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*1st Session*
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REPT. 106–123,
PART 1

# BANKRUPTCY REFORM ACT OF 1999

APRIL 29, 1999.—Ordered to be printed

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

# R E P O R T

together with

## ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 833]

The Committee on the Judiciary, to whom was referred the bill (H.R. 833) to amend title 11 of the United States Code, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS



The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

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

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

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

# TITLE I—CONSUMER BANKRUPTCY PROVISIONS

## Subtitle A—Needs based bankruptcy

**SEC. 101. CONVERSION.**

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

**SEC. 102. DISMISSAL OR CONVERSION.**

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

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

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

and

(2) in subsection (b)—

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

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

(i) in the first sentence—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(B) In the case of a petition filed under sections 301, 302, or 303 of this title and supporting lists, schedules and documents filed under section 521(a)(1) of this title,

the signature of an attorney on the petition shall constitute a certificate that the attorney has—

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

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

"(I) are well grounded in fact; and

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

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

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

"(B) the court finds that—

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) by adding at the end the following:

"(10)(A) With respect to an individual debtor, the trustee shall review all materials filed by the debtor, consider all information presented at the first meeting of creditors, and within 10 days after the first meeting of creditors file with the court a statement as to whether the debtor's case should be presumed to be an abuse under section 707(b) of this title The court shall provide a copy of such statement to all creditors within 5 days after such statement is filed If,

based on the filing of such statement with the court, the trustee determines that the debtor's case should be presumed to be an abuse under section 707(b) of this title and if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief, when multiplied by 12, is not less than the highest national median family income reported for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner, then the trustee shall within 30 days of the filing of such statement, either—

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

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

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

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

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

**SEC. 103. NOTICE OF ALTERNATIVES.**

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

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

"(1) a brief description of—

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

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

"(2) statements specifying that—

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

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

**SEC. 104. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.**

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

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

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

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

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

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

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

# Subtitle B—Consumer Bankruptcy Protections

**SEC. 105. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

**SEC. 106. ENFORCEMENT.**

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

**"§ 526. Debt relief agency enforcement**

"(a) A debt relief agency shall not—

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

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

"(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, what services the debt relief agency can reasonably expect to provide that person, or the benefits an assisted person may obtain or the difficulties the person may experience if the person seeks relief in a proceeding pursuant to this title; or

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

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

"(c) NONCOMPLIANCE.—

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

"(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person which the debt relief agency has received, for actual damages, and

for reasonable attorneys' fees and costs if the debt relief agency is found, after notice and hearing, to have—

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

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

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

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

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

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

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

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

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

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

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

"(c) RELATION TO STATE LAW.—This section shall not annul, alter, affect or exempt any person subject to those sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency.".

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

"526. Debt relief agency enforcement.".

**SEC. 107. SENSE OF THE CONGRESS.**

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

**SEC. 108. DISCOURAGING ABUSIVE REAFFIRMATION PRACTICES.**

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

(1) in subsection (c)—

(A) in paragraph (2)—

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

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

(iii) by adding at the end the following:

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

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

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

(B) in paragraph (6)(A)—

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

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

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

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

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

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

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

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

**SEC. 109. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SEC. 111. DUAL USE DEBIT CARD.**

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

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

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

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

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

(c) REPORT AND REGULATIONS.—Not later than 2 years after the date of the enactment of this Act, the Board shall make public a report on its findings with respect to the adequacy of existing protections afforded consumers with respect to unauthorized-use liability for debit cards and similar access devices If the Board determines that such protections are inadequate, the Board, pursuant to its authority under the Electronic Funds Transfer Act, may issue regulations to address such inadequacy Any regulations issued by the Board shall not be effective before 36 months after the date of the enactment of this Act.

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

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

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

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

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

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

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

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

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

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

"(h) In promulgating regulations to implement the disclosure of an example required under subsection (a)(9)(C) and (a)(10), the Board shall set forth a model dis-

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

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

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

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

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

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

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

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

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

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

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

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

(1) in subsection (b)(2)—

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

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

(C) by adding at the end the following:

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

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

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

(2) by adding at the end the following:

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

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

"(2) to the extent such funds exceed—

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

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

**SEC. 114. EFFECT OF DISCHARGE.**

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

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

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

"(A) the greater of—

"(i) the amount of actual damages; or

"(ii) $1,000; and

"(B) costs and attorneys' fees.

