision**]** *penalty rate or penalty provision* relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.

* * * * * * *

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

(1) * * *

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; *or*

(3) such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief**[**; or**]**.

[(4) such lease is of nonresidential real property under which the debtor is the lessee of an aircraft terminal or aircraft gate at an airport at which the debtor is the lessee under one or more additional nonresidential leases of an aircraft terminal or aircraft gate and the trustee, in connection with such assumption or assignment, does not assume all such leases or does not assume and assign all of such leases to the same person, except that the trustee may assume or assign less than all of such leases with the airport operator's written consent.]

(d)(1) * * *

* * * * * * *

[(4) Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

[(5) Notwithstanding paragraphs (1) and (4) of this subsection, in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate before the occurrence of a termination event, then (unless the court orders the trustee to assume such unexpired leases within 5 days after the termination event), at the option of the airport operator, such lease is deemed rejected 5 days after the occurrence of a termination event and the trustee shall immediately surrender possession of the premises to the airport operator; except that the lease shall not be deemed to be rejected unless the airport operator first waives the right to damages related to the rejection. In the event that the lease is deemed to be rejected under this paragraph, the airport operator shall provide the affected air carrier adequate opportunity after the surrender of the premises to remove the fixtures and equipment installed by the affected air carrier.

[(6) For the purpose of paragraph (5) of this subsection and paragraph (f)(1) of this section, the occurrence of a termination event means, with respect to a debtor which is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate—

[(A) the entry under section 301 or 302 of this title of an order for relief under chapter 7 of this title;

[(B) the conversion of a case under any chapter of this title to a case under chapter 7 of this title; or

[(C) the granting of relief from the stay provided under section 362(a) of this title with respect to aircraft, aircraft engines, propellers, appliances, or spare parts, as defined in section 40102(a) of title 49, except for property of the debtor found by the court not to be necessary to an effective reorganization.

[(7) Any order entered by the court pursuant to paragraph (4) extending the period within which the trustee of an affected air carrier must assume or reject an unexpired lease of nonresidential real property shall be without prejudice to—

[(A) the right of the trustee to seek further extensions within such additional time period granted by the court pursuant to paragraph (4); and

[(B) the right of any lessor or any other party in interest to request, at any time, a shortening or termination of the period within which the trustee must assume or reject an unexpired lease of nonresidential real property.

[(8) The burden of proof for establishing cause for an extension by an affected air carrier under paragraph (4) or the maintenance of a previously granted extension under paragraph (7)(A) and (B) shall at all times remain with the trustee.

[(9) For purposes of determining cause under paragraph (7) with respect to an unexpired lease of nonresidential real property between the debtor that is an affected air carrier and an airport operator under which such debtor is the lessee of an airport terminal or an airport gate, the court shall consider, among other relevant factors, whether substantial harm will result to the airport operator or airline passengers as a result of the extension or the maintenance of a previously granted extension. In making the determination of substantial harm, the court shall consider, among other relevant factors, the level of actual use of the terminals or gates which are the subject of the lease, the public interest in actual use of such terminals or gates, the existence of competing demands for the use of such terminals or gates, the effect of the court's extension or termination of the period of time to assume or reject the lease on such debtor's ability to successfully reorganize under chapter 11 of this title, and whether the trustee of the affected air carrier is capable of continuing to comply with its obligations under section 365(d)(3) of this title.]

(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

[(10)] *(5)* The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not

constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

* * * * * * *

(f)(1) Except as provided in [subsection] *subsections (b) and* (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection[; except that the trustee may not assign an unexpired lease of nonresidential real property under which the debtor is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate if there has occurred a termination event].

* * * * * * *

(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

(2)(A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.

§ 366. Utility service

(a) Except as provided in [subsection (b)] *subsections (b) and (c)* of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

* * * * * * *

(c)(1)(A) For purposes of this subsection, the term "assurance of payment" means—

(i) a cash deposit;

(ii) a letter of credit;

(iii) a certificate of deposit;

(iv) a surety bond;

(v) a prepayment of utility consumption; or

(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider—

(i) the absence of security before the date of the filing of the petition;

(ii) the payment by the debtor of charges for utility service in a timely manner before the date of the filing of the petition; or

(iii) the availability of an administrative expense priority.

(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of the filing of the petition without notice or order of the court.

* * * * * * *

CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

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559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.
560. Contractual right to liquidate, terminate, or accelerate a swap agreement.
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SUBCHAPTER I—CREDITORS AND CLAIMS

§ 501. Filing of proofs of claims or interests

(a) * * *

* * * * * * *

(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement (as defined in section 31701 of title 49) and, if so filed, shall be allowed as a single claim.

§ 502. Allowance of claims or interests

(a) * * *

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) * * *

* * * * * * *

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide*, and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required*.

* * * * * * *

(g)*(1)* A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed

under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.

* * * * * * *

(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if—

(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;

(B) the offer of the debtor under subparagraph (A)—

(i) was made at least 60 days before the date of the filing of the petition; and

(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

(C) no part of the debt under the alternative repayment schedule is nondischargeable.

(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

(A) the creditor unreasonably refused to consider the debtor's proposal; and

(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).

§ 503. Allowance of administrative expenses

(a) * * *

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)**[**(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case;**]** *(A) the actual, necessary costs and expenses of preserving the estate including—*

(i) wages, salaries, and commissions for services rendered after the commencement of the case; and

(ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title;

(B) any tax—

(i) incurred by the estate, *whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both,* except a tax of a kind specified in section 507(a)(8) of this title; or

(ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case; **[**and**]**

(C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; *and*

(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;

* * * * * * *

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under *subparagraph (A), (B), (C), (D), or (E) of* paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

(5) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title; **[**and**]**

(6) the fees and mileage payable under chapter 119 of title 28**[**.**]***;*

(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or a penalty provision, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from an entity other than the debtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);

(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

(A) in disposing of patient records in accordance with section 351; or

(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business; and

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title

in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

§ 504. Sharing of compensation

(a) * * *

* * * * * * *

(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.

§ 505. Determination of tax liability

(a)(1) * * *

(2) The court may not so determine—

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title; **[**or**]**

(B) any right of the estate to a tax refund, before the earlier of—

(i) * * *

(ii) a determination by such governmental unit of such request**[**.**]***; or*

(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.

(b)(1)(A) The clerk shall maintain a list under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may—

(i) designate an address for service of requests under this subsection; and

(ii) describe where further information concerning additional requirements for filing such requests may be found.

(B) If such governmental unit does not designate an address and provide such address to the clerk under subparagraph (A), any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of such governmental unit.

[(b)**]** *(2)* A trustee may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax *at the address and in the manner designated in paragraph (1).* Unless such return is fraudulent, or contains a material misrepresentation, *the estate,* the trustee, the debtor, and any successor to the debtor are discharged from any liability for such tax—

[(1)**]** *(A) upon payment of the tax shown on such return, if—*

[(A)] *(i)* such governmental unit does not notify the trustee, within 60 days after such request, that such return has been selected for examination; or

[(B)] *(ii)* such governmental unit does not complete such an examination and notify the trustee of any tax due, within 180 days after such request or within such additional time as the court, for cause, permits;

[(2)] *(B)* upon payment of the tax determined by the court, after notice and a hearing, after completion by such governmental unit of such examination; or

[(3)] *(C)* upon payment of the tax determined by such governmental unit to be due.

§ 506. Determination of secured status

(a)*(1)* An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement *or State statute* under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim*, including the payment of all ad valorem property taxes with respect to the property*.

* * * * * * *

§ 507. Priorities

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in

a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

[(1) First**]** *(2) Second*, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.

[(2) Second**]** *(3) Third*, unsecured claims allowed under section 502(f) of this title.

[(3) Third**]** *(4) Fourth*, allowed unsecured claims, but only to the extent of $4,000 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) * * *

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor**[**;**]**.

[(4) Fourth**]** *(5) Fifth*, allowed unsecured claims for contributions to an employee benefit plan—

(A) * * *

* * * * * * *

[(5) Fifth] *(6) Sixth*, allowed unsecured claims of persons—

(A) * * *

* * * * * * *

[(6) Sixth] *(7) Seventh*, allowed unsecured claims of individuals, to the extent of $1,800 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

[(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

[(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

[(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.]

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts *for a taxable year ending on or before the date of the filing of the petition*—

(i) [for a taxable year ending on or before the date of the filing of the petition] for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

[(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition; or]

(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days.

* * * * * * *

(B) a property tax [assessed] *incurred* before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

* * * * * * *

An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.

* * * * * * *

(10) Tenth, allowed claims for death or personal injury resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.

* * * * * * *

§ 508. Effect of distribution other than under this title

[(a) If a creditor receives, in a foreign proceeding, payment of, or a transfer of property on account of, a claim that is allowed under this title, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor in such foreign proceeding.**]**

[(b)**]** If a creditor of a partnership debtor receives, from a general partner that is not a debtor in a case under chapter 7 of this title, payment of, or a transfer of property on account of, a claim that is allowed under this title and that is not secured by a lien on property of such partner, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor from such general partner.

* * * * * * *

§ 511. Rate of interest on tax claims

(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.

SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

§ 521. Debtor's duties

(a) The debtor shall—

[(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of cur-

rent income and current expenditures, and a statement of the debtor's financial affairs;]

(1) file—

(A) a list of creditors; and

(B) unless the court orders otherwise—

(i) a schedule of assets and liabilities;

(ii) a schedule of current income and current expenditures;

(iii) a statement of the debtor's financial affairs and, if section 342(b) applies, a certificate—

(I) of an attorney whose name is indicated on the petition as the attorney for the debtor, or a bankruptcy petition preparer signing the petition under section 110(b)(1), indicating that such attorney or the bankruptcy petition preparer delivered to the debtor the notice required by section 342(b); or

(II) if no attorney is so indicated, and no bankruptcy petition preparer signed the petition, of the debtor that such notice was received and read by the debtor;

(iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;

(2) if an individual debtor's schedule of assets and liabilities includes [consumer] debts which are secured by property of the estate—

(A) * * *

(B) within [forty-five days after the filing of a notice of intent under this section] *30 days after the first date set for the meeting of creditors under section 341(a)*, or within such additional time as the court, for cause, within such [forty-five day] *30-day* period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title*, except as provided in section 362(h)*;

(3) if a trustee is serving in the case *or an auditor serving under section 586(f) of title 28*, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case *or an auditor serving under section 586(f) of title 28*, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of

the estate, whether or not immunity is granted under section 344 of this title**[**, and**]***;*

(5) appear at the hearing required under section 524(d) of this title**[**.**]***;*

(6) in a case under chapter 7 of this title in which the debtor is an individual, 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 such personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

(A) enters into an agreement with the creditor pursuant to section 524(c) with respect to the claim secured by such property; or

(B) redeems such property from the security interest pursuant to section 722.

(7) unless a trustee is serving in the case, continue to perform the obligations required of the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan if at the time of the commencement of the case the debtor (or any entity designated by the debtor) served as such administrator.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) is terminated with respect to the personal property of the estate 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 filed before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee.

(b) In addition to the requirements under subsection (a), a debtor who is an individual shall file with the court—

(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and

(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1).

(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).

(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h), 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, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agree-

ment that 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.

(e)(1) If the debtor in a case under chapter 7 or 13 is an individual and if a creditor files with the court at any time a request to receive a copy of the petition, schedules, and statement of financial affairs filed by the debtor, then the court shall make such petition, such schedules, and such statement available to such creditor.

(2)(A) The debtor shall provide—

(i) not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and

(ii) at the same time the debtor complies with clause (i), a copy of such return (or if elected under clause (i), such transcript) to any creditor that timely requests such copy.

(B) If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.

(C) If a creditor requests a copy of such tax return or such transcript and if the debtor fails to provide a copy of such tax return or such transcript to such creditor at the time the debtor provides such tax return or such transcript to the trustee, then the court shall dismiss the case unless the debtor demonstrates that the failure to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.

(3) If a creditor in a case under chapter 13 files with the court at any time a request to receive a copy of the plan filed by the debtor, then the court shall make available to such creditor a copy of the plan—

(A) at a reasonable cost; and

(B) not later than 5 days after such request is filed.

(f) At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court—

(1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

(2) at the same time filed with the taxing authority, each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) that had not been filed with such authority as of the date of the commencement of the case and that was subsequently filed for any tax year of the debtor ending in the 3-year period ending on the date of the commencement of the case;

(3) a copy of each amendment to any Federal income tax return or transcript filed with the court under paragraph (1) or (2); and

(4) in a case under chapter 13—

(A) on the date that is either 90 days after the end of such tax year or 1 year after the date of the commencement of the case, whichever is later, if a plan is not confirmed before such later date; and

(B) annually after the plan is confirmed and until the case is closed, not later than the date that is 45 days before the anniversary of the confirmation of the plan;

a statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

(g)(1) A statement referred to in subsection (f)(4) shall disclose—

(A) the amount and sources of the income of the debtor;

(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

(2) The tax returns, amendments, and statement of income and expenditures described in subsections (e)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003.

(h) If requested by the United States trustee or by the trustee, the debtor shall provide—

(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; or

(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.

(i)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.

(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

(3) Subject to paragraph (4) and upon request of the debtor made within 45 days after the date of the filing of the petition described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.

(4) Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the informa-

tion required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.

(j)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.

§ 522. Exemptions

(a) * * *

[(b) Notwithstanding**]** *(b)(1) Notwithstanding* section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph **[**(1)**]** *(2)* or, in the alternative, paragraph **[**(2)**]** *(3)* of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph **[**(1)**]** *(2)* and the other debtor elect to exempt property listed in paragraph **[**(2)**]** *(3)* of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph **[**(1)**]** *(2)*, where such election is permitted under the law of the jurisdiction where the case is filed. **[**Such property is—**]**

[(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,**]**

(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

[(2)(A) any property**]**

(3) Property listed in this paragraph is—

(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the **[**180 days**]** *730 days* immediately preceding the date of the filing of the petition**[**, or for a longer portion of such 180-day period than in any other place**]** *or if the debtor's domicile has not been located at a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place*; **[**and**]**

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law**[**.**]***; and*

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

(ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such 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 such amount.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

[(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;]

(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5));

* * * * * * *

(d) The following property may be exempted under subsection [(b)(1)] *(b)(2)* of this section:

(1) * * *

* * * * * * *

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

* * * * * * *

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt[—

[(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

[(ii) to the extent that such debt—

[(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

[(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.; or] *of a kind that is specified in section 523(a)(5); or*

* * * * * * *

(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term "household goods" means—

(i) clothing;

(ii) furniture;

(iii) appliances;

(iv) 1 radio;

(v) 1 television;

(vi) 1 VCR;

(vii) linens;

(viii) china;

(ix) crockery;

(x) kitchenware;

(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;

(xii) medical equipment and supplies;

(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and

(xv) 1 personal computer and related equipment.

(B) The term "household goods" does not include—

(i) works of art (unless by or of the debtor, or any relative of the debtor);

(ii) electronic entertainment equipment with a fair market value of more than $500 in the aggregate (except 1 television, 1 radio, and 1 VCR);

(iii) items acquired as antiques with a fair market value of more than $500 in the aggregate;

(iv) jewelry with a fair market value of more than $500 in the aggregate (except wedding rings); and

(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

* * * * * * *

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1) * * *

(2) the debtor could have avoided such transfer under ⟦subsection (f)(2)⟧ *subsection (f)(1)(B)* of this section.

* * * * * * *

(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of such Code or a simple retirement account under section 408(p) of such Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,000,000 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.

(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;

(3) a burial plot for the debtor or a dependent of the debtor; or

(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year

period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.

(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $125,000 in value in—

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(C) a burial plot for the debtor or a dependent of the debtor; or

(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $125,000 if—

(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

(B) the debtor owes a debt arising from—

(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

(iii) any civil remedy under section 1964 of title 18; or

(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and

(D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) * * *

(B) with respect to which a return, *or equivalent report or notice,* if required—

(i) was not filed *or given*; or

(ii) was filed *or given* after the date on which such return*, report, or notice* was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

* * * * * * *

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) * * *

* * * * * * *

[(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than $1,000 for "luxury goods or services" incurred by an individual debtor on or within 60 days before the order for relief under this title, or cash advances aggregating more than $1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 60 days before the order for relief under this title, are presumed to be nondischargeable; "luxury goods or services" do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act;]

(C)(i) for purposes of subparagraph (A)—

(I) consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(II) cash advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph—

(I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and

(II) the term "luxury goods or services" does not include goods or services reasonably necessary for the

support or maintenance of the debtor or a dependent of the debtor.

* * * * * * *

[(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—

[(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

[(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;]

(5) for a domestic support obligation;

* * * * * * *

[(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;]

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

(9) for death or personal injury caused by the debtor's operation of a [motor vehicle] *motor vehicle, vessel, or aircraft* if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

* * * * * * *

(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

(14B) incurred to pay fines or penalties imposed under Federal election law;

(15) *to a spouse, former spouse, or child of the debtor and* not of the kind described in paragraph (5) that is incurred by

the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, *or* a determination made in accordance with State or territorial law by a governmental unit [unless—

[(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

[(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor;]*;*

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a [dwelling] unit that has condominium ownership [or], in a share of a cooperative [housing] corporation, [but only if such fee or assessment is payable for a period during which—

[(A) the debtor physically occupied a dwelling unit in the condominium or cooperative project; or

[(B) the debtor rented the dwelling unit to a tenant and received payments from the tenant for such period,] *or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,*

but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed [by a court] *on a prisoner by any court* for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under [section 1915(b) or (f)] *subsection (b) or (f)(2) of section 1915* of title 28 *(or a similar non-Federal law)*, or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 *(or a similar non-Federal law)*;

[(18) owed under State law to a State or municipality that is—

[(A) in the nature of support, and

[(B) enforceable under part D of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or]

(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or

* * * * * * *

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

* * * * * * *

(c)(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), ⟦(6), or (15)⟧ *or (6)* of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), ⟦(6), or (15)⟧ *or (6)*, as the case may be, of subsection (a) of this section.

* * * * * * *

(e) Any institution-affiliated party of ⟦a insured⟧ *an insured* depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

§ 524. Effect of discharge

(a) A discharge in a case under this title—

(1) * * *

* * * * * * *

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under ⟦section 523, 1228(a)(1), or 1328(a)(1) of this title, or that⟧ *section 523, 1228(a)(1), or 1328(a)(1), or that* would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

* * * * * * *

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(1) * * *

[(2)(A) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim; and

[(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;]

(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;

* * * * * * *

(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

(2) such act is in the ordinary course of business between the creditor and the debtor; and

(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.

(k)(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement specified in subsection (c), statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with entering into such agreement.

(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms "Amount Reaffirmed" and "Annual Percentage Rate" shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases "Before agreeing to reaffirm a debt, review these important disclosures" and "Summary of Reaffirmation Agreement" may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms "Amount Reaffirmed" and "Annual Percentage Rate" must be used where indicated.

(3) The disclosure statement required under this paragraph shall consist of the following:

(A) The statement: "Part A: Before agreeing to reaffirm a debt, review these important disclosures:";

(B) Under the heading "Summary of Reaffirmation Agreement", the statement: "This Summary is made pursuant to the requirements of the Bankruptcy Code";

(C) The "Amount Reaffirmed", using that term, which shall be—

(i) the total amount of debt that the debtor agrees to reaffirm by entering into an agreement of the kind specified in subsection (c), and

(ii) the total of any fees and costs accrued as of the date of the disclosure statement, related to such total amount.

(D) In conjunction with the disclosure of the "Amount Reaffirmed", the statements—

(i) "The amount of debt you have agreed to reaffirm"; and

(ii) "Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.".

(E) The "Annual Percentage Rate", using that term, which shall be disclosed as—

(i) if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan, as the terms "credit" and "open end credit plan" are defined in section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to entering into an agreement of the kind specified in subsection (c) or, if no such periodic statement has been given to the debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the simple interest rate under subclause (II);

(ii) if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms "credit" and "open end credit plan" are defined in section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the entering into an agreement of the kind specified in subsection (c) with respect to the debt, or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have

been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating "The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.".

(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the debts the debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

(i) by making the statement: "Your first payment in the amount of $_____ is due on _____ but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.", and stating the amount of the first payment and the due date of that payment in the places provided;

(ii) by making the statement: "Your payment schedule will be:", and describing the repayment schedule with the number, amount, and due dates or period of payments scheduled to repay the debts reaffirmed to the extent then known by the disclosing party; or

(iii) by describing the debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

(I) The following statement: "Note: When this disclosure refers to what a creditor 'may' do, it does not use the word 'may' to give the creditor specific permission. The word 'may' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.".

(J)(i) The following additional statements:

"Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

"1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

"2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

"3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

"4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

"5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

"6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

"7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

"Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

"What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the

creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

"Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

"What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A 'lien' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.".

(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

"6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.".

(4) The form of such agreement required under this paragraph shall consist of the following:

"Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts arising under the credit agreement described below.

"Brief description of credit agreement:

"Description of any changes to the credit agreement made as part of this reaffirmation agreement:

"Signature: Date:

"Borrower:

"Co-borrower, if also reaffirming these debts:

"Accepted by creditor:

"Date of creditor acceptance:".

(5) The declaration shall consist of the following:

(A) The following certification:

"Part C: Certification by Debtor's Attorney (If Any).

"I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

"Signature of Debtor's Attorney: Date:".

(B) If a presumption of undue hardship has been established with respect to such agreement, such certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

(C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

(6)(A) The statement in support of such agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

"Part D: Debtor's Statement in Support of Reaffirmation Agreement.

"1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $_____, leaving $_____ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____.

"2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.".

(B) Where the debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

"I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.".

(7) The motion that may be used if approval of such agreement by the court is required in order for it to be effective, shall be signed and dated by the movant and shall consist of the following:

"Part E: Motion for Court Approval (To be completed only if the debtor is not represented by an attorney.). I (we), the debtor(s), affirm the following to be true and correct:

"I am not represented by an attorney in connection with this reaffirmation agreement.

"I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

"Therefore, I ask the court for an order approving this reaffirmation agreement.".

(8) The court order, which may be used to approve such agreement, shall consist of the following:

"Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.".

(l) Notwithstanding any other provision of this title the following shall apply:

(1) A creditor may accept payments from a debtor before and after the filing of an agreement of the kind specified in subsection (c) with the court.

(2) A creditor may accept payments from a debtor under such agreement that the creditor believes in good faith to be effective.

(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

(m)(1) Until 60 days after an agreement of the kind specified in subsection (c) is filed with the court (or such additional period as the court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that such agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of such agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation that identifies additional sources of funds to make the payments as agreed upon under the terms of such agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove such agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor, and such hearing shall be concluded before the entry of the debtor's discharge.

(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.

§ 525. Protection against discriminatory treatment

(a) * * *

* * * * * * *

(c)(1) A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a *student* grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(2) In this section, "student loan program" means **[**the program operated under part B, D, or E of**]** *any program operated under* title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.

§ 526. Restrictions on debt relief agencies

(a) A debt relief agency shall not—

(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is

untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

(A) the services that such agency will provide to such person; or

(B) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have—

(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State—

(A) may bring an action to enjoin such violation;

(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorneys' fees as determined by the court.

(4) The district courts of the United States for districts 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.

(d) No provision of this section, section 527, or section 528 shall—

(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

(2) be deemed to limit or curtail the authority or ability—

(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.

§ 527. Disclosures

(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

(1) the written notice required under section 342(b)(1); and

(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 must be stated in those documents where requested after reasonable inquiry to establish such value;

(C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13 of this title, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

(D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction, including a criminal sanction.

(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) the following state-

ment, 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 available under 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. A creditor is not permitted to coerce you into reaffirming your debts.

"If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

"If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should 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.

(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person.

§ 528. Requirements for debt relief agencies

(a) A debt relief agency shall—

(1) not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously—

(A) the services such agency will provide to such assisted person; and

(B) the fees or charges for such services, and the terms of payment;

(2) provide the assisted person with a copy of the fully executed and completed contract;

(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

(4) clearly and conspicuously use the following statement in such advertisement: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code." or a substantially similar statement.

(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public includes—

(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement; and

(B) statements such as "federally supervised repayment plan" or "Federal debt restructuring help" or other similar statements that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title.

(2) An advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt,

debt collection pressure, or inability to pay any consumer debt shall—

(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

(B) include the following statement: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code." or a substantially similar statement.

SUBCHAPTER III—THE ESTATE

§ 541. Property of the estate

(a) * * *

(b) Property of the estate does not include—

(1) * * *

* * * * * * *

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

(A) * * *

(B)(i) * * *

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section *365 or* 542 of this title; **[**or**]**

(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds—

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but—

(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(7) of

such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

(7) any amount—

(A) withheld by an employer from the wages of employees for payment as contributions—

(i) to—

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

(B) received by an employer from employees for payment as contributions—

(i) to—

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title;

(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

(A) the tangible personal property is in the possession of the pledgee or transferee;

(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b); or

[(5)**]** *(9)* any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

(A) * * *

* * * * * * *

(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.

(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.

* * * * * * *

§ 545. Statutory liens

The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien—

(1) * * *

(2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such a purchaser exists*, except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law*;

* * * * * * *

§ 546. Limitations on avoiding powers

(a) * * *

* * * * * * *

[(c) Except as provided in subsection (d) of this section, the rights and powers of a trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common-law right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, but—

[(1) such a seller may not reclaim any such goods unless such seller demands in writing reclamation of such goods—

[(A) before 10 days after receipt of such goods by the debtor; or

[(B) if such 10-day period expires after the commencement of the case, before 20 days after receipt of such goods by the debtor; and

[(2) the court may deny reclamation to a seller with such a right of reclamation that has made such a demand only if the court—

[(A) grants the claim of such a seller priority as a claim of a kind specified in section 503(b) of this title; or

[(B) secures such claim by a lien.]

(c)(1) Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

(A) not later than 45 days after the date of receipt of such goods by the debtor; or

(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).

* * * * * * *

(e) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, made by or to a commodity broker, forward contract merchant, stockbroker, financial institution, *financial participant,* or securities clearing agency, that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(f) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, made by or to a repo participant *or financial participant*, in connection with a repurchase agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(g) Notwithstanding sections 544, 545, 547, 548(a)(1)(B) and 548(b) of this title, the trustee may not avoid a transfer [under a swap agreement], made by or to a swap participant *or financial participant*, [in connection with a swap agreement] *under or in connection with any swap agreement* and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

[(g)] *(h)* Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days

after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor *and subject to the prior rights of holders of security interests in such goods or the proceeds of 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.

(i)(1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any State statute applicable to such lien that is similar to section 7–209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003, or any successor to such section 7–209.

(j) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.

§ 547. Preferences

(a) * * *

(b) Except as provided in ⟦subsection (c)⟧ *subsections (c) and (i)* of this section, the trustee may avoid any transfer of an interest of the debtor in property—

(1) * * *

* * * * * * *

(c) The trustee may not avoid under this section a transfer—

(1) * * *

⟦(2) to the extent that such transfer was—

⟦(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;

⟦(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and

⟦(C) made according to ordinary business terms;⟧

(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

(B) made according to ordinary business terms;

(3) that creates a security interest in property acquired by the debtor—

(A) * * *

(B) that is perfected on or before [20] *30* days after the debtor receives possession of such property;

* * * * * * *

[(7) to the extent such transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

[(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

[(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support; or]

(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $600[.]*; or*

(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,000.

* * * * * * *

(e)(1) * * *

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made—

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within [10] *30* days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such [10] *30* days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—

(i) * * *

(ii) [10] *30* days after such transfer takes effect between the transferor and the transferee.

* * * * * * *

(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment schedule between the debtor and any creditor of the debtor created by an approved nonprofit budget and credit counseling agency.

(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.

§ 548. Fraudulent transfers and obligations

(a) * * *

* * * * * * *

(d)(1) * * *

(2) In this section—

(A) * * *

(B) a commodity broker, forward contract merchant, stockbroker, financial institution, *financial participant,* or securities clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment;

(C) a repo participant *or financial participant* that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment; **[**and**]**

(D) a swap participant *or financial participant* that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer**[**.**]***; and*

(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.

* * * * * * *

§ 549. Postpetition transactions

(a) * * *

* * * * * * *

(c) The trustee may not avoid under subsection (a) of this section a transfer of *an interest in* real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of *an interest in* such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of **[**such property**]** *such real property*, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to **[**the interest**]** *such interest* of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

* * * * * * *

§ 552. Postpetition effect of security interest

(a) * * *

(b)(1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, [product] *products*, offspring, or profits of such property, then such security interest extends to such proceeds, [product] *products*, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

* * * * * * *

§ 553. Setoff

(a) Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—

(1) * * *

(2) such claim was transferred, by an entity other than the debtor, to such creditor—

(A) * * *

(B)(i) * * *

(ii) while the debtor was insolvent *(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)*; or

(3) the debt owed to the debtor by such creditor was incurred by such creditor—

(A) * * *

* * * * * * *

(C) for the purpose of obtaining a right of setoff against the debtor *(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)*.

(b)(1) Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), [362(b)(14),] *362(b)(17), 362(b)(27), 555, 556, 559, 560, 561,* 365(h), 546(h), or 365(i)(2) of this title, if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(A) * * *

* * * * * * *

[§ 555. Contractual right to liquidate a securities contract]

§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract

The exercise of a contractual right of a stockbroker, financial institution, *financial participant,* or securities clearing agency to

cause the [liquidation] *liquidation, termination, or acceleration* of a securities contract, as defined in section 741 of this title, because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title unless such order is authorized under the provisions of the Securities Investor Protection Act of 1970 or any statute administered by the Securities and Exchange Commission. [As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency.] *As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.*

[§ 556. Contractual right to liquidate a commodities contract or forward contract]

§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract

The contractual right of a commodity broker, *financial participant,* or forward contract merchant to cause the [liquidation] *liquidation, termination, or acceleration* of a commodity contract, as defined in section 761 of this title, or forward contract because of a condition of the kind specified in section 365(e)(1) of this title, and the right to a variation or maintenance margin payment received from a trustee with respect to open commodity contracts or forward contracts, shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by the order of a court in any proceeding under this title. [As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a clearing organization or contract market or in a resolution of the governing board thereof and a right,] *As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,*

whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.

* * * * * * *

[§ 559. Contractual right to liquidate a repurchase agreement]

§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement

The exercise of a contractual right of a repo participant *or financial participant* to cause the [liquidation] *liquidation, termination, or acceleration* of a repurchase agreement because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title, unless, where the debtor is a stockbroker or securities clearing agency, such order is authorized under the provisions of the Securities Investor Protection Act of 1970 or any statute administered by the Securities and Exchange Commission. In the event that a repo participant *or financial participant* liquidates one or more repurchase agreements with a debtor and under the terms of one or more such agreements has agreed to deliver assets subject to repurchase agreements to the debtor, any excess of the market prices received on liquidation of such assets (or if any such assets are not disposed of on the date of liquidation of such repurchase agreements, at the prices available at the time of liquidation of such repurchase agreements from a generally recognized source or the most recent closing bid quotation from such a source) over the sum of the stated repurchase prices and all expenses in connection with the liquidation of such repurchase agreements shall be deemed property of the estate, subject to the available rights of setoff. [As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw, applicable to each party to the repurchase agreement, of a national securities exchange, a national securities association, or a securities clearing agency, and a right,] *As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,* whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.

[§ 560. Contractual right to terminate a swap agreement]

§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement

The exercise of any contractual right of any swap participant *or financial participant* to cause the [termination of a swap agree-

ment] *liquidation, termination, or acceleration of one or more swap agreements* because of a condition of the kind specified in section 365(e)(1) of this title or to offset or net out any termination values or payment amounts arising under or [in connection with any swap agreement] *in connection with the termination, liquidation, or acceleration of one or more swap agreements* shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. [As used in this section, the term "contractual right" includes a right,] *As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,* whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15

(a) Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

(1) securities contracts, as defined in section 741(7);

(2) commodity contracts, as defined in section 761(4);

(3) forward contracts;

(4) repurchase agreements;

(5) swap agreements; or

(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

(b)(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—

(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) ex-

cept to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under such subchapter; 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 and traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

(3) No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

(A) a cross-margining agreement or similar arrangement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under paragraph (1) or (2) of section 5c(c) of the Commodity Exchange Act and has not been abrogated or rendered ineffective by the Commodity Futures Trading Commission; or

(B) any other netting agreement between a clearing organization (as defined in section 761) and another entity that has been approved by the Commodity Futures Trading Commission.

(c) As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under chapter 15, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).

§ 562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements

(a) If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract

(as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

(1) the date of such rejection; or

(2) the date or dates of such liquidation, termination, or acceleration.

(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates.

CHAPTER 7—LIQUIDATION

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.
701. Interim trustee.

* * * * * * *

[707. Dismissal.]
707. Dismissal of a case or conversion to a case under chapter 11 or 13.

SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

* * * * * * *

[728. Special tax provisions.]

SUBCHAPTER III—STOCKBROKER LIQUIDATION

* * * * * * *

753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.

SUBCHAPTER IV—COMMODITY BROKER LIQUIDATION

* * * * * * *

767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.

* * * * * * *

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

* * * * * * *

§ 704. Duties of trustee

(a) The trustee shall—

(1) * * *

* * * * * * *

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires; **[**and**]**

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee**[**.**]***;*

(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c);

(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and

(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

(A) is in the vicinity of the health care business that is closing;

(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

(C) maintains a reasonable quality of care.

(b)(1) With respect to a debtor who is an individual in a case under this chapter—

(A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

(B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

(2) The United States trustee (or bankruptcy administrator, if any) shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee (or the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or

(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals.

(c)(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

(B)(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of—

(i) the granting of the discharge;

(ii) the last recent known address of the debtor;

(iii) the last recent known name and address of the debtor's employer; and

(iv) the name of each creditor that holds a claim that—

(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

(II) was reaffirmed by the debtor under section 524(c).

(2)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.

* * * * * * *

§ 706. Conversion

(a) * * *

* * * * * * *

(c) The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests *or consents to* such conversion.

* * * * * * *

[§ 707. Dismissal]

§ 707. Dismissal of a case or conversion to a case under chapter 11 or 13

(a) * * *

(b)*(1)* After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, [but not at the request or suggestion of] *trustee (or bankruptcy administrator, if any), or* any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts*, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title,* if it finds that the granting of relief would be [a substantial abuse] *an abuse* of the provisions of this chapter. [There shall be a presumption in favor of granting the relief requested by the debtor.] In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

(II) $10,000.

(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it

is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of—

(I) 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

(II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts;

divided by 60.

(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—

(I) documentation for such expense or adjustment to income; and

(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

(II) $10,000.

(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that show how each such amount is calculated.

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not arise or is rebutted, the court shall consider—

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

(4)(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

(i) a trustee files a motion for dismissal or conversion under this subsection; and

(ii) the court—

(I) grants such motion; and

(II) finds that the action of the attorney for the debtor in filing under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—

(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and

(ii) the payment of such civil penalty to the trustee, the United States trustee (or the bankruptcy administrator, if any).

(C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has—

(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

(ii) determined that the petition, pleading, or written motion—

(I) is well grounded in fact; and

(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

(i) the court does not grant the motion; and

(ii) the court finds that—

(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

(B) A small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

(C) For purposes of this paragraph—

(i) the term "small business" means an unincorporated business, partnership, corporation, association, or organization that—

(I) has fewer than 25 full-time employees as determined on the date on which the motion is filed; and

(II) is engaged in commercial or business activity; and

(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

(I) a parent corporation; and

(II) any other subsidiary corporation of the parent corporation.

(6) Only the judge or United States trustee (or bankruptcy administrator, if any) may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(7)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if—

(i)(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

(ii) the debtor files a statement under penalty of perjury—

(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.

(c)(1) In this subsection—

(A) the term "crime of violence" has the meaning given such term in section 16 of title 18; and

(B) the term "drug trafficking crime" has the meaning given such term in section 924(c)(2) of title 18.

(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victim dismiss a voluntary case filed under this chapter by a debtor who is an individual if such individual was convicted of such crime.

(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.

SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

* * * * * * *

§ 722. Redemption

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien *in full at the time of redemption*.

* * * * * * *

§ 724. Treatment of certain liens

(a) * * *

(b) Property in which the estate has an interest and that is subject to a lien that is not avoidable under this title *(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)* and that secures an allowed claim for a tax, or proceeds of such property, shall be distributed—

(1) * * *

(2) second, to any holder of a claim of a kind specified in section 507(a)(1) *(except that such expenses, other than claims for wages, salaries, or commissions that arise after the date of the filing of the petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)*, 507(a)(2), 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, to the extent of the amount of such allowed tax claim that is secured by such tax lien;

* * * * * * *

(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

(1) exhaust the unencumbered assets of the estate; and

(2) in a manner consistent with section 506(c), recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of such property.

(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subject to the requirements of subsection (e), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:

(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(4).

(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).

* * * * * * *

§ 726. Distribution of property of the estate

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed

[before the date on which the trustee commences distribution under this section;] *on or before the earlier of—*

(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

(B) the date on which the trustee commences final distribution under this section;

* * * * * * *

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section [1009,] 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

* * * * * * *

§ 727. Discharge

(a) The court shall grant the debtor a discharge, unless—

(1) * * *

* * * * * * *

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within [six] *8* years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) * * *

(B)(i) * * *

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort; [or]

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter[.]*;*

(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination

not later than 1 year after the date of such determination, and not less frequently than annually thereafter.); or

(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

(A) section 522(q)(1) may be applicable to the debtor; and

(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

* * * * * * *

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

(1) * * *

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; **[**or**]**

(3) the debtor committed an act specified in subsection (a)(6) of this section**[**.**]***; or*

(4) the debtor has failed to explain satisfactorily—

(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.

* * * * * * *

[§ 728. Special tax provisions

[(a) For the purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 1112 or 1208 of this title.

[(b) Notwithstanding any State or local law imposing a tax on or measured by income, the trustee shall make tax returns of income for the estate of an individual debtor in a case under this chapter or for a debtor that is a corporation in a case under this chapter only if such estate or corporation has net taxable income for the entire period after the order for relief under this chapter during which the case is pending. If such entity has such income, or if the debtor is a partnership, then the trustee shall make and file a return of income for each taxable period during which the case was pending after the order for relief under this chapter.

[(c) If there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, a governmental unit's claim for any unpaid liability of such partner for a State or local tax on or measured by

income, to the extent that such liability arose from the inclusion in such partner's taxable income of earnings of such partnership that were not withdrawn by such partner, is a claim only against such partnership.

[(d) Notwithstanding section 541 of this title, if there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, then any State or local tax refund or reduction of tax of such partner that would have otherwise been property of the estate of such partner under section 541 of this title—

[(1) is property of the estate of such partnership to the extent that such tax refund or reduction of tax is fairly apportionable to losses sustained by such partnership and not reimbursed by such partner; and

[(2) is otherwise property of the estate of such partner.]

SUBCHAPTER III—STOCKBROKER LIQUIDATION

§ 741. Definitions for this subchapter

In this subchapter—

(1) * * *

* * * * * * *

[(7) "securities contract" means contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency;]

(7) "securities contract"—

(A) means—

(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(ii) any option entered into on a national securities exchange relating to foreign currencies;

(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, 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, mortgage loan, interest, group or index, or option;

(iv) any margin loan;

(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

(vi) any combination of the agreements or transactions referred to in this subparagraph;

(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

(ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial participant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan;

* * * * * * *

§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.

SUBCHAPTER IV—COMMODITY BROKER LIQUIDATION

§ 761. Definitions for this subchapter

In this subchapter—

(1) * * *

* * * * * * *

(4) "commodity contract" means—

(A) * * *

* * * * * * *

(D) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; **[**or**]**

* * * * * * *

(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

(G) any combination of the agreements or transactions referred to in this paragraph;

(H) any option to enter into an agreement or transaction referred to in this paragraph;

(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, including any guarantee or reimbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;

* * * * * * *

§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.

* * * * * * *

CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY

* * * * * * *

SUBCHAPTER I—GENERAL PROVISIONS

§ 901. Applicability of other sections of this title

(a) Sections 301, 344, 347(b), 349, 350(b), 361, 362, 364(c), 364(d), 364(e), 364(f), 365, 366, 501, 502, 503, 504, 506, 507(a)(1), 509, 510, 524(a)(1), 524(a)(2), 544, 545, 546, 547, 548, 549(a), 549(c), 549(d), 550, 551, 552, 553, *555, 556,* 557, *559, 560, 561, 562,* 1102, 1103, 1109, 1111(b), 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), *1123(d),* 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(6), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), 1129(b)(2)(B), 1142(b), 1143, 1144, and 1145 of this title apply in a case under this chapter.

* * * * * * *

SUBCHAPTER II—ADMINISTRATION

§ 921. Petition and proceedings relating to petition

(a) * * *

* * * * * * *

(d) If the petition is not dismissed under subsection (c) of this section, the court shall order relief under this chapter *notwithstanding section 301(b).*

* * * * * * *

CHAPTER 11—REORGANIZATION

* * * * * * *

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.
1101. Definitions for this chapter.

* * * * * * *

1115. Property of the estate.
1116. Duties of trustee or debtor in possession in small business cases.

* * * * * * *

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

* * * * * * *

§ 1102. Creditors' and equity security holders' committees

(a)(1) * * *

* * * * * * *

(3) On request of a party in interest in a case in which the debtor is a small business *debtor* and for cause, the court may order that a committee of creditors not be appointed.

(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the

court determines that the change is necessary to ensure adequate representation of creditors or equity security holders. The court may order the United States trustee to increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act), if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.

(b)(1) * * *

* * * * * * *

(3) A committee appointed under subsection (a) shall—

(A) provide access to information for creditors who—

(i) hold claims of the kind represented by that committee; and

(ii) are not appointed to the committee;

(B) solicit and receive comments from the creditors described in subparagraph (A); and

(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).

* * * * * * *

§ 1104. Appointment of trustee or examiner

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; **[**or**]**

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor**[**.**]***; or*

(3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.

(b)*(1)* Except as provided in section 1163 of this title, on the request of a party in interest made not later than 30 days after the court orders the appointment of a trustee under subsection (a), the United States trustee shall convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee in the case. The election of a trustee shall be conducted in the manner provided in subsections (a), (b), and (c) of section 702 of this title.

(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election.

(B) Upon the filing of a report under subparagraph (A)—

(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

(ii) the service of any trustee appointed under subsection (d) shall terminate.

(C) The court shall resolve any dispute arising out of an election described in subparagraph (A).

* * * * * * *

§ 1106. Duties of trustee and examiner

(a) A trustee shall—

[(1) perform the duties of a trustee specified in sections 704(2), 704(5), 704(7), 704(8), and 704(9) of this title;**]**

(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), (11), and (12) of section 704;

* * * * * * *

(6) for any year for which the debtor has not filed a tax return required by law, furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the condition of the debtor's books and records and the availability of such information; **[**and**]**

(7) after confirmation of a plan, file such reports as are necessary or as the court orders**[**.**]***; and*

(8) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).