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

**SEC. 115. LIMITING TRUSTEE LIABILITY.**

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

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

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

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

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

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

(2) by adding at the end the following:

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

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

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

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

**SEC. 116. REINFORCE THE FRESH START.**

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

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

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

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

**SEC. 117. DISCOURAGING BAD FAITH REPEAT FILINGS.**

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

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

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

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

"(3) If a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13 (other than a case refiled under a chapter other than chapter 7 after dismisssal under section 707(b) of this title), and if a single or joint case of the debtor was pending within the previous 1-year period but was dismissed, the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease will

terminate with respect to the debtor on the 30th day after the filing of the later case Upon motion by a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed A case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

"(A) as to all creditors if—

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

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

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

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

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

"(A) as to all creditors if—

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

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

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

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

by terminating, conditioning, or limiting the stay as to action of such creditor.".

**SEC. 118. CURBING ABUSIVE FILINGS.**

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

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

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

(3) by adding at the end the following:

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

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

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

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

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

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

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

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

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

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

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

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

**SEC. 119. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.**

Title 11, United States Code, is amended—

(1) in section 521—

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

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

(C) by adding at the end the following:

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

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

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

"If the debtor fails to so act within the 45-day period, the stay under section 362(a) of this title is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee brought before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequen-

tial value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee."; and

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

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

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

(1) in section 362—

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

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

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

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

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

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

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

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

(B) in paragraph (2)(B)—

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

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

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

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

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

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

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

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

**SEC. 122. RESTRAINING ABUSIVE PURCHASES ON SECURED CREDIT.**

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

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

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

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

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

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

**SEC. 123. FAIR VALUATION OF COLLATERAL.**

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

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

**SEC. 124. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.**

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

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

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

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

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

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

(2) by adding at the end the following:

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

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

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

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

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

**SEC. 126. ROLLING STOCK EQUIPMENT.**

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

**"§ 1168. Rolling stock equipment**

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

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

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

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

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

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

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

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

"(2) The equipment described in this paragraph—

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

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

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

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

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

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

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

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

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

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

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

**"§ 1110. Aircraft equipment and vessels**

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

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

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

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

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

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

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

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

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

"(3) The equipment described in this paragraph—

"(A) is—

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

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

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

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

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

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

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

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

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

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

**SEC. 127. DISCHARGE UNDER CHAPTER 13.**

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

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

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

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

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

**SEC. 128. BANKRUPTCY JUDGESHIPS.**

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

(b) TEMPORARY JUDGESHIPS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall not be filled.

(c) EXTENSIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) in paragraph (2)—

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

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

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

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

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

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

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

(2) by adding at the end the following:

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

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

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

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

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

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

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

**SEC. 132. ADEQUATE PROTECTION FOR INVESTORS.**

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

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

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

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

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

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

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

**SEC. 133. LIMITATION ON LUXURY GOODS.**

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

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

"(ii) for purposes of this subparagraph—

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

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

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

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

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

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

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

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

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

**"§ 1307A. Adequate protection in chapter 13 cases**

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

"(i) any lessor of personal property; and

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

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

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

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

"(I) the lessor or creditor; or

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

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

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

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

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

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

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

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

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

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

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

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

**SEC. 136. AUTOMATIC STAY.**

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

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

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

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

"(22) under subsection (a) of any transfer that is not avoidable under section 544 of this title and that is not avoidable under section 549 of this title;

"(23) under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement and the debtor has not paid rent to the lessor pursuant to the terms of the lease agreement or applicable State law after the commencement and during the course of the case;

"(24) under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated pursuant to the lease agreement or applicable State law;

"(25) under subsection (a)(3), of any eviction, unlawful detainer action, or similar proceeding, if the debtor has previously filed within the last year and failed to pay post-petition rent during the course of that case; or

"(26) under subsection (a)(3), of eviction actions based on endangerment to property or person or the use of illegal drugs.".

**SEC. 137. EXTEND PERIOD BETWEEN BANKRUPTCY DISCHARGES.**

Title 11, United States Code, is amended—

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

(2) in section 1328 by adding at the end the following:

"(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502 of this title if the debtor has received a discharge in any case filed under this title within 5 years of the order for relief under this chapter.".