* * * * * * *

(c)(1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (a)(8) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

(ii) include in the notice required by clause (i) the address and telephone number of such State child support enforcement agency;

(B)(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice required by clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 1141, provide written notice to such holder and to such State child support enforcement agency of—

(i) the granting of the discharge;

(ii) the last recent known address of the debtor;

(iii) the last recent known name and address of the debtor's employer; and

(iv) the name of each creditor that holds a claim that—

(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

(II) was reaffirmed by the debtor under section 524(c).

(2)(A) The holder of a claim described in subsection (a)(8) or the State child enforcement support agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of 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 by reason of making such disclosure.

* * * * * * *

§ 1112. Conversion or dismissal

(a) * * *

[(b) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee or bankruptcy administrator, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including—

[(1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;

[(2) inability to effectuate a plan;

[(3) unreasonable delay by the debtor that is prejudicial to creditors;

[(4) failure to propose a plan under section 1121 of this title within any time fixed by the court;

[(5) denial of confirmation of every proposed plan and denial of a request made for additional time for filing another plan or a modification of a plan;

[(6) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or a modified plan under section 1129 of this title;

[(7) inability to effectuate substantial consummation of a confirmed plan;

[(8) material default by the debtor with respect to a confirmed plan;

[(9) termination of a plan by reason of the occurrence of a condition specified in the plan; or

[(10) nonpayment of any fees or charges required under chapter 123 of title 28.]

(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

(2) The relief provided in paragraph (1) shall not be granted absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors

and the estate, if the debtor or another party in interest objects and establishes that—

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

(B) the grounds for granting such relief include an act or omission of the debtor other than under paragraph (4)(A)—

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

(3) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

(4) For purposes of this subsection, the term "cause" includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28;

(L) revocation of an order of confirmation under section 1144;

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan;

(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

(5) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such 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.

* * * * * * *

§ 1114. Payment of insurance benefits to retired employees

(a) * * *

* * * * * * *

(d) The court, upon a motion by any party in interest, and after notice and a hearing, shall [appoint] *order the appointment of* a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, to serve as the authorized representative, under this section, of those persons receiving any retiree benefits not covered by a collective bargaining agreement. *The United States trustee shall appoint any such committee.*

* * * * * * *

§ 1115. Property of the estate

(a) In a case in which the debtor is an individual, property of the estate includes, in addition to the property specified in section 541—

(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.

(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

§ 1116. Duties of trustee or debtor in possession in small business cases

In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—

(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow state-

ment has been prepared and no Federal tax return has been filed;

(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court, after notice and a hearing, waives that requirement upon a finding of extraordinary and compelling circumstances;

(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

(6)(A) timely file tax returns and other required government filings; and

(B) subject to section 363(c)(2), timely pay all taxes entitled to administrative expense priority except those being contested by appropriate proceedings being diligently prosecuted; and

(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.

SUBCHAPTER II—THE PLAN

§ 1121. Who may file a plan

(a) * * *

* * * * * * *

(d) **[**On**]** *(1) Subject to paragraph (2), on* request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

[(e) In a case in which the debtor is a small business and elects to be considered a small business—

[(1) only the debtor may file a plan until after 100 days after the date of the order for relief under this chapter;

[(2) all plans shall be filed within 160 days after the date of the order for relief; and

[(3) on request of a party in interest made within the respective periods specified in paragraphs (1) and (2) and after notice and a hearing, the court may—

[(A) reduce the 100-day period or the 160-day period specified in paragraph (1) or (2) for cause; and

[(B) increase the 100-day period specified in paragraph (1) if the debtor shows that the need for an increase is caused by circumstances for which the debtor should not be held accountable.]

(e) In a small business case—

(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

(A) extended as provided by this subsection, after notice and a hearing; or

(B) the court, for cause, orders otherwise;

(2) the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief; and

(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—

(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

(B) a new deadline is imposed at the time the extension is granted; and

(C) the order extending time is signed before the existing deadline has expired.

* * * * * * *

§ 1123. Contents of plan

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—

(1) * * *

* * * * * * *

(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends; [and]

(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee[.]*; and*

(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor

after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.

* * * * * * *

§ 1124. Impairment of claims or interests

Except as provided in section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan—

(1) * * *

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title *or of a kind that section 365(b)(2) expressly does not require to be cured*;

* * * * * * *

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; ⟦and⟧

(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and

⟦(D)⟧ *(E)* does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

§ 1125. Postpetition disclosure and solicitation

(a) In this section—

(1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, *including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case,* that would enable ⟦a hypothetical reasonable investor typical of holders of claims or interests⟧ *such a hypothetical investor* of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan *and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties*

in interest, and the cost of providing additional information; and

* * * * * * *

[(f) Notwithstanding subsection (b), in a case in which the debtor has elected under section 1121(e) to be considered a small business—

[(1) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

[(2) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement as long as the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed at least 10 days prior to the date of the hearing on confirmation of the plan; and

[(3) a hearing on the disclosure statement may be combined with a hearing on confirmation of a plan.]

(f) Notwithstanding subsection (b), in a small business case—

(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28; and

(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than 25 days before the date of the hearing on confirmation of the plan; and

(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.

(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.

* * * * * * *

§ 1127. Modification of plan

(a) * * *

* * * * * * *

(e) If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time period for such payments; or

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

(f)(1) Sections 1121 through 1128 and the requirements of section 1129 apply to any modification under subsection (a).

(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125 as the court may direct, notice and a hearing, and such modification is approved.

* * * * * * *

§ 1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) * * *

* * * * * * *

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) * * *

(B) with respect to a class of claims of a kind specified in section 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(i) * * *

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; **[**and**]**

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim **[**deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.**]** *regular installment payments in cash—*

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

* * * * * * *

(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

(16) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

(b)(1) * * *

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) * * *

(B) With respect to a class of unsecured claims—

(i) * * *

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property*, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section*.

* * * * * * *

(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).

SUBCHAPTER III—POSTCONFIRMATION MATTERS

§ 1141. Effect of confirmation

(a) * * *

* * * * * * *

(d)(1) * * *

(2) ⟦The confirmation of a plan does not discharge an individual debtor⟧ *A discharge under this chapter does not discharge a debtor who is an individual* from any debt excepted from discharge under section 523 of this title.

* * * * * * *

(5) In a case in which the debtor is an individual—

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and

(ii) modification of the plan under section 1127 is not practicable; and

(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

(i) section 522(q)(1) may be applicable to the debtor; and

(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

(B) for a tax or customs duty with respect to which the debtor—

(i) made a fraudulent return; or

(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

* * * * * * *

§ 1146. Special tax provisions

[(a) For the purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.

[(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.**]**

[(c)**]** *(a)* The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

[(d)] *(b)* The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

(1) * * *

* * * * * * *

SUBCHAPTER IV—RAILROAD REORGANIZATION

* * * * * * *

§ 1170. Abandonment of railroad line

(a) * * *

* * * * * * *

(e)(1) In authorizing any abandonment of a railroad line under this section, the court shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under [section 11347] *section 11326(a)* of title 49.

* * * * * * *

§ 1172. Contents of plan

(a) * * *

* * * * * * *

(c)(1) In approving an application under subsection (b) of this section, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under [section 11347] *section 11326(a)* of title 49.

* * * * * * *

CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER *OR FISHERMAN* WITH REGULAR ANNUAL INCOME

* * * * * * *

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

* * * * * * *

§ 1202. Trustee

(a) * * *

(b) The trustee shall—

(1) * * *

* * * * * * *

(4) ensure that the debtor commences making timely payments required by a confirmed plan; [and]

(5) if the debtor ceases to be a debtor in possession, perform the duties specified in sections 704(8), 1106(a)(1), 1106(a)(2), 1106(a)(6), 1106(a)(7), and 1203[.]*; and*

(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).

(c)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

(B)(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 1228, provide written notice to such holder and to such State child support enforcement agency of—

(i) the granting of the discharge;

(ii) the last recent known address of the debtor;

(iii) the last recent known name and address of the debtor's employer; and

(iv) the name of each creditor that holds a claim that—

(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

(II) was reaffirmed by the debtor under section 524(c).

(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of 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 by reason of making that disclosure.

§ 1203. Rights and powers of debtor

Subject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm *or commercial fishing operation*.

* * * * * * *

§ 1206. Sales free of interests

After notice and a hearing, in addition to the authorization contained in section 363(f), the trustee in a case under this chapter may sell property under section 363(b) and (c) free and clear of any

interest in such property of an entity other than the estate [if the property is farmland or farm equipment] *if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel)*, except that the proceeds of such sale shall be subject to such interest.

* * * * * * *

§ 1208. Conversion or dismissal

(a) * * *

* * * * * * *

(c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including—

(1) * * *

* * * * * * *

(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; [or]

(9) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation[.]*; and*

(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

* * * * * * *

SUBCHAPTER II—THE PLAN

* * * * * * *

§ 1222. Contents of plan

(a) The plan shall—

(1) * * *

[(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and]

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

(B) the holder of a particular claim agrees to a different treatment of that claim;

(3) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment[.]*; and*

(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected dis-

posable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) * * *

* * * * * * *

(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1228(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims;

[(11)**]** *(12)* include any other appropriate provision not inconsistent with this title.

* * * * * * *

§ 1225. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) * * *

* * * * * * *

(5) with respect to each allowed secured claim provided for by the plan—

(A) * * *

* * * * * * *

(C) the debtor surrenders the property securing such claim to such holder; **[**and**]**

(6) the debtor will be able to make all payments under the plan and to comply with the plan**[**.**]***; and*

(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; **[**or**]**

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan**[**.**]***; or*

(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended—

(A) for the maintenance or support of the debtor or a dependent of the debtor *or for a domestic support obligation that first becomes payable after the date of the filing of the petition*; or

* * * * * * *

§ 1228. Discharge

(a) [As] *Subject to subsection (d), as* soon as practicable after completion by the debtor of all payments under the plan*, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid*, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(10) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) * * *

* * * * * * *

(b) [At] *Subject to subsection (d), at* any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) * * *

* * * * * * *

(f) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

(1) section 522(q)(1) may be applicable to the debtor; and

(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

§ 1229. Modification of plan after confirmation

(a) * * *

* * * * * * *

(d) A plan may not be modified under this section—

(1) to increase the amount of any payment due before the plan as modified becomes the plan;

(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

(3) in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.

* * * * * * *

§ 1231. Special tax provisions

[(a) For the purpose of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.

[(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.**]**

[(c)**]** *(a)* The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1225 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

[(d)**]** *(b)* The court may authorize the proponent of a plan to request a determination, limited to questions of law, by **[**a State or local governmental unit**]** *any governmental unit* charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

(1) * * *

* * * * * * *

CHAPTER 13—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

Sec.
1301. Stay of action against codebtor.

* * * * * * *

1308. Filing of prepetition tax returns.

* * * * * * *

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

* * * * * * *

§ 1302. Trustee

(a) * * *

(b) The trustee shall—

(1) * * *

* * * * * * *

(4) advise, other than on legal matters, and assist the debtor in performance under the plan; **[**and**]**

(5) ensure that the debtor commences making timely payments under section 1326 of this title[.]*; and*

(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (d).

* * * * * * *

(d)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

(B)(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 1328, provide written notice to such holder and to such State child support enforcement agency of—

(i) the granting of the discharge;

(ii) the last recent known address of the debtor;

(iii) the last recent known name and address of the debtor's employer; and

(iv) the name of each creditor that holds a claim that—

(I) is not discharged under paragraph (2) or (4) of section 523(a); or

(II) was reaffirmed by the debtor under section 524(c).

(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of 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 by reason of making that disclosure.

* * * * * * *

§ 1307. Conversion or dismissal

(a) * * *

* * * * * * *

(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

(1) * * *

* * * * * * *

(9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521; [or]

(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521[.]*; or*

(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

* * * * * * *

(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

[(e)] *(f)* The court may not convert a case under this chapter to a case under chapter 7, 11, or 12 of this title if the debtor is a farmer, unless the debtor requests such conversion.

[(f)] *(g)* Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

§ 1308. Filing of prepetition tax returns

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

(B) for any return that is not past due as of the date of the filing of the petition, the later of—

(i) the date that is 120 days after the date of that meeting; or

(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

(2) After notice and a hearing, and order entered before the tolling of any applicable filing period determined under this subsection,

if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under this subsection for—

(A) a period of not more than 30 days for returns described in paragraph (1); and

(B) a period not to extend after the applicable extended due date for a return described in paragraph (2).

(c) For purposes of this section, the term "return" includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.

SUBCHAPTER II—THE PLAN

* * * * * * *

§ 1322. Contents of plan

(a) The plan shall—

(1) * * *

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; **[**and**]**

(3) if the plan classifies claims, provide the same treatment for each claim within a particular class**[**.**]***; and*

(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) * * *

* * * * * * *

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity; **[**and**]**

(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and

[(10)**]** *(11)* include any other appropriate provision not inconsistent with this title.

* * * * * * *

[(d) The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years.**]**

(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 5 years.

(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.

* * * * * * *

(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute "disposable income" under section 1325.

* * * * * * *

§ 1324. Confirmation hearing

[After**]** *(a) Except as provided in subsection (b) and after* notice, the court shall hold a hearing on confirmation of the plan. A party in interest may object to confirmation of the plan.

(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.

§ 1325. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) * * *

* * * * * * *

(5) with respect to each allowed secured claim provided for by the plan—

(A) * * *

(B)[(i) the plan provides that the holder of such claim retain the lien securing such claim; and] *(i) the plan provides that—*

(I) the holder of such claim retain the lien securing such claim until the earlier of—

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; [or] *and*

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder; [and]

(6) the debtor will be able to make all payments under the plan and to comply with the plan[.]*;*

(7) the action of the debtor in filing the petition was in good faith;

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the [three-year period] *appli-*

cable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments *to unsecured creditors* under the plan.

[(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended—

[(A) for the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made; and

[(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.]

(2) For purposes of this subsection, the term "disposable income" means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(3) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(4) For purposes of this subsection, the "applicable commitment period"—

(A) subject to subparagraph (B), shall be—

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

* * * * * * *

§ 1326. Payments

[(a)(1) Unless the court orders otherwise, the debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed.

[(2) A payment made under this subsection shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as practicable. If a plan is not confirmed, the trustee shall return any such payment to the debtor, after deducting any unpaid claim allowed under section 503(b) of this title.**]**

(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

(A) proposed by the plan to the trustee;

(B) scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment; and

(C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not

confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

(3) Subject to section 363, the court may, upon notice and a hearing, modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.

(4) Not later than 60 days after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.

(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; **[**and**]**

(2) if a standing trustee appointed under section 586(b) of title 28 is serving in the case, the percentage fee fixed for such standing trustee under section 586(e)(1)(B) of title 28**[**.**]***; and*

(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

(A) by prorating such amount over the remaining duration of the plan; and

(B) by monthly payments not to exceed the greater of—

(i) $25; or

(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan.

* * * * * * *

(d) Notwithstanding any other provision of this title—

(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior case under this title; and

(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).

* * * * * * *

§ 1328. Discharge

(a) **[**As**]** *Subject to subsection (d), as* soon as practicable after completion by the debtor of all payments under the plan*, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (includ-*

ing amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

[(1) provided for under section 1322(b)(5) of this title;

[(2) of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title; or

[(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime.]

(1) provided for under section 1322(b)(5);

(2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);

(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

(b) [At] *Subject to subsection (d), at* any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) * * *

* * * * * * *

(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or

(2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

(g)(1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

(1) section 522(q)(1) may be applicable to the debtor; and

(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

§ 1329. Modification of plan after confirmation

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments; **[**or**]**

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan**[**.**]***; or*

(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

(A) such expenses are reasonable and necessary;

(B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy; or

(ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance, who has similar income, expenses, age, and health status, and who lives in the same geographical location with the same number of dependents who do not otherwise have health insurance coverage; and

(C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title;

and upon request of any party in interest, files proof that a health insurance policy was purchased.

* * * * * * *

(c) A plan modified under this section may not provide for payments over a period that expires after **[**three years**]** *the applicable commitment period under section 1325(b)(1)(B)* after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

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CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

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§ 1501. Purpose and scope of application

(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

(1) cooperation between—

(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(2) greater legal certainty for trade and investment;

(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested 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 pending concurrently; or

(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

(c) This chapter does not apply to—

(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);

(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

(d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1502. Definitions

For the purposes of this chapter, the term—

(1) "debtor" means an entity that is the subject of a foreign proceeding;

(2) "establishment" means any place of operations where the debtor carries out a nontransitory economic activity;

(3) "foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;

(4) "foreign main proceeding" means a foreign proceeding pending 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, pending in a country where the debtor has an establishment;

(6) "trustee" includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title;

(7) "recognition" means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter; and

(8) "within the territorial jurisdiction of the United States", when used with reference to property of a debtor, refers to tangible property located within the territory of the United States

and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

§ 1503. International obligations of the United States

To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

§ 1504. Commencement of ancillary case

A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

§ 1505. Authorization to act in a foreign country

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

§ 1506. Public policy exception

Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

§ 1507. Additional assistance

(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

(1) just treatment of all holders of claims against or interests in the debtor's property;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(3) prevention of preferential or fraudulent dispositions of property of the debtor;

(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

§ 1508. Interpretation

In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

§ 1509. Right of direct access

(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.

(b) If the court grants recognition under section 1515, and subject to any limitations that the court may impose consistent with the policy of this chapter—

(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

(3) a court in the United States shall grant comity or cooperation to the foreign representative.

(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of an order granting recognition under section 1517.

(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

§ 1510. Limited jurisdiction

The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

§ 1511. Commencement of case under section 301 or 303

(a) Upon recognition, a foreign representative may commence—

(1) an involuntary case under section 303; or

(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

§ 1512. Participation of a foreign representative in a case under this title

Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

§ 1513. Access of foreign creditors to a case under this title

(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

§ 1514. Notification to foreign creditors concerning a case under this title

(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.

(c) When a notification of commencement of a case is to be given to foreign creditors, such notification shall—

(1) indicate the time period for filing proofs of claim and specify the place for filing such proofs of claim;

(2) indicate whether secured creditors need to file proofs of claim; and

(3) contain any other information required to be included in such 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 proof of claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

§ 1515. Application for recognition

(a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

(b) A petition for recognition shall be accompanied by—

(1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;

(2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; 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 such foreign proceeding and of the appointment of the foreign representative.

(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

§ 1516. Presumptions concerning recognition

(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so presume.

(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

§ 1517. Order granting recognition

(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

(2) the foreign representative applying for recognition is a person or body; and

(3) the petition meets the requirements of section 1515.

(b) Such foreign proceeding shall be recognized—

(1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests; or

(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. A 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 a 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 such foreign proceeding or the status of the foreign representative's appointment; and

(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

§ 1519. Relief that may be granted upon filing petition for recognition

(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

(1) staying execution against the debtor's assets;

(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

§ 1520. Effects of recognition of a foreign main proceeding

(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

(1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;

(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

§ 1521. Relief that may be granted upon recognition

(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

(6) extending relief granted under section 1519(a); and

(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

§ 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), to conditions it considers appropriate, including the giving of security or the filing of a bond.

(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

§ 1523. Actions to avoid acts detrimental to creditors

(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

(b) When a foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

§ 1524. Intervention by a foreign representative

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 a foreign court or a foreign representative, either directly or through the trustee.

(b) The court is entitled to communicate directly with, or to request information or assistance directly from, a foreign court or a foreign representative, subject to the rights of a party in interest to notice and participation.

§ 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with a foreign court or a foreign representative.

(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with a foreign court or a foreign representative.

§ 1527. Forms of cooperation

Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

(1) appointment of a person or body, including an examiner, to act at the direction of the court;

(2) communication of information by any means considered appropriate by the court;

(3) coordination of the administration and supervision of the debtor's assets and affairs;

(4) approval or implementation of agreements concerning the coordination of proceedings; and

(5) coordination of concurrent proceedings regarding the same debtor.

SUBCHAPTER V—CONCURRENT PROCEEDINGS

§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

§ 1529. Coordination of a case under this title and a foreign proceeding

If a foreign proceeding and a case under another chapter of this title are pending concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

(1) If the case in the United States pending at the time the petition for recognition of such foreign proceeding is filed—

(A) any relief granted under section 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

(B) section 1520 does not apply even if such foreign proceeding is recognized as a foreign main proceeding.

(2) If a case in the United States under this title commences after recognition, or after the date of the filing of the petition for recognition, of such foreign proceeding—

(A) 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 case in the United States; and

(B) if such foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

§ 1530. Coordination of more than 1 foreign proceeding

In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

§ 1532. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other credi-

tors of the same class is proportionately less than the payment the creditor has already received.

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TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 9—BANKRUPTCY

Sec.
151. Definition.

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158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules.

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§ 156. Knowing disregard of bankruptcy law or rule

(a) DEFINITIONS.—In this section—

(1) the term "bankruptcy petition preparer" means a person, other than the debtor's attorney or an employee of such an attorney, who prepares for compensation a document for filing**[**.**]***; and*

(2) the term "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under **[**this title**]** *title 11*.

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§ 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

(a) IN GENERAL.—The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

(b) UNITED STATES ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION.—The individuals referred to in subsection (a) are—

(1) the United States attorney for each judicial district of the United States; and

(2) an agent of the Federal Bureau of Investigation for each field office of the Federal Bureau of Investigation.

(c) BANKRUPTCY INVESTIGATIONS.—Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

(d) BANKRUPTCY PROCEDURES.—The bankruptcy courts shall establish procedures for referring any case that may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.

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SECTION 406 OF THE JUDICIARY APPROPRIATIONS ACT, 1990

SEC. 406. (a) * * *

(b) All fees as shall be hereafter collected for any service not of a kind described in any of the items enumerated as items 1 through 7 and as items 9 through 18, as in effect on November 21, 1989, of the bankruptcy miscellaneous fee schedule prescribed by the Judicial Conference of the United States [pursuant to 28 U.S.C. section 1930(b) and 33.87 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) and 25 percent of the fees hererafter collected under 28 U.S.C. section 1930(a)(3) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931] *under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title* and shall remain available to the Judiciary until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the Courts of Appeals, District Courts, and other Judicial Services and the Administrative Office of the United States Courts. The Judicial Conference shall report to the Committees on Appropriations of the House of Representatives and the Senate on a quarterly basis beginning on the first day of each fiscal year regarding the sums deposited in said fund.

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TITLE 28—UNITED STATES CODE

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Part I—Organization of Courts

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CHAPTER 6—BANKRUPTCY JUDGES

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§ 152. Appointment of bankruptcy judges

(a)(1) [The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph.] *Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located.* Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

Districts	Judges
* * * * * * *	
Georgia:	
Northern	8
Middle	[2] *3*
Southern	2
[Middle and Southern	1]
* * * * * * *	

CHAPTER 6—BANKRUPTCY JUDGES

Sec.
151. Designation of bankruptcy courts.
* * * * * * *
159. Bankruptcy statistics.
* * * * * * *

§ 157. Procedures

(a) * * *

(b)(1) * * *

(2) Core proceedings include, but are not limited to—

(A) * * *

* * * * * * *

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; [and]

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims[.]*; and*

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

* * * * * * *

§ 158. Appeals

(a) * * *

* * * * * * *

(c)(1) [Subject to subsection (b),] *Subject to subsections (b) and (d)(2),* each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless —

(A) * * *

* * * * * * *

(d)*(1)* The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal in pending, issues a stay of such proceeding pending the appeal.

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

§ 159. Bankruptcy statistics

(a) The clerk of the district court, or the clerk of the bankruptcy court if one is certified pursuant to section 156(b) of this title, shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a standardized format prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the "Director").

(b) The Director shall—

(1) compile the statistics referred to in subsection (a);

(2) make the statistics available to the public; and

(3) not later than July 1, 2006, 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 debtors;

(B) the current monthly income, average income, and average expenses of 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 cases filed during 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 date of the filing of the petition and the closing of the case for cases closed during the reporting period;

(E) for cases closed during the reporting period—

(i) the number of cases in which a reaffirmation agreement was filed; and

(ii)(I) the total number of reaffirmation agreements filed;

(II) of those cases in which a reaffirmation agreement was filed, the number of cases in which the debtor was not represented by an attorney; and

(III) of those cases in which a reaffirmation agreement was filed, the number of cases in which the reaffirmation agreement 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 entered determining the value of property securing a claim;

(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;

(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's attorney or damages awarded under such Rule.

* * * * * * *

Part II—Department of Justice

* * * * * * *

CHAPTER 39—UNITED STATES TRUSTEES

Sec.
581. United States trustees.

* * * * * * *

589b. Bankruptcy data.

* * * * * * *

§ 586. Duties; supervision by Attorney General

(a) Each United States trustee, within the region for which such United States trustee is appointed, shall—

(1) * * *

* * * * * * *

(3) supervise the administration of cases and trustees in cases under chapter 7, 11, 12, [or 13] *13, or 15* of title 11 by, whenever the United States trustee considers it to be appropriate—

(A) * * *

* * * * * * *

(G) monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress; [and]

(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and

[(H)] *(I)* monitoring applications filed under section 327 of title 11 and, whenever the United States trustee

deems it to be appropriate, filing with the court comments with respect to the approval of such applications;

* * * * * * *

(5) perform the duties prescribed for the United States trustee under title 11 and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe; [and]

[(6) make such reports as the Attorney General directs.]

(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003;

(7) in each of such small business cases—

(A) conduct an initial debtor interview as soon as practicable after the date of the order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—

(i) begin to investigate the debtor's viability;

(ii) inquire about the debtor's business plan;

(iii) explain the debtor's obligations to file monthly operating reports and other required reports;

(iv) attempt to develop an agreed scheduling order; and

(v) inform the debtor of other obligations;

(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor, ascertain the state of the debtor's books and records, and verify that the debtor has filed its tax returns; and

(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.

* * * * * * *

(d)*(1)* The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under paragraph (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11.

(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the district court of the United States for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the district court of the United States for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee

so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.

(e)(1) * * *

* * * * * * *

(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the district court of the United States for the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

(4) The Attorney General shall prescribe procedures to implement this subsection.

(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003.

(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the district court (or the clerk of the bankruptcy court if one is certified under section 156(b) of this title) shall give notice of the misstatement to the creditors in the case.

(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11.

* * * * * * *

§ 589a. United States Trustee System Fund

(a) * * *

(b) For the purpose of recovering the cost of services of the United States Trustee System, there shall be deposited as offsetting collections to the appropriation "United States Trustee System Fund", to remain available until expended, the following—

[(1) 27.42 percent of the fees collected under section 1930(a)(1) of this title;]

(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;

(2) ⟦one-half⟧ *three-fourths* of the fees collected under section 1930(a)(3) of this title;

* * * * * * *

(4) ⟦one-half⟧ *100 percent* of the fees collected under section 1930(a)(5) of this title;

* * * * * * *

§ 589b. Bankruptcy data

(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

(2) periodic reports by debtors in possession or trustees in cases under chapter 11 of title 11.

(b) REPORTS.—Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system;

(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports; and

(3) appropriate privacy concerns and safeguards.

(d) FINAL REPORTS.—The uniform forms for final reports required under subsection (a) for use by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include with respect to a case under such title—

(1) information about the length of time the case was pending;

(2) assets abandoned;

(3) assets exempted;

(4) receipts and disbursements of the estate;

(5) expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 13 of title 11;

(6) claims asserted;

(7) claims allowed; and

(8) distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

(e) PERIODIC REPORTS.—The uniform forms for periodic reports required under subsection (a) for use by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include—

(1) information about the industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

(2) length of time the case has been pending;

(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.

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Part III—Court Officers and Employees

* * * * * * *

CHAPTER 57—GENERAL PROVISIONS APPLICABLE TO COURT OFFICERS AND EMPLOYEES

* * * * * * *

§ 960. Tax liability

(a) Any officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.

(b) A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, unless—

(1) the tax is a property tax secured by a lien against property that is abandoned under section 554 of title 11, within a reasonable period of time after the lien attaches, by the trustee in a case under title 11; or

(2) payment of the tax is excused under a specific provision of title 11.

(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11, if—

(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

(2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.

* * * * * * *

Part IV—Jurisdiction and Venue

* * * * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION

* * * * * * *

§ 1334. Bankruptcy cases and proceedings

(a) * * *

(b) [Notwithstanding] *Except as provided in subsection (e)(2), and notwithstanding* any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) [Nothing in] *Except with respect to a case under chapter 15 of title 11, nothing in* this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

* * * * * * *

(d) Any decision to abstain or not to abstain [made under this subsection] *made under subsection (c)* (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. [This subsection] *Subsection (c) and this subsection* shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

[(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the

property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.]

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

* * * * * * *

CHAPTER 87—DISTRICT COURTS; VENUE

* * * * * * *

§ 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

(a) * * *

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,000 or a consumer debt of less than $5,000*, or a debt (excluding a consumer debt) against a noninsider of less than $10,000,* only in the district court for the district in which the defendant resides.

[§ 1410. Venue of cases ancillary to foreign proceedings

[(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the district court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

[(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against a property, or to require the turnover of property of an estate, may be commenced only in the district court for the district in which such property is found.

[(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the district court for the district in which is located the principal place of business in the United States, or the principal assets in the United States, of the estate that is the subject of such case.]

§ 1410. Venue of cases ancillary to foreign proceedings

A case under chapter 15 of title 11 may be commenced in the district court of the United States for the district—

(1) in which the debtor has its principal place of business or principal assets in the United States;

(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of jus-

tice and the convenience of the parties, having regard to the relief sought by the foreign representative.

* * * * * * *

Part V—Procedure

* * * * * * *

CHAPTER 123—FEES AND COSTS

§ 1930. Bankruptcy fees

(a) ⟦Notwithstanding section 1915 of this title, the⟧ *The* parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

⟦(1) For a case commenced under chapter 7 or 13 of title 11, $155.⟧

(1) For a case commenced—

(A) under chapter 7 of title 11, $160; or

(B) under chapter 13 of title 11, $150.

* * * * * * *

(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term "filing fee" means the filing required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.

* * * * * * *

CHAPTER 131—RULES OF COURTS

* * * * * * *

§ 2075. Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11. Such rules shall not abridge, enlarge, or modify any substantive right. The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective

a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law. *The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.*

* * * * * * *

FEDERAL DEPOSIT INSURANCE ACT

* * * * * * *

SEC. 11. (a) * * *

* * * * * * *

(e) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(1) * * *

* * * * * * *

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to [paragraph (10)] *paragraphs (9) and (10)* of this subsection and notwithstanding any other provision of this Act (other than subsection (d)(9) of this section and section 13(e)), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right [to cause the termination or liquidation] *such person has to cause the termination, liquidation, or acceleration* of any qualified financial contract with an insured depository institution which arises upon the appointment of the Corporation as receiver for such institution at any time after such appointment;

[(ii) any right under any security arrangement relating to any contract or agreement described in clause (i); or]

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);

* * * * * * *

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), *section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,* the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured depository institution.

* * * * * * *

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this [subsection—] *subsection, the following definitions shall apply:*

(i) QUALIFIED FINANCIAL CONTRACT.—The term "qualified financial contract" means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation*, resolution, or order* to be a qualified financial contract for purposes of this paragraph.

[(ii) SECURITIES CONTRACT.—The term "securities contract"—

[(I) has the meaning given to such term in section 741 of title 11, United States Code, except that the term "security" (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), and any interest in any mortgage loan or mortgage-related security; and

[(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

[(iii) COMMODITY CONTRACT.—The term "commodity contract" has the meaning given to such term in section 761 of title 11, United States Code.

[(iv) FORWARD CONTRACT.—The term "forward contract" has the meaning given to such term in section 101 of title 11, United States Code.

[(v) REPURCHASE AGREEMENT.—The term "repurchase agreement"—

[(I) has the meaning given to such term in section 101 of title 11, the United States Code, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 3(a)(41) of the Securities Exchange Act of 1934), any mortgage loan, and any interest in any mortgage loan; and

[(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

[(vi) SWAP AGREEMENT.—The term "swap agreement"—

[(I) means any agreement, including the terms and conditions incorporated by reference in any such agreement, which is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option purchased, forward foreign exchange agreement, rate cap agreement, rate floor agreement,

rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option purchased or any other similar agreement, and

[(II) includes any combination of such agreements and any option to enter into any such agreement.

[(vii) TREATMENT OF MASTER AGREEMENT AS 1 SWAP AGREEMENT.—Any master agreement for any agreements described in clause (vi)(I) together with all supplements to such master agreement shall be treated as 1 swap agreement.

[(viii) TRANSFER.—The term "transfer" has the meaning given to such term in section 101 of title 11, United States Code.]

(ii) SECURITIES CONTRACT.—The term "securities contract"—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(II) 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, mortgage 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, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term "commodity contract" means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this

clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term "forward contract" means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term "repurchase agreement" (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or

more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term "qualified foreign government security" means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

(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 total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial 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 subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any

agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any 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, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.

(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) TRANSFER.—The term "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.

(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (**[**other than paragraph (12) of this subsection, subsection (d)(9)**]** *other than subsections (d)(9) and (e)(10)* of this section, and section 13(e) of this Act), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) * * *

[(ii) any right under any security arrangement relating to such qualified financial contracts; or**]**

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);

* * * * * * *

(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or re-

pudiate any such contract in accordance with subsection (e)(1) of this section.

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term "walkaway clause" means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.

(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).

[(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

[(A) transfer to 1 depository institution (other than a depository institution in default)—

[(i) all qualified financial contracts between—

[(I) any person or any affiliate of such person; and

[(II) the depository institution in default;

[(ii) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

[(iii) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

[(iv) all property securing any claim described in clause (ii) or (iii) under any such contract; or

[(B) transfer none of the financial contracts, claims, or property referred to in subparagraph (A) (with respect to such person and any affiliate of such person).]

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph, the term "financial institution" means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term "clearing organization" has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—If—

(i) * * *

* * * * * * *

[the conservator or receiver shall use such conservator's or receiver's best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time) on the business day following such transfer.] *the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.*

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or 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 conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial con-

tract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

(i) A bridge bank.

(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

(I) immediately upon the organization of the institution; or

(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.

* * * * * * *

[(B)**]** *(D)* BUSINESS DAY DEFINED.—For purposes of this paragraph, the term "business day" means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the depository institution in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

[(11)**]** *(12)* CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

[(12)**]** *(13)* AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by

reason of, insolvency or the appointment of *or the exercise of rights or powers by* a conservator or receiver.

* * * * * * *

[(13)] *(14)* EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

(A) * * *

* * * * * * *

[(14)] *(15)* SELLING CREDIT CARD ACCOUNTS RECEIVABLE.—

(A) * * *

* * * * * * *

[(15)] *(16)* CERTAIN CREDIT CARD CUSTOMER LISTS PROTECTED.—

(A) * * *

* * * * * * *

(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

* * * * * * *

SEC. 13. (a) * * *

* * * * * * *

(e) AGREEMENTS AGAINST INTERESTS OF CORPORATION.—

(1) * * *

[(2) PUBLIC DEPOSITS.—An agreement to provide for the lawful collateralization of deposits of a Federal, State, or local governmental entity or of any depositor referred to in section 11(a)(2) shall not be deemed to be invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or with any changes in the collateral made in accordance with such agreement.]

(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreemen-t was not executed contemporaneously

with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.

* * * * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991

* * * * * * *

TITLE IV—MISCELLANEOUS PROVISIONS

Subtitle A—Payment System Risk Reduction

CHAPTER 1—BILATERAL AND CLEARING ORGANIZATION NETTING

* * * * * * *

SEC. 402. DEFINITIONS.

For purposes of this chapter—

(1) * * *

(2) CLEARING ORGANIZATION.—The term "clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar organization—

(A) that provides clearing, netting, or settlement services for its members and—

(i) * * *

(ii) which is registered as a clearing agency under the Securities Exchange Act of 1934*, or is exempt from such registration by order of the Securities and Exchange Commission*; or

(B) that is registered as a derivatives clearing organization under section 5b of the Commodity Exchange Act*, that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act, or that is a multilateral clearing organization (as defined in section 408 of this Act)*.

* * * * * * *

(6) DEPOSITORY INSTITUTION.—The term "depository institution" means—

(A) * * *

(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;

[(B) a branch or agency as defined in section 1(b) of the International Banking Act of 1978;**]**

(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the

foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;

[(C)] *(D)* a corporation chartered under section 25(a) of the Federal Reserve Act; or

[(D)] *(E)* a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act.

* * * * * * *

(11) MEMBER.—The term "member" means a member of or participant in a clearing organization, and includes the clearing organization *and any other clearing organization with which such clearing organization has a netting contract*.

* * * * * * *

(14) NETTING CONTRACT.—

(A) IN GENERAL.—The term "netting contract"—

[(i) means a contract or agreement between 2 or more financial institutions or members, that—

[(I) is governed by the laws of the United States, any State, or any political subdivision of any State, and

[(II) provides for netting present or future payment obligations or payment entitlements (including liquidation or close-out values relating to the obligations or entitlements) among the parties to the agreement; and]

(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or close out values relating to such obligations or entitlements) among the parties to the agreement; and

* * * * * * *

(15) PAYMENT.—The term "payment" means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.

SEC. 403. BILATERAL NETTING.

[(a) GENERAL RULE.—Notwithstanding any other provision of law, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract.]

(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject

to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).

* * * * * * *

(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).

SEC. 404. CLEARING ORGANIZATION NETTING.

[(a) GENERAL NETTING RULE.—Notwithstanding any other provision of law, the covered contractual payment obligations and covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract.]

(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).

* * * * * * *

(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).

* * * * * * *

SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, except that for such purpose—

(1) any reference to the "Corporation as receiver" or "the receiver or the Corporation" shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank;

(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 appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank; and

(3) any reference to an "insured depository institution" or "depository institution" shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act.

(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, 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 the case of an uninsured national bank or uninsured Federal branch or agency and the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

(d) DEFINITIONS.—For purposes of this section, the terms "Federal branch", "Federal agency", and "foreign bank" have the same

meanings as in section 1(b) of the International Banking Act of 1978.

SEC. [407] *407A*. NATIONAL EMERGENCIES.

The provisions of this subtitle may not be construed to limit the authority of the President under the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

* * * * * * *

SECTION 5 OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970

SEC. 5. PROTECTION OF CUSTOMERS.

(a) * * *

(b) COURT ACTION.—

(1) * * *

(2) JURISDICTION AND POWERS OF COURT.—

(A) * * *

* * * * * * *

(C) EXCEPTION FROM STAY.—

(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

(iii) As used in this subparagraph, the term "contractual right" includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing,

arising under common law, under law merchant, or by reason of normal business practice.

* * * * * * *

SECTION 302 OF THE BANKRUPTCY JUDGES, UNITED STATES TRUSTEES, AND FAMILY FARMER BANKRUPTCY ACT OF 1986

SEC. 302. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

(a) * * *

* * * * * * *

[(f) REPEAL OF CHAPTER 12 OF TITLE 11.—Chapter 12 of title 11 of the United States Code is repealed on October 1, 1998. All cases commenced or pending under chapter 12 of title 11, United States Code, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter had not been repealed. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed.]

TRUTH IN LENDING ACT

* * * * * * *

CHAPTER 2—CREDIT TRANSACTIONS

* * * * * * *

§ 127. Open end consumer credit plans

(a) * * *

(b) The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) * * *

* * * * * * *

(11)(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed clearly and conspicuously: "Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum

payments, call this toll-free number: _____." (the blank space to be filled in by the creditor).

(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: "Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: _____." (the blank space to be filled in by the creditor).

(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: "Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: _____." (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 percent. Any creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

(F)(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A), (B), or (C), as applicable,

may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

(ii)(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003, a toll-free telephone number, or provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250,000,000. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the program described in subclause (I).

(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

(H) The Board shall—

(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

(ii) establish the table required under clause (i) by assuming—

(I) a significant number of different annual percentage rates;

(II) a significant number of different account balances;

(III) a significant number of different minimum payment amounts; and

(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: "Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: _____." (the blank space to be filled in by the creditor).

(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

(B) The amount of the late payment fee to be imposed if payment is made after such date.

(c) DISCLOSURE IN CREDIT AND CHARGE CARD APPLICATIONS AND SOLICITATIONS.—

(1) * * *

* * * * * * *

(6) ADDITIONAL NOTICE CONCERNING "INTRODUCTORY RATES".—

(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

(i) use the term "introductory" in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c)), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

(B) EXCEPTION.—Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

(C) CONDITIONS FOR INTRODUCTORY RATES.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

(D) DEFINITIONS.—In this paragraph—

(i) the terms "temporary annual percentage rate of interest" and "temporary annual percentage rate" mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in

effect within 60 days before the date of mailing the application or solicitation; and

(ii) the term "introductory period" means the maximum time period for which the temporary annual percentage rate may be applicable.

(E) RELATION TO OTHER DISCLOSURE REQUIREMENTS.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.

(7) INTERNET-BASED SOLICITATIONS.—

(A) IN GENERAL.—In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

(ii) the information described in paragraph (6).

(B) FORM OF DISCLOSURE.—The disclosures required by subparagraph (A) shall be—

(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

(C) DEFINITIONS.—For purposes of this paragraph—

(i) the term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

(ii) the term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

* * * * * * *

(h) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.

SEC. 127A. DISCLOSURE REQUIREMENTS FOR OPEN END CONSUMER CREDIT PLANS SECURED BY THE CONSUMER'S PRINCIPAL DWELLING.

(a) APPLICATION DISCLOSURES.—In the case of any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor shall make the following disclosures in accordance with subsection (b):

(1) * * *

* * * * * * *

(13) STATEMENT REGARDING [CONSULTATION OF TAX ADVISOR.—A statement that the] *TAX DEDUCTIBILITY.—A statement that—*

(A) the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan[.]*; and*

(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Internal Revenue Code of 1986) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.

* * * * * * *

§ 128. Consumer credit not under open end credit plans

(a) For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) * * *

* * * * * * *

(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(b)(1) * * *

* * * * * * *

(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.

* * * * * * *

CHAPTER 3—CREDIT ADVERTISING

* * * * * * *

§ 144. Advertising of credit other than open end plans

(a) * * *

* * * * * * *

(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet,

as opposed to by radio or television, shall clearly and conspicuously state that—

(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

* * * * * * *

SEC. 147. ADVERTISING OF OPEN END CONSUMER CREDIT PLANS SECURED BY THE CONSUMER'S PRINCIPAL DWELLING.

(a) * * *

(b) TAX DEDUCTIBILITY.—**[**If any**]**

(1) IN GENERAL.—If any advertisement described in subsection (a) contains a statement that any interest expense incurred with respect to the plan is or may be tax deductible, the advertisement shall not be misleading with respect to such deductibility.