**SEC. 138. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.**

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

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

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

"(14A) 'domestic support obligation' means a debt that accrues before or after the entry of an order for relief under this title that is—

"(A) owed to or recoverable by—

"(i) a spouse, former spouse, or child of the debtor or that child's legal guardian; or

"(ii) a governmental unit;

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

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

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

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

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

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

**SEC. 139. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.**

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

(1) by striking paragraph (7);

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

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

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

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

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

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

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

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

"(1) First, allowed claims for domestic support obligations to be paid in the following order on the condition that funds received under this paragraph by a governmental unit in a case under this title be applied:

"(A) Claims that, as of the date of entry of the order for relief, are owed directly to a spouse, former spouse, or child of the debtor, or the parent of such child, without regard to whether the claim is filed by the spouse, former spouse, child, or parent, or is filed by a governmental unit on behalf of that person.

"(B) Claims that, as of the date of entry of the order for relief, are assigned by a spouse, former spouse, child of the debtor, or the parent of that child to a governmental unit or are owed directly to a governmental unit under applicable nonbankruptcy law.".

**SEC. 140. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.**

Title 11, United States Code, is amended—

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

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

(2) in section 1325(a)—

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

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

(C) by adding at the end the following:

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

(3) in section 1328(a), as amended by section 127, in the matter preceding paragraph (1), by inserting ", and with respect to a debtor who is required by a judicial or administrative order to pay a domestic support obligation, certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before or after the petition was filed) have been paid" after "completion by the debtor of all payments under the plan".

**SEC. 141. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.**

Section 362(b) of title 11, United States Code, as amended by sections 118, 132, and 136, is amended—

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

"(2) under subsection (a)—

"(A) of the commencement or continuation of an action or proceeding for—

"(i) the establishment of paternity; or

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

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

(2) in paragraph (25), by striking "or" at the end;

(3) in paragraph (26), by striking the period at the end and inserting a semicolon; and

(4) by inserting after paragraph (26) the following:

"(27) under subsection (a) with respect to the withholding of income pursuant to an order as specified in section 466(b) of the Social Security Act (42 U.S.C 666(b)); or

"(28) under subsection (a) with respect to—

"(A) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C 666(a)(16)) or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C 666(a)(7));

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

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

**SEC. 142. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.**

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

(1) in subsection (a), by striking paragraph (5) and inserting the following:

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

(2) in subsection (a)(15)—

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

(B) by striking "unless—" and all that follows through "debtor" the last place it appears; and

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

**SEC. 143. CONTINUED LIABILITY OF PROPERTY.**

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

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

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

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

**SEC. 144. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.**

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

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

**SEC. 145. CLARIFICATION OF MEANING OF HOUSEHOLD GOODS.**

Section 101 of title 11, United States Code, is amended by inserting after paragraph (27) the following:

"(27A) 'household goods' includes tangible personal property normally found in or around a residence, but does not include motorized vehicles used for transportation purposes;".

**SEC. 146. NONDISCHARGEABLE DEBTS.**

Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

"(14A) incurred to pay a debt that is nondischargeable by reason of section 727, 1141, 1228(a), 1228(b), or 1328(c), or any other provision of this subsection, if the debtor incurred the debt to pay such a nondischargeable debt with the intent to discharge in bankruptcy the newly-created debt, except that all debts incurred to pay nondischargeable debts, without regard to intent, are nondischargeable if incurred within 90 days of the filing of the petition;".

**SEC. 147. MONETARY LIMITATION ON CERTAIN EXEMPT PROPERTY.**

Section 522 of title 11, United States Code, as amended by section 125, is amended—

(1) in subsection (b)(2)(A) by striking "subsection (o)" and inserting "subsections (o) and (p)" before "any property"; and

(2) by adding at the end the following:

"(p)(1) Except as provided in paragraphs (2) and (3), as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any interest that exceeds $250,000 in value, in the aggregate, in—

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

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

"(C) a burial plot for the debtor or a dependent of the debtor.

"(2) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.

"(3) Paragraph (1) shall not apply to debtors if applicable State law expressly provides by a statute enacted after the effective date of this paragraph that such paragraph shall not apply to debtors.".

**SEC. 148. BANKRUPTCY FEES.**

Section 1930 of title 28, United States Code, is amended—

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

(2) by adding at the end the following:

"(f)(1) Pursuant to procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual debtor who is unable to pay such fee in installments For purposes of this paragraph, the term 'filing fee' means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7 of title 11.

"(2) The district court or the bankruptcy court may also waive for such debtors other fees prescribed pursuant to subsections (b) and (c).

"(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed pursuant to such subsections for other debtors and creditors.".

**SEC. 149. COLLECTION OF CHILD SUPPORT.**

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

(1) by inserting "(a)" before "The trustee",

(2) in paragraph (9) by striking "and" at the end,

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

(4) by adding at the end the following:

"(11) if, with respect to an individual debtor, there is a claim for support of a child of the debtor or a custodial parent of such child entitled to receive priority under section 507(a)(1) of this title, provide the applicable notification specified in subsection (b).

"(b)(1) In any case described in subsection (a)(11), the trustee shall—

"(A)(i) notify in writing the holder of the claim of the right of such holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which the holder resides; and

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

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

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

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

"(I) the granting of the discharge;

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

"(III) with respect to the debtor's case, the name of each creditor that holds a claim that is not discharged under paragraph (2), (4), or (14A) of section 523(a) of this title or that was reaffirmed by the debtor under section 524(c) of this title.

"(2)(A) If, after receiving a notice under paragraph (1)(B)(iii), a holder of a claim or a State child support agency is unable to locate the debtor that is the subject of the notice, such holder or such agency may request from a creditor described in paragraph (1)(B)(iii)(III) the last known address of the debtor.

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

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

(1) in subsection (b)—

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

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

(C) by adding at the end the following:

"(6) if, with respect to an individual debtor, there is a claim for support of a child of the debtor or a custodial parent of such child entitled to receive priority under section 507(a)(1) of this title, provide the applicable notification specified in subsection (d).", and

(2) by adding at the end the following:

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

"(A)(i) notify in writing the holder of the claim of the right of such holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which the holder resides; and

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

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

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

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

"(I) the granting of the discharge;

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

"(III) with respect to the debtor's case, the name of each creditor that holds a claim that is not discharged under paragraph (2), (4), or (14A) of section 523(a) of this title or that was reaffirmed by the debtor under section 524(c) of this title.

"(2)(A) If, after receiving a notice under paragraph (1)(B)(iii), a holder of a claim or a State child support agency is unable to locate the debtor that is the subject of the notice, such holder or such agency may request from a creditor described in paragraph (1)(B)(iii) the last known address of the debtor.

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

**SEC. 150. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.**

(a) IN GENERAL.—Section 541(b) of title 11 of the United States Code is amended—

(1) by striking "or" at the end of paragraph (4)(B)(ii);

(2) by striking the period at the end of paragraph (5) and inserting "; or"; and

(3) by inserting after paragraph (5) the following:

"(7) any amount or interest in property to the extent that an employer has withheld amounts from the wages of employees for contribution to an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974, or to the extent that the employer has received amounts as a result of payments by participants or beneficiaries to an employer for contribution to an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974.".

(b) APPLICATION OF AMENDMENT.—The amendment made by this section shall not apply to cases commenced under title 11 of the United States Code before the expiration of the 180-day period beginning on the date of the enactment of this Act.

**SEC. 151. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.**

Section 503(b)(1)(A) of title 11, United States Code, is amended to read as follows:

"(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case, and wages and benefits attributable to any period of time after commencement of the case as a result of the debtor's violation of Federal law, without regard to when the original unlawful act occurred or to whether any services were rendered;".

**SEC. 152. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.**

Section 362(b)(2) of title 11, United States Code, is amended—

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

(2) in subparagraph (B) by adding "or" at the end; and

(3) by adding at the end the following:

"(C) under subsection (a) of—

"(i) the withholding of income for payment of a domestic support obligation pursuant to a judicial or administrative order or statute for such obligation that first becomes payable after the date on which the petition is filed; or

"(ii) the withholding of income for payment of a domestic support obligation owed directly to the spouse, former spouse or child of the debtor or the parent of such child, pursuant to a judicial or administrative order or statute for such obligation that becomes payable before the date on which the petition is filed unless the court finds, after notice and hearing, that such withholding would render the plan infeasible;".