(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

* * * * * * *

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March 14, 2003

Lett 1A. cpr
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The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Jim:

On March 12, 2003, the Committee on the Judiciary ordered reported H.R. 975, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003. As you know, the Committee on Financial Services was granted an additional referral upon the bill's introduction pursuant to the Committee's jurisdiction under Rule X of the Rules of the House of Representatives over banks and banking, credit, and securities and exchanges.

Because of your willingness to consult with the Committee on Financial Services regarding this matter, your continuing support for our requested changes, and the need to move this legislation expeditiously, I will waive consideration of the bill by the Financial Services Committee. By agreeing to waive its consideration of the bill, the Financial Services Committee does not waive its jurisdiction over H.R. 975. In addition, the Committee on Financial Services reserves its authority to seek conferees on any provisions of the bill that are within the Financial Services Committee's jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Financial Services for conferees on H.R. 975 or related legislation.

I request that you include this letter and your response as part of your committee's report on the bill and the *Congressional Record* during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

Michael G. Oxley
Chairman

MGO/hnh
cc: The Honorable J. Dennis Hastert, Speaker
The Honorable Barney Frank
The Honorable Spencer Baccus
The Honorable Richard H. Baker
The Honorable Charles W. Johnson, III, Parliamentarian

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Eighth Congress

March 17, 2003

The Honorable Michael G. Oxley
Chairman
Committee on Financial Services
House of Representatives
Washington, DC, 20515

Dear Michael:

This letter responds to your letter dated March 14, 2003, concerning H.R. 975, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2003".

I agree that the bill contains matters within the Financial Services Committee's jurisdiction and appreciate your willingness to be discharged from further consideration of H.R. 975 so we may proceed to the floor.

Pursuant to your request, a copy of your letter and this letter will be included in the report of the Committee on the Judiciary on H.R. 975.

Sincerely

F. JAMES SENSENBRENNER, JR.
Chairman

cc. The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable Barney Frank
The Honorable Charles W. Johnson III

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, MARCH 12, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:07 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

* * * * * * *

Now, pursuant to notice, I call up the bill H.R. 975, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003 for purposes of markup, and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

Chairman SENSENBRENNER. At this point the Chair is prepared to recess the Committee. The House is shortly to go into session. There will be a 15-minute vote and two 5-minute votes. We will then have opportunity to commence this markup following these three votes, and the next round of votes will be at 1:00 o'clock in the afternoon. So I would urge Members to return promptly after the last of these three votes, so that we can begin this markup and hopefully make some progress on it.

The Committee stands recessed.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

When the Committee recessed prior to the votes, pending was a motion that H.R. 975, the Bankruptcy Abuse Prevention and Consumer Protection Act, be favorably reported to the House.

The chair now recognizes himself for 5 minutes for purposes of an opening statement.

This bill has a very long history. It represents the culmination of more than 6 years of intense and incisive consideration by this Committee. Over the course of the last three Congresses, this legislation has benefitted immensely from an extensive hearing and amendatory process, as well as meaningful bipartisan, bicameral negotiations. Last week, the Subcommittee on Commercial and Administrative Law had the eighteenth hearing that this Committee and Subcommittee have collectively held on the subject over the last 6 years.

During the 106th Congress alone, this Committee entertained 59 amendments over the course of a 5-day markup, which included 29 recorded votes. Of these amendments, 27 were agreed to. On the floor, 11 more amendments were considered. During the last Congress, this Committee considered an additional 18 amendments during the course of its markup. On the floor, the House passed five amendments to the bill.

Thereafter, an extensive negotiation process ensued. Beginning on August 10th, 2001, through July 26th, 2002, House and Senate conferees engaged in negotiations for nearly a year that ultimately

produced a bipartisan conference report on bankruptcy reform. I think it is fair to say that the conference report included many significant improvements, as well as the compromises that could generally be viewed as debtor friendly.

A version of the conference report, which deleted two provisions, was substituted for the text of H.R. 333. That passed the House by a vote of 244 to 116 on November 15th, 2002. It is against this lengthy legislative backdrop that we begin today's markup.

First, I want to remind my colleagues that H.R. 975 is virtually identical to the bankruptcy reform legislation that the House passed less than 4 months ago.

Second, while I acknowledge that this bill is not beyond further perfection, I am concerned that any further substantive amendments to the bill could upset the very delicate balance and various compromises that have been struck over the last 6 years, especially during the last Congress.

Third, as evidenced by experience in the last Congress, I strongly encourage Members on both sides to strenuously oppose amendments that concern extraneous or controversial matters.

Finally, we should be cognizant of the fact that the time for reforms will be effectuated by the enactment of H.R. 975 is long overdue. This bill is about personal responsibility and accountability. Every day that goes by without these reforms, more abuse and fraud goes undetected. Our economy should not suffer any longer from the billions of dollars in losses associated with proflights and abusive of bankruptcy filings.

We need to close the so-called "mansion loophole" now. We need to ensure that deadbeat parents can no longer use bankruptcy to shed their child and spousal support obligations. We need to make Chapter 12, a specialized form of bankruptcy relief for family farmers, a permanent component of the bankruptcy code and extend that relief to family fishermen. And we need to enact important administrative reforms, like direct appeals, streamlined reorganization procedures and additional bankruptcy judges that will address the burdens being endured by the current system and by those who must administer and use it.

I ask all Members to support this legislation and yield now to the gentleman from New York, Mr. Nadler, for an opening statement. He is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, we have, indeed, been considering this bill for 6 years, and it's gotten no better. It is still one of the most obnoxious bills that have come before this Committee since I've been on the Committee in the last 10 years.

This bill, when stripped to its essentials, is simply a way—actually, it's about 60 to 70 different ways of using the power of the Federal Government to reach into the pockets of low- and middle-income people, inextremists going into bankruptcy, and take money out of their pockets, additional money out of their pockets, and give it to the big banks and the credit card companies. That's the entire purpose and effect of this bill.

There are a couple of minor things in here, some not so minor. There's some good provisions in here, uncontroversial provisions, such as making Chapter 12 for the farmers permanent. No one disagrees with that.

But when you consider that most people going into bankruptcy—I forget whether it is 70 or 90 percent of people going into bankruptcy—are going into bankruptcy for one of three reasons: They had a medical emergency, and they were underinsured or had no insurance; they were laid off from their jobs; or they had a divorce. Those are the three things that put most people who go into bankruptcy into bankruptcy, not because they are irresponsible.

The slander that is behind this bill, the slander of the broad middle class of this country that the great increase in bankruptcy filings that we have seen in the last 20 years is because people simply see it as an easy way to get rid of their debt is simply not true. It is a slander. Slander is not true.

Why do I say that? In 1983—before we had the big increase in bankruptcy filings that is the asserted justification for this bill—in 1983, the average debt-to-income ratio of the Chapter 7 filer was .74; that is, when the average Chapter 7 filer had debts equal to 74 percent of his annual income.

In 1998, the average debt-to-income ratio was 1.24; that is, the average Chapter 7 filer didn't file for Chapter 7 until his debts equalled 124 percent of his annual income. So people were much more reluctant to file in recent years than in previous years. People are not jumping into bankruptcy, losing all their assets, except for those exempt property, because it's a first resort, it's lost the stigma, and therefore we have to do something. No, people are very reluctant to go into bankruptcy, but they're forced into it.

Why are they forced into? Because people have taken on too much debt, because the credit card companies have made debt too easy. Your dog can get a credit card. Certainly, my elementary school child was able to get a credit card or he got a solicitation for it when he was still in elementary school. He's now in high school. That's the real reason.

And, in fact, if you want to chart the increase in bankruptcy filings from 1983 to 1998, it charts exactly what the increase and the average debt-to-income ratio in society as a whole. That's the real problem.

But does this bill deal with that? Do we penalize credit card companies who offer credit cards to people whom they know are already over their heads in debt, who are begging them to go into bankruptcy? No. All we do in this bill is sock it to people in desperate straits in many, many different ways.

The Chairman mentioned, for instance, and while we're at it, we really hit women trying to collect child support. The Chairman mentioned that we strengthen child support collection ability. That's simply not true. What we do in this bill is we say that the woman who has her child support to collect would survive the bankruptcy judgment, survive the discharge in bankruptcy. It's one of the few things that survive it. Now we're going to add a lot of credit card debt that will survive in bankruptcy. So now, when she tries to collect on that child support, she'll have to compete with Chemical Bank or Chase Manhattan Bank's lawyer in trying to collect that debt. Who do you think is going to win?

Now, we're told, ah, but we made child support a—we gave it a priority for the first time, and that's true, but the priorities don't survive the bankruptcy. They're irrelevant once the discharge occurred, and now she's got to go compete with the Chase Bank's

lawyer. There is no priority then. She is in State civil court. The priorities are irrelevant to this collection.

What we've done is make it much harder for her to collect because she's now got to compete with the banks and the credit card companies because the credit card debt survived the bankruptcy, which they didn't do before, and priorities are gone. So it's upside down the way this bill is being represented.

This bill is a testament to the power of large financial institutions in our political system. It is probably the greatest advertisement for the necessity of fundamental campaign finance reform. If Members of Congress didn't have to raise money for their campaigns, I doubt this bill would be seriously considered because it is so one-sided, so impossible to enforce. Everybody who knows anything about the system of the judges, the trustees, the professors, the white-shoe law firms, they are all opposed to this bill because it is so bad a bill, and the fact that we've considered it for 6 years has made it no better.

I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired.

Without objection, all Members' opening statements will appear in the record at this point.

Chairman SENSENBRENNER. At this point, I ask unanimous consent that the staff be directed to make the specific technical and conforming changes contained in the document entitled "Technical Revisions," which has been cleared by both Democrats and Republicans.

Chairman SENSENBRENNER. Without objection——

Mr. WATT. Reserving the right to——

Chairman SENSENBRENNER. The gentleman reserves the right to object.

Mr. WATT. Could the Chairman just explain what it is, in general.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. WATT. Yes, sir.

Chairman SENSENBRENNER. Notwithstanding the many technical and substantive enhancements made to the legislation over the course of its consideration in the 107th Congress, we have identified a number of other technical errors that require revisions.

Let me assure the gentleman from North Carolina that they are purely technical, noncontroversial revisions, effectuated through my unanimous consent request, and will correct, for example, various grammatical, punctuation and spacing errors, inconsistent terms and erroneous terminologies and statutory cross-references and drafting errors.

I can assure the gentleman that there is nothing substantive involved in this. The minority had a copy of the text 2 days ago, and they agree with this conclusion, and I would hope that we could make these revisions at the beginning.

Mr. WATT. Thank you, Mr. Chairman.

Continuing on my reservation, I would just say to the Members that, while I have not personally looked at these, I do understand that the minority has looked at them and that they are technical amendments, no substantive amendments and would encourage my colleagues not to exercise their right to object, and I withdraw any objection that I might——

Chairman SENSENBRENNER. Without objection, the unanimous consent request is agreed to.

Chairman SENSENBRENNER. Are there amendments?

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina.

Mr. WATT. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 975 offered by Mr. Watt. On Page 155, strike lines 5 through——

Mr. WATT. Mr. Chairman, I ask unanimous that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

Amendment to H.R. 975
Offered by Mr. Watt

On page 155, strike lines 5 through 26.

On page 156, line 1, delete "(24)" and insert in its place "(22),"and strike line 4 and all that follows through line 10, page 161.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. This bill upsets a number of balances that have developed in bankruptcy law over the years.

One of the ones that I have particular concern about is addressed by this amendment, and it is the provision which basically makes it impossible for a tenant to continue to stay in an apartment once he or she declares bankruptcy, whether that tenant pays the rent, whether that tenant would like to try to correct whatever defaults there have been under the lease. The bill basically makes it impossible for a tenant to continue in an apartment.

I think that this is counterproductive because if a person has no place to live, you are running the risk that the person is not going to be able to continue to hold a job, to continue to pay the payments into the bankruptcy court to even comply with these new standards that exist in this bill.

So this provision would restore the automatic stay recognized in current law to allow the debtor breathing space to resolve his or her financial difficulties. Under current law, a debtor who wants to keep an apartment must keep current on the rent during bankruptcy, and must make steps, can make steps, should make steps, is required to make sense to cure past defaults as a condition for remaining in the apartment after filing the bankruptcy.

The automatic stay provision is designed to allow the debtor time to resolve financial obligations without becoming uprooted. Studies have shown that debtors who are temporarily relieved of their debts during the pendency of a bankruptcy quickly catch up on the rental arrears because they don't really have much alternative but to do that.

The bill would allow landlords to evict debtors, regardless of whether the debtor is meeting current obligations and regardless of whether a fresh start would enable the debtor to continue meeting rental obligations and cure any prebankruptcy defaults within a reasonable time. By doing so, the bill undermines the fresh-start rationale of the automatic stay and puts the only source of stability for many debtors, their apartments, at risk.

This provision also affords landlords special status over other creditors and favors only residential landlords so the bill itself really is kind of selectively dealing with landlords.

Also, this would, in a number of major cities like New York, where you have rent-controlled public housing tenancies, a person's ability to stay in an apartment may be one of the most valuable assets in the bankruptcy proceeding. So I think we are, as in many other cases in this bill, overreacting and overcompensating, and I would encourage my colleagues to pass this amendment in this particular hearing.

Mr. NADLER. Mr. Chairman?

Mr. WATT. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. I recognize myself for 5 minutes in opposition to the amendment.

This amendment strikes language that was a result of some lengthy negotiations during the Conference Committee and results in what is in the bill now, it results in an agreement that was negotiated between Senators Feingold and Sessions and signed off on by Senators Leahy and Biden. So it was a balancing of the equities. And what the gentleman from North Carolina is attempting to do is to push the pendulum more in favor of the debtor and against those who lease or rent properties to people who might file for bankruptcy.

Not only can the people under the Watt amendment, which restores the existing law, have an opportunity to live rent free, which is definitely not in the benefit of the people who own and maintain the property, the lessor, but also severely restricts the ability of a landlord to kick somebody out who has filed for bankruptcy if they are endangering the property or are using the property with the illegal use of controlled substances on the property. For that reason, I would urge the——

Mr. WATT. Would the gentleman yield?

Mr. NADLER. Mr. Chairman, would the gentleman yield for questions?

Chairman SENSENBRENNER. I yield back the balance of my time.

Mr. NADLER. Point of information.

Chairman SENSENBRENNER. The gentleman can't be recognized for a point of information under the rules.

Mr. NADLER. What?

Chairman SENSENBRENNER. Does the gentleman wish to support the amendment?

Mr. NADLER. I don't know. What I was going to ask is I don't——

Chairman SENSENBRENNER. Does the gentleman wish to strike the last word?

Mr. NADLER. No, I want some information, sir. I don't want to use my time until I get the information.

Chairman SENSENBRENNER. Well the question is on the amendment offered by the gentleman from North Carolina, Mr. Watt.

Mr. NADLER. Mr. Chairman?

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek——

Mr. NADLER. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. I don't want to speak for 5 minutes. I simply do not understand the current law and what the—I would ask the Chairman, sir, what change does this bill make in the current law? I don't understand what we're talking about here. That's why I wanted a point of information. What's the current law? What change does the bill make?

Chairman SENSENBRENNER. If the gentleman will yield, it allows certain eviction procedures to go forward, irrespective of the automatic stay.

Mr. NADLER. What eviction procedures?

Chairman SENSENBRENNER. If the gentleman will yield further, the ones that are enumerated in the language that the gentleman from North Carolina seeks to strike.

Mr. WATT. Will the gentleman yield?

Mr. NADLER. Yes, I'll yield.

Mr. WATT. Let me just say, first, I appreciate the gentleman yielding. I think it's fair to disagree with my amendment, but to misrepresent what it does I don't think is fair, and I think the Chairman's response to my amendment either reflects the fact that he has not read it or that he wants to intentionally mislead us.

This amendment would continue the current provisions of the law that require a tenant, as condition for staying in an apartment, to maintain their rental payment. So this whole notion that somebody is going to be able to stay in an apartment without paying rent is just wrong.

Mr. NADLER. Reclaiming my time.

Let me ask Mr. Watt, who may give me a better answer than the Chairman did.

Under current law, under current law, the automatic stay stays an eviction proceeding, as long, and only as long as the tenant is current on his rent or pays rent on an ongoing basis?

Mr. WATT. Pays rent on——

Mr. NADLER. On an ongoing basis.

Mr. WATT.—his ongoing rent and starts to make efforts, under the approval of the bankruptcy court, to pay their arrearage.

Mr. NADLER. Thank you. And under the current law, if the tenant is endangering the apartment in some way, using controlled substances, setting fires, whatever, can the landlord evict him, despite the automatic stay?

Mr. WATT. Yes.

Mr. NADLER. He can, with the approval of the bankruptcy judge?

Mr. WATT. With the approval of the bankruptcy judge.

Mr. NADLER. And what is the effect of this amendment?

Mr. WATT. The affect of the——

Mr. NADLER.—of the provision in the bill.

Mr. WATT. The effect of the amendment is to maintain the current law.

Mr. NADLER. No, no. What is the effect of the bill? What would the bill do as written?

Mr. WATT. The bill would just evict the tenant.

Mr. NADLER. So any tenant who keeps, who files for bankruptcy, but who keeps paying his rent would be evicted under this bill?

Mr. WATT. Well, he wouldn't be allowed to do that if the landlord didn't want him to stay in the property.

Mr. NADLER. I would ask the Chairman if he thinks that's a correct characterization of the bill.

Mr. Chairman?

[No response.]

Mr. NADLER. Mr. Chairman?

[No response.]

Mr. NADLER. On my time, I'm asking—I'll yield. Is what the gentleman just said correct?

[No response.]

Mr. NADLER. Is anybody willing to answer that question on the other side? Any proponent of the bill, is Mr. Watt correct that what this bill does is say that any tenant, even if he pays his rent currently, is going to be evicted the moment he files for bankruptcy; is that correct or not?

[No response.]

Mr. NADLER. I think it's a rather important question. Someone ought to answer it.

[No response.]

Mr. NADLER. Could I ask the Chairman if he'll answer the question or ask staff to answer or somebody to answer the question?

Mr. CANNON. If the gentleman will yield.

Mr. NADLER. Yes, I will.

Mr. CANNON. The statute has a specific set of criteria set out for what would happen in that circumstance. You should just look at the bill and answer that question for yourself.

Mr. NADLER. I've looked at the bill, and it's a lot of legal gobbledygook, which references other things which aren't before me.

Mr. WATT. Would the gentleman yield?

Mr. NADLER. Yes, I will.

Mr. WATT. The gentleman needs to accept what I'm saying to him. If the landlord wants to put the tenant out once the tenant declares bankruptcy, the fact that the tenant is there with the money in hand, willing to pay their current rent, and willing to work out an arrangement to correct the prior default, the tenant can still be put out if the landlord wants him——

Mr. NADLER. Well, let me, reclaiming my time. If that is correct, and if no one on the other side is willing to say that it's incorrect, if that is correct, it's the first time I've heard this about this bill, and I would dare say that a lot of people who voted for this bill in the past—not me, I've never voted for this bill—but a lot of people who have are not going to vote for it again.

If what this bill really does is to say that any tenant who has some arrearages of rent, the moment he files for bankruptcy, even if he's willing and able to pay current rent, and to pay some of the arrearages, can automatically be put out, then there is a real problem with this bill.

Chairman SENSENBRENNER. The gentleman's time has expired.

The question is on the Watt amendment. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it.

Mr. WATT. Recorded vote, please.

Chairman SENSENBRENNER. A recorded vote is requested. Those in favor of the Watt amendment will, as your names are called, answer aye; those opposed, no. The clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Ms. Hart?

Ms. HART. No.

The CLERK. Ms. Hart, no. Mr. Flake?

[No response.]

The CLERK. Mr. Pence?

[No response.]

The CLERK. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Carter?

Mr. CARTER. No.

The CLERK. Mr. Carter, no. Mr. Feeney?

[No response.]

The CLERK. Mrs. Blackburn?

Mrs. BLACKBURN. No.

The CLERK. Mrs. Blackburn, no. Mr. Conyers?

[No response.]

The CLERK. Mr. Berman?

[No response.]

The CLERK. Mr. Boucher?

[No response.]

The CLERK. Mr. Nadler?

Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
[No response.]
The CLERK. Ms. Sánchez?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. No.
Are there additional Members in the chamber who wish to cast or change their votes?
The gentleman from North Carolina, Mr. Coble?
Mr. COBLE. I vote no.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from Tennessee, Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. The gentleman from Florida, Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their vote?
[No response.]
Chairman SENSENBRENNER. If not, the clerk will report.
Mr. BACHUS. Mr. Chairman?
Chairman SENSENBRENNER. The gentleman from Alabama, Mr. Bachus?
Mr. BACHUS. I move to strike the last word.
Chairman SENSENBRENNER. The clerk has not reported yet.
The clerk will report.
Chairman SENSENBRENNER. Mr. Chairman, there are five ayes and fifteen nays.
Chairman SENSENBRENNER. The amendment is not agreed to.
Mr. BACHUS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Alabama, Mr. Bachus, seek recognition?

Mr. BACHUS. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BACHUS. I have an amendment I'd like to offer and ask——

Chairman SENSENBRENNER. Is the gentleman moving to strike the last word or offering an amendment?

Mr. BACHUS. I'm offering an amendment.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 975 offered by Mr. Bachus. Strike Section 414.

[The amendment follows:]

AMENDMENT TO H.R. 975
OFFERED BY MR. BACHUS

Strike section 414.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BACHUS. Thank you. I think most of the Members of this panel, we've dealt with bankruptcy for the past several years, and we all know that there was a National Bankruptcy Review Commission set up, made up of judges, mostly at the appellate level, bankruptcy authorities, and this commission took literally hundreds of votes. Most of those votes were fairly evenly divided. One vote they took was unanimous or near unanimous—conservatives, liberals, everyone, and that was a vote not to water down the disinterested standard in the bankruptcy code.

That is a standard that has existed since 1930. However, this, the present legislation before you contains Section 414, and what it does, briefly, is it strikes the disinterested standard.

Let me read, I have a letter from Edith Jones, United States Court of Appeals, Fifth Circuit. She is a very conservative jurist. She writes this:

"The National Bankruptcy Review Commission was asked to recommend a modification of the disinterested standard in order to accommodate the increased sophistication of professional firms of all types involved in Chapter 11 bankruptcy practice. Despite fervent lobbying by prominent bankruptcy professionals, the commission resisted making such a recommendation. We voted by a lopsided majority, as I recall, to retain the standard as it has existed since the 1930's."

Each of you have a copy of that letter. This morning I received a copy of a letter from the dean of the University of Houston Law School, which basically it's a two-page letter. I'm going to distribute it to the Members. But basically I want to read one thing that she, and she mentions the Enron case, and she basically says it's inconceivable that in a post-Enron environment we would be moving to strike or water down the disinterested standard. It says, "Some proponents of Section 414 may argue that the elimination of investment bankers from the per se list is not harmful because 101 would still retain language excluding from disinteresting those who 'have an interest materially adverse the estate.' Although this provision may provide a similar result to the per se list, the per se list serves as an important purpose. It saves the bankruptcy court from having to make time-consuming factual findings regarding the disinterest of those categories which, by their very nature, are rift with conflicts of interest. Removing investment bankers from the per se exclusion list and creating a case-by-case factual determination by the bankruptcy court will increase the time, cost and attorney fees for every bankruptcy case without increasing the benefits to the estate as a whole."

So the one argument that has been advanced against my amendment is pretty much shot down by this letter. I reserve the balance of my time.

Chairman SENSENBRENNER. Under the 5-minute rule, the gentleman can't reserve his time. Does he yield it back?

Ms. JACKSON LEE. Would the gentleman yield?

Mr. BACHUS. I would yield.

Ms. JACKSON LEE. I thank the gentleman for yielding. I think that the amendment that he is offering is an important one and that there is much in this bill I don't like, but the amendment to

protect the integrity of the bankruptcy process is enormously important. I believe that the language in Section 414 of the bankruptcy reform bill would remove investment bankers from the narrow list of persons and that the gentleman's description of that is just about exactly right.

If we, at a time when there are large corporate bankruptcies that raise many ethical issues to further impair the integrity and impartiality of the bankruptcy system, it would be a dreadful thing to do to markets, as well as to the court system itself.

So I commend the gentleman for offering the amendment, and I look forward to voting for it, and I thank him for yielding and yield back to him.

Mr. BACHUS. I thank you, and I would just reiterate that, Members, this is no time to soften or loosen current law as it applies to investment banks and what they are permitted to do.

Weakening the current disinterested person standard would undermine public confidence and the core legislative intent of increasing corporate and financial accountability as set forth by the Sarbanes-Oxley Act.

I ask that you vote for my amendment and restore and keep the integrity and accountability in the present bankruptcy——

Ms. JACKSON LEE. Would the gentleman yield?

Chairman SENSENBRENNER. The gentleman's time has expired.

For what purpose does the gentleman from Utah seek recognition?

Mr. CANNON. Thank you, Mr. Chairman. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CANNON. Thank you.

I'd like to advise my colleagues that I intend to vote no on this amendment. This is not a very clear case, let me just say, but as Mr. Bachus has pointed out, this provision has been in the law since 1930. The provision in the current bill before us was much considered and I think is an appropriate change to the law.

I might just point out that the law has many, there are many ways that you can deal with people who act badly, investment bankers, in particular, including criminal prosecutions. In this case, we have lots of corporations that have had difficulty and who are not evil, as Enron has sort of become synonymous with being.

For instance, much, if not most, of our steel industry in America has gone through a reorganization process in bankruptcy, and the burden, largely because I think of policies that happened under the prior Administration, but the result of that has been that those companies which are pretty much innocent, they've had best practices, they've done well otherwise, have been forced into reorganization and ended up reeducating and paying the cost of a new investment banking counsel. That's a burden that I don't think we need to do on a per se basis. A person with an interest can still be challenged.

So while we're talking about a substantial change to a law that's been in place for many years, this is a very thoughtful, the bill is very thoughtful on this point, and I would encourage people——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. CANNON.—to vote against this amendment.

Yes, I would yield to the Chairman.

Chairman SENSENBRENNER. I appreciate the Chairman of the Subcommittee yielding.

Let me also urge a no vote on this amendment. The reason that I think the language in Section 414 is good is that when a large corporation in particular goes bankrupt, there aren't very many assets to pass around. The people who end up being the major sufferers of a large bankruptcy are the employees, particularly where 401(k)s and other retirement plans have been heavily invested in that company's stock.

Now, the problem is, is that if we take Section 414 out, a large corporation, and Enron, as an example, is going to need to have investment banking advice in order to try to get itself on its feet and to try to preserve as much of the assets of the estate as possible.

If there is an automatic disqualification of the incumbent investment banker, then an unnecessary part of that estate is going to have to be used hiring a new investment banker, having that investment banker get up to speed on what the issues are all the time while the meter is ticking and the fees are being generated for the new investment banker.

Now, I think that the language in Section 414 prevents conflicts of interest from occurring, particularly 414(14)(c), which states that a disinterested person 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.

That gives the court the authority to remove an investment banker that does have a conflict of interest, but if there is no conflict of interest, and the advice of the investment banker post-bankruptcy filing during a reorganization is in the interest of maintaining as much of the estate as possible. There should be no reason why there should be an automatic disqualification. That's why I would hope that the amendment would be rejected, and I yield back to the gentleman from Utah.

Mr. CANNON. Reclaiming my time. Let me just point out, in addition to what you said, the fact is these fees go up. The clock ticks on the fees, but it also ticks down against the assets that could be recovered by people who are familiar with the assets and who could move quickly if you have an investment banker who is not conflicted. So I would encourage a no vote.

Mr. BACHUS. Would you yield?

Mr. CANNON. I certainly would yield.

Mr. BACHUS. Why would the National Bankruptcy Review Commission which was made up of appellate judges, many of which handle these cases, actually, said it would result in not only unjust enrichment or could, but it would also drive up the cost of fees and diminish the assets. I mean, the very professionals that deal with this on a daily basis, including the dean of the Houston Law School who says that actually her specialty——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. COBLE. Mr. Chairman?

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek recognition?

Mr. WEINER. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEINER. I actually had a similar question that the author of the amendment had, but in the inverse. It seems to me that the gentleman's amendment takes out judicial discretion. You know, the present Section 414 seems to give a judge a bankruptcy judge, who's most familiar with the case, the ability to decide whether someone is disinterested or not. So if you want to respect the views of judges as you quote that document, then I think the best way to do it is to leave Section 414 in, provide someone to make a judgment of who's disinterested and who is not.

I mean, it seems to me that one of the things that we have to be careful of doing here is think that we understand the complexities of every case. We won't, and we never will. And I think that the way 414 is written is it gives a judge the ability to make that decision, to kind of look at the information and decide is an investment firm purely at the tangential element in the involvement with the company, and therefore they don't fall under the category that would be disqualified or are they substantial?

And also if you're concerned about the grander question, I would agree with the Chairman's assessment that the language is written to make sure that an obvious conflict is weeded out. But if the maker of the amendment is concerned about what judges' opinions would be, rather than looking at some umbrella organization, why don't we give an opportunity for a judge to look at the matters involved, decide whether it would be in the interest to disqualify the person, and I would be glad to yield for an answer to that question.

Mr. BACHUS. Let me answer that question by just citing one member of the National Review Commission and what they said about that.

They said, "Given the ongoing nature of the problem," that is, of people having conflict of interest or people with an interest, a financial interest, in the bankruptcy proceeding advising the Court, they said, "I do not see how any professional group can advocate, consistent with the public interests, eliminating the statutory requirement of disinterestedness."

Now, they couldn't see any reason, in fact, and they did——

Mr. WEINER. I'm going to reclaim my time and ask you——

Mr. BACHUS. And I can give you the two reasons they gave for——

Mr. WEINER. No, no, stand by. You misunderstood my question. My question is not what someone looking at the broad scope of the law might have to say about their perceived conflict, if you're interested in the views of judges, there is one judge who I'm interested in more than any other, and that's the one who is sitting up to their eyeballs in documents about a case who, by the way, can make a decision not just about investment bankers, but they can make it about an accountant, about any other money manager.

The point is that that organization, I bet anyone who signed that letter would not like the presumption, going into a case that they were reviewing, that they didn't have the judgment that would be necessary, and I think 414 is written to give them what we should be doing here, which is a general sense of what the guidelines should be, and then let them step in and review it.

So if you have a judge who says, "Yeah, I don't trust my own judgment on this case, and I want Congress to substitute it," that letter I'd like to hear.

Mr. BACHUS. Would you yield?

Mr. WEINER. I'd be glad to.

Mr. BACHUS. What the gentleman said was what about accountants? What about these other professionals? I mean what, not just investment bankers. Well, in fact, part of what the Review Commission said is that to grant to one group alone the investment bankers a status insulated from the strict disinterest requirement makes no sense. In fact——

Mr. WEINER. Where is that, sir?

Mr. BACHUS. The accountants——

Mr. WEINER. Where is that, sir?

Mr. BACHUS. The accountants can't give advice, lawyers can't give advice. It's only the investment bankers who asked for this exemption.

Mr. WEINER. I'm going to have to reclaim my time because it's running out.

Section 414 doesn't read that way. The present Section 414 would include everyone on the same playing field. That's exactly the beauty of the way that the Chairman has written the bill.

Mr. BACHUS. I can give you the reasons. I have passed out a letter telling you that this commission, made up of bankruptcy experts and appellate judges——

Mr. WEINER. I was asking, perhaps, if you had a way to clarify that inconsistency, but I'll yield back the balance of my time.

Mr. COBLE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. COBLE. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. COBLE. Mr. Chairman, I think compelling arguments can be submitted on each side of this issue, but I'm inclined to lean against it. You, and the Subcommittee Chairman, and the gentleman from New York have pretty well expressed sentiments that I share.

Now, it is my belief, and I can't prove this—Mr. Bachus, I may ask you to weigh in on this at the right time—it is my belief that many of these bankruptcies resulted more from the anxiety that plagues the stock market, rather than corrupt or misleading or deceptive advice submitted by financial advisers. I think you're right, Mr. Chairman. I think the bill addresses an obvious conflict of interest, and I think the court that has jurisdiction can address that.

I want to ask the gentleman from Alabama a question if he would be willing to respond to me.

Mr. BACHUS. I would.

Mr. COBLE. Mr. Bachus, do you know what percentage of the bankruptcies did result from the anxiety that plagues the stock market, as opposed to bad information submitted by respective financial advisers? You may not know that, and I may be wrong in my thinking.

Mr. BACHUS. I do know this, that what our law has been since 1930 is that a person that has a financial or monetary interest in

the results cannot participate in the decision making on how to dispose of those assets or who gets them.

The investment bankers have an inherent conflict of interest here because they make a ton of money off these offerings. They have a financial interest in the outcome of the disposition of these cases.

Mr. COBLE. I thank you. I thank the gentleman. Let me reclaim my time.

Mr. BACHUS. And we don't let accountants do this, we don't let lawyers do this, we don't let third parties do this.

Mr. COBLE. I understand that, but let me claim my time.

Mr. BACHUS. We don't let shareholders do this. Why would we let the investment bankers do this?

Mr. COBLE. Let me reclaim my time before that red light illuminates into my eye.

I still believe that the problem is not, for the most part, with investment bankers who have performed unethically or improperly or corruptly, and for that reason, I'll lean against the amendment, and I thank the gentleman for his answer.

Mr. BACHUS. Could I ask the gentleman one question?

Mr. COBLE. I'll yield. Yes, sir.

Mr. BACHUS. What you basically say by this is that we're going to exempt all of these other groups because there might be a conflict of interest because they have an interest or they could have an interest or it could—but we're going to let the investment bankers participate.

Mr. COBLE. Well, you and I——

Mr. BACHUS. Why would we do that? Why would we single them out and say, despite the fact that they have a conflict of interest, we'll allow them to participate?

Mr. COBLE. Let me reclaim and say to my good friend from Alabama, I think on this issue you and I are going to have to agree to disagree agreeably.

With that, Mr. Chairman, I'll yield back my time.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Mr. Chairman, I've been——

Chairman SENSENBRENNER. For what purpose do you seek recognition?

Mr. NADLER. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

I've been listening to this discussion, and I've been trying to figure out the equities here, and I think that some of the questions and answers given by the last few—some of the answers given were not on point to the question asked by the gentleman from—my colleague from New York, perhaps because people didn't understand it.

The existing law allows the judge or mandates the judge to say whether someone has an interest, you know, to bar someone who has an interest materially adverse to the interest of the estate or of any class of creditors, that's exactly as this amendment does.

What the amendment does is remove a specific prohibition that says you cannot be the new—you cannot participate now if you were—that he is not, and was not an investment banker for any outstanding security of the debtor.

And the gentleman asked why should there be this specific prohibition of the preexisting investment banker? Why not allow the judge to determine if there's a conflict of interest, as the other section does. Why do you need to go beyond that?

I think the answer is that, in order for the judge to determine whether there's an adverse interest, he would have to review every prior note, the bond issue, determination and transaction made by the investment banker prior to the filing for bankruptcy. In fact, one of the jobs of the new investment banker in the bankruptcy proceeding, one of the things he has to do is precisely, the investment banker, not the judge, to review every transaction that the private investment banker went through in order to determine, number one, the valuation of different properties in the estate, different securities in the estate, and, number two, what obligations there are, and, number three, whether there was any impropriety.

Obviously, you can't review it yourself. So that's why the law has required a specific—has had a specific provision for the investment bankers, not the same as the lawyers and the accountants, because they don't have the same problem. Because in order to value everything in the estate, you have to review all of these transactions, and the guy who made all of these transactions, namely, the prior investment banker, is not the person to come in and review it to see if it was all done right and what the current valuations are.

Mr. WEINER. Would the gentleman yield?

Mr. NADLER. And they must—the attorneys and the accountants, by the way, must also be disinterested, and for the attorneys and the accountants, the judge determines whether they are disinterested, but because of the unique status of the job here, which is to say the new investment banker has to review everything the old investment banker did, you can't review yourself, and that's why the statute has a specific prohibition——

Mr. WEINER. Would the gentleman yield on that point?

Mr. NADLER. Yes, I'll yield.

Mr. WEINER. Except that you're description of the distinction is not correct. Frankly, an accountant would also have to go back and review their decisions that they've made over the last 20 years. Lawyers would have to go back and assess their decisions. That's why the law gives the judge to decide who's interested and who's disinterested.

And, frankly, this notion that they have to go back and review every transaction, well, what if they had one tangential or tertiary or fringe transaction 20 years ago, they are automatically disqualified. Whereas, an accountant who might have done some work for a CEO last week is not automatically disqualified.

It's simply, the distinction doesn't exist. These are complex transactions, complex relationships. What's the difference?

Mr. NADLER. Reclaiming my time because you're dealing with an outstanding security of the debtor, not for any transaction that happened 30 years ago. The language of the statute which this provision would get rid of is not, and was not, an investment banker for any outstanding security of the debtor.

You have to evaluate and look at everything that went into the current status of the value of all outstanding securities, and for that you don't want or the statute doesn't want, for the very reasons of leaning over backwards to make sure you have clean hands, not just clean hands, but there is a disinterestedness that we should have learned from all of the problems we've had in the last few years.

This statute, I think, on balance, and I've looked at it since yesterday really, has served us well for the last 65 years, and what is the pressing necessity to get rid of it? Especially now. What is the pressing necessity to get rid of it that not one single member of the Bankruptcy Commission, liberal, conservative, Republican, Democrats saw? Why do we have to now experiment by taking out this safeguard that has been there for 65 years and eliminate it? What do we gain by doing that? What is the pressing necessity for changing that?

I'll yield back.

Chairman SENSENBRENNER. The time of the gentleman has experienced.

The question is on the amendment offered by the gentleman from Alabama, Mr. Bachus.

Those in favor will say aye.

Opposed, no.

The noes appear to have it.

Mr. BACHUS. Mr. Chairman, I ask for a——

Chairman SENSENBRENNER. A rollcall will be ordered. Those in favor of the Bachus amendment will, as your names are called, answer aye; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus, aye. Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Ms. Hart?

Ms. HART. No.

The CLERK. Ms. Hart, no. Mr. Flake?

Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Carter?
Mr. CARTER. No.
The CLERK. Mr. Carter, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mrs. Blackburn?
Mrs. BLACKBURN. No.
The CLERK. Mrs. Blackburn, no. Mr. Conyers?
[No response.]
The CLERK. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no. Mr. Schiff?
[No response.]
The CLERK. Ms. Sánchez?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members in the room who wish to cast or change their vote?
The gentleman from Massachusetts, Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes?

[No response.]

Chairman SENSENBRENNER. If not, the clerk will report.

The gentleman from Indiana, Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no.

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee?

Ms. JACKSON LEE. Aye.

The CLERK. Ms. Jackson Lee, aye.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Wexler?

Mr. WEXLER. Aye.

The CLERK. Mr. Wexler, aye.

Chairman SENSENBRENNER. The clerk will report.

The CLERK. Mr. Chairman, there are 12 ayes and 17 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments?

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. DELAHUNT. This is Delahunt 019.

Chairman SENSENBRENNER. The clerk will report Delahunt 019.

The CLERK. Amendment to H.R. 975 offered by Mr. Delahunt. Add at the end of Title II the following: Section 234, Administrative Expenses. Section 503 of Title 11——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman from Massachusetts is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 975
OFFERED BY MR. DELAHUNT

Add at the end of title II the following:

SEC. 234. ADMINISTRATIVE EXPENSES.

Section 503 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) Notwithstanding subsection (b), there shall neither be allowed, nor paid—

''(A) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent a finding by the court based on evidence in the record that—

''(i) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;

''(ii) the services provided by the person are essential to the survival of the business; and

''(iii) either—

''(I) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean

transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or

''(II) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred;

''(B) a severance payment to an insider of the debtor, unless—

''(i) the payment is part of a program that is generally applicable to all full-time employees; and

''(ii) the amount of the payment is not greater than 10 times the amount of the mean severance pay given to nonmanagement employ-

ees during the calendar year in which the payment is made; or

"(C) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case.

"(2) For purposes of paragraph (1)(C), transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition shall be considered outside the ordinary course of business.".

Mr. DELAHUNT. I thank the Chairman.

Mr. Chairman, this markup has a certain surreal quality about it when we consider the economic strains and issues that are presently facing the American people, with unemployment rising, substantial numbers of people who can't buy health insurance at reasonable rates, retirees whose pensions and life savings have been wiped out by corporate bankruptcies and what are we doing about it? We're helping the credit card companies squeeze a few more pennies out of these same working folk, and at the same time we're ignoring corporate abuses that have turned the bankruptcy code into a bonanza for a handful of unscrupulous executives.

We talk about personal responsibility. We should also be talking about corporate responsibility.

Some months ago, the Financial Times published an analysis of the profits amassed by the top officers and directors of the 25 largest companies to declare bankruptcy during the previous year and a half. According to that report, in just 3 years, they grossed about $3.3 billion dollars before their companies went bust, having wiped out hundreds of billions of dollars of shareholder value and nearly 100,000 jobs.

And so, as Global Crossing was losing $9.2 billion and eliminating over 5,000 jobs, its chairman grossed $512 million. While Enron lost $18.8 billion and eliminated 5,500 jobs, its CEO, Mr. Ken Lay, and the chairman of its Energy Services subsidiary by the name of Lou Pai, made gross profits of $247 million and $270 million, respectively.

The sources of these windfalls included such now-familiar devices as retention bonuses, severance payments, forgiven loans and dividends on holdings of company stock.

In Massachusetts, my home State, Polaroid executives cancel their retirees health and life insurance coverage several days before the bankruptcy filing and terminated workers who were on long-term disability, all the while awarding themselves more than $5 million in various bonus and incentive payments, again, before filing for bankruptcy, and another $6 million in retention bonuses afterwards.

Officers and directors received severance packages, while employee severance was terminated. Officers and directors were able to redeem their company stock while employees who were forced to put 8 percent of their salaries into the stock option plan were prohibited from withdrawing the funds and watched their holdings evaporate.

No sooner was the sale of the company completed, than the new CEO terminated the retiree pension plan. What happens to people who lose their livelihood, their savings, and their health coverage? Well, a lot of them wind up unable to pay their debts and force them into bankruptcy. So, in fact, we have corporate bankruptcies causing personal bankruptcies.

My amendment represents a modest attempt to redress the balance. It would place reasonable limits on exorbitant so-called retention bonuses, severance packages and other payments to corporate insiders of companies that are bankrupt or facing bankruptcy.

The amendment does not prohibit such payment to the extent that they are truly necessary to keep key employees in place, but it permits such payments only when the court finds first the em-

ployee has a bona fide job offer from other businesses at the same or at a greater rate of compensation; secondly, the services provided by the person are essential to the survival of the business; and, third, the amount of the payment is not excessive, when measured against the amounts paid to nonmanagement employees in the ordinary course of business.

The amendment would empower the court to return excessive payments to the bankrupt company so that these funds can be available to help the company reorganize or, in the alternative, can be distributed to employees, retirees, and other creditors.

The amendment would restore some sense of fairness to this unbalanced bill, and I urge my colleagues to support it.

I yield back.

Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?

Mr. CANNON. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. You're recognized for 5 minutes.

Mr. CANNON. Thank you. I'm over here struggling with this. This is a fairly new amendment that we haven't dealt with very much. Let me just make a couple of points, if I might. I intend to oppose this amendment and would encourage people to vote against it. Although while saying that, I think we all agree here that we've had really gross abuses of the system, especially in recent times, and Mr. Delahunt has spoken eloquently about those problems.

This is an issue that we ought to do something about, that we need to be considering working on, and yet the amendment may be controversial, and probably includes some elements that have some unintended consequences. We haven't had a chance to do a hearing on this issue, and so I would encourage people to vote against it. I might suggest that a hearing in the future to consider this is something that we may want to do.

Let me just point out, just in a brief review of the amendment, we're dealing with some fairly arbitrary amounts. You've got in Section (a)(2), on Page 2, line 11, we're dealing with an amount equal to 25 percent of any similar transfer...made to or incurred for the benefit of the insider.

That seems to me to be arbitrary. I'm not sure if it's wrong or bad, it's just that it's something we haven't dealt with up until this point. And so given the enormity of this, I mean, what do you do to keep your employees loyal when the company is going to go through rough times? Your best employees are going to have options and alternatives.

I know Mr. Delahunt has tried to deal with that particular issue by showing that there is an outside offer, but often people need to get on and move away from a company and get on with their lives if the company is having problems.

So I would encourage the Members of the Committee to vote against this amendment. I would encourage Mr. Delahunt to continue working on it, and I pledge, as Chairman of the Subcommittee, to work with him on this problem, so we can have a hearing and flush out these ideas a little more, but I think it's inappropriate for this bill, which has been so carefully and so delicately balanced with so many interests, I believe this raises too many specters that are difficult.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the Delahunt amendment.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. rollcall is ordered. Those in favor of Delahunt No. 019 will, as your names are called, answer aye; those opposed, no. The clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Ms. Hart?

Ms. HART. No.

The CLERK. Ms. Hart, no. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.

The CLERK. Mr. King, no. Mr. Carter?

Mr. CARTER. No.

The CLERK. Mr. Carter, no. Mr. Feeney?

Mr. FEENEY. No.

The CLERK. Mr. Feeney, no. Mrs. Blackburn?

Mrs. BLACKBURN. No.

The CLERK. Mrs. Blackburn, no. Mr. Conyers?

[No response.]

The CLERK. Mr. Berman?

Mr. BERMAN. Aye.

The CLERK. Mr. Berman, aye. Mr. Boucher?

[No response.]

The CLERK. Mr. Nadler?

Mr. NADLER. Aye.

The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
[No response.]
The CLERK. Ms. Sánchez?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there Members who wish to cast or change their vote?
The gentleman from Massachusetts, Mr. Meehan?
Mr. MEEHAN. Aye, Mr. Chairman.
The CLERK. Mr. Meehan, aye.
Chairman SENSENBRENNER. Further Members who wish to cast or change their vote?
[No response.]
Chairman SENSENBRENNER. If not, the clerk will report.
The CLERK. Mr. Chairman, there are 7 ayes and 18 noes.
Chairman SENSENBRENNER. The amendment is not agreed to.
For what purpose does the gentleman from Massachusetts, Mr. Delahunt, seek recognition?
Mr. DELAHUNT. I have an amendment at the desk, Mr. Chairman.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Mr. Chairman, I have two Delahunt.
Mr. DELAHUNT. I'm sorry. This is .017.
Chairman SENSENBRENNER. The clerk will report Delahunt .017.
The CLERK. Amendment to H.R. 975 offered by Mr. Delahunt. Add at the end of Title II the following: Section 234 Priorities.
Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman from Massachusetts is recognized for 5 minutes.
[The amendment follows:]

AMENDMENT TO H.R. 975

OFFERED BY MR. DELAHUNT

Add at the end of title II the following:

SEC. 234. PRIORITIES

Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3), by striking "$4,000" and inserting "$13,500";

(2) in paragraph (3), striking "90 days" and inserting "180 days";

(3) in paragraph (4)(A), striking "180 days" and inserting "360 days"; and

(4) in paragraph (4)(B)(i), by striking "$4,000" and inserting "$13,500".

Mr. DELAHUNT. I thank the chair.

Like my previous amendment, this is an attempt to restore some measure of fairness and balance to the equation by increasing the chances that employees and retirees whose companies fall into bankruptcy are able to receive some portion of what they are owed.

Currently, Section 507(a) of the bankruptcy code gives employees a priority unsecured claim for up to $4,000 for unpaid wages, salaries and commissions earned during a 90-day period preceding the bankruptcy filing.

The section also gives employees a priority unsecured claim for up to $4,000 for unpaid contributions to an employee benefit plan during a 180-day period preceding the filing. The amendment would raise the wage and benefit cap to $13,500 and would lengthen the look-back period from 90 to 180 days in the case of unpaid wages, and from 130 to 360 days for plan contributions.

This dollar increase corresponds to the amount negotiated for unpaid employee claims in the Enron settlement, and the longer look-back makes it possible for people who earn less to accrue more of their unpaid wages and benefits, up to the amount of the cap.

The amendment recognizes the special obligations that an enterprise owes to the working people who have labored to build it, and to make it viable and to sustain it, and it acknowledges the high degree to which workers are reliant upon the good faith and promises of their employer to keep its commitments in return.

This is a fair and reasonable change, I would submit, Mr. Chairman, and I hope my colleagues support it.

I yield back.

Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?

Mr. CANNON. Thank you, Mr. Chairman.

In looking this bill over, many of the issues that Mr. Delahunt has raised are important and they really go to fairness and equity.

This is, in part, similar to legislation that was introduced by Mr. Gekas in the last Congress. That was H.R. 5525, and I would pledge to the gentleman, if he would like to do so, that we will work on this and see if we can't take the best thinking from both sides and do something with this bill between now and the time that it comes to the floor.

Mr. DELAHUNT. I appreciate the offer, and the offer is accepted, and I look forward to working with Mr. Cannon.

Mr. CANNON. Thank you.

Chairman SENSENBRENNER. Is the amendment withdrawn?

Mr. DELAHUNT. And the amendment is withdrawn.

Are there further amendments?

The gentleman from Massachusetts, Mr. Delahunt?

Mr. DELAHUNT. Yes, Mr. Chairman, if the chair will indulge me, I have one final amendment.

Chairman SENSENBRENNER. The clerk will report the last Delahunt amendment.

Mr. DELAHUNT. And this is Delahunt .013.

The CLERK. Amendment to H.R. 975 offered by Mr. Delahunt. Page 187, line 20 strike "was" and all that follows through "which" in line 22.

Page 188——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman from Massachusetts is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 975
OFFERED BY MR. DELAHUNT

Page 187, line 20, strike ''was'' and all that follows through ''which'' in line 22.

Page 188, strike line 12 and all that follows through line 18.

Chairman SENSENBRENNER. Thank you, Mr. Chairman.

This amendment would help eliminate the biggest loophole in the bankruptcy code and implement a key recommendation of the National Bankruptcy Review Commission by placing a meaningful national cap on the homestead exemption. I say meaningful, Mr. Chairman, because the $125,000 cap that is currently in the bill is qualified by a series of exemptions that assure that those who engage in flagrant abuse of the bankruptcy system by sheltering homestead assets can continue to do so.

My amendment leaves the cap at $125,000, but eliminates the exemptions for transactions conducted more than 1,215 days, roughly, 3 years, preceding the bankruptcy filing and for interest transferred from a debtor's previous principal residence acquired within the same State prior to that time.

The rationale we have been given for the so-called needs based reforms proposed in 975 is to eliminate abuses of the bankruptcy laws, abuses which proponents of the legislation have characterized as the use of the bankruptcy code as a financial planning tool, yet while the bill obsesses about whether small debtors can manage to pay $20 a month in Chapter 13, it continues to permit, indeed, endorses, the most notorious abuse of the consumer bankruptcy system of all of the financial planning strategy, whereby debtors purchase expensive homes in States with unlimited homestead exemptions, declare bankruptcy, and continue to enjoy a life of luxury while their creditors get little or nothing.

If we are truly serious about curtailing abuses, it seems to me that this is the place to start, with the owner of the failed Ohio S&L who paid off only a fraction of $300 million in bankruptcy claims, while keeping his multi-million-dollar ranch in Florida; or the convicted Wall Street financier who filed bankruptcy while owing some $50 million in debt and fines, but he still kept his $5-million Florida mansion, complete with 11 bedrooms and 21 baths; or the Miami physician, with no malpractice insurance, who was named in four separate malpractice actions, filed for bankruptcy protection and kept a $500,000 home, with 100-foot swimming pool; or that movie actor, Burt Reynolds, who declared bankruptcy in 1996, claiming more than $10 million in debt. Reynolds kept a $2.5-million home, appropriately named Valhalla, while his creditors received 20 cents on the dollar.

The situation in Florida has become so notorious that one Miami bankruptcy judge told the New York Times you could shelter the Taj Mahal in this State and no one could do anything about it.

The sponsors of this bill will claim that they have closed the loophole, first, by applying the cap to property purchased within the 1,215-day period prior to the filling; second, by requiring the individual to wait for 730 days after moving from another State before claiming the new State's exemption; and, third, by disallowing the claim on any portion of the homestead acquired, quoting the statutory language, "with the intent to hinder, delay or defraud a creditor."

While these features may eliminate a few of the abuses, they do not solve the problem. Wealthy debtors who are sophisticated enough to plan ahead can purchase a homestead and shelter their nonexempt assets and simply wait before filing their petition.

And the bill expressly permits them to transfer their assets from a previous principal residence into a new one at any time prior to their bankruptcy filing without being subject to the cap, provided that the former residence is located in the same State.

Well, what message does this send when Congress subjects middle class debtors to a means test, while permitting the wealthy to continue to place their millions out of reach of their creditors. With all due respect, a bill that does that isn't a Bankruptcy Abuse Prevention Act at all. If we're serious about curbing abuse, this amendment is the only way to do it, and I urge support, and I yield back.

Chairman SENSENBRENNER. For what purpose does the gentleman from Utah seek recognition?

Mr. CANNON. Mr. Chairman, it's my understanding that the gentleman from Texas, Mr. Smith, would like to address this bill.

Chairman SENSENBRENNER. The gentleman from Texas?

Mr. SMITH. Mr. Chairman, I oppose the amendment.

Chairman SENSENBRENNER. The gentleman is recognized.

Mr. SMITH. Mr. Chairman, this amendment should be opposed for several reasons. The amendment substantially changes the substance of the bill. In the last Congress, the Conference Committee carefully negotiated these provisions over the course of many months. The Senate Democrats, in fact, agreed to the provisions. If we change the provisions now, we jeopardize the chances that this bill will be enacted into law.

Also, a flat cap is an attempt to bypass State Constitutions. For over a century, our Nation's bankruptcy laws have allowed States to determine how much of the homestead should be protected from creditors in the event of bankruptcy.

Congress gave this authority because States are in a better position to determine an appropriate exemption based on the needs of each, individual State. Factors like property values, real estate inflation and demographics vary widely. In States like Texas and Florida, the exemption is unlimited and is written into the State Constitution.

In California, Massachusetts, and Arizona, the exemption is based on the debtor's age, health or income. Minnesota looks at whether the homestead is used for agricultural purposes. At any point here, different States have different standards.

If a flat cap is imposed, the authority for States to set their own limits will be overridden. The provisions in this bill already close a loophole in current law that allows individuals to relocate to a State on the eve of bankruptcy solely to obtain bankruptcy relief in a venue with a more generous exemption.

Infringing on a State's rights is only part of the problem with the policy behind flat caps. Under a permanent cap, senior citizens are at particular risk. Currently, 81 percent of those 65 and older own their own homes. Should a senior suffer a catastrophic illness or a financial calamity and be forced to seek bankruptcy relief, they would be forced to sell their home if its equity exceeded the amount of the one-size-fits-all cap.

Since most seniors have limited or no capacity to earn additional income, this would mean the end of home ownership for them.

This bill addresses debtors who abuse the homestead provision. It provides that a debtor must be domiciled in a State for at least

2 years before he or she can claim the State's homestead exemption. The bill further requires the debtor to own the homestead for at least 40 months before he or she can use State-exemption law. If a debtor has committed an intentional tort or criminal act or violated securities laws, their homestead exemption will be capped at 125,000.

These provisions will close the loophole that currently allows debtors to abuse the homestead provision. The overwhelming majority of people who declare bankruptcy do so because they have no other choice. Bankruptcy law is intended to give debtors a fresh start, not to punish them. Less than 1 percent of bankruptcy debtors abuse the process. We should not send a message to the American people that all debtors are wrongdoers and deserve to lose their homes. If we want really to address fraudulent debtors, an inflexible, across-the-board permanent cap is not the way to do it.

The solution is to support the provisions as they are in the underlying bill and ensure that this bill is enacted. I urge my colleagues to oppose the amendment——

Ms. LOFGREN. Would the gentleman yield?

Mr. CANNON. Would the gentleman yield, Mr. Smith?

Mr. SMITH. I'll yield back the balance of my time because I'm almost at the end and would appreciate their getting their own time. Thanks.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from California seek recognition?

Ms. LOFGREN. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I don't think I'll use the entire 5 minutes.

I think Mr. Delahunt has done a splendid job of pointing out some of the abuses that have occurred, and I share his sense that there is something wrong about stiffing the creditors, while residing in your mansion.

Now, I understand Mr. Smith's comments that there are differences, in terms of housing prices, and taxes, and the like. Certainly, the San Francisco Bay area has one of the highest housing costs in the world. As a matter of fact, you can't get anything for $125,000. You can't get a mobile home for $125,000 in San Jose.

But I would suggest, and I would actually ask Mr. Smith if he would agree, that if we were to change the $125,000-limit to a million dollars, let's just put it at million dollars, and preempt. Surely, in every part of the country, a million-dollar house ought to do the trick without disturbing the kind of differences that you have outlined. Would the gentleman consider that?

Mr. SMITH. Well, the reason I don't think we ought to consider it is twofold.

First of all, it still—my objections would remain the same. First of all, it does substantially change the bill. We have a bipartisan bill agreed to with the Senate last time. I sat through months of Conference Committee meetings, and if we come in with a change of this magnitude, I don't think it's going to be an easy haul to get the bankruptcy bill passed. So I think any substantive change like that would upset the cart.

Furthermore, as we all know, the cap is somewhat arbitrary, and I oppose caps in general, whether it's a million dollars or $125,000,

and I'm not really happy with the compromise that we ironed out in the Conference Committee last year because it doesn't allow States like Texas or Florida or Massachusetts or others to determine for themselves what's best for their own residents.

So, for those reasons, I'm afraid I'd have to pass on the gentlewoman's offer.

Ms. LOFGREN. I would yield to Mr. Delahunt.

Mr. DELAHUNT. I'm certainly glad to hear that the gentleman from Texas is disturbed by caps. I hope that tomorrow or whenever the malpractice bill comes to the floor of the House, he'll agree with any amendment that would remove the cap on pain and suffering from $250,000.

But let me respond to the gentlelady's suggestion of a million. I'd be happy to raise the cap because I know how expensive it is out in San Francisco there. It's very, very expensive, and I'd be more than willing to raise the cap in the amendment to $5 million.

Ms. LOFGREN. Well, can we ask unanimous consent to make that change in the gentleman's amendment?

Mr. DELAHUNT. Absolutely.

Chairman SENSENBRENNER. Looking at the amendment that the gentleman from Massachusetts has introduced, there is no number in the amendment, so the chair does not know what the UC request would relate to.

The time belongs to the gentlewoman from California.

Ms. LOFGREN. I would yield to Mr. Delahunt.

Mr. DELAHUNT. Well, if I could, on Page 187, line 22 of the base bill, strike $125,000 and insert $10 million.

And on Page 188, line 23, strike $125,000 and insert $10 million.

Chairman SENSENBRENNER. Is this a unanimous consent request?

Mr. DELAHUNT. It is.

Ms. LOFGREN. It is.

Chairman SENSENBRENNER. Is there objection?

Mr. CANNON. Mr. Chairman, I object to that.

Chairman SENSENBRENNER. Objection is heard.

Chairman SENSENBRENNER. The question is on Delahunt Amendment .013.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it.

Mr. DELAHUNT. Recorded vote, Mr. Chairman.

Chairman SENSENBRENNER. Recorded vote is demanded.

Those in favor of Delahunt Amendment .013 will, as your names are called, answer aye; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

Mr. GALLEGLY. No.

The CLERK. Mr. Gallegly, no. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Carter?
Mr. CARTER. No.
The CLERK. Mr. Carter, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mrs. Blackburn?
Mrs. BLACKBURN. No.
The CLERK. Mrs. Blackburn, no. Mr. Conyers?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?

[No response.]

Ms. JACKSON LEE. How am I recorded?

The CLERK. Mr. Chairman, Ms. Jackson Lee is not recorded.

The CLERK. The clerk will continue calling the roll.

The CLERK. Ms. Baldwin?

[No response.]

The CLERK. Mr. Weiner?

[No response.]

The CLERK. Mr. Schiff?

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye. Ms. Sánchez?

[No response.]

The CLERK. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Are there Members in the room who wish to cast or change their votes?

The gentlewoman from California, Ms. Waters?

Ms. WATERS. Aye.

The CLERK. Ms. Waters, aye.

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee?

Ms. JACKSON LEE. No.

The CLERK. Ms. Jackson Lee, no.

Chairman SENSENBRENNER. Are there further Members who wish to cast or change their vote?

[No response.]

Chairman SENSENBRENNER. If not, the clerk will report.

The CLERK. Mr. Chairman, there are 17 ayes and 19 noes.

Chairman SENSENBRENNER. And the amendment; is that correct? There are a lot of Members that are absent.

The CLERK. I'm sorry, 7 ayes and 19 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Mr. Chairman, I have an amendment at the desk, No. A–1.

Chairman SENSENBRENNER. The clerk will report the amendment.

While the clerk is looking for the amendment, the chair will announce that it is the chair's intention to continue this markup until the next series of votes, which I am now informed will be approximately 2 o'clock in the afternoon.l

After the next series of votes, and the official photograph of the House in session, Mr. Conyers and I are to testify before the House Administration Committee on the money needed to run this Committee for the next 2 years, and the chair will announce when the markup will resume, if necessary, after that period of time, which would be in the 3:30 to 4 o'clock area.

The Rules Committee is scheduled to meet at 5 o'clock in order to consider a rule for H.R. 5, which is the medical liability bill. The chair wishes to conclude the markup on this legislation today and

will keep the Committee marking up until such time as there is a vote on reporting the bill.

The clerk will now report the Nadler amendment.

The CLERK. Amendment to H.R. 975 offered by Mr. Nadler. On Page 8——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman from New York will be recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 975 (A-1)

OFFERED BY Nadler

On page 8, strike line 23, and all that follows through line 8 on page 11, 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)."

On page 28, strike line 7 and all that follows through line 8 on page 29, and insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 197. 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.".

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, this amendment would remove the IRS standards from the means test and allow a court to use the debtor's actual expenses, rather than those concocted by some IRS bureaucrat to determine how much a debtor would be able to repay creditors. The rest of the formula remains the same only the IRS is removed from the process to ensure that the process remains fair and reasonable.

I drafted this amendment using the language offered by Chairman Hyde before the full House when this bill was considered in the 106th Congress. Members of this Committee will no doubt recall that a similar amendment was offered by the Chairman and was adopted by this Committee, only to be reconsidered and removed later in the same markup.

The standard that would be put in place of the IRS standards by this amendment is the reasonable and necessary standard. The court would have to assess what the debtor's actual expenses are and whether they are reasonably necessary for the maintenance and support of the debtor and the dependents of the debtor. This is not a standard that has been pulled out of thin air. It has been the law for decades and has been interpreted by the courts. The main merit is that it is reasonable, it's real world, and it works.

Anyone who thinks that by turning the lives of financially distressed Americans, and there are quite a few out there right now, over to the IRS that we will avoid litigation should take another look at this bill. It assumes your expenses. And if the IRS standards have nothing to do with your real family, then you must go to court and litigate special circumstances. Just to get the court to

look at your real finances, you must hire a lawyer and bring a motion.

How many genuinely bankrupt families are there out there who can do this, who can afford to hire a lawyer and bring a motion just to get their real expenses in front of the court? This is neither fair nor rational. Since when did Members of Congress become cheerleaders for the IRS? Chairman Hyde put it quite well, and I quote, he said, "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 toward 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."

You will be told that this is a closed issue; that because Congress has done it before, you should not take the trouble to consider the arguments. Well, I don't think any of us came to Congress to put our reason in a blind trust, and I don't think any Member of this Committee did that. Please read the bill. Do you think IRS bureaucrats should have the power to decide how much a family of four should live on? Do you believe IRS bureaucrats should have the power to amend the bankruptcy code without any public notice? Because that's what you'll be doing if you defeat this amendment.

Did you vote for IRS reform because you thought the IRS was being too heavy-handed with taxpayers? If you did, you voted for a bill requiring the IRS to be more flexible in its application of these same collection standards when they negotiate with taxpayers who fail to pay their back taxes. Why are we now coming down so hard on families who are just down on their luck, when Members of this Congress were so willing to cut tax evaders more slack just a few year ago? Is this really what we want to vote for?

As Mr. Hyde said in concluding his remarks on this topic on the floor of the House, and again I quote, "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. It is the first time, and I dare say the last time, so much approbation will be showered on the IRS by this side of the aisle. I certainly do not join in that showering. 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. Chairman, I ask that Chairman Hyde's entire floor statement appear in the record following my remarks.

And, Mr. Chairman, I will simply summarize by saying that we decided, this Congress decided that the IRS standards are too harsh to be applied to people who fail to pay their taxes. They're also too harsh to be applied to people who are simply down in their luck, and the fact is someone's real expenses ought to be considered when looking to his ability to repay debts, not some average expenses for the Northeast United States that some bureaucrat at the IRS decides on without any knowledge of this particular creditor and his or her family. That's what Chairman Hyde said. I join with him. It's the only humane standard, and I urge my colleagues to vote for this amendment.

I thank you, and I yield back.

Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?

Mr. NADLER. Mr. Chairman, I asked for unanimous consent, and I didn't hear you—I asked a moment ago for unanimous consent that Chairman Hyde's entire floor statement appear in the record following my remarks.

Chairman SENSENBRENNER. Without objection.

[The statement of Mr. Hyde follows:]

BANKRUPTCY REFORM ACT OF 1999—(House of Representatives - May 05, 1999)

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.

Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CANNON. I appreciate the gentleman's concern here, and of course the position of Mr. Hyde. I would like to point out I rise in opposition to this bill and urge my colleagues to vote against it.

Again, this is a delicately balanced bill that's been through a lot of process, and just let me point out that Chairman Hyde signed three conference reports that included the provision that Mr. Nadler would illuminate here.

Let me make several points about this because there are a number of them. In the first place, the means test goes well beyond the IRS expense standards in certain respects, so we're not fixed to those.

Secondly, the current provision allows the debtor to claim, in addition to the IRS expense standards, eight other categories of expenses. If the debtor has higher expenses, the means tests specifically allows the debtor to rebut the presumption of abuse to establish special circumstances with respect to such higher expenses.

The bill specifically authorizes the Secretary of the Treasury to alter the IRS expense standards as they apply to bankruptcy cases.

The bill requires the director of the Executive Office of the U.S. Trustees to study this matter and to report to Congress on his conclusions. Efforts to delete the IRS expense standard failed on several occasions. It failed twice in the 105th Congress, both at full Committee and on the floor; it failed on the April 23rd, 2002, the conference on the meeting of this bill's predecessor. So it's been considered, it's been debated. And, frankly, in the 107th Congress, not even the Senate Democrats wanted this provision deleted.

This is a case where clarity of the process and the convenience of moving the issue forward, the efficiency of our judicial process I think is involved and been considered, and I would urge my colleagues to oppose this——

Mr. NADLER. Would the gentleman yield for a question?

Mr. CANNON.—this provision.

Mr. NADLER. Would the gentleman yield?

Mr. CANNON. Certainly.

Mr. NADLER. Thank you. Yes, it is true, of course, as you said, and as I referenced, that there are various standards in the bill to get away from the IRS standards if you make a motion for extraordinary circumstances. But the point is, and you would agree, I assume, that to make that motion, you need to hire a lawyer, and few people who are—now, maybe if it's General Motors going bankrupt, they'll have a lawyer, but if it's an ordinary middle-class or low-income person, to spend $5,000 to make that motion is not going to happen.

So, in effect, you don't really have an appeal against the IRS standards.

Mr. CANNON. Except that, in this case, it's a response to a motion so somebody else has to bring that standard to bear to be able to raise that issue of the standard, the way I understand the law is written currently.

Mr. NADLER. No, I think you have to make, you have to appeal to the extraordinary circumstances because the law creates a presumption of abuse—there's a presumption of abuse if you exceed the IRS standards. So, now, you can make a motion to go against that presumption, but you've got to make the motion, and that costs a few thousand dollars.

Mr. CANNON. The way I think it works is that the creditor would make a motion to dismiss, and then the debtor would have to respond to that is the way I believe it is currently——

Mr. NADLER. Yes, the creditor would have to make the motion to dismiss, but then you have to rebut the presumption——

Mr. CANNON. That's correct.

Mr. NADLER. And rebutting the presumption requires your lawyer and $5,000 or $6,000.

Mr. CANNON. Well, if you're a poor person in this system, the possibility of being attacked by a creditor is going to be lower than; in other words, to the degree that you have the ability to deal with an issue of rebutting the presumption, then you probably have the cash to do so.

Mr. NADLER. Do you think that the average middle-class person in a bankruptcy situation—and why is a middle-class person in a bankruptcy situation? Because he lost his job or whatever—he has the $5,000 to——

Mr. CANNON. Reclaiming my time. I think that in that circumstance, he's not going to be typically challenged by a creditor unless his expenditures are so far out of line that it would suggest that he has the ability to afford an attorney. In other words, there's sort of a self-healing process built into the system. This is not just a matter of——

Mr. NADLER. Would the gentleman yield further?

Mr. CANNON. Reclaiming my time. This is not just a matter of poor people, poor versus rich; this is a system that people need to move through with some clarity and efficiency.

Mr. NADLER. Would the gentleman yield for a second?

Mr. CANNON. I think I'm almost out of town.

Mr. NADLER. Well, just for a second then, before you're out of time. The fact is that creditors were kept out of this until this bill, for making such a motion, specifically because of the coercive power that they have given the fact that the guy going bankrupt is going to have, for another $5,000, is going to have a problem with a lawyer.

Mr. CANNON. Mr. Chairman, I yield back what little remains of my time.

Chairman SENSENBRENNER. The question is on the Nadler amendment.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments?

Chairman SENSENBRENNER. From New York, the clerk will report the next Nadler amendment.

The CLERK. Amendment to H.R. 975 offered by Mr. Nadler. Strike Section 1223 and insert——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman will be recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 975
OFFERED BY MR. NADLER

Strike section 1223 and insert the following:

SEC. 1223.

(a) PERMANENT JUDGESHIPS.—Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the eastern and western districts of Arkansas by striking ''3'' and inserting ''4'',

(2) in the item relating to the district of Delaware by striking ''1'' and inserting ''6'',

(3) in the item relating to the middle district of Florida by striking ''8'' and inserting ''10'',

(4) in the item relating to the southern district of Florida by striking ''5'' and inserting ''7'',

(5) in the item relating to the northern district of Georgia by striking ''8'' and inserting ''9'',

(6) in the item relating to the southern district of Georgia by striking ''2'' and inserting ''3'',

(7) in the item relating to the district of Maryland by striking ''4'' and inserting ''7'',

(8) in the item relating to the eastern district of Michigan by striking ''4'' and inserting ''6'',

(9) in the item relating to the district of Nevada by striking ''3'' and inserting ''5'',

(10) in the item relating to the district of New Jersey by striking ''8'' and inserting ''9'',

(11) in the item relating to the southern district of New York by striking ''9'' and inserting ''11'',

(12) in the item relating to the eastern district of North Carolina by striking ''2'' and inserting ''3'',

(13) in the item relating to the eastern district of Pennsylvania by striking ''5'' and inserting ''6'',

(14) in the item relating to the district of Puerto Rico by striking ''2'' and inserting ''3'',

(15) in the item relating to the district of South Carolina by striking ''2'' and inserting ''3'',

(16) in the item relating to the western district of Tennessee by striking ''4'' and inserting ''6'',

(17) in the item relating to the district of Utah by striking ''3'' and inserting ''4'', and

(18) in the item relating to the eastern district of Virginia by striking ''5'' and inserting ''6''.

(b) TEMPORARY JUDGESHIPS.—

(1) IN GENERAL.—

(A) APPOINTMENTS.—The following bankruptcy judges shall be appointed 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:

(i) One additional bankruptcy judge for the southern district of Georgia.

(ii) One additional bankruptcy judge for the district of Maryland.

(iii) One additional bankruptcy judge for the eastern district of Mississippi.

(iv) One additional bankruptcy judge for the northern district of Mississippi.

(v) One additional bankruptcy judge for the middle district of New York.

(vi) One additional bankruptcy judge for the middle district of Pennsylvania.

(vii) One additional bankruptcy judge for the district of Puerto Rico.

(B) VACANCIES.—The first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in subparagraph (A)—

(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under subparagraph (A) to such office; and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(2) EXTENSIONS.—

(A) IN GENERAL.—The temporary office of bankruptcy judges authorized for the northern district of Alabama and the eastern district of Tennessee under paragraphs (1) and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring 5 years after the date of the enactment of this Act.

(B) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary office of bankruptcy judges referred to in this paragraph.

(3) TECHNICAL AMENDMENTS.—Section 152(a) of title 28, United States Code, is amended—

(A) in paragraph (1), by striking the first sentence and inserting the following: ''Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located.''; and

(B) in paragraph (2)—

(i) in the item relating to the middle district of Georgia, by striking ''2'' and inserting ''3''; and

(ii) in the collective item relating to the middle and southern districts of Georgia, by striking ''Middle and Southern . . . . . 1''.

(4) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Mr. NADLER. Mr. Chairman, my amendment embodies the text of H.R. 1112 introduced by our colleague Mr. Kingston. It reflects the current recommendations from the Judicial Conference for additional bankruptcy judges. Much of our discussion today is centered on the increase in bankruptcies, both individually——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. NADLER. Yes, I will.

Chairman SENSENBRENNER. The chair intends to deal with additional judicial manpower of both Article 3 judges and Article 1 judges, using as the baseline the Administrative Office's recommendations. I would encourage the gentleman from New York to forebear on this, and we will handle the question of additional judicial manpowers in the context of an overall comprehensive bill.

Mr. NADLER. Reclaiming my time.

Thank you, Mr. Chairman. I would welcome the opportunity for such hearings, and with that understanding, and with your continued interest in this matter, I ask unanimous consent to withdraw the amendment at this time.

Chairman SENSENBRENNER. The amendment is withdrawn.

We now have votes on the floor. It is my understanding that between the votes the official photograph of the House will be taken. Mr. Conyers and I will have to go get us some money after all of those votes are over with. That should be done with about 2:30. The chair will recess the Committee until 2:45 and encourage the Members to return promptly. We have a few amendments left, and hopefully before the next series of votes at 4 o'clock we will be able to finish this bill.

The Committee is recessed.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

When the Committee recessed, pending was a motion to report the bill H.R. 975 favorably to the House. Are there further amendments? The gentlewoman from California.

Ms. LOFGREN. Mr. Chairman, I have an amendment at the desk. It's Lofgren 005.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 975 offered by Ms. Lofgren. Page 145, line 11, strike "910"——

Ms. LOFGREN. I'd ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 975
OFFERED BY MS. LOFGREN

Page 145, line 11, strike ''910'' and insert ''365''.

Page 145, line 16, strike ''1-year'' and insert ''180-day''.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. Mr. Chairman, although I oppose the bill, as you know, this is an amendment that proponents of the bill should like. As you know, under current law a secured creditor is given favored treatment only for the value of the collateral that secures their claim. For example, if a debtor owes $10,000 on a car loan but the car is only worth $5,000, the car lender's secured claim is, as it's said in the biz, "crammed down" to $5,000, plus interest. And the remaining $5,000 in debt becomes an unsecured claim.

The cram-down principle protects unsecured creditors. If secured creditors can get more than the value of their collateral, the unsecured creditors get that much less.

H.R. 975 changes this fundamental principle. Under this bill, secured creditors would be allowed to protect the full amount of their loans if a bankruptcy is declared within a certain time frame. For example, a car lender would be able to protect the full value of a car loan made within 910 days of the bankruptcy, regardless of the current value of the car. That doesn't make sense. If a person simply defaulted on a car loan without declaring bankruptcy, the lender's only security would be to impound the car. There is no reason to give them more in bankruptcy.

The bill, I have heard over and over for the last several years, is supposed to help unsecured creditors, like doctors, hospitals, and, yes, credit card companies. But the longer cram-downs are prohibited, the more likely it is people will be ineligible for Chapter 13. In fact, Chapter 13 trusteed estimated that a similar provision would reduce the number of Chapter 13 cases by 20 percent.

This provision also makes it more difficult for families to save homes and cars from repossession since it increases the value of secured claims. Debtors would have to propose longer reorganization plans and, with longer plans, there is an increased risk that the plan will fail because of sudden unemployment or unexpected medical emergencies.

My amendment simply lessens the period during which cram-downs are prohibited. For cars, it would be 1 years instead of 910 days. For other personal items, it would be 180 days instead of 1 year.

This amendment will protect the intended beneficiaries of this bill, unsecured creditors, and will provide more incentives to file Chapter 13 and will give debtors a better chance to come out of bankruptcy. And I would highly recommend it to those who are so anxious to make sure that credit card companies get a better shot at the assets of the bankrupt, and I would yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Utah.

Mr. CANNON. Thank you, Mr. Chairman. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CANNON. Thank you. I appreciate the gentlelady's amendment and argument. As I understand it, this amendment would reduce the reach-back periods for which anti-cram-down provisions would apply. The 910-day period applies to automobiles, and let me

just point out that the 1-year period applies to other types of collateral.

This is one of those cases where many good things could happen, but this bill has been the subject of, again, great and careful negotiations, and this provision in particular was modified at the request of the Senate Democrats to have a shorter reach-back period with respect to the anti-cram-down provisions as they apply to automobiles. And it was the subject of extensive negotiations.

I oppose the gentlelady's amendment and encourage all the Members of the Committee to vote no, and with that, Mr. Chairman, I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. WATT. And I yield to Ms. Lofgren.

Ms. LOFGREN. I would simply say that we have heard from many good amendments that this is a deal and it can't be undone. But I would note that the deal unraveled last Congress, and there is no deal at this point, and the matter relative to abortion has not been secured, and I don't think this bill has a bright future. I do think it is ironic that in our rush to help the credit card industry that is making more money now than they have ever made in the history of the United States, one group trumped them and that was auto dealerships. And why we would take this one group and benefit them unreasonably beyond any other group is just completely mysterious, and I think does deserve some scrutiny on the part of those who are watching this process.

And I think thank the gentleman for yielding me time.

Mr. WATT. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the Lofgren amendment. Those in favor will say aye? Opposed, no?

The noes appear to have it. The——

Ms. LOFGREN. Mr. Chairman, I ask for a recorded vote.

Chairman SENSENBRENNER. A recorded vote is ordered. Those in favor of Lofgren 005 will, as your names are called, answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Jenkins?

[No response.]

The CLERK. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
[No response.]
The CLERK. Mr. Carter?
[No response.]
The CLERK. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mrs. Blackburn?
Mrs. BLACKBURN. No.
The CLERK. Mrs. Blackburn, no. Mr. Conyers?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye. Ms. Sánchez?

Ms. SÁNCHEZ. Aye.

The CLERK. Ms. Sánchez, aye. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Additional Members who wish to cast or change their vote? The gentleman from Indiana, Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. The gentleman from Tennessee, Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If—Mr. Meehan?

Mr. MEEHAN. Yes.

The CLERK. Mr. Meehan, aye.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If not, the clerk will report. The gentleman from Indiana, Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

Mr. Chairman, there are 6 ayes and 15 noes.

Chairman SENSENBRENNER. The amendment is not agreed to.

Are there further amendments? The gentlewoman from California?

Ms. LOFGREN. Mr. Chairman, I have an amendment at the desk, Lofgren number 2.

Chairman SENSENBRENNER. The clerk will report Lofgren number 2.

The CLERK. Amendment to H.R. 975 offered by Ms. Lofgren. Page 17, beginning in line 21, redesignate the matter after "if"——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 975
OFFERED BY MS. LOFGREN

Page 17, beginning in line 21, redesignate the matter after "if" through line 24 as an indented clause (i) and modify the margins accordingly.

Page 18, redesignate clauses (i) through (iii) as subclauses (I) through (III) and adjust the margins accordingly.

Page 18, line 12, strike the period and insert ";".

Page 18, after line 12, insert the following:

"(ii) the debtor or the debtor's spouse is diagnosed with a debilitating medical condition within the 730-day period preceding the filing of the petition;

"(iii) the debtor or the debtor's spouse is unemployed for at least 90 days preceding the filing of the petition;

"(iv) the debtor or the debtor's spouse is owed the equivalent of 60 days of delinquent child support payments at the time that the petition is filed."

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. Mr. Chairman, this amendment would provide that when the debtor or the debtor's spouse is diagnosed with a debilitating medical condition within the 730-day period preceding the filing of the petition, the debtor or the debtor's spouse is unemployed for at least 90 days preceding the filing of the petition, and the debtor or the debtor's spouse is owed the equivalent of 60 days of delinquent child support payments at the time the petition is filed, in that case the draconian provisions of the act would not apply.

I have heard, as the years have gone by, a lot of rather extravagant rhetoric about deadbeats and people who are not being responsible, and certainly in this big wide country there will be people who are irresponsible. But we know that the vast majority of bankruptcies doesn't relate to that type of situation. This is really a P.R. job that the credit card industry has painted for America.

Additionally, the number of bankruptcies filed in 2001 has hit a record high. It's up 19 percent, and it's clearly related to the economic situation. In fact, over 91 percent of individuals who file for bankruptcy have suffered a recent job loss, medical problem, or divorce. The leading cause is unemployment. Two out of three individuals that file for bankruptcy have lost their jobs. Half have experienced serious health problems, and that's according to a study by the University of Texas published in Norton's Bankruptcy Adviser.

Seniors and women head of households are particularly hard hit by the financial consequences of illness or loss of employment, and it is these most vulnerable Americans who will suffer the most from this so-called reform.

American seniors will suffer. The average household debt for those 65 and older has jumped 164 percent over the last 8 years compared to 92 percent for those under 65. And although seniors account for a small proportion of total personal bankruptcies, they are the fastest-growing group according to the Consumer Bankruptcy Project, a study done at Harvard.

Nearly half of the seniors who ended up in bankruptcy court did so because of medical reasons; also, out-of-pocket health care expenses for seniors increased nearly 50 percent from 1999 to 2001. Yet at the same time HMOs in California and around the country have cut prescription drug coverage, aggravating this situation, and also seniors are frequently the targets of predatory lenders.

Women also suffer. Women filing independently represent the largest group of personal bankruptcies, and women filers have even less income and fewer assets than men filers.

This bill would prevent many seniors and single mothers from filing Chapter 7 and regaining economic stability. The means test in the IRS formula it incorporates will force many into Chapter 13 where more debts will survive and only limited household goods will be protected from repossession.

The means test starts with a family's income and then subtracts medical expenses and ends up with a really rather miserly amount of money for one to live on. The proponents of this bill say they want to restore personal responsibility and integrity to the bankruptcy system. Well, that's fine. But what this amendment would

do would say don't punish the people who are in trouble because they lost a job or they're dogged by huge medical bills or they can't get a deadbeat dad to pay child support. These are the people that account for a majority of personal bankruptcies, not spendthrifts who are abusing the system.

The bankruptcy system is supposed to give these people a chance to get back on their feet. My amendment would do this by exempting them from the harsh means test, and it would allow those who believe in compassionate conservatism to show that they really mean what they say.

And I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Utah.

Mr. CANNON. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CANNON. I thank you, Mr. Chairman.

I oppose this amendment, with all—with the utmost respect to the gentlelady from California. In fact, some elements of our system are draconian, and, in fact, we have deadbeat dads who don't pay and deadbeat moms who don't pay child support. We have problems in our society, and I don't want to suggest that's not the case at all. And I agree with the gentlelady that the largest reason for bankruptcies is job loss followed by medical problems or in some cases divorce. These are serious problems that people have. They're not planning for them. They're not using those problems as an excuse for estate planning.

But as I understand this amendment, it would expand the safe harbor in Section 102 of the bill with respect to motions to dismiss Chapter 7 cases based on the debtor's ability to repay debts.

What happens if the debtor's unemployment is—unemployed spouse is, say, Tom Cruise, who is temporarily between movie contractors? Or what if the medical condition is curable and the debtor is a multimillionaire? What if the debtor who is owed delinquent child support is Mrs. Trump? The point is these are the extreme cases——

Ms. LOFGREN. Would the gentleman yield?

Mr. CANNON. In just a moment, because I believe that you have a reasonable response to those, and I'd just like to make another couple of points first, and then we can join the debate.

The short of it is there are many cases that are the outliers. With the normal cases that come through the system, what we're trying to do here is have a means test that attempts to establish a neutral, a uniform income and expense screening mechanisms to determine who has the ability to repay. It allows the debtor to establish special circumstances with respect to additional expenses or income adjustments to rebut the presumptions of abuse. Establishing numerous exceptions to the means test will unduly burden what I think is the efficient administration of bankruptcy cases and create opportunities for abuse.

So I would encourage Members of the Committee to vote against this amendment and would certainly yield to the gentlelady from California for further discussion.

Ms. LOFGREN. If the gentleman has an interest in the amendment, I would be happy to alter the proposed amendment to make

it apply to only those whose income is not higher than the median income in the metropolitan area where they file their petition for bankruptcy.

Mr. CANNON. Let me say to the gentlelady that if you would like to withdraw the amendment, I'm willing to talk to you about it, although I can't make any promises as to whether—any likelihood of including it into the bill. But I would certainly be happy to talk some more about that; otherwise, I think we just need to have a vote.

Ms. LOFGREN. Let's vote on it, and we can always talk further.

Mr. CANNON. We certainly can.

Chairman SENSENBRENNER. The gentleman yield back?

Mr. CANNON. I yield back, Mr. Chairman.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I actually had pretty much convinced myself not to say anything else on this bill.

Chairman SENSENBRENNER. You're not very persuasive in doing that.

Mr. WATT. And I'm sure it disappoints you that I've changed my mind. And I wouldn't on this amendment, either, except that it kind of goes to the heart of what this bill and what this process has been all about. There are a number of us who are extremely frustrated because 4, 5, 6 years ago, when this process started, some of us were willing to concede from the very first day of the debate that some gaming of the system was taking place, that people were taking advantage of the bankruptcy system, and that we were willing to sit down and roll up our sleeves and work with people to try to address the gaming of the system.