**SEC. 153. AUTOMATIC STAY INAPPLICABLE TO CERTAIN PROCEEDINGS AGAINST THE DEBTOR.**

Section 362(b)(2) of title 11, United States Code, as amended by section 153, is amended—

(1) in subparagraph (B) by striking "or" at the end;

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

"(D) the commencement or continuation of a proceeding concerning a child custody or visitation;

"(E) the commencement or continuation of a proceeding alleging domestic violence; or

"(F) the commencement or continuation of a proceeding seeking a dissolution of marriage, except to the extent the proceeding concerns property of the estate;".

# TITLE II—DISCOURAGING BANKRUPTCY ABUSE

**SEC. 201. REENACTMENT OF CHAPTER 12.**

(a) REENACTMENT.—Chapter 12 of title 11 of the United States Code, as in effect on March 31, 1999, is hereby reenacted.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on March 31, 1999.

**SEC. 202. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.**

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

"(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.".

**SEC. 203. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.**

(a) IN GENERAL.—Section 522 of title 11, United States Code, as amended by sections 113, 125, and 147 is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) by striking "(2)(A)" and inserting:

"(3) Property listed in this paragraph is—

"(A) subject to subsections (o) and (p),";

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

(iii) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(iv) by adding at the end the following:

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

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

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

(C) in the matter preceding paragraph (2)—

(i) by striking "(b)" and inserting "(b)(1)";

(ii) by striking "paragraph (2)" both places it appears and inserting "paragraph (3)";

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

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

(D) by adding at the end of the subsection the following:

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

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

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

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

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

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

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

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

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

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

(2) in subsection (d)—

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

(B) by adding at the end the following:

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

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by sections 118, 132, 136, and 141 is amended—

(1) in paragraph (27), by striking "or" at the end;

(2) in paragraph (28), by striking the period and inserting "; or";

(3) by inserting after paragraph (28) the following:

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

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

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

(4) by adding at the end of the flush material following paragraph (29) the following: "Paragraph (29) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year pe-

riod preceding the filing of a petition Nothing in paragraph (29) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.".

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, is amended—

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

(2) by striking the period at the end of paragraph (18) and inserting "; or"; and

(3) by adding at the end the following:

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

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

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

Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.".

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

"(f) A plan may not materially alter the terms of a loan described in section 362(b)(29) of this title.".

**SEC. 204. PROTECTION OF REFINANCE OF SECURITY INTEREST.**

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are amended by striking "10" each place it appears and inserting "30".

**SEC. 205. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.**

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

"(4)(A) Subject to subparagraph (B), in any case under any chapter in this title, an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender such property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

"(i) the date that is 120 days after the date of the order for relief; or

"(ii) the date of the entry of an order confirming a plan.

"(B)(i) The court may extend the period determined under subparagraph (A) for 120 days upon motion of the trustee or the lessor for cause.

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

**SEC. 206. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.**

Section 1102(a)(2) of title 11, United States Code, is amended by inserting before the first sentence the following: "On its own motion or on request of a party in interest, and after notice and hearing, the court may order a change in the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders.".

**SEC. 207. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.**

Section 546 of title 11, United States Code, is amended by inserting at the end thereof:

"(i) Notwithstanding section 545 (2) and (3) of this title, the trustee may not avoid a warehouseman's lien for storage, transportation or other costs incidental to the storage and handling of goods, as provided by section 7–209 of the Uniform Commercial Code.".

**SEC. 208. LIMITATION.**

Section 546(c)(1)(B) of title 11, United States Code, is amended by striking "20" and inserting "45".

**SEC. 209. AMENDMENT TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.**

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

(1) in paragraph (3)—

(A) in subparagraph (A) after "awarded", by inserting "to an examiner, chapter 11 trustee, or professional person"; and

(B) by redesignating subdivisions (A) through (E) as clauses (i) through (iv), respectively; and

(2) by adding at the following:

"(B) In determining the amount of reasonable compensation to be awarded a trustee, the court shall treat such compensation as a commission based on the results achieved.".