Instead, a group of people sat down and basically made a pact that they would exempt the lowest-income people in the country by virtue of a means test from the effects of this bill, and it was okay with them if lower-income people gamed the system. They just—you know, the deal that got cut between consumer interest and creditor interest was, okay, we'll leave the poorest of the poor alone if you give us a bill and don't lay down in the road and block getting a bankruptcy bill.

Now, my consumer friends, consumer groups, don't like for me to say this any more than my creditor friends like for me to say it, but I think the result of that kind of unholy alliance is just a terrible public policy result that is going to get you two separate sets of bankruptcy proceedings, one for very poor people, which I have called the pauper's court, similar to the old pauper's court that we used to have, and one for a higher-income category of citizens. And it really makes no allowance for either very poor people who are gaming the system or people who are above the means test who are not gaming the system. So you've got these inflexible set of rules that just go into effect, take all the discretion away from the bankruptcy judges to make reasonable judgments about who is, in fact, gaming the system, who is not gaming the system, and it's an easy

kind of way to legislate, because I was the first to acknowledge, one of the first to acknowledge that coming up with a set of rules that really got at the people who were gaming the system, who are the people that everybody said they wanted to get at, would be difficult. It would take some work. It would take some crafting of language that really got at those people rather than just a bunch of arbitrary rules, a means test that exempts some people who are gaming the system and doesn't exempt other people whether they are gaming the system or not.

This is a bad way to legislate. This bill does it—and Ms. Lofgren's amendment actually has come closer to trying to address that than anything else I have heard. I've been trying to think of some way to do it myself, and I couldn't resist the opportunity to rise in support of her amendment because she at least is trying to get at the problem that everybody 6 years ago started off saying they were trying to get at. And that's to keep people from gaming the system but not be unfair——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. WATT.—to people who really need the bankruptcy system.

Chairman SENSENBRENNER. The question is on Lofgren amendment number 2. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes——

Ms. LOFGREN. rollcall.

Chairman SENSENBRENNER. A recorded vote is ordered. Those in favor of Lofgren amendment number 2 will, as your names are called, answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Jenkins?

[No response.]

The CLERK. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

[No response.]

The CLERK. Mr. Hostettler?

[No response.]

The CLERK. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

[No response.]

The CLERK. Ms. Hart?

Ms. HART. No.

The CLERK. Ms. Hart, no. Mr. Flake?

Mr. FLAKE. No.

The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
[No response.]
The CLERK. Mr. Carter?
[No response.]
The CLERK. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mrs. Blackburn?
Mrs. BLACKBURN. No.
The CLERK. Mrs. Blackburn, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members who wish to cast or change their vote? The gentleman from Texas, Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no.
Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. The gentleman from Tennessee, Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Chairman SENSENBRENNER. Are there other Members who wish to cast or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 8 ayes and 16 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to.

For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. Mr. Chairman, I have three amendments at the desk, and I'd like to call up the three of them, 001 Jackson Lee, 049, and 039, and I would ask the Chairman that I be allowed to take them—that they be taken en bloc.

Chairman SENSENBRENNER. That sounds like a good idea. Without objection, the clerk will report the amendments en bloc.

The CLERK. Amendment to H.R. 975 offered by Ms. Jackson Lee of Texas. Page 145, line 16, insert "The preceding sentence does not apply if the court determines that such application would hinder the ability of the debtor to pay alimony or a child support obligation" before the close quotation mark.

Amendment to H.R. 975 offered by Ms. Jackson Lee of Texas——

Chairman SENSENBRENNER. Without objection, the amendments en bloc are considered as read.

[The amendments follow:]

Amendment to H.R. 975

Offered by Ms. Jackson Lee

Page 154, line 23, strike the period, the close quotation marks, and the period at the end.

Page 154, after line 23, insert the following (and make such technical and conforming changes as may be appropriate):

1 ''(III) clause (i) shall not apply if the court
2 determines that the limitations on discharge
3 would impair the debtor's ability to pay domes-
4 tic support obligations.''.

Page 165, after line 15, insert the following:

5 (c) LIMITATION ON APPLICABILITY.—The amend-
6 ments made by this section do not apply if the court deter-
7 mines that the limitation on discharge would impair the
8 debtors ability to pay domestic support obligations.

AMENDMENT TO H.R. 975

OFFERED BY MS. JACKSON-LEE OF TEXAS

Page 145, line 16, insert ''The proceeding sentence does not apply if the court determines that such application would hinder the ability of the debtor to pay alimony or a child support obligation.'' before the close quotation mark.

AMENDMENT TO H.R. 975

OFFERED BY MS. JACKSON-LEE OF TEXAS

Page 63, line 16, strike the close quotation mark and the period which follows.

Page 63, after line 16, insert the following:

1 ''(3) Notwithstanding any other provision of this sec-
2 tion, the court may disapprove a reaffirmation agreement
3 if the agreement would hinder the debtor's ability to pay
4 alimony or a child support obligation.''.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Mr. CONYERS. Would the gentlelady yield?

Ms. JACKSON LEE. Yes, I'd be happy to yield.

Mr. CONYERS. I want to commend her for her act, but could we not approach the Chair to ask that we—that they agree off on one of the three?

Ms. JACKSON LEE. I'd be delighted if they would.

Mr. CONYERS. Wouldn't that——

Ms. JACKSON LEE. This is more important to me than having all three—this is a very——

Mr. CONYERS. Which one do you really prefer?

Ms. JACKSON LEE. Well, Mr. Chairman, the fear is that if I say what I prefer, I would knock out what they might accept. Any consultation, advice that you might give me, Mr. Chairman, as you consult with—Mr. Ranking Member, as you consult with the Chairman would be helpful. But I would hope my colleagues would realize the devastating position women and families are put in as it relates to alimony and child support. If we have an opportunity for an agreement, Mr. Cannon, as I begin to discuss these amendments, I'd be happy to ask for a separation, dividing of the question, so that we could vote on one of these amendments.

With that, are you in consultation, Mr. Conyers?

Mr. CONYERS. Yes, ma'am, we are.

Ms. JACKSON LEE. All right. And then I will continue to discuss the amendment? Thank you very much.

The amendment number 1 and—is alimony and child support, 39 and 40 deal with a cram-down analysis, but let me just proceed with my discussion of the amendment.

The amendment provides that a creditor should not receive any greater protections under the bill with respect or with regard to luxury good purchases, ATM debt, or credit card debt used to pay taxes if it would impair the debtor's ability to pay alimony and child support.

Why do I say this? First of all, I think it's important to note our earlier remarks that most Americans do not willingly go into bankruptcy court. They do not send out announcement cards. They do not let their neighbors know or their employer know, "I am happily going into bankruptcy court." It is, in fact, an embarrassment. It is, in fact, something they wish they did not have to do.

It penalizes them, as maybe it should, that they cannot secure credit or mortgages or homes for a period of time. It is well known that many who owe child support and alimony file bankruptcy. In fact, 180,000 persons owing alimony and child support filed for bankruptcy in 2001.

It most harms women, single heads of households, and single male parents who are taking care of children as well, single heads of households who are depending upon that support system from the divorced spouse. It impacts negatively if the person who is trying to receive the alimony and the child support also experiences a catastrophic illnesses—illness. That is a double knock, if you will, against that household being able to survive.

This would simply ensure—this amendment would simply ensure—these amendments would simply ensure, and independently they would do so, to ensure that the alimony and child support is

first. This amendment does nothing to impair the present position of the creditors. It merely states that before we give them greater protection than they now enjoy, we need to make sure that alimony and child care are protected.

Let me also reinforce the fact that women are the largest group in bankruptcy. Women filing independently in 2001 for bankruptcy represented 39 percent of the households, so they file because they're not getting their child support and alimony. Additionally, they file more than men and more than married couples.

The main crux of this amendment is the economic vulnerabilities that families face, and particularly those with a single head of household. Now, when 300,000 people are being laid off, the unemployment is 5.6 percent, deficit is skyrocketing, and Wall Street is plunging, it seems to me that overall this is a bad time for this bankruptcy bill. It is absolutely absurd. But the least we can do is take care of the least of those, elderly, people experiencing catastrophic illnesses, and certainly heads of households with children who are dependent upon alimony and child support.

I would ask my colleagues to consider these amendments as they are presented to make the bill a better bill and to protect—and to protect those individuals who are dependent on this income as an aspect of their resources to provide for their family.

I yield back.

Mr. CANNON. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Utah.

Mr. CANNON. Thank you, Mr. Chairman. I——

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CANNON. Thank you. I oppose these amendments, the three en bloc, and let me just point out that they're not the same, and so I'm going to deal with each of them independently, and that may take a little bit of time.

Let me start by agreeing with the gentlelady that most Americans don't go into bankruptcy intentionally or are desirous of going into bankruptcy. But the focus of this bill is on those bankruptcy filings which are frivolous, abusive, fraudulent, and unhealthy for our system. The fact is we need people who have medical problems or who lose their jobs or who go through a divorce—we need a system that will help them solve their problem.

But we all know many cases of people who, in fact, take out bankruptcy without considering the seriousness of the effects of taking out bankruptcy and, therefore, create an environment that is unhealthy for their futures individually and also for the economic stability of the country.

So as I understand the Lee amendment 001, it would create an exception to the provision in the bill in Section 310 that makes certain debts for luxury goods and expenses non-dischargeable. The exception would apply if the debt—the debts that would be non-dischargeable under the provision would impair the debtor's ability to repay domestic support obligations.

Now, this provision is the result of extensive compromise and, thus, should not be further amended here. For example, the House provision in the last Congress had a lower figure of $250 for luxury goods and services. The compromise raised this amount to $500.

With respect to the underlying concerns that this amendment purports to address—that is, women and children may be adversely affected by this amendment—it should be noted that the legislation over the years has been substantially improved to specifically address these very concerns. Indeed, the National Child Support Enforcement Association has said that the reforms contained in H.R. 975 are crucial to the collection of child support during bankruptcy.

H.R. 975 benefits women and children in the following respects:

Firstly, it prioritizes the collection of payment of spousal and child support. The legislation gives spousal and child support claims the highest priority, payment priority under the bankruptcy law. Current reforms contained in H.R. 975 are crucial to the collection of child support during bankruptcy. H.R. 975 benefits women and children in the following respects. Firstly, it prioritizes the collection or payment of spousal and child support. The legislation gives spousal and child support claims the highest priority under the bankruptcy law. Current law gives these claimants only a seventh level payment priority. So this is a major change as far as women and children go. It requires important guidance and information to be supplied to the child support claimants. H.R. 975 requires bankruptcy trustees to inform these claimants about the availability of State child support enforcement assistance and to notify the State child support enforcement agency of the deadbeat parents filing bankruptcy.

It protects the debtor—or the name of the debtor's minor child from public disclosure in a bankruptcy case. It permits enforcement action to continue or be commenced, notwithstanding the deadbeat's bankruptcy filing, and finally, it permits child custody and domestic violence proceedings to continue, notwithstanding the debtor's filing for bankruptcy.

So the bill does address these concerns very particularly and carefully.

If I might turn to the Jackson Lee .039 amendment. As I understand this amendment, this would create an exception from the anti-cramdown provisions in Section 306(b) of the bill. This provision was modified at the request of the Senate Democrats to have a shorter reachback period with respect to anti-cramdown provisions as they apply to automobiles. We discussed this to some degree in the prior Lofgren amendment, so we'll come back to that if there are questions.

And then finally, the Jackson Lee .040, Section 203 of the bill is intended to give more protections to debtors who enter into reaffirmation agreements, a legally binding obligation pursuant to which a debtor agrees to repay an otherwise dischargeable debt. Under current law if the debtor is represented by counsel, the attorney must file an affidavit with the court specifying that the debtor was fully informed about the agreement and entered into it voluntarily, that the agreement does not impose an undue hardship on the debtor or the debtor's dependence, and that the attorney fully advised the debtor of the legal consequences of the agreement and default under it.

Let me just check my time here, Mr. Chairman. We're getting close to being out of time. So we can touch on more of the arguments in opposition to this, but let me just say,k this is a section of the bill, these issues that these amendments address are sec-

tions of the bill that we've dealt with with great particularity and through a long series of compromises, and I believe they've been significantly improved during the course of the development of this bill, and I would encourage the Members of the Committee to vote against this amendment.

Chairman SENSENBRENNER. The gentleman's time is expired. The question is on the Jackson Lee.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. Jackson Lee amendments en bloc. Those in favor will say aye.

Opposed, no

Noes appear to have it. The noes have it, and the amendments en bloc are not agreed to.

For what purpose does the other gentlewoman from California, Ms. Waters, seek recognition?

Ms. WATERS. My previous attempt to seek recognition was to speak on Ms. Jackson Lee's bill, but since I was effectively ignored, I'll just go ahead and tell you that I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 975, offered by Ms. Waters.

Mr. SMITH. Mr. Chairman, I'll reserve a point of order.

Chairman SENSENBRENNER. Point of order is reserved.

Without objection, the amendment is considered as read, and the gentlewoman from California, Ms. Waters, is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 975
OFFERED BY MS. WATERS

Page 437, strike line 21 and all that follows through page 447, line 9, and insert the following (and conform the table of contents accordingly):

SEC. 1301. ISSUANCE OF CREDIT CARDS TO UNDERAGE CONSUMERS.

Section 127(c) (15 U.S.C. 1637(c)) is amended by inserting after paragraph (6) (as added by section 1303 of this title) the following new paragraph:

"(7) APPLICATIONS FROM UNDERAGE CONSUMERS.—

"(A) PROHIBITION ON ISSUANCE.—No credit card may be issued to, or open end credit plan established on behalf of, any consumer who has not attained the age of 21, except in response to a written request or application to the card issuer that meets the requirements of subparagraph (B).

"(B) APPLICATION REQUIREMENTS.—An application to open a credit card account by a consumer who has not reached the age of 21 as of the date of submission of the application shall require—

"(i) the signature of the parent or guardian of the consumer indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has reached the age of 21; or

"(ii) submission by the consumer of financial information indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.".

Ms. WATERS. Thank you very much, Mr. Chairman. This amendment would prohibit the issuance of credit cards to persons under age 21 unless a parent acts as co-signor or minors can demonstrate an independent source of income sufficient to repay their debts. This amendment would in no way limit the extension of credit to the millions of working young Americans who have an adequate income and are deserving of credit, as anyone over age 21.

Right now credit card companies are sending millions upon millions of credit card solicitations to teenagers every year. They offer them free gifts, tee shirts and toys to hook them on credit. It is outrageous. Financial troubles caused by reckless lending to teens can haunt them for the rest of their lives, costing them more when they try to buy a car, home or take out future loans. With the average undergraduate owing approximately $3,000 to credit cards, college and university officials have reported that it is no longer uncommon for some students to drop out before completing their degree because of the burden of credit card debt, or worse yet, the television news magazine, 60 Minutes II, profiled two college students last year, who had committed suicide while struggling with credit card debts of thousands of dollars apiece. This is not about pointing fingers at anyone. It's all of our moral responsibility, our children's, our parents, Congress', and yes, even the credit card companies moral responsibility. The cost to our nation is too high.

I believe that this is a common sense amendment that imposes an incredibly reasonable requirement on credit card companies and will protect our children being forced into the bankruptcy system later in life.

I yield back.

Chairman SENSENBRENNER. Does the gentleman from Texas insist on his point of order?

Mr. SMITH. Mr. Chairman, I do insist on my point of order.

Chairman SENSENBRENNER. State your point of order.

Mr. SMITH. And may I elaborate?

Chairman SENSENBRENNER. State your point of order.

Mr. SMITH. The point of order is that the amendment does not fall within the jurisdiction of this particular Committee. It falls within the jurisdiction of the Financial Services Committee, on which I believe the gentlewoman serves, and so it is not germane. I yield back to the Chair.

Chairman SENSENBRENNER. The gentlewoman from California wish to be heard on the point of order?

Ms. WATERS. Yes, Mr. Chairman. Let me just say this. Certainly, I know how you're going to rule on that point of order, but the fact of the matter is this is an issue, just as the last issue we heard that was given to us by Ms. Jackson, that should be dealt with by this Committee. You're right, I serve on the Financial Service Committee, and I too will continue to press this issue, whether it's this year, next year or the year after, but the fact of the matter is, we have a problem in this country, and it could be shuttled off to another Committee and not dealt with, or even laughed at as it appears is happening on the other side of the aisle, but it is irresponsible, and I would certainly hope that you would have the foresight and the—take the responsibility for dealing with it in this Committee.

Chairman SENSENBRENNER. The Chair is prepared to rule. The gentleman from Texas, Mr. Smith, raises a point of order that the amendment is not germane because the text of the amendment falls within the jurisdiction of another Committee, namely the Committee on Financial Services. The gentleman from Texas is correct and the point of order is sustained.

Are there further amendments? The gentleman from New York, Mr. Nadler?

Mr. NADLER. Thank you, Mr. Chairman. I have an amendment at the desk, No. 022.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 975 offered by Mr. Nadler. Insert at the appropriate place——

Mr. NADLER. Mr. Chairman, I move that reading of the amendment be dispensed with.

Chairman SENSENBRENNER. Without objection, so ordered, and the gentleman's recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 975
OFFERED BY MR. NADLER

Insert at the appropriate place the following:

SEC. ___. NONDISCHARGEABILITY OF DEBTS INCURRED THROUGH VIOLATIONS OF CIVIL RIGHTS LAWS.

(a) DEBTS INCURRED THROUGH VIOLATIONS OF CIVIL RIGHTS LAWS.—Section 523(a) of title 11, United States Code, as amended by section 224, is amended—

(1) in paragraph (18) by striking ''or'' at the end;

(2) in paragraph (19) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(20) that results from any judgment, order, consent order, or decree entered in any Federal or State court, or contained in any settlement agreement entered into by the debtor (including any court-ordered damages, fine, penalty, or attorney fee or cost owed by the debtor), that arises from—

''(A) the violation by the debtor of any offense described in section 244 (relating to discrimination against a person wearing the uniform of the Armed Forces), section 245 (relat-

ing to federally protected rights), section 247 (relating to damage to religious property; obstruction of persons in the free exercise of religious beliefs), or section 248 (relating to the freedom of access to clinic entrances), of title 18, United States Code;

"(B) an offense under State law that consists of conduct that would be a civil rights crime described in subparagraph (A) of this paragraph; or

"(C) a valid court order enforcing a civil rights law described in subparagraphs (A) or (B) of this paragraph.".

(b) RESTITUTION.—Section 523(a)(13) of title 11, United States Code, is amended by inserting "or under the criminal law of a State" after "title 18".

Mr. NADLER. Thank you, Mr. Chairman. This amendment would exempt from discharge debts incurred as a result of acts on the part of the debtor that constitute violations of certain criminal civil rights laws. These include discrimination against a person wearing the uniform of the armed services, denying a person's federally protected civil rights, damaging religious property or obstructing persons in the free exercise of religious beliefs, or denying people freedom of access to clinic entrances.

As the original author of the amendment making debts incurred due to violations of the Freedom of Access to Clinic Entrances Act, an amendment which has gotten some notoriety over the last few years, I've had the benefit of the last few years of debate to reevaluate my original amendment. I think this new amendment reflects many of the concerns that some of my colleagues have had in the past, and I would ask people to take a fresh look at it. There was a concern that the debts made dischargeable were vaguely defined. I have used the language from last year's conference agreement to make clear that only judgments, orders, consent orders, decrees entered in a Federal or State court or contained in a settlement agreement entered into by the debtor are included.

Second, I also have clearly spelled out which existing statutory violations must have given rise to the debt owed by the debtor. There is no ambiguity, no danger of inadvertently incurring a nondischargeable debt. It is spelled out in chapter and verse. I have taken to heart the concerns by my colleagues that certain types of violations should not be singled out. As I went back through the criminal code to review the Freedom of Access to Clinic Entrances Act, I was reminded that that act is one part of a larger portion of the Federal Criminal Code that exists to protect the rights of individuals. That makes sense. We should favor the rights of women exercising their constitutional right to go to a doctor, or for a person of faith trying to attend church or a soldier in uniform trying to attend a show. No one should get away with using violence, the threat of violence, intimidation or a blockade to rob someone of their rights, and they certainly shouldn't be allowed to use the bankruptcy courts either to evade the debt that results from a judgment because of their conviction for robbing someone of their rights, or to force the people whose rights they have violated to spend large sums of money chasing them through the bankruptcy courts. That law should be clear.

Some will say that this is unnecessary because people have not had much success in discharging debts. Were that the only issue, we might actually have to consider the argument. But the bankruptcy courts are misused in many ways. For example, this bill makes it easier to evict a debtor from an apartment. Why? Because the law gives the landlord no remedy? No. The landlord has plenty of remedies under the law, but landlords have complained that the time and expense of asserting those remedies under current law is overly burdensome, and so this bill gives them a further remedy. The problems with these cases is that people whose rights have been violated have spent years litigating the status of these debts in State and Federal courts and then have had to start all over again in bankruptcy court. It's not some accident. The extremists, not the nuns praying on the sidewalk, but the people who threaten women, shout at them, block them from the doctor's office, who

think that they are law unto themselves, have made it their strategy to train their activists to shed assets and file for bankruptcy so that the people they harm can never enforce their rights.

Even in cases such as Randall Terry's, who famously bragged that he would file for bankruptcy so that his victims would never see a penny, there was no discharge of all debts, but he did succeed in forcing his victims to settle for cents on the dollar. Is that an appropriate use of the bankruptcy system?

I think this amendment strikes an appropriate balance between the rights of individual debtors and the rights of the people they harm. It does not make hypothetical judgments nondischargeable. It would make nondischargeable only those debts that are the result of legally enforceable judgments from a clearly-defined set of civil rights violations. It also does not single out, as it did in prior year, and its people objected to, only one type of debt, that arising from violation of the FACE Act. This would deal with debts arising from the violation of the FACE Act, from violation of statutes protecting religious property, or protecting people's free exercise of their religious beliefs. It protects people who are discriminated against as a result of wearing the uniform of the armed services.

It seeks to ensure that our bankruptcy court do not become a haven for people who have been found guilty of violating the civil rights of others. I urge the adoption of the amendment, and I yield back the balance of my time.

Chairman SENSENBRENNER. Gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I oppose this amendment. First of all, it's really unnecessary. The bankruptcy code already prevents the discharge of most types of debts resulting from violent or destructive activities. Current law clearly applies to willful and malicious acts of violence committed by persons protesting, for example, at an abortion clinic that result in injury to the person or to property. In fact, there is no reported case holding otherwise. The Congressional Research Service concluded, for example, and I quote, "As a consequence of the specific intent requirement in order to establish a violation of the FACE Act it is likely that civil liability incurred thereunder would arise from behavior comparable to an intentional tort, and would therefore be nondischargeable under 11 USC Section 523(a)(6)." Unquote.

Bankruptcy code Section 523(a)(6) provides that a debt for a willful and malicious injury by the debtor to another entity or to the property or another entity is nondischargeable. The Supreme Court has interpreted the phrase "willful and malicious" to encompass acts done with the actual intent to cause injury as opposed to acts done intentionally that cause injury. Current bankruptcy law makes other debts nondischargeable that may relate to a violation of FACE. For example, Section 523(A)(13) of the bankruptcy code provides that an obligation to pay a restitution order issued under Title 18 of the United States Code, and may not be discharged. Likewise Section 523(a)(7) makes certain fines and penalties payable to and for the benefit of a Federal or State governmental unit nondischargeable. The bankruptcy code is designed to regulate the

terms of commercial relations between debtors and creditors. It should not be misused to advance and ideologically driven agenda of small minority, many of whom are in the final analysis, opposed to bankruptcy reform in any event.

For those and other reasons I would oppose this amendment, urge my colleagues to do the same, and yield back the balance of my time.

Chairman SENSENBRENNER. The question is on——

Mr. WATT. Mr. Chairman, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I just wanted to ask what disposition was made of the carefully-negotiated compromise that was negotiated painfully through the conference I thought last year, between Mr. Schumer and Mr. Hyde. I too was a member of that conference and——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. WATT. Yes, sir.

Chairman SENSENBRENNER. It failed on the floor.

Mr. WATT. Okay. But this bill came back, I thought, for the purpose of reflecting those carefully negotiated compromises, and we've been carefully protecting all of those——

Chairman SENSENBRENNER. Will the gentleman yield further?

Mr. WATT. Yes, sir.

Chairman SENSENBRENNER. The gentleman may recall there was another bill that came up after the bill with the Schumer-Hyde language failed on the floor, that passed by an overwhelming margin.

Mr. WATT. Oh, okay. So you're just protecting that compromise that came out of the conference.

Chairman SENSENBRENNER. If the gentleman will yield further?

Mr. WATT. Yes, sir.

Chairman SENSENBRENNER. Both of us are good at counting votes.

Mr. WATT. Okay, all right. All right. Well, I just—I couldn't recall exactly what had happened with all of that agony we went through in conference last year. I'm glad the Chairman has enlightened me.

I think Mr. Nadler wants me to yield to him, and I'm happy to do that.

Mr. NADLER. Thank you. I would just make two observations. First of all, this is a real deviation from what we've been told all day was the carefully negotiated agreement of last year, which included a version of this amendment. This is an updated, new and improved super amendment.

Secondly, the bill did—a different version of the bill without this amendment passed on the floor, but that was because everybody knew it was a joke and wasn't going anywhere in the Senate, which may be happening to this bill without some version of this amendment.

But the second thing I'd say is that Mr. Chabot, a few minutes ago, reading carefully from notes that sounded very much like the debate last year on the same amendment, neglected to mention

what was at the heart of the compromise and the heart of the negotiations in the conference. We're not talking here really about violence. We are agreed, everybody agrees that if someone is convicted of deliberate tortious violence, that's covered by existing law. What the negotiations were about last year, what this amendment is really about, is nonviolent but nonetheless forceful interference with constitutional rights. Someone who blockades a clinic entrance, not by shooting people who want to walk in or slugging them, but laying down in front of them so they can't walk in the door. That is not covered by existing law, but that effectively deprives people of their constitutional rights and is the real purpose of this amendment, and that's what Senator Schumer and Mr. Hyde and others agreed to last year.

And that's the essence of this, so to say that this is unnecessary because it's covered by the law is simply not true. Granted, the violent acts are covered by the law. The nonviolent but effective forceful blockade of a clinic or forceful neglect of someone—not neglect—blocking of someone's constitutional rights without violence is not covered by the current law, is covered by the bill that was reported by the Conference Committee, by that carefully conceived and negotiated compromise, and that's what we ought to do because without this language or something similar to it, the bankruptcy law will be used, as it has been in the past, perhaps nonviolently, but nonetheless effectively to deprive people of paying judgments incurred as a result of deliberate violation of people's constitutional rights, and we shouldn't allow the bankruptcy code to be used in that way, and that's why I urge Members to vote for this amendment, and I thank the gentleman for yielding.

Mr. WATT. I'll reclaim my time just to refresh my recollection, and I appreciate the Chairman refreshing it about what transpired last year, but the ultimate result last year was we got no bankruptcy bill. And I'm wondering—I mean this is a wonderful political statement to pass something on the House floor, but is there some end game that the Chairman and the proponents of this bill have to prevail this year?

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. WATT. yes, sir.

Chairman SENSENBRENNER. Yes, there is. Hopefully we get a bill signed into law.

Mr. WATT. Okay. As long as you got your end game. I just was wondering. I yield back.

Chairman SENSENBRENNER. The question is on the Nadler Amendment. Those in favor will say aye.

Opposed no.

The noes appear to have it.

Mr. NADLER. Mr. Chairman, I ask for the ayes and nays.

Chairman SENSENBRENNER. rollcall will be ordered. Those in favor of the Nadler Amendment will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes.
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Carter?
Mr. CARTER. No.
The CLERK. Mr. Carter, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mrs. Blackburn?
Mrs. BLACKBURN. No.
The CLERK. Mrs. Blackburn, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?

[No response.]

The CLERK. Mr. Wexler?

[No response.]

The CLERK. Ms. Baldwin?

[No response.]

The CLERK. Mr. Weiner?

[No response.]

The CLERK. Mr. Schiff?

Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye. Ms. Sánchez?

Ms. SÁNCHEZ. Aye.

The CLERK. Ms. Sánchez, aye. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Members who wish to case or change their votes. The gentleman from Virginia, Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. Further Members who wish to case—gentleman from Indiana, Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their note? If not, the clerk will report. The gentleman from Massachusetts, Mr. Meehan?

Mr. MEEHAN. Yes.

The CLERK. Mr. Meehan, aye.

Mr. Chairman, there are 8 ayes and 19 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments? Gentleman from New York, Mr. Nadler?

Mr. NADLER. Mr. Chairman, I have an amendment, .016.

Chairman SENSENBRENNER. The clerk will report 016.

The CLERK. Amendment to H.R. 975 offered by Mr. Nadler. Page 63, strike lines 12 through 14.

[The amendment follows:]

AMENDMENT TO H.R. 975
OFFERED BY MR. NADLER

Page 63, strike lines 12 through 14.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. This amendment deals with a strange provision in one of the stranger sections of this bill. The actual provision carves out an exception to a provision that in itself makes no sense. Section 203 deals with so-called reaffirmation agreements. Under the bankruptcy code a debtor may legally bind himself to repay a debt that could otherwise be discharged in bankruptcy.

Now, that in itself is counter-intuitive. Why would someone legally bind himself to repay a debt when the whole purpose of filing for bankruptcy and incurring the bad credit rating for 10 years and the possible loss of employment and everything else, is to get a fresh start. It's not because he would be prevented from repaying the debt without a reaffirmation agreement, because he can always repay it, every penny of it if he wants to. Sometimes it is in the interest of a debtor to reaffirm a debt because he wants to retain property that is securing the debt. There are many reasons, but this is at the discretion of the debtor. There have been many cases, however, in the past, involving abuses like creditors who have failed to follow the rules of the law, who have used unscrupulous or deceptive practices, who have made threats or coerced debtors into signing away their rights. This bill, especially by allowing many more creditor motions, would encourage the creditors to engage in much more of that conduct by making many more motions which have to be opposed by the debtor at the expense of thousands of dollars apiece, would encourage that kind of coercive tactic to get a debtor to reaffirm some of his debts.

Section 203 of the bill says that a bankruptcy court may—may, not shall—disapprove a reaffirmation agreement if the agreement is, quote, "an undue hardship on the debtor," if the debtor's monthly income is less than the debtor's monthly expenses—I'm sorry—if the debtor's monthly income, less the debtor's monthly expenses is less than the scheduled payments on the reaffirmed debt.

In other words, the court has the power to block a reaffirmation agreement if the debtor's ability to repay is less than he would be obligating himself to repay under the reaffirmation agreement. Really, as to say that—it's at the bottom of page 62. Undue hardship is a reaffirmation agreement that would legally require a debtor to pay more than 100 percent of his income less expenses, to repay a debt that he had a legal right to discharge.

Whoever wrote that has a very strange sense of humor. But it gets better. On the next page it says that the discretion of the court to disapprove a reaffirmation agreement, calling on the debtor to pay more than 100 percent of his post-discharge disposable income does not apply if the creditor is a credit union. So the bankruptcy courts would be powerless to stop a credit union from requiring a debtor to repay more money than they know he has available to repay at the time he legally binds himself to repay it. That makes no sense.

No one has ever been able to explain why the credit union would want such power, or why the law would give the power to the credit union. Just last week we had a witness on behalf of the credit union industry who appeared not to know that this provision was in the bill. She couldn't tell us why anyone would or should ever

reaffirm a debt that he cannot possibly repay. She couldn't tell us why any credit union under any circumstances would ever try to obtain such an agreement. She appeared genuinely surprised when I asked her about the answer we've been getting for years about this bizarre provision, that we can't take it out of the bill because the credit unions would withdraw their support from the bill. She did tell me that credit unions are the good guys. She did tell us that reaffirmations are important to them. She even told us that they lose money when people don't repay their debts. But that doesn't really answer the question. We gave her another chance to explain this strange provision in writing after the hearing. Her answer was not responsive.

Can any one tell me what the provision of this—what the purpose, rather, of this provision is? Can anyone tell me under what circumstances it would ever be a sane thing to permit a credit union to assist on a reaffirmation that requires the debtor to repay more than 100 percent of his ability to repay? Is it really true that without this, the credit union industry will abandon this bill? Am I the only one who finds this whole thing absurd?

My amendment would simply strike this exception for credit unions. It would not even disturb the disturbing definition of undue hardship or the suggestion that a court should ever approve an agreement that everyone knows in advance the debtor could never honor? Is there anyone in this room willing to argue that this should remain in the bill and provide a cogent reason why it should? The fact is that there's no way that a court should be required not—should be required to approve a reaffirmation agreement that requires a debtor to pay more than 100 percent of what he can possibly repay.

So I urge my colleagues to approve this amendment, or at least to explain how this makes any sense at all as currently written.

I thank the Chairman and I yield back.

Chairman SENSENBRENNER. The gentleman's time is expired.

Gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman. The gentleman asks if he's the only one who finds this provision absurd. Let me say I don't know that because I can't know the hearts and minds of everybody at least in this room, but many people have found that this is an appropriate issue.

Let me first start by talking about who has agreed to this issue and then answer the gentleman's question about the rationale behind it.

This provision has had bipartisan support. Senator Clinton specifically mentioned the need to protect credit unions from abuse in her floor statement in support of similar legislation pending in the Senate during the 107th Congress. And members of the House Democratic Caucus have specifically endorsed Section 203. Senator Torricelli and the Clinton administration specifically negotiated Section 203 and insisted that it be included in the conference report during the 106th Congress. It was left untouched during the nearly 1 year that the legislation was out in conference during the 107th Congress.

I think the rationale is this: credit unions are different. The witness that you referred to, you will recall was a lovely person who I thought was very, very calm in the face of daunting questions and

criticism, but she represented a $23.7 million credit union. Now, that is not a massive financial institution. And her lack of understanding of the particulars does not mean—and her surprise at the question and the manner of the questioning does not mean that she wouldn't assert with clarify what the underlying concept was, that is, that credit unions, especially small—you know, we have some major financial institutions that are credit unions, but the small historically chartered credit unions are different because they represent a sort of a community. And what this bill does is allow people, or part of that community, the reaffirm their debts. Unlike other types of creditors, there is this special relationship that credit unions have with their members, and by not restricting the member's ability to reaffirm an obligation owed to a credit union, this ensures the credit union member has continued access to reasonably priced products and services, as does the rest of that creditor community.

Credit unions are not-for-profit entities, and reaffirmation agreements save the credit unions from suffering financial losses which keeps costs down for all credit unions and their members. Now that, you may want to call that rationale absurd, but I think most people that have been part of a small credit union, or who understand the legal construct for small credit unions, for them this makes a compelling argument and a very reasonable argument.

Mr. NADLER. Would the gentleman now yield for a question?

Mr. CANNON. I'd be happy to yield.

Mr. NADLER. Thank you. There's no disagreement that credit unions need the ability to reaffirm debts, that reaffirmations make sense, and that they have it under current law. The question, sir, the question is what the—what the bill says is that it should be presumed that the reaffirmation agreement is an undue hardship on the debtor, if the debtor's monthly income less his monthly expenses is less than the scheduled payments on the reaffirmed debt. Now, this presumption may be rebutted if he can show additional sources of income. That makes sense.

But then it says, and if the presumption is not rebutted, the court may disapprove, may disapprove the agreement. In other words, if you show that he can't possibly repay that amount, the court may disapprove. Then it says, this subsection does not apply where the creditor is a credit union. So the question is not why credit unions need reaffirmation agreements; it is why if a presumption that he can't repay—if you show that he doesn't have the—that he can't possibly repay it because he doesn't have enough money to repay it, the court decides that that presumption wasn't rebutted, the court may then disapprove the reaffirmation agreement and presumably can have a smaller reaffirmation agreement. Why shouldn't that apply to a credit union? If I owe money to a credit union, it's still not possible for me to pay more by definition than I'm able to pay.

Mr. CANNON. I think the rationale for that is that you have—the credit union in fact represents the community and credit unions are not likely to overreach in this regard, recognizing the difficulty of getting more money than the creditor has available.

Mr. NADLER. Would the gentleman further yield?

Mr. CANNON. Yes.

Mr. NADLER. A credit union may be further—may or may not—let's assume it would be less willing to—less likely to overreach. But the arithmetic is the arithmetic. If it needs to——

Mr. CANNON. Reclaiming my time, let me just point out that we did take testimony on this particular point, and what happens is that credit unions have a tendency to work with—in fact, credit unions work with their debtors to try and work out a system in the process, so that we don't have the kind of overreaching that may happen with a credit card or a larger institution where there's more pressure. In other words, I believe that what we came to a conclusion on a long time since with many, many folks from both parties is that this is not an unreasonable——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. WATT. Mr. Chairman?

Mr. CANNON. I yield back.

Chairman SENSENBRENNER. Gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. WATT. Yield to Mr. Nadler.

Mr. NADLER. Thank you, sir. I thank the gentleman for yielding.

And let me continue, Mr. Cannon, because the credit union may want to work everything out and they may be the greatest people in the world, and they may be very reasonable. But the fact is the arithmetic is the arithmetic. If in fact the facts are in a given case that the debtor's monthly income less the debtor's monthly expenses is less than the scheduled payment on the reaffirmed debt, and if there are no sources of outside income, he cannot possibly pay what the reaffirmation agreement is saying. In the circumstance, the bill says the court may disapprove the agreement if the court sees that it's impossible to meet the agreement unless the creditor is a credit union.

If the arithmetic is such that there's no possibility of repaying the agreement because the guy's income less his expenses is less than the reaffirmation and there are no outside sources of income, why shouldn't the court have the ability even if the credit union is the creditor, to disapprove a reaffirmation agreement under those circumstances? And saying that the credit union is a nice guy and they're wonderful people, that's all true, but in the given instance where the arithmetic, where his income is $1,000 and his expenses are $900, and he can pay $100, and he agrees to pay $200, it can't be done. Why shouldn't the court have the ability to say no, that's too much?

I'll yield.

Mr. CANNON. I thank the gentleman for yielding.

Mr. WATT. I'll yield to the gentleman.

Mr. CANNON. I'm sorry. Thank you, Mr. Watt. I appreciate your yielding to me, although if you want to answer this question, you're welcome to take a shot. [Laughter.]

Mr. WATT. My answer I suspect would be substantially different.

Mr. CANNON. Different from mine.

Mr. WATT. I don't want to deprive you of your answer.

Mr. CANNON. Thank you. I think that inherent in your question is, maybe they're nice guys. You're acknowledging the fact that I

think that all of the folks that have been involved in this on both sides, including the very prominent Democrats have come to acknowledge. That is, credit unions are not going to get more than what the math allows, but sometimes they have reason to believe that maybe the math is not what reality is. They ought to have that option to do that, I believe, as do the others that have dealt with this issue.

Mr. WATT. Reclaiming my time and yielding to Mr. Nadler.

Mr. NADLER. But the problem is, that without—with my amendment, without these two lines, they have that ability because it's not only the arithmetic. The presumption may be rebutted if the statement includes an explanation which identifies additional sources of funds. And the court may then disapprove it, or may approve it. In other words, you show to the court, this is the arithmetic. If someone disputes the arithmetic, fine. The court can decide that. That's what it's there for, to decide the facts. But if the facts are such that his income less his expenses are less than he agreed to repay, and there are no outside sources of income, the court ought to have the ability to say this is ridiculous. You got to have a smaller reaffirmation agreement, which is the case without these two lines with my amendment, and is the case with everybody else, and saying that the creditor is a nice guy doesn't change it. If the arithmetic is such and the court finds the arithmetic is such, the court ought to have the ability to say you got to change the deal.

Mr. WATT. Reclaiming my time and yielding to Mr. Cannon.

Mr. CANNON. Thank you. I'd like to submit, Mr. Chairman, ask unanimous consent to submit for the record a letter, a "Dear Colleague" letter from various Members of the Congress that I'll name in a moment, dated April 12th, 2000.

Chairman SENSENBRENNER. Without objection.

[The information follows:]

Congress of the United States
Washington, DC 20515

April 12, 2000

Dear Colleague:

We are writing as members of the Democratic Caucus asking you to support efforts to reform our nation's bankruptcy laws.

Last year, nearly half of the House Democratic Caucus voted to approve the bankruptcy reform bill (H.R. 833). As you know, the bill has subsequently passed the Senate and efforts are being made to move the bill to conference.

Congress must pass balanced legislation that gives necessary reform to a bankruptcy process that has been too often abused. The central feature of the bills passed by both the House and Senate is the creation of a needs-based system that will ensure that higher-income filers repay what they can afford. However, those who are truly in financial distress will continue to have access to the relief the bankruptcy system currently provides.

Sound protections such as mandatory consumer financial education and minimum payment disclosures have been incorporated to ensure that consumers have a better understanding of their financial options. Furthermore, the rights of credit union members to reaffirm their debts and thus protect their access to fairly priced financial services are preserved in the House version of the legislation.

For Democrats in Congress, a vote for genuine bankruptcy reform will be an important indication of our commitment to financial responsibility. And for families, who deserve a fairer and more responsible way of participating in the American Dream, ending abuse of the bankruptcy system is a good place to start. Please join me in supporting common sense bankruptcy reform.

Sincerely,

Ellen O. Tauscher Martin Frost Robert Menendez

Patrick J. Kennedy James H. Maloney

Mr. CANNON. Let me just read a section of that, a paragraph of that, and then the people who signed the letter. This is April 12, 2000. "Sound protection, such as mandatory consumer financial education and minimum payment disclosures, have been incorporated to ensure that consumers have a better understanding of their financial obligations." This is written by the Democratic Caucus in asking for a bankruptcy to be—this bill to be passed before. Continuing: "Furthermore the rights of"——

Mr. WATT. Reclaiming my times, just to clarify, that I'm a member of the Democratic Caucus. I don't think that's speaking for the Democratic caucus.

Mr. CANNON. I understand that, but let me go on if you don't mind.

Mr. WATT. Well, if you're speaking for whoever signed the letter, I don't have any problem with that, but it certainly doesn't speak for me.

Mr. CANNON. This is people writing as members of the Democratic Caucus, asking for your support. I'm sorry if I was not clear enough on that point.

But continuing: "Furthermore, the rights of credit union members to reaffirm their debts and thus protect their access to fairly priced financial services are preserved in the House version of the legislation."

This is a letter signed by Ellen Tauscher, Martin Frost, Robert Menendez, Patrick Kennedy and James Maloney.

Mr. WATT. Reclaiming my time, I'm not sure that's responsive to Mr. Nadler's question. I'll yield to Mr. Nadler.

Mr. NADLER. Again, the question isn't the right of reaffirmation. The bill, including with my amendment, grants the right of reaffirmation. All we're talking about here is in a case where reaffirmation is made, where it's impossible arithmetically to meet that reaffirmation, the bill grants everybody—the ability to say, wait a minute, you've got to change your arithmetic, unless the creditor is a credit union, and that "unless" doesn't make sense. And that's what my amendment deals with.

Chairman SENSENBRENNER. The gentleman's time——

Ms. LOFGREN. Would the gentleman yield?

I ask unanimous consent that the gentleman be allotted 30 seconds so he might——

Chairman SENSENBRENNER. The gentlemen from North Carolina, without objection, is given another 30 seconds.

Mr. WATT. I yield to the generous lady from California.

Ms. LOFGREN. I just wanted to note the gentleman from Utah read a letter with some individuals who had supported the bill. I think it's worth noting that upon further study, some of those individuals no longer support the bill, including Congressman Patrick Kennedy.

I yield back. I thank the gentleman.

Mr. CANNON. If the gentleman would yield his remaining 15 seconds?

Mr. WATT. I'd be happy to yield.

Chairman SENSENBRENNER. 8 seconds.

Mr. CANNON. 8 seconds. I don't know who has withdrawn in name from this position, but the language is specific to what—the question that Mr. Nadler was asking,a and I suppose——

Chairman SENSENBRENNER. The gentleman's time has once again expired. The question is on the Nadler Amendment. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it, and the——

Mr. NADLER. Mr. Chairman, I ask for the ayes and nays.

Chairman SENSENBRENNER. rollcall will be ordered Those in favor of Nadler Amendment No. 16 will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Jenkins?
[No response.]
The CLERK. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
[No response.]
The CLERK. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Ms. Hart?
[No response.]
The CLERK. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Carter?
Mr. CARTER. No.
The CLERK. Mr. Carter, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mrs. Blackburn?
Mrs. BLACKBURN. No.
The CLERK. Mrs. Blackburn, no. Mr. Conyers?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?

[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
[No response.]
The CLERK. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there Members in the chamber who wish to cast or change their vote? Gentleman from Texas, Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Smith, no.
Chairman SENSENBRENNER. Gentleman from Virginia, Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Chairman SENSENBRENNER. Gentleman from Tennessee, Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. Gentleman from Alabama, Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Chairman SENSENBRENNER. Gentleman from Indiana, Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Chairman SENSENBRENNER. Gentleman from Wisconsin, Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Chairman SENSENBRENNER. Gentlewoman from Pennsylvania, Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Chairman SENSENBRENNER. Gentleman from Massachusetts, Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Chairman SENSENBRENNER. Gentleman from Michigan, Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Chairman SENSENBRENNER. Are there further Members who wish to cast or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there ar 8 ayes and 18 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. Gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you. I now call up my last amendment, No. 007.

Chairman SENSENBRENNER. Promise?

Mr. NADLER. Yes, I do.

Chairman SENSENBRENNER. Clerk will report the amendment.

Mr. NADLER. And it's No. 007 notice.

The CLERK. Amendment to H.R. 975 offered by Mr. Nadler. Page 16, strike lines 7 through 24.

[The amendment follows:]

AMENDMENT TO H.R. 975
OFFERED BY MR. NADLER

Page 16, strike lines 7 through 24.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. This amendment deals with another of those perplexing sections of this bill. As you know, there's been a great deal of controversy generated by that part of Section 102 that imposes sanctions on attorneys. Apparently the authors of this section think that debtors' counsel are inherently more dangerous than creditors' counsel, because the penalties and the duties imposed on debtors' counsel are much more severe than those imposed on their colleagues who represent creditors.

Anyone who thinks this isn't a bill written by creditors to tilt the whole system in their favor, should read pages 13 through 16 of this bill.

All right. So it's be kind to creditor lawyer week on the Judiciary Committee. Congress often plays favorites, and I suppose if the majority of Members want to favor bank lawyers over the lawyers who represent financially distressed individuals, the majority will rule.

My amendment deals with only one small part of that that no one has ever explained. While debtors attorneys can be fined if they fail to detect that their clients are providing them with bad information, a creditor's attorney can only be assessed costs. He can't be fined. Even more amazingly, some creditors cannot be penalized if they are found to have violated bankruptcy rule 9011. In order to violate that rule—and I hope I won't be yelled at for reading rule 9011 aloud, the way a Member of the minority staff was a few years ago—you must have filed a motion for, quote, "any improper purpose such as to harass or to cause unnecessary delay or needless increase in the course of litigation," unquote. Additionally, quote, "the allegations and other factual contentions have evidentiary support, or specifically so identified a likelihood to have evidentiary support after a reasonable opportunity for further investigation or discovery and the denials of factual contentions are warranted on the evidence or specifically so identified are reasonably based on a lack of information or belief," close quote.

Okay. Is there anyone in this room prepared to tell me why anyone should be allowed to do that, especially in a bill that's supposed to repair the integrity of the bankruptcy system? Does anyone want to defend a, quote, "improper purpose," unquote? How about making false statements, harassment, unnecessary delay or needless increase in the cost of litigation?

Well, that's what it says right here on page 16 at lines 7 to 9. No penalty under this section even if you violate rule 9011. So who is the lucky winner of this special rule? It says small business. Well, we all like small business, but do we want them to act that improperly with impunity?

Now, let's look at the definition of small business, because it's not your local mom and pop getting this protection. It says that it is "any business that has fewer than 25 full-time employees and is engaged in commercial or business activity," unquote, if they have a claim of an aggregate amount less than $1,000. Do you recognize this business? Does it sound like one of those law firms that buys bad debt and then harasses people to squeeze out a few more cents on the dollar?

Some of these operators are what politely could be called shady. In Brooklyn where I grew up, we have other names for them. Even

in Brooklyn these things are illegal. Perhaps they should be in the bankruptcy courts as well.

My amendment would simply eliminate this unwarranted get-of-jail-free card for these sleazy operators. If we're going to clean up the system, we should not track the place up on our way out.

I thank you and I yield back the balance of my time.

Chairman SENSENBRENNER. Gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman.

Section 102 of the bill allows a debtor to recover reasonable costs including contesting a motion against a creditor who violates rule 9011 of the Federal Rules of Bankruptcy procedure or brought the motion solely to coerce a debtor into waiving his or her rights. Its purpose is to ensure that creditors do not profit from violations of the code, but it creates an important exception for businesses that have aggregate claims of less than $1,000. This provision which the amendment seeks to change is limited only to a Section 707(b) motion filed by a small business. It does not prevent a court from awarding sanctions against a small business that violates rule 9011 or further filings. Rule 9011 is broader, more comprehensive to turn against improper conduct on the part of small businesses.

Over the nearly 1 year that the bankruptcy legislation was in conference in the 107th Congress, there was no serious effort to remove this provision. Supporters of this amendment now wish to penalize small businesses. While we have striven to create broad, generally applicable rules throughout H.R. 975, it's important to make the necessary adjustments to make provisions for the specific needs of individuals and businesses that this legislation affects. Small businesses are the cornerstone of the American economy. They generate most of our job growth and often operate on very small margins. The events of September 11th caused considerable dislocation with small businesses, and small businesses that sell commercial goods and merchandise have seen their already narrow profit margins strained even further.

While some claim that small businesses should be treated like large corporations capable of withstanding these losses, the special circumstances faced by small businesses requires to address this problem with particularity. In other words, these people in small businesses ought to have the ability, without investigating and spending a great deal of money which they don't have to ask their claims to be covered without fear of retribution. And so I would suggest to the Members of this Committee that this amendment is—would be destructive. It would be counterproductive for the overall balance of this bill. This is an important provision which helps small business, and I request the Members of the Committee to oppose this amendment.

Thank you, Mr. Chairman. I yield back.

Mr. DELAHUNT. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. And I won't take 5 minutes. I'll just be very brief, but I want to yield some time to the gentleman from New York. But let me say this about small business. A thorough review

of this entire bill can only lead to one conclusion, that this is a bill that does nothing, in fact is an impediment to small businesses' reorganization efforts, and I would suggest that the only conclusion one could reach after a thoughtful examination and close scrutiny of this legislation is that this particular bill is hostile to the interests of small business in this Nation, and ought to be described as a bill that is anti-small business.

And with that, I will yield to Mr. Nadler.

Mr. NADLER. Thank you. I thank the gentleman for yielding.

I want to say two things, and I'll be brief. One, I agree with Mr. Delahunt, not these provisions but the provisions in the bill in other title sections of the bill that greatly reduce the ability of small businesses to reorganize and put a lot of requirements on them in Chapter 11, will result in a lot more liquidations and a lot fewer—and going out of business, and a lot fewer businesses surviving and reorganizing in Chapter 11, and that makes it a very anti-small business bill.

What this provision does, all that it—all we're saying is let it be a little more balance. Yes, Mr. Cannon said that you can assess costs against the lawyers for a small business who violate rule 11. If the debtor's attorney does the wrong thing, you can assess costs and fines. If the creditor's attorney does the wrong thing, you can assess only costs. All this amendment says is be even handed. You're dealing with a small business. You're dealing with a small debtor usually. Either they should both be subject to costs and fines if they violate the law, or they should both be subject only to costs. But why say that the attorney who violates the law if he's the attorney for the creditor, can be assessed costs, but if he's the attorney for the debtor and he violates the law, he can be fined as well as being assessed costs. That's uneven handed and doesn't make sense, and that's what this amendment seeks to change.

Mr. CANNON. Would the gentleman yield?

Mr. NADLER. I thank the gentleman and yield back.

Mr. CANNON. Would the gentleman yield for a moment?

Mr. DELAHUNT. I will.

Mr. CANNON. I'm not going to respond particularly but just to say this is not a bill that is anti-small business. One of the big problems with small businesses is the languishing of other cases as debtors in bankruptcy court, and this moves that more quickly. I might say that the U.S. Chamber of Commerce, the NFIB, the National Federation of Independent Businesses, representing small businesses, both endorsed this bill, and it's really probably not fair to characterize it as anti-small business. I think in fact that many of its provisions are dramatically good for small businesses.

Mr. DELAHUNT. Reclaiming my time, and I agree with the gentleman that the Chamber of Commerce has in fact endorsed this bill, and I can understand that perspective. But when the gentleman—I cannot understand why NFIB has endorsed this particular legislation, and I daresay they're not representing the interest of small business.

And I'll yield to Mr. Nadler.

Mr. NADLER. Thank you.

Let me say I spoke to the NFIB about 4 years ago on the particular provisions, not the ones we're talking about in this amendment, but the particular provisions that are going to murder small

businesses and Chapter 11s. I said, you ought to look into that and you ought to do something about it. And they refused, which went to my conclusion that the NFIB is not honestly representing small businesses, but has overarching political motives, whatever that may be. That's just my conclusion.

But the point is, whatever you may say, watch what happens when and if this bill is in law, and watch what the percentage of small businesses in Chapter 11, watch the percentages of liquidations soar, the percentages of reorganizations go way down, and then I will say I told you so.

I yield back, and I thank the gentleman.

Chairman SENSENBRENNER. The gentleman from Massachusetts yield back.

The question is on the Nadler Amendment. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have——

Mr. NADLER. Mr. Chairman, I ask for the ayes and nays.

Chairman SENSENBRENNER. A rollcall will be ordered. The question is on Nadler Amendment No. 7. Those in favor will, as your names are called, answer aye; those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Hostettler?

[No response.]

The CLERK. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Ms. Hart?

[No response.]

The CLERK. Mr. Flake?

[No response.]

The CLERK. Mr. Pence?

[No response.]

The CLERK. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.
The CLERK. Mr. King, no. Mr. Carter?
Mr. CARTER. No.
The CLERK. Mr. Carter, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mrs. Blackburn?
Mrs. BLACKBURN. No.
The CLERK. Mrs. Blackburn, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
[No response.]
The CLERK. Ms. Sánchez?
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members in the chamber who wish to cast or change their vote? Gentleman from Virginia, Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Chairman SENSENBRENNER. Gentleman from Indiana, Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Chairman SENSENBRENNER. Gentlewoman from Pennsylvania, Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.

Chairman SENSENBRENNER. Gentleman from Indiana, Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no.

Chairman SENSENBRENNER. Gentleman from Massachusetts, Mr. Meehan?

Mr. MEEHAN. Aye.

The CLERK. Mr. Meehan, aye.

Chairman SENSENBRENNER. Gentleman from Florida, Mr. Wexler?

Mr. WEXLER. Aye.

The CLERK. Mr. Wexler, aye.

Chairman SENSENBRENNER. Further Members in the chamber who wish to cast or change their votes? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 10 ayes and 18 noes.

Chairman SENSENBRENNER. The amendment is not agreed to. Are there further amendments? There being none, the question now occurs on the motion to report the bill H.R. 975 favorably as modified by the technical revisions. Those in favor will—a reported quorum is present. Those in favor will say aye.

Opposed, no.

The ayes appear to have it.

Mr. WATT. May I as for a rollcall.

Chairman SENSENBRENNER. rollcall is requested. Those in favor of reporting the bill favorably will, as your names are called, answer aye; those opposed no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Bachus?

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus, aye. Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye. Mr. Keller?

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye. Ms. Hart?

Ms. HART. Aye.

The CLERK. Ms. Hart, aye. Mr. Flake?

[No response.]

The CLERK. Mr. Pence?

Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye. Mr. Forbes.
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye. Mr. King?
Mr. KING. Aye.
The CLERK. Mr. King, aye. Mr. Carter?
Mr. CARTER. Aye.
The CLERK. Mr. Carter, aye. Mr. Feeney?
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye. Mrs. Blackburn?
Mrs. BLACKBURN. Aye.
The CLERK. Mrs. Blackburn, aye. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Berman?
Mr. BERMAN. No.
The CLERK. Mr. Berman, no. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms. Lofgren?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no. Mr. Meehan?
Mr. MEEHAN. No.
The CLERK. Mr. Meehan, no. Mr. Delahunt?
Mr. DELAHUNT. No.
The CLERK. Mr. Delahunt, no. Mr. Wexler?
Mr. WEXLER. No.
The CLERK. Mr. Wexler, no. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no. Mr. Schiff?
Mr. SCHIFF. Pass.
The CLERK. Mr. Schiff, pass. Ms. Sánchez?
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Members in the chamber, who wish to cast or change their votes? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 18 ayes, 11 noes, and one pass.

Chairman SENSENBRENNER. And the motion to report favorably is agreed to. Without objection the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the modifications contained in the technical revisions adopted here today.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by the House rules, in which to submit additional dissenting supplemental or minority views.

The Chair thanks all Members for their patience. We got a lot of work done today, and the Committee is adjourned.

[Whereupon, at 4:25 p.m., the Committee was adjourned.]

DISSENTING VIEWS

Reform of the bankruptcy system, and the principle that every debtor should repay as much of her debt as she can reasonably afford, is a sound and uncontroversial idea. Were the legislation reported by the Judiciary Committee to bear any remote relationship to that laudable goal, this legislation would be wholly uncontroversial. Instead, by pressing legislation that is unbalanced and tilted toward specific special interest groups, the proponents of H.R. 975 have created a bill that would impose monumental costs on the parties in the bankruptcy system, including the government, subject the "honest but unfortunate debtor"[1] to coercion and loss of their legal rights, force businesses into unnecessary liquidation, and favor certain creditors over others.

For these reasons, and others discussed below, we respectfully dissent.

The sponsors of H.R. 975 have argued that the legislation is warranted by the increase in bankruptcy filings in recent years, the losses to borrowers, purported widespread abuse of the system and the costs which they claim are passed on to borrowers. They further claim that the bill "will help some of the most needy and deserving members in our society."[2]

Nonetheless, this legislation is opposed by organizations and individuals most concerned with the bankruptcy system, the rights of consumers, the needs of single parents and children, the elderly, working families, civil rights, and crime victims. Many of these concerns have been expressed since the introduction of the precursor bills since the 105th Congress. The reported bill is virtually identical to the conference report on H.R. 333 in the 107th Congress with the exception of an important provision that would have prevented the discharge, or the abuse of the bankruptcy system to hinder, delay and defraud creditors, of debts arising from violations of the Freedom of Access to Clinic Entrances Act[3]. There is no reason for the deletion of this amendment which reflects a compromise between Rep. Henry Hyde, Sen. Charles Schumer, and Sen. Orrin Hatch, other than the conclusion among the sponsors that protecting women's constitutional rights would interfere with the passage of this special interest legislation.

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[1] *Local Loan* v. *Hunt*, 292 U.S. 234 (April 30, 1934). "One of the primary purposes of the bankruptcy act is to 'relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.' The purpose of the act has been again and again emphasized by the courts as being of public as well as private interest, in that if gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Id.* at 244. (Citations omitted).

[2] *Letter to Colleagues from Rep. F. James Sensenbrenner and Rep. Richard Boucher* (March 11. 2003).

[3] 18 USC 248.

The bill as reported also makes 350 technical corrections of which we approve, but which do not in any way improve the substance of the legislation.[4]

Among the organizations that have opposed, or have expressed serious concerns with, H.R. 975 and its precursors since the 105th Congress are:[5]

(1) groups concerned about the rights of workers (such as the AFL-CIO; the American Federation of State, County, and Municipal Employees ("AFSCME"); the United Auto Workers ("UAW"); and the Union of Needletrades, Industrial and Textile Employees ("UNITE"));[6]

(2) groups of non-partisan bankruptcy lawyers, judges, and academics (such as the National Bankruptcy Conference ("NBC"), the American Bankruptcy Institute ("ABI"), the National Conference of Bankruptcy Judges ("NCBJ"), the National Association of Chapter 13 Trustees ("NACTT"), the National Association of Bankruptcy Trustees ("NABT"), the Commercial Law League of America, the American College of Bankruptcy, and the National Association of Consumer Bankruptcy Attorneys ("NACBA"));[7]

(3) groups concerned about the rights of women, children, and victims of crimes and torts (such as the National Women's Law Center, the National Partnership for Women and Families, the National Organization for Women ("NOW"), the Association for Children for Enforcement of Support ("ACES"), the California Women's Law Center, Mothers

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[4] While the meticulous corrections, to which all members of the Committee agreed, are highly technical, we note that interpretation of the Bankruptcy Code has turned on the placement of commas. *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241–2 (February 22, 1989). Nonetheless, we are concerned that the reckless manner in which this legislation has been drafted will lead to interminable litigation and perverse and unexpected results. If the sponsors wish to enact a bad policy, they have, at the very least, an obligation to execute that policy correctly.

[5] Letter from AFL-CIO, American Association of University Women, American Friends Service3 Committee, Association of Community Organization for Reform Now (ACORN), Business and Professional Women/USA, Center for Community Change, Children's Foundation, Church Women United, Commission on Social Action of Reform Judaism, Consumer Federation of America, Consumers Union, International Brotherhood of Boilermakers, International Union UAW, Leadership Conference on Civil Rights, Lutheran Office for Governmental Affairs ELCA, NAACP, National Advocacy Center of the Sisters of the Good Shepard, National Community reinvestment Coalition, National Consumer Law Center, National Council of Jewish Women, National Council of Women's Organizations, National Organization for Women, National Women's Law Center, Neighborhood Assistance Corporation of America, Network—a National Catholic Social Justice Lobby, NOW Legal Defense and Education Fund, OWL—Thee Voice of Midlife and Older Women, Public Justice Center, Transport Workers Union, Union of Needletrade Industrial and Textile Employees (UNITE), United Steelworkers of America, U.S. Public Research Group (March 3, 2003).

[6] Letter from Peggy Taylor, Director of Legislation, AFL-CIO, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 20, 1999); Letter from Charles M. Loveless, Director of Legislation, AFSCME, to Members of Congress (Apr. 19, 1999); Letter from Alan Reuther, Legislative Director, UAW, to Members of Congress (Apr. 26, 1999); Letter from Ann Hoffman, Legislative Director, UNITE, to the Honorable John Conyers, Jr., Ranking Member, House Comm. on the Judiciary (May 4, 1998).

[7] Letter from Douglas G. Baird, Vice Chair, NBC, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 19, 1999); *Hearing on H.R. 833, the "Bankruptcy Reform Act of 1999," Before the House Subcomm. on Commercial and Admin. Law*, 106th Cong., 1st Sess. (Mar. 17, 1999) [hereinafter March 17, 1999 Hearing] (written statement of the Honorable William Houston Brown, ABI); *Id.* (written statement of the Honorable Randall J. Newsome, NCBJ; *Id.* (written statement of Henry E. Hildebrand, III, NACTT); *Id.* (written statement of Robert H. Waldschmidt, NABT); COMMERCIAL LAW LEAGUE OF AMERICA, POSITION PAPER ON THE BANKRUPTCY REFORM ACT OF 1999, H.R. 833, SUBMITTED TO THE U.S. HOUSE OF REPRESENTATIVES AND THE U.S. SENATE (Mar. 9, 1999); Letter from Raymond L. Shapiro, Chair, American College of Bankruptcy, to Members of Congress (Apr. 26, 1999); Letter from Norma Hammes, President, NACBA, to Members of Congress (Apr. 26, 1999).

Against Drunk Driving ("MADD"), the National Organization for Victim Assistance ("NOVA"), and the National Victim Center);[8] and

(4) consumer and civil rights organizations (such as the Leadership Conference on Civil Rights ("LCCR"), National Consumer Law Center, Consumers Union, the Consumer Federation of America, U.S. Public Interest Research Group ("U.S. PIRG"), Public Citizen, the Alliance for Justice, and the National Council of Senior Citizens).[9]

Section I of describes concerns about the lack of empirical justification for this bill. Section II describes the consumer provisions, including, most notably, the means test. Section III discusses flaws in the small business and single-asset real estate provisions, and Section IV turns to the tax sections of H.R. 975. The following is a table of contents summarizing this analysis:

[8] Letter from the National Women's Law Center & the National Partnership for Women and Families to the Honorable John Conyers, Jr., Ranking Member, House Comm. on the Judiciary (Apr. 19, 1999); Letter from Patricia Ireland, President, NOW, to the Honorable John Conyers, Jr., Ranking Member, House Comm. on the Judiciary (May 15, 1998); Letter from Geraldine Jensen, President, ACES, to the Honorable George W. Gekas, Chair, House Subcomm. on Commercial and Admin. Law (Mar. 17, 1999); Letter from Abby J. Leibman, Executive Director, California Women's Law Center, to the Honorable Dianne Feinstein, Senate Comm. on the Judiciary (Apr. 27, 1998); Letter from Karolyn V. Nunnallee, National President, MADD, to Members of Congress (Apr. 26, 1999); Letter from Marlene A. Young, Executive Director, NOVA, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 26, 1999); Letter from David Beatty, Director of Public Policy, The National Center for Victims of Crime, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (Apr. 28, 1999).

[9] Letter from the Leadership Conference on Civil Rights to Members of Congress (March 12, 2003); Letter from Gary Klein, Senior Attorney, National Consumer Law Center, to Members of Congress (Apr. 23, 1999); Letter from Consumer Federation, Consumers Union, and U.S. Public Interest Group (March 11, 2003); Letter from Frank Clemente, Legislative Director, Public Citizen, to House Comm. on the Judiciary (May 11, 1998); Letter from Nan Aron, President, Alliance for Justice, to Members of the Senate Comm. on the Judiciary (Apr. 23, 1998); Letter from Dan Schulder, Director Legislation, National Council of Senior Citizens, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (June 9, 1998).

I. LACK OF EMPIRICAL JUSTIFICATION. . . . . .

II. CONSUMER PROVISIONS . . . . . .
A. Current Law and Proposed Changes . . . . . .
1. Means Testing . . . . . .
2. Exceptions to Discharge & Loan Bifurcations . . . . . .
3. Domestic Support . . . . . .
4. Other Anti-Debtor Provisions . . . . . .
B. Principal Problems with Proposed Changes . . . . . .
1. Means Testing is Arbitrary and Unworkable in Practice . . . . .
2. Means Testing Will be Costly and Bureaucratic . . . . . .
3. Means Testing and the Other Consumer Provisions Will Harm Low- and Middle-Income People . . . . . .
a. Concerns Regarding the Means Test . . . . . .
b. Other Concerns . . . . . .
4. The Consumer Provisions Will Have a Significant, Adverse Impact on Women, Children, Minorities, and Seniors, as well as Victims of Crimes and Severe Torts . . . . . .
a. Women and Children . . . . . .
b. Minorities, Seniors, and Victims of Crimes and Severe Torts . . . . . .
5. The Bill Does not Address Abuses of the Bankruptcy System by Creditors

III. SMALL BUSINESS AND SINGLE-ASSET REAL ESTATE PROVISIONS . . . . . .
A. Small Business Provisions . . . . . .
B. Single-Asset Real Estate Provisions . . . . . .
C. Other Business Concerns . . . . . .

IV. TAX PROVISIONS . . . . . .
V. CORRUPTION OF THE BANKRUPTCY SYSTEM . . . . . .

I. LACK OF EMPIRICAL JUSTIFICATION

One of the major reasons accounting for the differing views regarding H.R. 975 relates to differing understandings of the quantitative evidence of the causes, costs, and effects of bankruptcy. H.R. 975's proponents point to (1) the fact that the United States is experiencing a dramatic growth in the number of bankruptcy filings (an increase by 150% to more than 1.5 million filings in 2002),[10] and (2) credit industry-funded studies by Professor Michael Staten of Georgetown University's Credit Research Center,[11]

[10] According to the Administrative Office of the U.S. Courts, in the calendar year 2002 there 1,109,923 personal chapter 7 filings, 984 personal chapter 11 filings, and 450, 516 personal chapter 13 filings in 1998. Press Release of the Administrative Office of the U.S. Courts (Feb. 12, 2003. Personal bankruptcy filings represented 97.6% of all filings in 2003. *Id.*

[11] Professor Michael E. Staten of Georgetown University's Credit Research Center ("CRC"), which has many credit industry officials on its board, conducted what is perhaps the most-discussed study. JOHN M. BARRON & MICHAEL E. STATEN, PURDUE UNIVERSITY CREDIT RESEARCH CENTER, PERSONAL BANKRUPTCY: A REPORT ON PETITIONERS' ABILITY TO PAY (Oct. 1997); *see also March 17, 1999 Hearing* (written statement of Michael E. Staten). Staten concluded that

Ernst & Young,[12] and the WEFA[13] group that purport to demonstrate that the bankruptcy laws allow many relatively high income individuals to avoid debts they could otherwise pay and that this avoidance imposes substantial costs on the economy. Proponents of H.R. 975 point to the "opportunistic personal filings" for bankruptcy and the declining stigma associated with doing so to explain the increase in filings.[14]

Despite the earlier trend in higher numbers of bankruptcy filings, the vast weight of studies have contradicted the proponents' rationales and have shown that the increasing filing rate is a symptom, not a root cause, of financial difficulties. Analysts with the Congressional Budget Office,[15] the General Accounting Office,[16] and the Federal Deposit Insurance Corporation all have called into question the conclusions of those studies. These critiques focus on a number of grounds, including numerous flaws in the analysis and the assumptions underlying the studies. Moreover, other analyses indicate that the rise in bankruptcies is more properly attributable to a number of changes unrelated to the bankruptcy laws, such as unexpected medical costs, family crises like divorce, loss of high

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5% of chapter 7 debtors could repay all of their non-priority, non-housing debt over 5 years, 10% could repay at least 78% of such debt, and 25% could repay 30% of their debt.

[12] An Ernst & Young study, funded by VISA USA and MasterCard International, purports to corroborate the CRC findings. Policy Economics and Quantitative Analysis Group, *Chapter 7 Bankruptcy Petitioner's Ability to Repay: Additional Evidence from bankruptcy Petition Files*, Ernst & Young LLP (Feb. 1998).

[13] Wharton Econometric Forecasting Associates ("WEFA") examined the financial cost of personal bankruptcy cases filed in 1997, which it defined as "the amount of credit dollars (outstanding loans) lost due to bankruptcy filings . . . [and] the costs of the U.S. court system . . . and other creditor's expenses relating to bankruptcy." WEFA Group Resource Planning Service, *The Financial Costs of Personal Bankruptcy* 4 (Feb. 1998). The WEFA study calculated that "financial losses due to 1997 personal bankruptcies totaled more than $44 billion. . . . Unsecured nonpriority losses totaled almost $35 billion in 1997 . . . [and] passing such financial losses on to consumers in terms of higher prices would cost the average household over $400 annually." *Id.* at 1. The WEFA study also concluded that the needs based proposal in H.R. 3150 "should decrease financial costs due to bankruptcy . . . from 8% to 17% annually." *Id.* at 2.

[14] *Hearing on H.R. 833, the "Bankruptcy Reform Act of 1999," Before the House Subcomm. on Commercial and Admin. Law*, 106th Cong., 1st Sess. (Mar. 17, 1999) (written statement of Michael E. Staten); *Joint Hearing Before the House Subcomm. on Commercial and Admin. Law and the Senate Subcomm. on Admin. Oversight and the Courts*, 106th Cong., 1st Sess. (Mar. 11, 1999) (written statements of (1) Bruce L. Hammonds, Senior Vice Chairman of MBNA Corporation; (2) Judge Edith H. Jones, U.S. Court of Appeals for the Fifth Circuit; (3) Professor Todd J. Zywicki, George Mason University School of Law; and (4) Dean Sheaffer, National Retail Federation). *See also* "Dear Colleague," dated February 27, 2003, from Chairman F. James Sensenbrenner and Congressman Rick Boucher ("There is a perception that bankruptcy relief is too readily available and the it is sometimes used as a first resort, rather than a last resort.").

[15] Kim Kowalewski of the Congressional Budget Office ("CBO"), at the request of the National Bankruptcy Review Commission, conducted a review of three economic analyses of this question. Kowalewski concluded that a 1996 VISA study did not support such a conclusion and, in fact, "because the social trends variable is flat during 1995 and early 1996, VISA believes that their social factors played no role behind the increase in personal bankruptcies in that period." Kim J. Kowalewski, *Evaluations of Three Studies Submitted to the National Bankruptcy Review Commission* 4 (Oct.6, 1997). At the request of Subcommittee Democrats, Mr. Kowalewski reviewed the economic issues affecting the rate and nature of bankruptcy in the United States. The Democratic Members made their original request on January 14, 1998; the response from CBO, in draft form only, was delivered April 16, 1999, over 1 year later. Mr. Kowalewski has still not been made available to testify before the Committee.

[16] At the request of Senators Charles Grassley and Richard Durbin, the General Accounting Office ("GAO") examined the CRC study and found five areas of concern: (1) data supplied by the debtors regarding their income expenses, and debts and the stability of their income and expenses over a 5-year period were not validated, (2) the report did not define the universe of debts for which it estimated debtors' ability to pay, (3) payments on non-housing debts that debtors stated they intended to reaffirm were not included in debtor expenses in determining the net income debtors had, (4) the CRC did not account for the considerable variation among the 13 locations used in the analysis, and (5) a scientific random sampling methodology was not used to select the 13 bankruptcy locations or the bankruptcy petitions used in the analysis. GENERAL ACCOUNTING OFFICE, PERSONAL BANKRUPTCY: THE CREDIT RESEARCH CENTER REPORT ON DEBTORS' ABILITY TO PAY, GAO/GGD–98–47 (Feb. 1998).

paying full time jobs, and most notably, the deregulation of credit card interest rates and the dramatic increase in credit card solicitations and overall consumer debt.[17] Even a credit card industry official found that "[t]he majority of bankruptcies in [its] file are on customers who have been on the books for more than 3 years and have had some significant change in their financial condition." [18] It also has been shown that the average income of persons filing for bankruptcy has declined from the 1980's, further contradicting assertions of widespread abuse by high-income individuals.[19]

One of the most telling studies was performed by the non-partisan American Bankruptcy Institute commissioned Professors Marianne B. Culhane and Michaela M. White of the Creighton University School of Law to conduct a study independent of the credit industry.[20] Professors Culhane and White used for their study a database of chapter 7 cases; the National Conference of Bankruptcy Judges funded the compilation of the database. The study estimated that 3.6% of the debtors in their sample had sufficient income, after deducting allowable living expenses, to pay all of their non-housing secured debts, all of their unsecured priority debts, and at least 20% of their unsecured nonpriority debts. Moreover, in making their calculations, Professors Culhane and White assumed that 100% of the debtors in chapter 13 would complete a 5-year repayment plan even though more than 60% of voluntary chapter 13 plans currently do not complete. These figures are significantly lower than those of the Credit Research Center and VISA—two entities that had financial stakes in their own bankruptcy studies—and show that the credit industry may have overstated the "problem" by as much as 500%.

The American Bankruptcy Institute study also showed that, while the credit industry estimates it may be eligible recover $4 billion under the rigid standards of the means test, creditors would receive only $450 million in actual collections.[21] The Executive Office of United States Trustees in the Justice Department conducted

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[17] The Federal Deposit Insurance Corporation ("FDIC") contested many of assertions made in the above-noted studies. FEDERAL DEPOSIT INSURANCE CORP., BANK TRENDS (Mar. 1998); Lawrence M. Ausubel, *Credit Card Defaults, Credit Card Profits, and Bankruptcy*, 71 American Bankruptcy L.J. 249 (1997). The FDIC observed a strong correlation between credit card default rates and personal bankruptcies, both of which increased in the 1990's. The FDIC found that, because of and following interest rate deregulation in 1978, credit card companies became more profitable and credit card lenders were able to extend more unsecured credit to less creditworthy borrowers.

[18] *March 11, 1999 Hearing* (written statement of Bruce L. Hammonds, Senior Vice Chairman, MBNA Corporation).

[19] While bankruptcy rates have been on the rise as a result of the current recession both the American Bankruptcy Institute and Professor Ausubel pointed out, however, that the earlier rise in personal bankruptcy rates, which were used to manufacture fear of a so-called bankruptcy crisis, in fact ended in 1998. AMERICAN BANKRUPTCY INSTITUTE, 18 ABI JOURNAL 1 (Apr. 1999); LAWRENCE M. AUSUBEL, UNIVERSITY COLLEGE LONDON, A SELF-CORRECTING "CRISIS": THE STATUS OF PERSONAL BANKRUPTCY IN 1999 1 (Mar. 10, 1999). In fact, the ABI found that "consumer bankruptcy filings have dropped dramatically nationwide in January and February [1999], after three consecutive years of record filings." AMERICAN BANKRUPTCY INSTITUTE, *supra*, at 1. Specifically, "[t]he personal bankruptcy filing rate per thousand population grew at an annual rate of only 1.5% in the last year, and at a (seasonally-adjusted) annual rate of only 1.0% in the last quarter." ?LAWRENCE M. AUSUBEL, *supra*, at 1. The crisis corrected itself because lenders, as they normally would, tightened their lending practices when defaults became more common and infringed upon profits, thereby limiting the number of people going into debt and filing for bankruptcy. *See id.* at 3.

[20] *March 17, 1999 Hearing* (written statement of Marianne B. Culhane); MARIANNE B. CULHANE & MICHAELA M. WHITE, TAKING THE NEW CONSUMER BANKRUPTCY MODEL FOR A TEST DRIVE: MEANS-TESTING REAL CHAPTER 7 DEBTORS (Mar. 8, 1999).

[21] Culhane and White, "Means Testing for Chapter 7 Debtors: Repayment Capacity

a study that reached similar results, estimating that passage of the Conference Report probably would have netted creditors no more than 3% of the $400 per household they claim to be losing. These findings call into question the hundreds of millions of dollars in bureaucratic expenses the means test would require of both government and private citizens.

Untapped?" (American Bankruptcy Institute, 1998).

Recently, Prof. Staten, whose work for the credit industry provided much of the empirical fodder for this legislation, observed that this legislation would only move about 5% of all ch. 7 cases into ch. 13, and that the legislation would have not effect on the number of bankruptcies.[22]

Similarly, according to James Blaine, CEO of the NC State Employees Credit Union, "Charge-offs, too, are well under control at .46% of total loans (less than 1%). In other words, 99.5% of credit union loans are repaid as promised. According to NCUA 41.1% of credit union charge-offs related to bankruptcy. Or said another way, just .19% (less than 2/10th of 1%!) of total credit union loans result in a bankruptcy loss. So taking a the high estimate of 15% rate of abuse, he calculates that total losses on loan portfolios are .0385% or less than 3/100ths of 1% (.19% × 15% = .0285% (less than 3/100ths of 1%)".[23]

Notwithstanding claims by the consumer credit industry to the contrary, consumer lending is their most profitable enterprise. According to Bloomberg News:

> Citigroup Inc. said fourth-quarter profit fell 37 percent because of higher loan losses and the cost of settling claims that the world's biggest financial-services company misled customers with biased stock research.
>
> Net income declined $2.43 billion, or 47 cents a share, from $3.88 billion, or 74 cents, in the year-ago quarter, the New York-based company said. Revenue was $18.93 billion, little changed, as fees from credit cards and mortgage lending rose while its Salomon Smith Barney Inc. unit had a loss.
>
> For Chairman and Chief Executive Sanford Weill's bank, businesses aimed at consumers contributed about 98 percent of net income.
>
> The company also took a $1.3 billion after-tax charge to set up a reserve to pay for the settlement with regulators and related civil litigation as well as private litigation related to Enron. The reserve was announced last month.
>
> The Salomon Smith Barney securities unit lost $344 million as revenue declined 9 percent to $4.66 billion. Citigroup includes corporate lending in its investment banking results.
>
> Profit from the global consumer business, including credit cards, home lending and fees generated through 459 Citibank branches, rose 26 percent to $2.37 billion.

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[22] *FDIC Roundtable On Consumer Debt* (Statement of Michael Staten)(Feb. 28, 2003).

[23] Jim Blaine, 'Only Thing Bankrupt Is Logic Behind 'Reform' *Credit Union Journal*, 23 (February 24, 2003).

> Credit card earnings rose 30 percent to $939 million, branch profit rose 25 percent and consumer-finance earnings rose 15 percent.[24]

Based on this report it appears that consumer borrowers are not subsidizing other consumers who are filing for bankruptcy relief. Rather it appears that consumer borrowers are subsidizing losses due to bad investments and penalties.

There is nothing in this bill to guarantee that any savings realized from this bill will be passed on to consumers. The bill does not require it and, quite frankly, although real interest rates are at record lows, none of those savings have been passed on to credit card borrowers. There is no guarantees that consumers have that any increased returns would be passed on the form of reduced interest rates or other fees. Yet the proponents of this legislation have never been willing to accept a provision requiring such a passalong to ensure that the proponents of this bill do not reap a windfall.

Finally, we have never received any evidence that the credit card industry likely would pass on any of the "savings" from bankruptcy law changes to individual debtors. Instead the evidence shows that credit card companies, which represent by far the most profitable sector of the commercial banking business,[25] tend to maintain high interest rates, even when their own cost of credit declines.[26] The lack of competition in this industry has caught even the Justice Department's attention, which has brought an antitrust suit against VISA and MasterCard in the Southern District of New York.[27]

II. CONSUMER PROVISIONS

A. *Current Law and Proposed Changes*

Under current law, individuals facing financial difficulty may seek a variety of forms of relief under the bankruptcy laws, with chapter 7 (liquidation) being by far the most common form of relief sought. Under this chapter, debtors are required to forfeit all of their property other than their "exempt" assets (i.e., deemed necessary for the debtor's maintenance, as determined under Federal or state law, at the state's option) in exchange for receiving a discharge of their unsecured debts. Creditors are entitled to receive any net proceeds from the sale of the debtor's nonexempt property, subject to the statutory priority schedule.[28] The Bankruptcy Code

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[24] George Stein "CitiGroup Net Falls on Loan Loss Settlement Costs" *Bloomberg News*, January 21, 2003.

[25] In 1993, credit card banks were nearly four times as profitable as all commercial banks. Despite the slight decrease in the average credit card interest rate, credit card banks remain twice as profitable as commercial banks. *March 16, 1999 Hearing* (written statement of the Honorable Joe Lee) (citing FEDERAL RESERVE BOARD, THE PROFITABILITY OF CREDIT CARD OPERATIONS OF DEPOSITORY INSTITUTIONS (Aug. 1997)).

[26] In 1996, Professor James Medoff, the Meyer Kestnbaum Professor of Labor and Industry at Harvard University, pointed out that, between 1980 and 1992, when the Federal funds rate (the interest that banks charge for overnight loans) fell from 13.4% to 3.5%, a drop of nearly 10 percentage points, the average credit card interest rate rose from 17.3% to 17.8%. Professor Medoff suggests that during the 1980's, when interest rates were high, lenders learned a valuable lesson; consumer debtors in general pay very little attention to interest rates. *March 16, 1999 Hearing* (written statement of the Honorable Joe Lee at 1) (citations omitted).

[27] Kenneth N. Gilpin, *"Antitrust Suit Filed Against VISA and MasterCard,"* N.Y. TIMES, Oct. 8, 1998, at C1.

[28] For example, the costs of administering the estate are entitled to the first priority, and payments of alimony, child support, and taxes are entitled to later priorities, with general unsecured debt entitled to any residual assets left over. 11 U.S.C. § 507(a).

does not permit the discharge of certain debts whose payments are considered to be important to society. Some of this debt is of the same nature as priority debt (*e.g.*, family support obligations and taxes), but the law also excepts from discharge debts incurred through the debtor's misconduct, such as debts arising from fraud and intentional injuries.

While the decision to seek relief under ch. 7 or ch. 13 is voluntary at the discretion of the debtor, § 707(b) of the Bankruptcy Code grants the court the discretion to deny relief where the filing is found to be a "substantial abuse."[29] Under § 707(b), however, there is a presumption *in favor of* granting relief to the debtor. This stems in part from the costs and potential hardships associated with developing excessive barriers to chapter 7 eligibility, the belief that the "honest but unfortunate debtor" should be entitled to a "fresh start," the importance of encouraging risk-taking and entrepreneurship, and avoiding situations where it is impossible for individuals to escape aggressive creditor collection tactics.[30] Section 707(b) is not the only provision in the Bankruptcy Code that prevents individuals from misusing chapter 7. For example, creditors may request that certain debts be held nondischargeable under § 523(a) or that the debtor be denied a discharge altogether under § 727.

A separate bankruptcy alternative available to individual debtors is chapter 13, which was formerly known as a wage earner's plan.[31] Under chapter 13, a debtor is permitted to retain his or her property, but is required to pay to creditors over a 3–5 year period out of future income at least as much as the creditors would have received under a chapter 7 liquidation, and is also required to pay all priority debts in full. To accomplish this, the debtor must propose a plan, administered by a trustee, that pays creditors in full or that devotes the debtor's "disposable income" after accounting for necessary support of the debtor, his or her family, or a business. In order to encourage the use of chapter 13 plans, which are currently voluntary to the debtor, Congress determined that persons who meet their chapter 13 obligations are entitled to a broader discharge of their unpaid debts than is available under chapter 7. This "superdischarge" results in the discharge of several types of debt that chapter 7 does not discharge. In addition, debtors are permitted to retain property whether or not the property is encumbered by liens and the debtor committed a prepetition default, so long as the chapter 13 plan cures any arrearages. In this manner, debtors can use chapter 13 to save their homes from foreclosure. In addition, in chapter 13 a debtor is permitted to bifurcate a loan

[29] The Code does not define the term "substantial abuse," which is used in § 707(b), although, some courts have found that the ability to pay an appreciable proportion of one's debts over 3 years, using future income, could constitute "substantial abuse." *See, e.g., Fonder* v. *United States*, 974 F.2d 996 (8th Cir. 1992) (debtor could pay 89% of unsecured debts in 3 years); In re Krohn, 886 F.2d 123 (6th Cir. 1989) (ability to pay portion of debts from "ample income" in excess of $80,000 per year); In re Walton, 866 F.2d 981 (8th Cir. 1989) (ability to pay two thirds of debts in 3 years).