**SEC. 210. POSTPETITION DISCLOSURE AND SOLICITATION.**

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

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

**SEC. 211. PREFERENCES.**

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

(1) by amending paragraph (2) to read as follows:

"(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

"(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

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

(2) in paragraph (7) by striking "or" at the end;

(3) in paragraph (8) by striking the period at the end and inserting "; or"; and

(4) by adding at the end the following:

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

**SEC. 212. VENUE OF CERTAIN PROCEEDINGS.**

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

**SEC. 213. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

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

(1) by striking "On" and inserting "(1) Subject to paragraph (1), on"; and

(2) by adding at the end the following:

"(2)(A) Such 120-day period may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

"(B) Such 180-day period may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.".

**SEC. 214. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.**

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

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

(2) by striking "ownership or" and inserting "ownership,";

(3) by striking "housing" the first place it appears; and

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

**SEC. 215. CLAIMS RELATING TO INSURANCE DEPOSITS IN CASES ANCILLARY TO FOREIGN PROCEEDINGS.**

Section 304 of title 11, United States Code, is amended to read as follows:

**"§ 304. Cases ancillary to foreign proceedings**

"(a) For purposes of this section—

"(1) the term 'domestic insurance company' means a domestic insurance company, as such term is used in section 109(b)(2);

"(2) the term 'foreign insurance company' means a foreign insurance company, as such term is used in section 109(b)(3);

"(3) the term 'United States claimant' means a beneficiary of any deposit referred to in subsection (b) or any multibeneficiary trust referred to in subsection (b);

"(4) the term 'United States creditor' means, with respect to a foreign insurance company—

"(A) a United States claimant; or

"(B) any business entity that operates in the United States and that is a creditor; and

"(5) the term 'United States policyholder' means a holder of an insurance policy issued in the United States.

"(b) The court may not grant relief under chapter 15 of this title with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.".

**SEC. 216. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.**

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

(1) in subsection (b)—

(A) in paragraph (1)(A) by striking the semicolon at the end and inserting the following:

"other than a default that is a breach of a provision relating to—

"(i) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property (excluding executory contracts that transfer a right or interest under a filed or issued patent, copyright, trademark, trade dress, or trade secret), if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption; or

"(ii) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an executory contract, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption and if the court determines, based on the equities of the case, that this subparagraph should not apply with respect to such default;"; and

(B) by amending paragraph (2)(D) to read as follows:

"(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from a failure to perform nonmonetary obligations under an executory contract (excluding executory contracts that transfer a right or interest under a filed or issued patent, copyright, trademark, trade dress, or trade secret) or under an unexpired lease of real or personal property.";

(2) in subsection (c)—

(A) in paragraph (2) by adding "or" at the end;

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

(C) by striking paragraph (4);

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9); and

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

(4) in subsection (f)(1) by striking "; except that" and all that follows through the end of the paragraph and inserting a period.

(b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by inserting "or of a kind that section 365(b)(1)(A) of this title expressly does not require to be cured" before the semicolon at the end;

(2) in subparagraph (C) by striking "and" at the end;

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

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

"(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and".

**SEC. 217. SHARING OF COMPENSATION.**

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

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

**SEC. 218. PRIORITY FOR ADMINISTRATIVE EXPENSES.**

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

(1) by deleting "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and";

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

"(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or penalty provisions, for the period of one year following the later of the rejection date or date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor; and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6).".

# TITLE III—GENERAL BUSINESS BANKRUPTCY PROVISIONS

**SEC. 301. DEFINITION OF DISINTERESTED PERSON.**

Section 101(14) of title 11, United States Code, is amended to read as follows:

"(14) 'disinterested person' means a person that—

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

"(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

"(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;".

**SEC. 302. MISCELLANEOUS IMPROVEMENTS.**

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

"(h)(1) Subject to paragraphs (2) and (3) and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 90-day period preceding the date of filing of the petition of that individual, received credit counseling, including, at a minimum, participation in an individual or group briefing that outlined the opportunities for available credit counseling and assisted that individual in performing an initial budget analysis, through a credit counseling program (offered through an approved credit counseling service described in section 111(a)).

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

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

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

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

"(ii) states that the debtor requested credit counseling services from an approved credit counseling service, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request or that the exigent circumstances require filing before such 5-day period expires; and

"(iii) is satisfactory to the court.

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

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

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

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

(3) by adding at the end the following:

"(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111 unless the debtor resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to provide service to the additional individuals who would be required to compete the instructional course by reason of the requirements of this section Each United States trustee or bankruptcy administrator that makes such a determination shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.".