[30] There are a number of disincentives to filing for bankruptcy, such as the fact that a person filed for a chapter 7 bankruptcy will be disclosed on a debtor's credit report, and the law's prohibitions on repeat chapter 7 filings for 6 years.

[31] The eligibility requirements for chapter 13 may be found in 11 U.S.C. § 109(e). To be eligible for chapter 13, an individual must have regular income and noncontingent, liquidated, unsecured debts of less than $290,525 and secured debts of less than $871,550. Individuals with debts in excess of the ch. 13 limits must reorganize under chapter 11.

on personal property, such as an automobile, into secured and unsecured portions based on its present value, and treat only the secured portion as a secured claim that must be paid in full with interest.[32] Also, chapter 13 plans can provide for the payment of priority debts, such as taxes and family support obligations, before payment on general unsecured debts.

H.R. 975 would institute a number of major changes to consumer bankruptcy, in general, and chapter 7 and 13, in particular, that some have argued may reduce the number of bankruptcy filings (but will not reduce the number of cases of financial hardship) and that are likely to serve as procedural and legal impediments to bankruptcy relief. These changes are designed to increase pay-outs to non-priority unsecured creditors, particularly credit card companies, as well as to certain secured lenders, especially those extending credit for automobile loans.

1. Means Testing

The most far-reaching change, set forth in section 102 of the bill, would institute a so-called "means testing" approach to consumer bankruptcy.[33] This new standard would create a presumption of abuse of the bankruptcy system and deny chapter 7 relief to debtors who fail a "means test." The means test applies only to debtors with primarily consumer debts. The means test in general works as follows:

First, the debtor's "current monthly income" is computed. This is the average of the debtor(s)' monthly income over the last 6 months before the bankruptcy, excluding Social Security benefits, reparations to victims of war crimes and crimes against humanity, and payments to victims of terrorism.

Second, the debtor's expenses, as provided in the IRS National Standards and Local Standards and the IRS Other Necessary Expenses rather than the debtors actual expenses not to include:

a. total priority debts divided by 60
b. the scheduled payments on secured debts over the next 60 months, divided by 60
c. arrears on secured debts such as mortgages and car payments
d. monthly expenses permitted by the Internal Revenue Service collection guidelines, with possible 5% increase for food and clothing allowances if demonstrated to be "reasonable and necessary", long-term care expenses for the elderly or chronically ill, expenses due to domestic violence, and private school expenses up to $1500 per child annually if there is an explanation of why they are reasonable and necessary, documented home energy costs in excess of the IRS allowance, and health insurance costs.

[32] This is known as a "stripdown." Specifically, except for certain home mortgages, a debtor in chapter 13 may be able to bifurcate a debt to a secured creditor, treating only the *current value* of the collateral as secured, even if it is less than the full amount of the loan, and treating the remaining debt as a non-priority unsecured debt.

[33] Subsection (a) of section 102 amends section 707(b) of the Bankruptcy Code to permit a court, on its own motion, or on motion of the United States trustee, private trustee, bankruptcy administrator, or party in interest, to dismiss a chapter 7 case for abuse if it was filed by an individual debtor whose debts are primarily consumer debts.

e. if debtor is eligible for chapter 13, hypothetical administrative expenses for chapter 13, but only up to 10% of projected plan payments.

All of the calculations must be done as part of the debtor's schedules. If after deducting the allowed expenses, the debtor has enough "disposable income" over 60 months to pay either the greater of 25% of the debtor's nonpriority unsecured claims or $6,000, or, if it is more than the 25%, $10,000.

Put more plainly, if the debtor is able to pay as little as $100 per month to non-priority unsecured creditors (such as credit card banks) for 5 years, after working through a means test that relies neither on her real income nor her real expenses, the debtor will be presumed to have "abused" ch. 7, and will be subject to dismissal or conversion to ch. 13.

If a debtor is presumed to be abusing chapter 7, the U.S. trustee must move to dismiss or file a report about why no motion is filed. Any creditor may also move to dismiss under the means test. However, no motion under § 707(b) may be filed by a creditor if the debtor(s) are under state median income. No motion under the means test may be filed by a trustee or U.S. trustee if the current monthly income of the debtor and the debtor's spouse is less than the state median income. If a motion is filed under the means test, the court has little discretion to deny it. The presumption of abuse can be overcome only if there are "special circumstances" that can be documented that require adjustment of the debtor's income or expenses for which there is "no reasonable alternative."

Although the means test is only applicable above median income,[34] all debtors must complete the means test calculations. This gives rise to the possibility that trustees or U.S. trustees will bring motions for abuse under § 707(b)'s new looser standard ("totality of the circumstances" or "bad faith") and use the means test calculations to support the argument that the debtor could afford to pay creditors, especially since chapter 7 trustees could receive compensation under the chapter 13 plan.

The bill also makes substantial changes to ch. 13 by substituting the IRS expense standards to calculate disposable income, rather than the existing standard that uses the debtor's actual expenses "reasonably necessary for the maintenance and support of the debtor or a dependant of the debtor.[35]

Accordingly, under section 102(h) of the bill, debtors would be required to dedicate all of their available income to unsecured debt, again after allowing deductions for secured and priority debts and living expenses per the means test and its IRS collection standards, even if the debtor's actual reasonably necessary expenses exceed

[34] Two forms of "safe harbors" are recognized under section 102(a). One provides that only a judge, United States trustee, bankruptcy administrator, or private trustee may bring a motion under section 707(b) of the Bankruptcy Code if the chapter 7 debtor's income (or in a joint case, the income of debtor and the debtor's spouse) does not exceed the state median family income for a family of equal or lesser size (adjusted for larger sized families), or the state median family income for one earner in the case of a one-person household. The second safe harbor provides that no motion under section 707(b)(2) may be filed by a judge, United States trustee, bankruptcy administrator, private trustee, or other party in interest if the debtor and the debtor's spouse combined have income that does not exceed the state median family income for a family of equal or lesser size (adjusted for larger sized families), or the state median family income for one earner in the case of a one-person household.

[35] 11 USC 1325(b).

the IRS permitted, but arbitrarily-created, expenses.[36] Although the provisions clarifying the means test allow for adjustments for "special circumstances that require additional expenses or adjustments of current monthly total income, for which there is no reasonable alternative," no such appeal is available under the revised 1325(b). Under the revised 707(b) the debtor would be required to file a motion with the court to rebut the presumption of abuse, which may be challenged by the trustee or any creditor, with the burden of proof lying with the debtor.[37]

The bill also goes on for these debtors to calculate the means test using expenses over 5 years rather than 3 years. That guarantees that, if the means test pushes a debtor into chapter 13, the repayment capacity assumptions would force the debtor into a 5-year repayment plan. This legislation also greatly curtails the broader discharge currently available to debtors who have successfully completed a chapter 13 plan, eliminating a significant inducement for voluntary debtor participation in chapter 13.[38]

2. Exceptions to Discharge & Loan Bifurcations

H.R. 975 would make two significant additions to the types of debts that a debtor may not discharge under chapters 7 or 13 and proscribe a debtor's ability to bifurcate a loan into secured and unsecured portions based upon the value of the collateral.

Section 310 would create a presumption of non-dischargeability for credit card debts of $500 or more in the aggregate (as opposed to $1,150 under current law) or more owed to a single creditor for "luxury goods or services" incurred within 90 days prior to the bankruptcy filing (as opposed to 60 days under current law).[39] Additionally, § 310 also makes presumptively nondischargeable cash advances aggregating at least $750 incurred within 70 days before the order for relief, to one or more creditors in an open-ended credit plan. This means that, if a debtor uses several cards to purchase basic household needs (there is no requirement that these cash advances be used for luxury goods) over a 70 day period, even if the debt to each creditor is a fraction of the $750 threshold, all the debts would be nondischargeable. Current law makes cash advances aggregating more than $1,150 nondischargeable if they are incurred within 90 days before the order for relief.[40] Section 314 adds another exception to discharge when the "debtor incurred the debt to pay a tax to a governmental unit that would be nondischargeable."[41] Therefore, regardless of the debtor's intent, any debts incurred to pay a nondischargeable tax debt would be nondischargeable.[42] This particular change will have a devastating impact on taxpayers who, at the urging of the IRS, pay their taxes electronically using a credit card.

The legislation would also largely eliminate the possibility of loan bifurcations in chapter 13 cases. Under current law a debtor is permitted to bifurcate a loan between the secured and unsecured

[36] H.R. 975, § 102(h) (proposed amendment to 11 U.S.C. § 1325(b)).
[37] H.R. 975, § 102 (proposed amendment to 11 U.S.C. § 707).
[38] H.R. 975, § 314(b) proposed amendment to 11 U.S.C. § 1328(a)).
[39] H.R. 975, § 310 (proposed amendment to 11 U.S.C. § 523(a)(2)(C)).
[40] 11 U.S.C. 523(a)(2)(C).
[41] H.R. 975, § 314 (proposed amendment to 11 U.S.C. § 523(a)).
[42] H.R. 975, § 315.

portions. The debt is treated as a secured debt up to the value of the property securing the debt. The remainder of the debt is treated as a non-priority unsecured debt. Section 306 of the legislation prevents such bifurcations (including with regard to interest and penalty provisions) with respect to any loan for the purchase of a vehicle in the 2 years before bankruptcy, as well as all loans secured by other property incurred within 1 year before bankruptcy.

3. Domestic Support

Sections 211–219 of the bill make a number of changes to current law are purportedly intended to enhance the status of child support and alimony payments in bankruptcy. These changes are presumably being made in an effort to offset the considerable criticism the legislation has received from children and family advocates.

Section 211 creates a new definition of "domestic support obligation."[43] In addition to applying to debts owed on account of child support and alimony, which are already nondischargeable under current law[44], the new definition includes alimony and child support debts owed or recoverable to a governmental unit.[45] This definition is in turn relevant to new sections of the Bankruptcy Code that give certain enhanced rights to the holders of domestic support obligations in terms of priorities, payments, automatic stay, preferences, and foreclosure placing the rights of children and custodial parents in conflict with the claims of governmental entities.[46]

Section 212 grants alimony and child care creditors a first priority in bankruptcy (they are currently seventh, although most of the higher priority debts are seen rarely in consumer bankruptcy cases).[47] Section 213 prevents the confirmation of a reorganization plan unless the debtor has paid all domestic support obligations.[48] Section 214 provides that the automatic stay does not prevent legal actions enforcing wage orders for domestic support obligations and similar actions.[49] Section 215 makes nondischargeable all domestic support obligations, including obligations owed to government support agencies. Section 216 permits nondischargeable domestic support obligations to be collected from property—notwithstanding state laws making that property exempt from collection or attachment—after bankruptcy.[50] Section 217 makes clear that a transfer that was a bona fide payment for a domestic support obligation will not be considered a fraudulent or preferential prepetition transfer.[51] Section 218 specifies that alimony and child support payments are not included in the definition of disposable income in chapter 12 cases. Finally, section 219 of the bill requires trustees to send written notice to recipients of alimony and child support

[43] H.R. 975, § 211 (proposed amendment to 11 U.S.C. § 101).
[44] 11 USC 523(a)(6).
[45] *Id.*
[46] *See* H.R. 975, § 211 *et seq.*
[47] H.R. 975, § 212 (proposed amendment to 11 U.S.C. § 507(a)). In the current enumeration of priorities, for example, the unsecured claims of person who raise grain or operate fish-processing facilities have fifth priority. 11 U.S.C. § 507(a)(5).
[48] H.R. 975, § 213 (proposed amendments to title 11, United States Code).
[49] H.R. 975, § 214 (proposed amendment to 11 U.S.C. § 362(b)). This includes the interception of tax refunds, the enforcement of medical obligations, or actions to withhold, suspend, or restrict licenses of the debtor for delinquency in support obligations.
[50] H.R. 975, § 216 (proposed amendment to 11 U.S.C. § 522).
[51] H.R. 975, § 217 (proposed amendment to 11 U.S.C. § 547(c)(7)).

payments, and to the local and state child support agencies, notifying them that a debtor of such payments has filed for bankruptcy.[52]

4. Other Anti-Debtor Provisions

The legislation makes a host of additional changes to the consumer provisions of the bankruptcy laws. The majority of the provisions are designed to increase creditor pay outs and would greatly harm low- and middle-class debtors. As Harvard Law Professor Elizabeth Warren writes, the bill "has more than 120 pages of amendments affecting consumer cases, and they all head in the same direction: They give a few creditor interests more opportunities to try to recover from their debtors while they reduce the protection for other creditors and debtors."[53] In 1999, Chairman Hyde himself noted that the bill contains at least 75 provisions detrimental to debtors and favorable to creditors. Among other things, the bill extends the period permitted between chapter 7 filings from 6 years (under current law) to 8 years;[54] expands the ability of residential landlords to evict tenants without seeking permission from the court;[55] and significantly narrows the definition of household goods exempt from repossession in bankruptcy.[56]

B. Principal Problems with Proposed Changes

1. H.R. 975's Means Testing is Arbitrary and Unworkable in Practice

The National Bankruptcy Review Commission's majority specifically rejected the so-called "means testing" approach,[57] observing:

> The credit industry has sought means testing consistently for at least 30 years, but Congress has consistently refused to change the basic structure of the consumer bankruptcy laws. . . . Access to chapter 7 and to chapter 13, the central feature of the consumer bankruptcy system for nearly 60 years, should be preserved.[58]

The 1973 Commission on Bankruptcy Laws similarly considered and rejected industry calls for mandatory chapter 13's, noting that Congress had itself rejected similar proposals in 1967, and observed:

> [B]usiness debtors are not subject to any limitation on the availability of straight bankruptcy relief, including discharge from debts, and it was pointed out that, quite apart from bankruptcy, business debtors are able to incorporate and to limit their liability to their investments in corporate assets. To force

[52] Notices to domestic support recipients must also state that they can use the services of a government support enforcement agency to collect the support.

[53] *March 11, 1999 Hearing* (written statement of Professor Elizabeth Warren).

[54] H.R. 975, § 312.

[55] H.R. 975, § 311.

[56] H.R. 975, § 313.

[57] Only two members of the National Bankruptcy Review Commission signed onto a dissenting statement supporting the consideration of various means testing options. National Bankruptcy Review Commission, Final Report: Bankruptcy—The Next Twenty Years (Oct. 20, 1997) (Chapter 5, Additional Dissent to Recommendations for Reform of Consumer Bankruptcy Law Submitted by the Honorable Edith H. Jones and Commissioner James I. Shepard).

[58] *Bankruptcy: The Next Twenty Years*, National Bankruptcy Review Commission Final Report 90–91 (Oct. 20, 1997).

> unwilling wage earners to devote their future earnings to payment of past debts smacked to some of debt peonage, particularly when business debtors could not be subjected to the same kind of regimen under the Bankruptcy Act. . . . The Commission concluded that forced participation by a debtor in a plan requiring contributions out of future income has so little prospect for success that it should not be adopted as a feature of the bankruptcy system.[59]

The principal problem with the means test is that the rigid one-size-fits-all test used in determining eligibility for chapter 7 and the operation of chapter 13 will often operate in an arbitrary fashion. Many of these flaws were highlighted in 1999 by Chairman Hyde when he unsuccessfully sought to delete the use of the rigid IRS standards and instead substitute a more fact specific test based on the court's assessment of the debtor's actual reasonable and necessary expenses.[60]

Rather than relying on the debtor's actual costs of living, the bill relies upon IRS collection standards, which lay out no comprehensive or specific standards for the deduction of living expenses. Part of the problem arises from the fact that the IRS standards referenced by the bill are not automatic in many cases. Although the IRS does set forth national standards for some expenses, such as food and clothing,[61] and local standards for expenses such as housing and transportation,[62] it leaves the determination of "other necessary expenses" to the discretion of the relevant IRS employee.[63]

Moreover, where the IRS has specific local expense standards, those standards do not always provide adequately for normal expenses. Ironically, Congress itself has recognized the inadequacy of such collection standards. The Internal Revenue Service Restructuring and Reform Act of 1998 directs the IRS to "determine, on the basis of the facts and circumstances of each taxpayer, whether the use of the schedules . . . is appropriate" and to ensure that they not be used "to result in the taxpayer not having adequate means to provide for basic living expenses."[64] However, neither that law nor H.R. 975 grants this safeguard in the bankruptcy context.

The seemingly arbitrary allowances for such expenses points to another problem with the means test under H.R. 975—its bias against debtors without secured debts. This is because the bill allows all secured debt payments to be deducted from monthly income, but limits rental and lease payments to the amount permitted by the IRS standards. This means that persons renting apartments and leasing cars may not be able to deduct the full

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[59] *Report of the Commission on Bankruptcy Laws*, H.R. Doc. No. 137, Part I, 93rd Congress, 158–59 (1973) (citation omitted).

[60] The Committee had initially approved an amendment offered by Chairman Hyde eliminating the IRS collection standards from the means test. Subsequently, however, Rep. Graham (R-SC) offered an amendment reintroducing the IRS collection standards into the means test; effectively reversing the Chairman's earlier amendment. The Committee accepted this amendment by a 17–14 largely party line vote, with Chairman Hyde and Rep. Baccus (R-AL), crossing party lines to join with most Democrats in opposing the reinsertion of the IRS standards.

[61] IRS Manual § 5323.432.

[62] IRS Manual § 5323.433.

[63] IRS Manual § 5323.12.

[64] Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, § 3462 (1998).

amount of their housing and transportation costs in bankruptcy, while persons with mortgages and automobile debt will be able to do so.[65] There is no legitimate policy rationale for this discrepancy, which appears to punish people who rent and lease and nonetheless had to resort to bankruptcy.

Also, it is important to note that the IRS collection standards can change the manner in which the bankruptcy laws are applied. The collection standards serve as internal guidelines for the IRS; they are not regulations that are subject to the Administrative Procedures Act. As such, the IRS does not need to provide notice or seek public comment when introducing new standards or when changing the existing ones. If the bankruptcy law was amended to incorporate the collection standards, as H.R. 975 proposes, and the IRS were to change the collection standards in the future, the alteration in the standards would completely change how the Bankruptcy Code is applied. In effect, H.R. 975 would delegate authority to the IRS to amend the Bankruptcy Code without notice.

It is no answer to assert, as the legislation's proponents have done, that the "glitches" in the collection standards can be resolved through the bill's allowance that "the presumption of abuse may only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative."[66] This is a new standard with no clear definition. It is unclear how the courts will apply it. Establishing "special circumstances" will be costly and burdensome. Special circumstances may be established only upon a debtor's motion to the court.[67] It is the debtor's burden to show special circumstances. The debtor must present detailed documentation for expenses for adjustments to income and a detailed explanation of the special circumstances which make such expenses or adjustment to income the only reasonable alternative for the debtor. These requirements make it very difficult for debtors to claim special circumstances, since many expenses are paid in cash and cannot be documented. This risk provides a tremendous disincentive for debtors to claim extraordinary circumstances, let alone incur the legal costs the debtor himself is required to pay to bring the motion.

By the same token, the sanctions against creditors who file abusive motions under § 707(b) are weak. The court may grant attorney's fees and costs only under a Rule 9011 standard or if the motion was brought *solely* to coerce a debtor to waive bankruptcy rights, an almost impossible standard to meet. (If the motion was brought both for illegally coercive purposes and other purposes, fees would not be awarded.) In motions brought by small businesses with small claims, no fees are awarded even if Rule 9011 is violated.[68] Conversely, debtors' counsel are subject to both costs

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[65] Higher income debtors can also easily plan around the means test by, for example, purchasing a new expensive car shortly before bankruptcy, or deferring tax and child support payments, thereby increasing priority claims.

[66] § 102, new 11 U.S.C. 707(b)(2)(B)(i)

[67] H.R. 975, § 102 (proposed amendment to 11 U.S.C. § 707(b)(2)(B)).

[68] Bankruptcy Rule 9011(b) provides, in part, "By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . it is not being

and civil penalties, and must certify that the client's statement about her financial circumstances are true.

There are also several serious interpretive problems caused by the drafting of the means test, which combines debt payment amounts with IRS allowances. For example, it is not clear whether a debtor who has two payments remaining on a secured car loan is allowed the IRS car ownership allowance for the remaining 58 months. If not, the debtor may have no funds to replace a car that is already seven or 8 years old at the outset of the 5 year period and is essential for a long commute to work during the 5-year term of the plan.

Finally, making chapter 13 the only avenue for bankruptcy relief for some individuals and imposing the bill's strict income and expense tests will undoubtedly result in an even smaller proportion of successful chapter 13 plans. It is also somewhat unrealistic to expect many chapter 13 cases to result in successful completion of repayment plans. The current chapter 13 completion rate is less than one-third,[69] for chapter 13 plans which are voluntary and with disposable income tests are less rigid than that proposed in this bill. Moreover, changes to ch. 13, such as the elimination of stripdown, will make it more difficult for even debtors who file for ch. 13 voluntarily to confirm or complete a plan.

2. Means Testing Will be Costly and Bureaucratic

The bill's attempt to impose rigid financial criteria on debtors' eligibility for chapter 7 and the operation of chapter 13 will impose substantial new costs on the bankruptcy system—both the portions paid for by private parties (through payment for private chapter 7 and chapter 13 trustees and higher attorneys' fees) and the Federal Government (through the bankruptcy courts and the U.S. Trustees Program).

Testifying about the costs to private trustees, the National Association of Bankruptcy Trustees has complained:

> [U]nder the bill, trustees must (1) review the debtor's income and expenses prior to 5 days before the § 341 hearing, (2) file a 'certification'that the debtor is qualified to be a chapter 7 debtor at least 5 days before the § 341 hearing, (3) filed motions to dismiss under § 707(b) where the debtor's disposable income would yield [specified payments] to a chapter 13 trustee over a 5-year plan. This is a great deal of work for trustees who only receive $60 in the typical chapter 7 case. In addition, the plight of the trustee is multiplied when, even if he is successful, he cannot count on any compensation.[70]

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presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation."

Under the bill, should a court grant a section 707(b) motion made by a trustee and find that the action of debtor's counsel in filing the chapter 7 case violated Federal Rules of Bankruptcy Procedure 9011, section 102(a) mandates that the court order the attorney to reimburse the trustee for all reasonable costs in prosecuting the motion, including reasonable attorneys' fees. In addition, the court must assess an appropriate civil penalty, payable to the private trustee, bankruptcy administrator, or the United States trustee.

[69] NATIONAL BANKRUPTCY REVIEW COMMISSION, FINAL REPORT: BANKRUPTCY—THE NEXT TWENTY YEARS 90–91 (Oct. 20, 1997).

[70] *March 17, 1999 Hearing* (written statement of Robert H. Waldschmidt, National Association of Bankruptcy Trustees at 3).

The most recent CBO estimate of the bill's cost to the Federal Government is $256 million over the next 5 years[71]. An additional cost of $18 million is estimated for additional judges necessary to administer the new rules. This estimate was made before the recent recommendations of the Judicial Conference which seeks significantly more judges than are contained in the bill. This request is based on current needs, not on projected needs if the bill passes. Hence the estimate of costs to the judiciary must be considered unrealistically low. Part of this cost estimate derives from implementing the complex and paperwork heavy means testing program. CBO estimates it will cost some $38 million over the next 5 years[72]. However, this estimate may well be far too low. For example, Henry E. Hildebrand, Chair of the Legislative Committee of the National Association of Chapter Thirteen Trustees estimated that:

> Assuming that one out of nine cases filing for chapter 7 relief would be contested and further assuming that the contest would require about 2 hours of pretrial preparation and 1 hour of court time, the litigation would require 276,000 additional hours, about 90,000 of which would occupy the court.[73]

Another source of higher costs for the government is the requirement that one in every 250 cases in each Federal district[74] be randomly audited by independent certified public accountants or independent licensed public accountants, at taxpayer expense under generally-accepted auditing standards.[75] CBO estimated it will cost the Federal Government $58 million over 5 years to effectuate this requirement. It is unclear whether such costs will yield any comparable benefits. For example, the Honorable William Houston Brown, a U.S. Bankruptcy Judge in the Western District of Tennessee, testified on behalf of the ABI that the audits required "are likely to be very expensive, and such formal audits are likely unnecessary to determine significant misstatements in debtors' petitions and schedules."[76]

Other costs to the government under the bill include, the costs of the U.S. Trustee certifying the availability of credit counseling ($17 million over 5 years) and requiring the U.S. Trustee to visit sites in chapter 11 cases ($12 million over 5 years).

CBO also found that it would "impose private-sector mandates, as defined by UMRA, on bankruptcy attorneys, creditors bankruptcy petition preparers, debt-relief agencies, and credit and charge-card companies. CBO estimates that the direct costs of

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[71] Congressional Budget Office, *Cost Estimate: H.R. 333 Bankruptcy Abuse Prevention and Consumer Protection Act of 2001 as reported by the House Committee on the Judiciary on February 26, 2001*, at 1 (February 27, 2001)(Hereinafter referred to as "CBO 2001 ").

[72] *Id.*

[73] Henry E. Hildebrand, *The Hidden Costs of Bankruptcy Reform* 2 (1998)(unpublished manuscript on file with the Committee on the Judiciary, minority staff).

[74] Henry E. Hildebrand, *The Hidden Costs of Bankruptcy Reform* 2 (1998)(unpublished manuscript on file with the Committee on the Judiciary, minority staff).

[75] H.R. 975, § 603. Although there is broad support for audits, which were a National Bankruptcy Review Commission proposal, the purpose of the proposal (to ensure honesty and accuracy) will fail unless a reasonable requirement is set on the ratio of cases to audit and unless the appropriate substantive standard is applied to the audits.

[76] *March 17, 1999 Hearing* (testimony of the Honorable William Houston Brown).

these mandates would exceed the annual threshold established by UMRA ($109 million in 2000, adjusted annually for inflation)." [77]

Another concern is the many, many new opportunities for litigation and confusion created by the bill. Judge Randall Newsome testified on behalf of the National Conference of Bankruptcy Judges that at least 16 potential sources of litigation are contained in the means testing provisions alone, and that another 42 litigation points have been identified in the other consumer provisions, noting that "[t]his is probably only the tip of the iceberg." [78]

Costs imposed on the private sector will also be substantial. According to CBO, "H.R. 333 would impose private-sector mandates, as defined by UMRA [the Unfunded Mandates Reform Act] on bankruptcy attorneys, creditors, bankruptcy petition preparers, debt relief agencies and credit and charge-card companies. CBO estimates that the direct costs of these mandates would exceed the annual threshold established by UMRA ($109 million in 200, adjusted annually for inflation)." [79]

3. Means Testing and the Other Consumer Provisions Will Harm Low- and Middle-Income People

a. Concerns Regarding the Means Test

It is incorrect to assume that the effect of H.R. 975's harmful provisions would be limited to individuals seeking bankruptcy relief who earn more than the regional median income.

The definition of "current monthly income" used in the means test measures a debtor's income based upon how much the debtor earned in the 6 months prior to bankruptcy. If the debtor lost a good job in month three and has been working at a low-wage job ever since, the income from that good job, and help from family members, would be counted as if that is what his future income would be. The debtor would be expected to pay out of income that may no longer exist. Also, the means test will pickup a variety of revenue sources—such as disaster assistance, and Veterans' benefits—which will result in lower- and middle-income individuals being cast as bankruptcy "abusers" with income above the median.

In addition, due to the fact that H.R. 975, unlike current law, will permit creditors and other parties-in-interest to bring motions to dismiss or convert, more aggressive and well-funded creditors will have extremely wide latitude to use such motions as a tool for making bankruptcy an expensive, protracted, and contentious process for honest debtors, their families, and other creditors. Creditors could use such motions as leverage to obtain reaffirmation agreements so that their unsecured debts survive bankruptcy

The inability to obtain bankruptcy relief will force more families out of the above ground economy and into a permanent state of unmanageable indebtedness.[80]

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[77] CBO 2001, at 1.

[78] *March 17, 1999 Hearing* (written statement of the Honorable Randall J. Newsome, President, National Conference of Bankruptcy Judges at 1).

[79] CBO 2001 at 1.

[80] A recent study, by the University of Maryland Department of Economics, illuminates the phenomenon of "informal bankruptcy", whereby debtors, especially those who are difficult to find or those with few attachable assets, may choose simply to stop making payments altogether and enter the underground economy. Amanda E. Dawsey and Lawrence M. Ausubel, *Informal Bank-*

Continued

b. Other Concerns

The bill makes nondischargeable a wider range of debts including cash advances and debts incurred for so-called luxury goods and debts incurred to pay nondischargeable tax debts.[81] These new exceptions from discharge obviate many of the benefits that debtors may realize from filing for bankruptcy, under chapter 7 or 13 and increase the opportunity for creditor abuse. The provisions were opposed by President Clinton. In a communication to the Congress, that administration wrote that it is "generally inappropriate to make post-bankruptcy credit card debt a new category of nondischargeable debt. . . . We remain skeptical that the current protections against fraud and debt run-up prior to bankruptcy are ineffective and that the additional debts made nondischargeable by [H.R. 975] meet the standard of an overriding public purpose."[82]

Consumer bankruptcy expert Henry Sommer also has explained that such provisions:

> increase the opportunity for creditors to file the types of abusive fraud complaints which have been found by many courts to be baseless and unjustified attempts to coerce reaffirmations by debtors who cannot afford to defend them. The new presumptions of nondischargeability will fall mainly on low income debtors who are unsophisticated, do not have the time, budget flexibility, or attorney advice to plan their bankruptcy cases carefully, have to file on short notice to prevent utility shutoffs or other impending creditor actions and will not have the funds to defend dischargeability complaints."[83]

The new ban on loan bifurcations for car loans less than 2 years old will further erode the possibility of obtaining a fresh start through bankruptcy.[84] Automobiles depreciate rapidly once they leave the showroom. Before the loan is repaid, the value of the vehicle is less than the unpaid balance of the loan. By prohibiting bifurcation, a lender with a secured loan that is underwater would be unjustly enriched by being able to treat the unsecured portion of that loan as fully secured to the detriment of other unsecured creditors. Such a prohibition on automobile bifurcation is likely to render many chapter 13 plans unfeasible because a debtor may be able to repay the entire secured value, but not the entire purchase price of the car along with penalties. The provision also permits the lender to come out of the bankruptcy in a superior position than if it had foreclosed on the loan under applicable non-bankruptcy law.

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ruptcy, U. MD. Dept. Econ., Jan. 2001, at 2. This then puts the burden on the creditors to collect. While informal bankruptcy lacks the legal protections afforded by (formal) bankruptcy, the incentives of informal bankruptcy cannot be underestimated, not the least of which is the lack of any administrative or legal costs initially. Importantly, little consideration has been given to informal bankruptcy with respect to legislation, yet in 1996 some 65.2 % of credit card loans were charged off for reasons other than bankruptcy. 1997 Annual Bankruptcy Survey, Visa U.S.A. Inc., September 1998.

[81] H.R. 975, §§ 310 (proposed amendment to 11 U.S.C. § 523(a)(2)(C)), and sec. 314.

[82] Letter from Jacob J. Lew, Director, Office of Management and Budget, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law 2 (Mar. 23, 1999).

[83] *Hearing on Consumer Bankruptcy Issues in H.R. 3150, the "Bankruptcy Reform Act of 1999," Before the House Subcomm. on Commercial and Admin. Law,* 105th Cong., 2d Sess. (Mar. 10, 1998) (written statement of Henry J. Sommer).

[84] H.R. 975, § 306.

Several other consumer provisions also will impose significant hardships on all debtors, regardless of income level or degree of culpability. For example, by allowing landlords to continue eviction or unlawful detainer actions even after debtors have obtained an automatic stay, the bill will force many battered women and families with children and seniors out onto the streets, without ever having an opportunity to use bankruptcy to catch up on their rent.[85]

Extending the permitted period between bankruptcy filings to 8 years[86] exceeds the period between filings set forth in the Bible,[87] and could prove a substantial hardship to families in already unstable economic situations. The bill's narrow definition of exempt household goods could allow creditors to threaten foreclosure on economic necessities, such as personal computers, in order to obtain preferential treatment for itself.[88] This provision would work to the benefit of predatory and subprime lenders that take a security in interest in the borrower's personal effects.

4. The Consumer Provisions Will Have a Significant, Adverse Impact on Women, Children, Minorities, and Seniors, as well as Victims of Crimes and Severe Torts

a. Women and Children

H.R. 975 will have an adverse impact upon single mothers and their children, both as debtors and as creditors. On the debtor side, the means test will make it far more difficult for women to access the bankruptcy system. For example, women whose average income was at the median during the last 180 days, before the support checks stopped, may be denied access to chapter 7 and forced into restrictive chapter 13 repayment plans. Second, 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.[89] In addition, the bill will also make it more difficult for women to hold onto the car they need to get to work, or the refrigerator or washing machine they need to care for their families if a creditor claims a security interest in such items.[90] The new nondischargeability categories also are problematic. Even if a mother filing for bankruptcy, who obtained cash advances to purchase basic necessities such as diapers or food, it will be more difficult for her to litigate a credit card company's claim of nondischargeability.[91]

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[85] H.R. 975, § 311.

[86] H.R. 975, § 312 (proposed amendments to 11 U.S.C. §§ 727(a)(8), 1328).

[87] The Biblical origin of debt forgiveness may be found in Deuteronomy 15:1–3: "[a]t the end of every 7 years you shall grant a release of debts. And this is the form of the release: Every creditor who has lent anything to his neighbor shall release it; he shall not require it of his neighbor or his brother, because it is called the Lord's release. Of a foreigner you may require it; but you shall give up your claim to what is owed by your brother." In Deuteronomy 15:9, we are instructed, "See that you do not harbor iniquitous thoughts when you find that the seventh year, the year of remission, is near and look askance at your needy countryman and give him nothing. If you do, he will appeal to the Lord against you and you will be found guilty of sin."

[88] H.R. 975, § 313.

[89] H.R. 975, § 102.

[90] H.R. 975, §§ 310, 314.

[91] H.R. 975, § 310.

The bill will have a particularly adverse impact on the payment of domestic support to women and children as holders of claims for alimony and child support. These concerns are by no means insignificant given that an estimated 243,000–325,000 bankruptcy cases involved child support and alimony orders during the most recent years.[92]

Under current law, alimony and child support are treated as priority debt and are not subject to discharge.[93] This preferential treatment dates from as early as 1903 and is based on Congress's determination that the payment of these debts is so important to society that it should come ahead of most general creditors. Although H.R. 975 does not revoke this special treatment, viewed as a whole, the legislation will have the effect of diminishing the likelihood of full payment of alimony and child support. This arises as a result of several features of the bill: its creation of significant new categories of nondischargeable debt, the extension of the length and onerousness of chapter 13 plans, and the bill's general limitations on the availability of chapter 7 relief.

Each one of these changes will make it less likely that a former spouse will be able to make his required alimony and child support payments. First, by making significant amounts of credit card debt nondischargeable, more of these debts will survive bankruptcy. Since most chapter 7 and 13 debtors do not have the ability to repay most of their unsecured debts, financial pressure on the debtor will continue after bankruptcy, decreasing his ability to handle important support obligations.

Collectively considered, these changes will help foster an environment where unsecured and credit card debt is far more likely to compete against alimony and child support obligations in the state law collection process. As a Congressional Research Service Memorandum analyzing predecessor legislation concluded under [a predecessor] bill "child support and credit card obligations could be 'pitted against' one another. . . . Both the domestic creditor and the commercial credit card creditor could pursue the debtor and attempt to collect from post-petition assets, but not in the bankruptcy court."[94]

Outside of the bankruptcy court is precisely the arena where sophisticated credit card companies have the greatest advantages. While Federal bankruptcy court enforces a strict set of priority and payment rules and generally seeks to provide equal treatment of creditors with similar legal rights, state law collection is far more akin to "survival of the fittest." Whichever creditor engages in the most aggressive tactic—be it through repeated collection demands and letters, cutting off access to future credit, garnishment of wages or foreclose on assets—is most likely to be repaid. As Marshall Wolf has written on behalf of the Governing Counsel of the

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[92] The reported data are from the Consumer Bankruptcy Project, Phase II. Principal researchers are Dr. Teresa Sullivan, Vice-President of the University of Texas; Jay Westbrook, Benno Schmidt, Chair in Business Law, University of Texas; and Elizabeth Warren, Leo Gottlieb Professor of Law, Harvard Law School. These estimates are based on data collected in 1991 in 16 judicial districts around the country. For more details about the study, see Teresa Sullivan et al., *Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981–91*, 68 AM. BANKRUPTCY L.J. 121 (1994).

[93] 11 U.S.C. §§ 507(a)(7) & 523(a)(5).

[94] CONGRESSIONAL RESEARCH SERVICE, IMPACT OF CONSUMER BANKRUPTCY REFORM PROPOSALS ON CHILD SUPPORT OBLIGATIONS (May 13, 1998).

Family Law Section of the American Bar Association, "if credit card debt is added to the current list of items that are now not dischargeable after a bankruptcy of a support payer, the alimony and child support recipient will be forced to compete with the well organized, well financed, and obscenely profitable credit card companies to receive payments from the limited income of the poor guy who just went through a bankruptcy. It is not a fair fight and it is one that women and children who rely on support will lose."[95]

It is for these reasons that groups concerned with the payment of alimony and child support have expressed their strong opposition to the bill and its predecessors. Professor Karen Gross of New York Law School stated succinctly that "the proposed legislation does not live up to its billing; it fails to protect women and children adequately."[96] Joan Entmacher, on behalf of the National Women's Law Center, testified that "the child support provisions of the bill fail to ensure that the increased rights the bill would give to commercial creditors do not come at the expense of families owed support."[97]

Assertions by the legislation's supporters that any disadvantages to women and children under H.R. 975 are offset by supposedly pro-child support provisions are not persuasive. It is useful to recall the context in which these provisions were added. In the 105th Congress, the bill's proponents adamantly denied that the bill created any problems with regard to alimony and child support.[98] Although the proponents have now changed course, the child support and alimony provisions included do not respond to the provisions in the bill causing the problem—namely the provisions limiting the ability of struggling, single mothers to file for bankruptcy; enhancing the bankruptcy and post-bankruptcy status of credit card debt; and making it more difficult for debtors to eliminate debts and focus on domestic support obligations. In some instances, the new sections are counterproductive in furthering the goal of payment of support obligations to ex-spouses and children.

For example, section 211 provides a definition of "domestic support obligation" that includes funds owed to government units.[99] If the government is acting as the debt collector for a woman or child, this is appropriate; the benefits of this inure to women and children directly. However, if the government is collecting for its own benefit (say, for example, the woman recipient is on welfare and the government is collecting arrearages to reduce a state or Federal deficit), then the result is inappropriate and will put the government collection agency in direct competition with single mothers and children, particularly in chapter 13.[100]

Section 212 purportedly increases to first priority from seventh priority obligations for domestic support, including debts owed to

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[95] Statement of Marshall J. Wolf (May 13, 1998) (on file with the House Comm. on the Judiciary).

[96] *March 18, 1999 Hearing* (written statement of Karen Gross, New York Law School).

[97] *Id.* (written statement of Joan Entmacher, National Women's Law Center).

[98] Letter from Representative George W. Gekas, *et al.*, to Members of Congress (Apr. 29, 1998).

[99] Under current law, domestic support owed to families is a priority debt; support owed to the government is nondischargeable, but is not priority debt.

[100] Although the bill gives priority to support claims owed to actual people over those owed to the government in chapter 7 cases where there are assets to distribute, those cases are few, and the new definition could serve to hurt women and children, the most likely creditors of domestic support.

the government. It is misleading to suggest that moving up to "first priority" from "seventh priority" makes a significant difference: the debts that have second through sixth priorities almost never appear in consumer cases.[101]

In most cases, the place in the priority order is meaningless. In ch. 13, all priority debts must be paid in full.[102] In approximately 97% of all individual ch. 7 cases, the debtor has no non-exempt assets and so is unable to pay any priority or non-priority unsecured debts, regardless of their placement in the priority order. Outside bankruptcy, of course, the priorities in the Bankruptcy Code are inapplicable and unenforceable. It is in state court, after the case is over that the mother must compete with newly non-dischargeable credit card debts. Being first priority is of no help.

Section 214 creates additional exceptions to the automatic stay[103] that, like other provisions in the bill, have the potential of placing women and children at a disadvantage. First, these provisions apply only to income withholding orders issued by government agencies under the Social Security Act, even though an estimated 40–50% of all child support cases, and all alimony-only cases, are enforced privately, not by government child support agencies. Second, income withholding is helpful only if such orders are placed against debtors with regular income. Yet, in 1997, more than four out of ten cases in state child support systems across the country lacked a support order.[104]

Section 216, which allows domestic support creditors to levy otherwise exempt homesteads and other exempt property, also does not go far enough. Like the other provisions, it is effective only if a single mother goes to the time and expense of hiring an attorney to enforce her new rights.

The legislation also totally ignores another very serious problem facing women as a result of the Bankruptcy Code—the fear that violent and reckless individuals will be able to terrorize and blockade abortion clinics and eliminate their liability from that action through the bankruptcy process. Although the current bankruptcy laws prevent discharge for "willful and malicious injuries,"[105] Supreme Court precedent has raised doubt whether this standard applies to a clinic bombing where a particular victim was not targeted.[106] It is also unclear whether the law applies to damages resulting for barricading clinic entrances. At the same time, notorious clinic bomber and "Operation Rescue" found Randall Terry specifi-

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[101] Those priorities—which would likely apply in less than 1% of all cases—deal with debts of grain storage facility operators, debts of fishermen, employee wage claims, retail layaway claims, and the like. 11 U.S.C. § 507(a).

[102] 11 USC 1332(a)(1).

[103] H.R. 975, § 214 (proposed amendment to 11 U.S.C. § 362(b)). Specifically, the bill creates exceptions to the automatic stay for enforcement actions undertaken by government child support agencies, including income withholding in cases being enforced by public agencies; actions to withhold, suspend or restrict drivers', professional and occupational, or recreational licenses; reporting overdue support to credit bureaus; intercepting tax refunds; and enforcing medical support.

[104] *March 18, 1999 Hearing* (written statement of Joan Entmacher, National Women's Law Center) (citing U.S. DEPT. OF HEALTH AND HUMAN SERVS., OFFICE OF CHILD SUPPORT ENFORCEMENT, PRELIMINARY DATA REPORT: CHILD SUPPORT ENFORCEMENT FY 1997 (Aug. 1998).

[105] 11 U.S.C. § 523(a)(6).

[106] *Kawaauchau* v. *Geiger*, 523 U.S. 57 (1998) (holding that the actor must intend the consequences of the act, injury to someone or something, not just the act, itself). If, therefore, the actor intends only to damage the building and not any person inside, but does injure a person inside, he may be able to discharge the debts arising out of the injury to the person because that injury was not intended. *See id.*

cally filed for bankruptcy in order to void a $1.6 million judgment he owed to the National Organization for Women and Planned Parenthood,[107] and many of the notorious "Nuremberg files" defendants have filed for bankruptcy.

Although a bankruptcy discharge has proved elusive for these law-breakers, they have succeeded in abusing the bankruptcy courts to hinder, delay and defraud the women whose rights they have violated, imposing substantial costs on them to collect lawful judgements.

As NARAL Pro-Choice America has written, "[d]ebtors whose debts arise from their own clinic violence are not honest debtors and should not be able to escape the financial liabilities incurred by their illegal conduct." [108]

b. Minorities, Seniors, and Victims of Crimes and Severe Torts

H.R. 975 will have a disparate impact upon minorities and victims of crimes and torts, also. The Leadership Conference on Civil Rights has warned that, under the predecessor legislation, "African American and Hispanic American families, suffering from discrimination in home mortgage lending and in housing purchases and facing inequality in hiring opportunities, wages, and health insurance coverage [will be less able to] turn to bankruptcy to stabilize their economic circumstances." [109] We know this because the economic struggle for Hispanic American and African American homeowners is harder than for any other group. While 68% of whites own their own homes, only 44% of African Americans and Hispanic Americans own their homes. Both African American and Hispanic American families are likely to commit a larger fraction of their take-home pay for their mortgages, and their homes represent virtually all their family wealth. It is no surprise, then, that African American and Hispanic American homeowners are six hundred percent more likely to seek bankruptcy protection when a period of unemployment or uninsured medical loss puts them at risk for losing their homes.[110] Experience has also shown that minorities are also particular targets of predatory lenders.

Similar concerns have been raised on behalf of seniors, who could lose their retirement savings if forced into chapter 13 plans.[111] The National Council of Senior Citizens has warned that legislation of this nature:

> would have a harsh impact on a group of people who are often subject to job loss or catastrophic health costs; instead of ameliorating these problems, this bill will only exacerbate them. . . . Since 1992, more than a million people over the age of 50 have filed for bankruptcy; in 1997, an estimated 280,000 older Americans filed. For them it is particularly hard. If they are forced into prolonged repayment schedules, they

[107] *Operation Rescue Founder Files for Bankruptcy due to Lawsuits*, WASH. POST, Nov. 8, 1998, at A29; *An Anti-Abortion Leader Files for Bankruptcy*, N.Y. TIMES, Nov. 8, 1998, at 45.

[108] Memorandum of NARAL 8 (Mar. 30, 1999).

[109] Letter from LCCR to Members of Congress (Apr. 21, 1999).

[110] *Id.*

[111] Letter from Dan Schulder, Director Legislation, National Council of Senior Citizens, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (June 9, 1998).

> may not be able to maintain or accumulate savings for retirement. As you know, approximately two third of voluntary Chapter 13 workout plans fail, and we believe that retirement savings must be protected for that purpose.[112]

With regard to the concerns of victims' groups, it is important to note that current law reserves the nondischargeability of debts for obligations arising out of willful or malicious injury, death or personal injury caused by the operation of a motor vehicle, or criminal restitution payments.[113] However, making more credit card debt nondischargeable, encouraging more reaffirmations of general unsecured debt, and discouraging more financially troubled individuals from seeking debt relief will place these individual creditors at a relative disadvantage. As the National Organization for Victim Assistance has written, "more exempted creditors with rights to the same finite amount of resources means lower payments to all. Inevitably, for victim-creditors, that means either a smaller return on the restitution owed, or a longer period of repayment, or both."[114] The National Center for Victims of Crime has similarly observed, "to equate contractual losses of a commercial creditor with . . . personal obligations [for victim claims as the legislation does] is to belittle their importance and to directly reduce the likelihood that crime victims will ever be financially restored, despite obtaining an order of restitution or a civil judgment."[115] Mothers Against Drunk Driving ("MADD") has also complained that if "individuals [whose lives] have been shattered financially and emotionally by the death or serious injury of their family members . . . have to compete with credit card debt holders for the limited post-discharge income of debtors available [as the predecessor legislation requires], they may themselves end up in bankruptcy."[116] MADD also noted that in contrast to crash victims, "lending institutions have the ability to provide some degree of protection to themselves when they issue credit cards to individuals and they are in a better financial position to absorb losses, which to them is a cost of doing business."[117]

5. The Bill Does not Address Abuses of the Bankruptcy System by Creditors

Perhaps the bill's most glaring omission is its failure to fully address the problem of abusive lending practices. At the same time the legislation responds to every conceivable debtor excess—whether real or imagined—it largely ignores the transgressions of the credit industry. The only significant "reform" with regard to lending industry disclosure is that requirement that credit card companies provide the consumer with an "800" number to call and unrealistic examples of credit card debt paydowns (which may not reflect the actual situation of the debtor and thus prove misleading),

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[112] *Id.*

[113] 11 U.S.C. §§ 523(a)(6), (9), (13).

[114] Letter from Marlene A. Young, Executive Director, NOVA, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 26, 1999).

[115] Letter from David Beatty, Director of Public Policy, The National Center for Victims of Crime, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (Apr. 28, 1999).

[116] Letter from Karolyn V. Nunnallee, National President, MADD, to Members of Congress (Apr. 26, 1999).

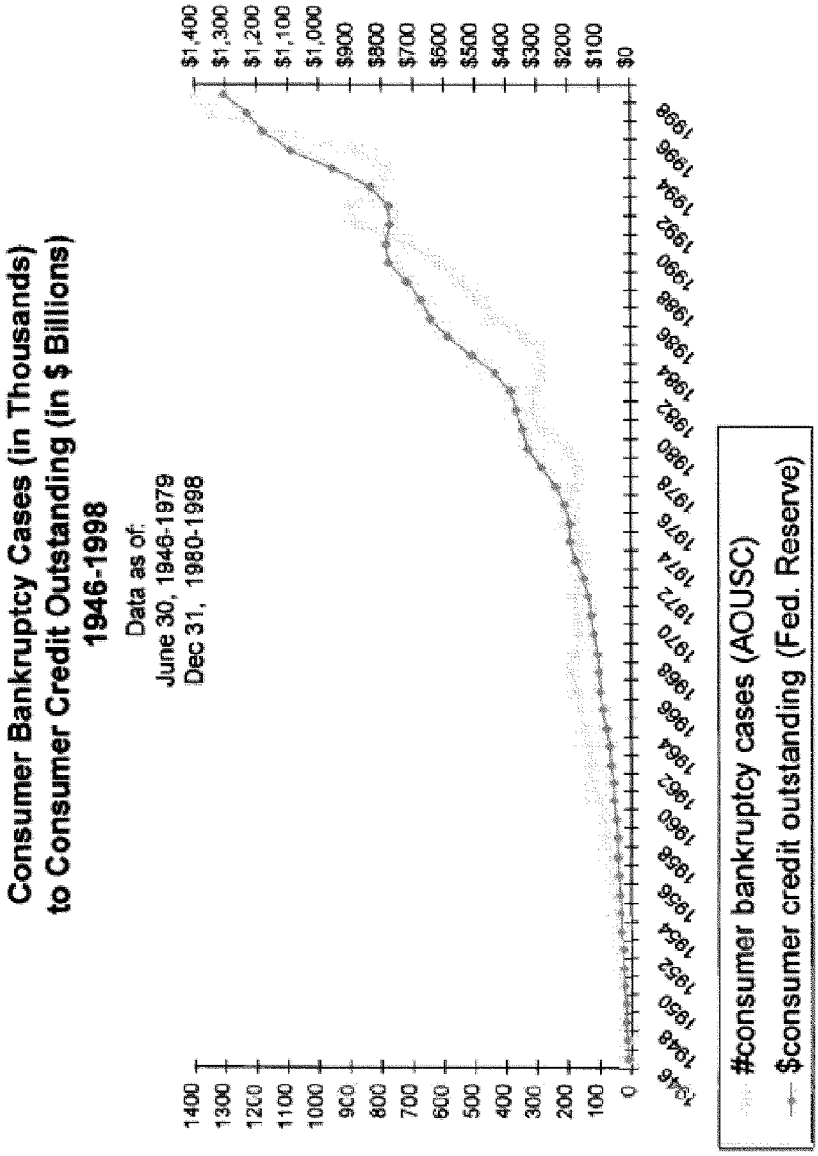
[117] *Id.*

as well as a series of boilerplate warnings regarding real estate loans and teaser rates.[118]

As noted at the outset, the overwhelming weight of authority establishes that it is the massive increase in consumer debt, not any change in bankruptcy laws, which has brought about the increases in consumer filings. Indeed, there is an almost perfect correlation between the increasing amount of consumer debt and the number of consumer bankruptcy filings. For example, between 1993 and 1998, bank credit card loans in the United States more than doubled from $223 billion to nearly $500 billion, and personal bankruptcy filings increased accordingly.[119] The same basic correlation holds from 1946 through 1998, as the below chart indicates:

[118] H.R. 975, Title XIII.

[119] *March 16, 1999 Hearing* (written statement of Joe Lee, Charts 5–6). In 1993, banks issued credit card loans in the amount of $223 billion; in the same year, there were approximately 900,000 consumer bankruptcy filings. *Id.* (citing the FDIC and the Administrative Office of the U.S. Courts). In 1998, banks issued $455 billion in credit card loans; that year, there were 1.4 million consumer bankruptcy filings. *Id.*



Review of this data indicates that the primary factor that led to the increase in bankruptcy filings after 1978 was not the enactment of the revised bankruptcy laws, but the deregulation of credit. The deregulation resulted from the Supreme Court decision in *Marquette National Bank of Minneapolis* v. *First Omaha Service Corp.*,[120] which held that out-of-state banks were not subject to the usury laws of the state where the consumer was located. This deci-

[120] 439 U.S. 299 (1978).

sion led credit card concerns to relocate to states with lax usury laws that gave banks the ability to charge exorbitant interest rates in all 50 states. Subsequently, other legal changes permitted a broad range of new entities to get into the ever-growing, and lucrative, credit card business.[121] Among other things, we know that it was this unprecedented increase in high-cost credit, not the changed bankruptcy laws, that led to the change by virtue of Canada's experience. In Canada, bankruptcy filings began to explode in the late 1960's, simultaneous with the entry of VISA and MasterCard into that nation and the growth in credit card lending. There was no change in Canada's laws that could account for the increase.[122]

This deregulation of credit and the accompanying explosion in credit availability—the number of credit card solicitations in 1998 reached 3.5 billion, an increase of 15 percent from the prior year[123]—and consumer debt, have been accompanied by a wide variety of credit card abuses. For example, solicitations of minors and college students are a particular problem. Credit card companies purposefully solicit students and other minors who have little ability to pay their debts. Illustrative of the seriousness with which credit card companies target students is the following topic from the 1998 Card Marketing Conference:

> Targeting Teens: "You Never Forget Your First Card!" Most teens never forget their first love. Nor do they forget the issuer who dares to accept their application. Their brand loyalty and propensity to spend make consumers in their mid- to late-teens priced prospects for many card issuers.[124]

The credit card tactics are myriad, including offering gifts such as mugs, Slinkees, T-shirts, and Frisbees.[125] Campus groups managing credit card tables receive large cash payments from credit card companies.[126] Such tactics apparently work, as 61% of students responsible for their own bills have indicated that they received credit cards at college.[127] Some colleges have become so fed up with card marketing practices that they banned the credit card companies from their campus[128]—although they cannot stop mail solicitations.

Credit card companies even go so far as to solicit business from the developmentally disabled.[129] One developmentally disabled

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[121] *See March 16, 1999 Hearing* (written statement of Hon. Joseph Lee at 1–3).

[122] *Id.* (written statement of Hon. Joseph Lee at 4–5).

[123] Press Release of the National Consumer Law Center, Consumers Union, Consumer Federation of America, and U.S. PIRG (Apr. 19, 1999).

[124] *Id.* (quoting Agenda for Card Marketing Conference '98 (Nov. 9–11, 1998)). Between 1990 and 1995, the average student credit card debt more than doubled from $900 to $2,100. By 1997, graduate students averaged seven cards and carried a total balance of $5,800. That's in addition to school loans, which are increasingly being used to pay off students' credit card debt. To support average post-college debts and other expenses, graduates need to earn more than $38,000—$4,000 more than the national average. ("Bankrupt at 24, Susan Carpenter, LA Times January 24, 2001.)

[125] *Id.*

[126] *Id.*

[127] U.S. PUBLIC INTEREST RESEARCH GROUP, THE CAMPUS CREDIT CARD TRAP: RESULTS OF A PIRG SURVEY OF COLLEGE STUDENTS AND CREDIT CARDS (Sept. 1998).

[128] Press Release of the National Consumer Law Center, Consumers Union, Consumer Federation of America, and U.S. PIRG (Apr. 19, 1999).

[129] Dan Herbeck, *Where Credit Isn't Due: Developmentally-Disable Become Victims*, BUFFALO NEWS, Apr. 7, 1998, at 1A.

man, aged 35, has the reading and mathematic skills of a second-grader and an annual income of $7,000 from Social Security disability benefits; nevertheless, he has 13 credit cards, generating a debt of $11,745.[130] When his counselor asked the bank to lower his credit limit to $500, his limit was instead raised to $4,900.[131] Credit card companies have no answer for how this occurs other than to say that they screen all applicants to ensure they can handle the risk.[132] Clearly, however, credit card companies have not been doing a sufficient job of screening their applicants. Unfortunately, H.R. 975 does nothing to discourage any of these practices.

The bill also ignores the problem of credit card companies lending to individuals with already substantial debts and little prospect of repayment. Gary Klein of the National Consumer Law Center noted "offering additional credit . . . to families already struggling to pay their debts hurts not only borrowers, but also the borrowers' honest creditors if the new credit pushes the family over the edge. Similarly, failure by one creditor to seriously consider payment arrangements outside bankruptcy for families facing hardship may lead to a bankruptcy filing which affects all creditors." [133] One credit card company goes so far as to solicit debt counselors and offers them $10 for each chapter 7 client who requests a VISA card.[134]

A particularly pernicious credit card practice occurs in the so-called "subprime" market, where lenders seek out riskier borrowers and offer home equity financing at loan to value ratios in excess of 100%. Another lending abuse targets low income and minority neighborhoods with "serial" refinancing loans that carry high interest rates and other onerous terms.[135] In essence this causes poor individuals to place their homes at risk in order to finance their credit card purchases.

These problems are compounded by the fact that credit card companies fail to disclose clearly on their account statements the total amount and total time it would take to pay off balances if only the minimum amount due was paid each month.[136] Unlike mortgage loans and car loans, credit card loans do not disclose the amortization rates or the total interest that will be paid if the cardholder makes only the minimum monthly payment. As a result, using a typical minimum monthly payment rate on a credit card, it could take 34 years to pay off a $2,500 loan, and total payments would exceed 300 percent of the original principle. This is why many lend-

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[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *March 11, 1999 Hearing* (written statement of Gary Klein, National Consumer Law Center).

[134] Letter from American Bankruptcy Service to Michael Schwartz (Dec. 18, 1998).

[135] March 18, 1999 Hearing (written statement of Damon A. Silvers, AFL-CIO, n.9 [citing Debra Nussbaum, *"Lenders Laud the Value of Home Sweet Equity,"* N.Y. TIMES, Mar. 22, 1998, § 3 at 10; Richard W. Stevenson, *"How Serial Refinancings Can Rob Equity,"* ?N.Y. TIMES, Mar. 22, 1998, § 3 at 10. *See also* Julia Patterson Forrester, *"Mortgaging the American Dream: A critical Evaluation of the Federal Government's Promotion of Home Equity Financing,"* 69 TULANE L. REV. 373 (1994)]).

[136] Section 112 of the bill requires only that credit card companies disclose on customer account statements that making the minimum payments each month will increase the length of time it takes to pay off the account. This "disclosure" provision is meaningless because it would not require credit card companies to tell customers exactly how long it would take, and how much it would cost, if the minimum payments were made.

ers encourage minimum payments that do not pay down the loan.[137]

Finally, the legislation fails to address adequately the problem of abuse in the area of reaffirmation agreements, by for example, placing effective and meaningful restrictions on their use with respect to unsecured and dischargeable loans.[138] Although it requires lengthy and confusing "disclosures," it exempts credit unions from any restrictions on unduly burdensome reaffirmations, defined as requiring the debtor to make monthly payments in excess of 100% of the debtor's post-discharge monthly disposable income[139]. This failing is especially glaring in view of the fact that the bill will provide numerous opportunities for creditors to coerce reaffirmations making the provisions of this bill, which will render it more difficult to obtain effective remedies against abusive creditors like Sears, even less defensible.[140]

Neither the witness representing the Credit Union National Association, nor any proponent of the bill has ever attempted to explain why a credit union should be permitted to reaffirm a debt requiring payments that, as a matter of simple arithmetic, the debtor will be unable to pay. This provision is unconscionable and runs counter to the historic commitment of credit unions as defenders of the rights of their members.

III. SMALL BUSINESS AND SINGLE-ASSET REAL ESTATE PROVISIONS

Under current law, businesses may use chapter 11 of the Bankruptcy Code in an effort to obtain relief from the creditors while they seek to develop a plan to reorder their affairs and pay as much of their debts as their operations will allow. Under this chapter, businesses obtain an "automatic stay," which forestalls creditor collection efforts. During this time period, debtors have an opportunity to examine their contracts and leases and determine which ones to assume and which ones to reject (with rejection leading to a claim for damages). Debtors are subject to a number of requirements during this period, such as the formation of creditor committees and various ongoing financial disclosures.

The goal of chapter 11 is to determine whether there is ongoing business value that can be preserved to pay off creditors, while maintaining as many jobs and contractual relationships as possible. To this end, the debtor is given an exclusive 120-day period (unless lengthened or shortened for cause) in which to develop a reorganization plan that satisfies a host of statutory requirements and convince a majority of the creditors that the plan is in their best interests and is preferable to a liquidation "fire sale."

In 1994, Congress enacted two exceptions to the general rules of chapter 11. The first related to "small businesses," defined as entities engaged in commercial or business activities whose aggregate debts do not exceed $2 million. Debtors that elect to be treated as small businesses are permitted to dispense with creditor commit-

[137] *March 16, 1999 Hearing* (written statement of Frank Torres, Consumers Union).

[138] The bill fails to effectively address the problem with reaffirmation agreements, since it provides for court review in only a limited group of cases and allows creditors to refuse to disgorge funds received even if a reaffirmation was illegal in many cases.

[139] Sec. 203(a) (creating a new 11 USC 524(m)).

[140] *See* Leslie Kaufman, *Sears to Pay Fine of $60 Million in Bankruptcy Fraud Lawsuit*, N.Y. TIMES, Feb. 10, 1999, at C2.

tees, receive only a 100-day plan exclusivity period, and are entitled to more flexible provisions for disclosure and solicitation for acceptances of their proposed reorganization plan.

In 1994, Congress also developed a special set of rules applicable to "single asset real estate," generally defined as cases in which the principal asset is a single piece of real estate subject to debt of no more than $4 million. In cases falling within this definition, secured creditors are permitted to foreclose on their collateral unless the debtor files a reorganization plan which is likely to be confirmed or commences payment on the secured loan within a 90-day period. This exception to chapter 11 procedures was justified on the grounds that single asset real estate cases were seen as essentially private two-party loan disputes, which did not implicate ongoing businesses or jobs.

A. Small Business Provisions

The business provisions of the bill would effectuate a number of changes in the manner in which corporations, partnerships and other business entities are permitted to reorganize their financial affairs. With respect to small business, H.R. 975 would expand the definition of covered small business to those companies having debts of less than $3 million,[141] subsuming more than 80% of all chapter 11 cases.[142] It would also make the small business requirements mandatory (rather than optional) and mandate the operation of numerous additional requirements on debtors.[143] For example, under H.R. 975, small business debtors would be required to provide balance sheets, statements of operations, cash-flow statements, and income tax returns within 3 days after filing a bankruptcy petition, the time period the debtor has the exclusive right to file a plan of reorganization would be modified (to 180 days without the possibility of extension), and the standards for being able to seek an extension of this time period would be substantially narrowed.[144]

It is for these reasons that the AFL-CIO, and a number of other organizations representing both debtor and creditor interests are opposed to, or have serious concerns with, the small business provisions of the bill. The AFL-CIO has warned that the small business provisions in the bill will "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 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."[145] All of these concerns are compounded at a time we are experiencing an economic slowdown, if not an outright recession.

This new bankruptcy mandate, particularly sections 437 through 439, would impose substantial new costs on small businesses, both

[141] H.R. 975, § 432 (proposed amendment to 11 U.S.C. § 101(51D)).
[142] *See March 18, 1999 Hearing* (written statement of Jere W. Glover, Chief Counsel for Advocacy, SBA).
[143] H.R. 975, § 436 (proposed 11 U.S.C. § 1116).
[144] H.R. 975, § 437 (proposed amendment to 11 U.S.C. § 1121(e)).
[145] Letter from Peggy Taylor, Director of Legislation, AFL-CIO, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 20, 1999).

in terms of document production and legal fees, and limit the time frame that the business has to develop a reasonable reorganization plan.[146] Section 437 provides an absolute limit on the period the business debtor has the exclusive right to file a plan of reorganization. Congress has previously enacted laws that have made it far more difficult for debtors to unduly delay filing a plan of reorganization, and these appear to have had a salutary effect. The proposed rigid deadline goes much farther and could work to detriment of debtors involved in complex reorganizations and force unnecessary liquidations and job losses. In turn, these changes will lead to the premature liquidation of small businesses with the attendant loss of jobs. The provisions are particularly unnecessary at a time when business bankruptcies have declined by one-third over the most recent 10-year period.[147]

Describing the earlier version of the bill, the SBA's Office of Advocacy summed up the situation as follows: "the proposals in [the legislation] go too far in addressing the relatively small number of problem cases."[148] Even more dangerously, it has been noted that many—if not most—of the business cases in the average district would fall prey to these harsh new rules.[149]

B. Single-Asset Real Estate Provisions

A similar concern relates to single-asset real estate ("SARE") debtors. The legislation would significantly expand the definition of SARE by eliminating the $4 million debt cap pursuant to a "technical correction" in section 1201(5) of Title XIII of H.R. 975, would take in SARE bankruptcies below that cap and treat them as small businesses.

As a result of these changes, a much wider range of real estate operations would be required to conform with the SARE and small business requirements when they seek to reorganize, notwithstanding the fact that those requirements were drafted with a much smaller and simpler entity in mind. Large operating entities such as Rockefeller Center, as well as hotels and nursing homes, could be considered SARE and put back on the track set forth in § 362(d)(3) of the Bankruptcy Code. It would also create new incentives for lenders to require that all of their real estate borrowers place their holdings in the single asset form in order to avoid ordinary bankruptcy rules in the future. The AFL-CIO noted, "the significant limiting factor in the application of these rules has been the $4 million cap. [Eliminating] the cap would place a wide variety of properties . . . at risk of foreclosure and threaten jobs at these properties. Absent rules that specifically exclude properties such as housing and those with significant business enterprises,

[146] *March 18, 1999 Hearing* (written statement of Jere W. Glover, Chief Counsel for Advocacy, SBA).

[147] Letter from Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Business Administration, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (Apr. 22, 1998).

[148] *March 18, 1999 Hearing* (written statement of Jere W. Glover, Chief Counsel for Advocacy, SBA).

[149] *Id.* (written statement of Damon A. Silvers, AFL-CIO at 4); *March 17, 1999 Hearing* (written statement of Kenneth Klee, National Bankruptcy Conference at 7).

there should be no expansion in the definition of single asset real estate debtor." [150]

By design, the SARE changes will "broaden the scope of single asset real estate debtors subject to rules which increase the threat of disruptive summary foreclosures of commercial property." [151] This, in turn, would likely lead to significant job losses.[152] Even if a hotel or nursing home remains in existence, the new owner would not necessarily be required to honor any previously negotiated collective-bargaining agreements applicable to employees at the facility. In the case of a large real estate operation, premature foreclosure could also allow the new owner to terminate many leases, leading to further job losses to the extent the business is relying on these leases.

C. Other Business Concerns

A host of additional concerns have been raised by groups such as the AFL-CIO and the National Bankruptcy Conference regarding the business titles of the legislation. These include concerns about the expansion of remedies available to secured creditors in the transportation industry; [153] the imposition of mandatory deadlines for extensions of "exclusivity"; [154] amendments regarding asset securitization limiting the assets available to a debtor during a bankruptcy case; [155] limits on subsequent filings for troubled small businesses,[156] and provisions giving utility companies an enhanced position in bankruptcy.[157] In general, the AFL-CIO has warned that "the real danger posed by H.R. 833 [the precursor to H.R. 975] 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." [158]

Similar concerns relate to the power of creditors who lease retail property. Section 404 unfairly grants lessors of commercial property the ability to coerce debtor-tenants into deciding prematurely whether to assume or reject a lease. In a retail insolvency, a debtor may need to wait beyond the 210-day period—120 days with the ability to gain a 90-day extension upon a motion for cause and with the lessor's consent—until the holiday season is complete to determine which locations have a realistic chance to succeed; a trustee or debtor in possession may decide to assume and reject some of the leases based upon this practical experience.[159] If the trustee or

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[150] *March 18, 1999 Hearing* (written statement of Damon A. Silvers, Associate General Counsel, AFL-CIO).

[151] Letter from Peggy Taylor, Director of Legislation, AFL-CIO, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 20, 1999).

[152] *Id.*

[153] *March 18, 1999 Hearing* (written statement of Damon A. Silvers, AFL-CIO); *March 17, 1999 Hearing* (written statement of Kenneth Klee, National Bankruptcy Conference).

[154] H.R. 975, § 411.

[155] H.R. 975, § 912.

[156] H.R. 975, § 441.

[157] H.R. 975, § 417.

[158] Letter from Peggy Taylor, Director of Legislation, AFL-CIO, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 20, 1999).

[159] The value to the estate of retaining the ability to assign certain leases is often a significant issue in determining which leases to assume or reject because it impacts upon the ability to

debtor in possession assumes a nonresidential lease in chapter 11, and the case subsequently converts to chapter 7, under the bill, the rent due for a 1-year period following rejection of the lease becomes an administrative expense for compensation, gaining priority over all other unsecured claims and limiting the opportunity for other unsecured creditors to receive compensation.[160] By giving the lessor veto power at the end of 210 days, as the bill now does, the legislation would have the effect of giving a single creditor inordinate bargaining power among creditors and with the debtor.

Another problematic provision appears in section 442 of H.R. 975. Section 442 amends section 1112(b) of the Code to expand the grounds on which the court can dismiss or convert a small business case. For example, a case will be presumptively dismissed when the debtor fails to comply with a lengthy list of requirements. To overcome the presumption, the debtor must show that a reasonable justification exists for the debtor's action, that the debtor will rectify the situation within a reasonable time prescribed by the court, and that the plan will be confirmed within a reasonable period of time. Again, the concern is that § 442 may be too inflexible and could be used by some creditors to obtain leverage over other creditors,"[161] or the case could be converted to ch. 7 when it may have successfully reorganized, costing jobs and sacrificing going concern value for the creditors and the estate.

IV. TAX PROVISIONS

The Bankruptcy Code seeks to effectuate a delicate balance between the rights of the Internal Revenue Service and state tax agencies to the repayment of any taxes, interest, and penalties owed them, and the rights of other creditors and the ability of individuals and corporations to be financially rehabilitated for the benefit of all parties. Title VII of the bill, on balance, manifests a strong preference for the IRS and other taxing authorities to the detriment of other participants in the bankruptcy system. Concerns have been expressed that, not only does H.R. 975 generally enhance the rights and position of the IRS and state authorities in bankruptcy, but the bill grants the IRS certain rights in bankruptcy cases that it does not enjoy outside of bankruptcy, and vests the IRS with new enforcement powers that ordinary creditors do not posses.[162] Of particular concern is the fact that the bill varies in many significant respects from the nonpartisan, and often unanimous, recommendations of the Bankruptcy Commission and its Tax Advisory Committee.

Title VII of the H.R. 975 deals with the treatment of tax debts owed to the government by a debtor. It is ironic that the bill, whose sponsors have normally taken such an anti-tax posture on most issues, not only uses the IRS collection standards for the means test but also presses for changes to the Bankruptcy Code that favor

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pay other creditors. It should also be noted that the lessor already is entitled to get paid post-petition rent for the use of the property—the debtor is not using it for free.

[160] *In re Klein Sleep Prods.*, 78 F.3d 18 (2d Cir. 1996).

[161] National Bankruptcy Conference, Report on H.R. 2415, 106th Cong., 2d Sess (H. Rept. 106–970) at 17 (2001).

[162] *Hearing on Business Bankruptcy Issues Before the House Subcomm. on Commercial and Admin. Law*, 105th Cong., 2d Sess., (Mar. 18, 1998) (statement of Paul H. Asofsky).

governmental collections over the rights of debtors and private sector creditors.

Arguably one of the bill's most important provisions affecting business bankruptcies appears in Section 708 of Title VII. This section provides that a corporation will not be discharged from a tax or customs duty where the debtor made a fraudulent return or willfully attempted to evade or defeat the tax or duty. More significantly, by referencing any debt in section 523(a)(2) of the Code, the provision even would encompass claims that were fraudulently incurred that are not tax claims. In its critique of section 708, the National Bankruptcy Conference wrote:

> A rule such as the one proposed in § 708 advantages one creditor at the expense of others. It is a recipe for certain mischief, especially in large reorganizations. There is no public policy reason to grant this kind of leverage to some creditors as the purpose in making these assertions transparently will likely be to obtain a better deal that other creditors.[163]

In addition, Paul Asofsky, who served as the Chair of the Task Force on the Tax Recommendations of the National Bankruptcy Review Commission of the American Bar Association's Tax Section, testifying about H.R. 833 on behalf of the American Bar Association's Section on Taxation, observed that: "[T]here are many provisions in this legislation with which we agree as a matter of principle, but the specific provisions are either ambiguously drafted or cut against the grain of the principal proposal, causing us to oppose what should be noncontroversial proposals." [164]

Mr. Asofsky provided a somewhat more detailed discussion of his concerns in a letter to the Subcommittee's Ranking Member.[165] Section 704 of H.R. 975 provides for a significantly higher uniform interest rate to be applied to tax claims in a bankruptcy case. The Tax Advisory Committee, which included governmental representatives, concluded that the rate for all types of tax claims should be the regular tax deficiency rate for Federal income tax purposes. The bill, however, provides that the rate shall be determined by applicable bankruptcy law. Of greater concern, local governments can set their own interest rates, many of which are substantially higher than either of the IRS rates.[166]

Section 707 severely limits the "superdischarge" available to debtors in chapter 13. It would prevent a debtor from discharging tax debts, which is now permitted in chapter 13, but not in chapter 7. Eliminating the benefit of the superdischarge also eliminates the single greatest incentive for an individual debtor to choose chapter 13. As Mr. Asofsky observed,

> [T]he problem faced by many taxpayers who are delinquent in their obligations is that the IRS standard allowances for installment payment agreements [167] clearly do not leave many taxpayers with the minimum amounts necessary to provide for

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[163] National Bankruptcy Conference, Report on H.R. 2415, 106th Cong., 2d Sess (H. Rept. 106–970) at 16 (2001).

[164] *March 18, 1999 Hearing* (written statement of Paul Asofsky).

[165] Letter from Paul Asofsky to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (Feb. 5, 1999) [hereinafter Asofsky Letter].

[166] *Id.* at 3–4.

[167] These are the same standards used in the means test in section 102 of H.R. 975.

> basic necessities, and so called "offers in compromise" are very difficult to obtain. Thus, for the most desperate of taxpayers, the chapter 13 superdischarge affords a safety net which is the only thing that provides them with the possibility of living somewhat of a normal life in dignity . . . elimination of the chapter 13 superdischarge would be devastating to large numbers of unfortunate individual debtors.[168]

Section 717 requires disclosure of the tax consequences of a chapter 11 plan of reorganization. Although originally an uncontroversial idea, the bill adds extra requirements which will likely cause confusion and may be impossible for debtors to comply with fully. The section now requires "a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interest in the case." The use of a vague term such as "discussion"—although an improvement over the requirement in the earlier version of a "*full* discussion"—will likely lead to extensive litigation as these statements are scrutinized. In some instances, the precise tax consequences of a plan at all levels of government, and for a "typical" holder of claim, may be difficult to produce with great precision.[169]

Finally, section 718 requires that a debtor actually have commenced an action against the taxing authority to determine the amount of a disputed tax before a setoff can be prevented. Absent such an action by the debtor, a governmental entity generally is free to "setoff" any prepetition refund with a liability. The Advisory Committee had recommended that such setoff should only be permitted in cases where the liability was undisputed. The bill goes much further and to the disadvantage of the debtor and other, nongovernmental creditors.

V. CORRUPTION OF THE BANKRUPTCY SYSTEM:

Although the legislation purports to wring fraud and abuse from the bankruptcy system, there are a number of provisions which will open the door to further abuse by certain parties.

Section 324 of the bill would overturn the result in the *Merry-go-Round* case in which the accounting firm of Ernst and Young was for fraud, fraudulent concealment, and negligence/malpractice for its conduct while serving as restructuring accountants and business advisors in the Merry-go-Round bankruptcy. The suit was brought in the Circuit Court for Baltimore City, but Ernst & Young attempted to move the case to the bankruptcy court. The case was remanded back to state court and the remand was ultimately upheld by the District Court.[170] Faced with a jury trial in state court, Ernst & Young ultimately settled the case with the trustee for $185 million.

The import of the *Merry-Go-Round* case is the issue of holding professionals, such as accounting firms, accountable for their actions in a bankruptcy case. As professionals, they are paid by funds

[168] Asofsky Letter at 4.
[169] *Id.* at 5–6.
[170] *In re: Merry-Go-Round Enterprises, Inc. (Ernest & Young, LLP* v. *Devan)*, 222 B.R. 254 (D. Md. 1998).

from the estate before other creditors. They have a duty to the estate and the creditors. When they violate that duty, they can be denied fees by the bankruptcy court, or they may face an action for damages. Damages paid to the trustee are made available to the creditors.

This change in the law was inserted for the express purpose of insulating accountants and other professionals from facing the consequences of their wrongdoing. At a time when public policy is moving in the direction of greater accountability, there is no excuse for this change.

Section 414 would relieve investment bankers of the duty of being disinterested persons before they can be retrained as professionals by the trustee. The disinterestedness standard, which has been in existence since 1938, protects the estate from conflicts of interest by professionals in the case. Judge Edith Jones of the U.S. Court of Appeals for the Fifth Circuit has written, "such a standard can alone protect integrity in the bankruptcy process. If professionals who have previously been associated with the debtor continue to work for the debtor during a bankruptcy case, they will often be subject to conflicting loyalties that undermine their foremost fiduciary duty to the creditors. Strict disinterestedness, required by current law, eliminates such conflicts or potential conflicts . . . Section 414, in removing investment bankers from a rigorous standard of disinterestedness, is out of character with the rest of this important legislation, however, and it should be eliminated." [171]

Section 102 relieves certain creditors and their attorneys from penalties prescribed in the bill even if they violate Bankruptcy Rule 9011. As discussed earlier, there is never a justification for violating BR 9011. Granting such an exception would only encourage inexcusable abuse of the process. Moreover, because this exception is embedded in the attorney sanctions portion of the individual debtor provisions of this bill, it would open the door to creditors abusing the most vulnerable debtors with impunity. There are many instances in which this legislation makes such abuse possible. Enshrining this sort of exemption in the law exemplifies the dangerous distortion of the bankruptcy system this bill represents.

For these reasons, we believe that H.R. 975 should not become law.

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JERROLD NADLER.
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MELVIN L. WATT.
ZOE LOFGREN.
SHEILA JACKSON LEE.
MAXINE WATERS.
WILLIAM D. DELAHUNT.
TAMMY BALDWIN.
LINDA T. SÁNCHEZ.

[171] *Letter to Hon. F. James Sensenbrenner,* (Hon. Edith H. Jones)(March 11, 2003).

ADDITIONAL DISSENTING VIEWS

In addition to the concerns raised in the general dissenting views, we are disappointed by the committee's refusal to put an end to one of the most notorious abuses of the bankruptcy system—the "financial planning" strategy by which debtors purchase expensive homes in states which allow an unlimited homestead exemption under 11 U.S.C. 522 (b) (2) (A), declare bankruptcy, and continue to enjoy a life of luxury while their creditors get little or nothing.[1]

During the committee markup, Mr. Delahunt offered an amendment to eliminate this abuse—and implement a key recommendation of the National Bankruptcy Review Commission—by retaining the $125,000 national cap on the homestead exemption, as provided under the bill, while striking the exceptions and loopholes to the cap contained in the current bill.

The amendment would have helped to eliminate the biggest loophole in the Bankruptcy Code, and implement a key recommendation of the National Bankruptcy Review Commission, by placing a meaningful national cap on the homestead exemption.

The amendment would have made the cap meaningful because, in the bill as reported, the $125,000 cap is qualified by a series of exemptions that assure that those who engage in flagrant abuse of the bankruptcy system by sheltering homestead assets can continue to do so.

The Delahunt amendment, which was rejected on a party line vote by the Committee, would leave the cap at $125,000, but eliminate the exemptions for transactions conducted more than 1215 days (roughly 3 years) preceding the bankruptcy filing and for interests transferred from a debtor's previous principal residence acquired within the same state prior to that time.

The rationale that has been given for the so-called "needs-based" reforms proposed in H.R. 975 is to eliminate abuses of the bankruptcy laws-abuses which proponents of the legislation have characterized as the use of the Bankruptcy Code as a "financial planning tool."

Yet while the bill would presume that debtors of modest means are abusing the system if they can pay general unsecured creditors as little as $100 a month in chapter 13, it continues to permit, indeed it endorses—the most notorious abuse of the consumer bankruptcy system of all.

If we are truly serious about curtailing abuses, this is the place to start, with individuals like Marvin Warner, a former ambassador to Switzerland and the owner of a failed Ohio Savings & Loan, who paid off only a fraction of $300 million in bankruptcy

[1] The following are the states have unlimited homestead exemptions: Florida, Iowa, Kansas, South Dakota, Texas, and the District of Colombia.

claims while keeping his multi-million-dollar horse ranch near Ocala, Florida.[2]

Or Martin A. Siegel, a former Wall Street investment banker convicted of insider trading. While facing a $2.75 billion civil suit, he bought a $3.25 million, 7,000-square-foot beachfront home in Ponte Vedra Beach.[3]

Or former baseball commissioner Bowie Kuhn, whose Manhattan law firm went into bankruptcy. After creditors seized his weekend house in the Hamptons and were about to attach his $1.2 million home in Ridgewood, New Jersey, Kuhn acquired a million-dollar house in Florida with five bedrooms and five baths.[4]

Or Dr. Carlos Garcia-Rivera, a Miami physician with no malpractice insurance, who was named in four separate malpractice actions, filed for bankruptcy protection, and kept a $500,000 home with a 100-foot swimming pool.[5]

Or the Dallas developer, Talmadge Wayne Tinsley, who filed under chapter 7 after incurring $60 million in debts. Tinsley objected to the Texas law that permitted him to keep only one acre of his $3.5 million, 3.1-acre magnolia-lined estate. But that acre included a five-bedroom, six-and-a-half-bath mansion with two studies, a pool and a guest house.[6]

Or the movie actor, Burt Reynolds, who declared bankruptcy in 1996, claiming more than $10 million in debt. Reynolds kept a $2.5 million home—appropriately named "Valhalla"—while his creditors received 20 cents on the dollar.[7]

Or Paul Bilzerian, who used Florida's unlimited homestead exemption to avoid his creditors. He filed for bankruptcy in 1991, and filed again last month. He retains his $5 million Florida home, and can completely avoid the $200 million in debt owed his creditors, including the IRS.[8]

The situation in Florida has become so notorious that one Miami bankruptcy judge told the New York Times, "You could shelter the Taj Mahal in this state and no one could do anything about it."[9] As the Wall Street Journal noted recently concerning the Kuhn case, "the bill that Congress will soon send to a welcoming President Bush would make [pre-bankruptcy planning using the unlimited homestead exemption] more difficult, but that's symbolic. Few people anticipating bankruptcy have the cash to pull off that maneuver. This is a national problem that demands a uniform solution. Without a nationwide cap, debtors who live in the 45 states that cap the exemption at $200,000 or less are free to relocate to one of the five so-called "debtors' paradises" that have no cap at all."[10] Indeed, the Florida Supreme Court has ruled that even

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[2] Larry Rohter, "Rich Debtors Finding Shelter Under a Populist Florida Law," *N.Y. Times* A–1 (July 25, 1993).

[3] *Id.*

[4] *Id.*

[5] David J. Morrow, "Key to a Cozier Bankruptcy: Location, Location, Location," *N.Y. Times*, A–1 (Jan. 7, 1998).

[6] *Id.*

[7] Eliot Kleinberg, "Reynolds Gets Out from under Bankruptcy," *The Palm Beach Post*, (Oct. 8, 1998)

[8] *Hearing Before the Senate Committee on the Judiciary on S. 220*, (Written statement of Brady C. Williamson), at 6 (Feb. 8, 2001).

[9] Judge A. Jay Cristol, quoted in Rohter, supra note 2.

[10] David Wessel, "A Law's Muddled Course," *The Wall Street Journal*, at 1 (Feb. 22, 2001).

fraudulent transfers are protected by the unlimited homestead exemption under that state's constitution.[11]

The sponsors of the bill will claim that they have closed the loophole, first, by applying the cap to property purchased within the 1215-day period prior to the filing; second, by requiring the individual to wait for 730 days after moving from another state before claiming the new state's exemption; and third, by disallowing the claim on any portion of the homestead acquired "with the intent to hinder, delay, or defraud a creditor."

While these features may eliminate a few of the abuses, they do not solve the problem. Wealthy debtors who are sophisticated enough to plan ahead—and those are, after all, the people we are talking about—can purchase a homestead to shelter their non-exempt assets and simply wait the 1215 days before filing their petition. And the bill expressly permits them to transfer their assets from a previous principal residence into a new one at any time prior to their bankruptcy filing without being subject to the cap, provided that the former residence is located in the same state.

What message does it send when Congress subjects middle-class debtors to a means test while permitting the wealthy to continue to place their millions out of reach of their creditors? A bill that does that is not a "Bankruptcy Abuse Prevention and Consumer Protection Act" at all. If Congress is serious about curbing abuse, a national, absolute dollar amount cap, without any loopholes, is the only way to do it. The bill, as reported, fails this test and so bears the burden of treating poor and middle class families harshly while letting the wealthiest individuals, who are clearly abusing the system and defrauding their creditors, shelter millions of dollars.

Bankruptcy should provide a safety net for families truly in need of relief. This legislation, which imposes stringent new rules on financially distressed families should not leave the most notorious loophole—the "millionaire's loophole"—intact.

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[11] *Havoco of America, Ltd.* v. *Hill*, No. SC 99–98 (June 21, 2001).