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, as amended by section 137, is amended by adding at the end the following:

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

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

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

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 604 and 120, is amended by adding at the end the following:

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

"(1) a certificate from the credit counseling service that provided the debtor services under section 109(h); and

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

(e) GENERAL PROVISIONS.—

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

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

"The clerk of each district shall maintain a list of credit counseling services that provide 1 or more programs described in section 109(h) and a list of instructional courses concerning personal financial management that have been approved by—

"(1) the United States trustee; or

"(2) the bankruptcy administrator for the district.".

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

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

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

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

"(13A) 'debtor's principal residence' means a residential structure including incidental property when the structure contains 1 to 4 units, whether or not that structure is attached to real property, and includes, without limitation, an individual condominium or cooperative unit or mobile or manufactured home or trailer;";

(2) by inserting after paragraph (27A), as added by section 318 of this Act, the following:

"(27B) 'incidental property' means property incidental to such residence including, without limitation, property commonly conveyed with a principal residence where the real estate is located, window treatments, carpets, appliances and equipment located in the residence, and easements, appurtenances, fixtures, rents, royalties, mineral rights, oil and gas rights, escrow funds and insurance proceeds;";

(3) in section 362(b), as amended by sections 117, 118, 132, 136, 141 203, 818, and 1007,—

(A) in paragraph (28) by striking "or" at the end thereof;

(B) in paragraph (29) by striking the period at the end and inserting "; or"; and

(C) by inserting after paragraph (29) the following:

"(30) under subsection (a), until a prepetition default is cured fully in a case under chapter 13 of this title by actual payment of all arrears as required by the plan, of the postponement, continuation or other similar delay of a prepetition foreclosure proceeding or sale in accordance with applicable nonbankruptcy law, but nothing herein shall imply that such postponement, continuation or other similar delay is a violation of the stay under subsection (a).";

and

(4) by amending section 1322(b)(2) to read as follows:

"(2) modify the rights of holders of secured claims, other than a claim secured primarily by a security interest in property used as the debtor's principal residence at any time during 180 days prior to the filing of the petition, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;".

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

"(j) If one case commenced under chapter 7, 11, or 13 of this title is dismissed due to the creation of a debt repayment plan administered by a credit counseling agency approved pursuant to section 111 of this title, then for purposes of section 362(c)(3) of this title the subsequent case commenced under any such chapter shall not be presumed to be filed not in good faith.".

(g) RETURN OF GOODS SHIPPED.—Section 546(g) of title 11, United States Code, as added by section 222(a) of Public Law 103–394, is amended to read as follows:

"(h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553 of this title, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and hearing, that a return is in the best interests of the estate, the debtor, with the consent of the creditor, and subject to the prior rights, if any, of third parties in such goods, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.".

**SEC. 303. EXTENSIONS.**

Section 302(d)(3) of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C 581 note) is amended—

(1) in subparagraph (A), in the matter following clause (ii), by striking "or October 1, 2002, whichever occurs first"; and

(2) in subparagraph (F)—

(A) in clause (i)—

(i) in subclause (II), by striking "or October 1, 2002, whichever occurs first"; and

(ii) in the matter following subclause (II), by striking "October 1, 2003, or"; and

(B) in clause (ii), in the matter following subclause (II)—

(i) by striking "before October 1, 2003, or"; and

(ii) by striking ", whichever occurs first".

**SEC. 304. LOCAL FILING OF BANKRUPTCY CASES.**

Section 1408 of title 28, United States Code, is amended—

(1) by striking "Except" and inserting "(a) Except"; and

(2) by adding at the end the following:

"(b) For the purposes of subsection (a), if the debtor is a corporation, the domicile and residence of the debtor are conclusively presumed to be where the debtor's principal place of business in the United States is located.".

**SEC. 305. PERMITTING ASSUMPTION OF CONTRACTS.**

(a) Section 365(c) of title 11, United States Code, is amended to read as follows:

"(c)(1) The trustee may not assume or assign an executory contract or unexpired lease of the debtor, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

"(A)(i) applicable law excuses a party to the contract or lease from accepting performance from or rendering performance to an assignee of the contract or lease, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties; and

"(ii) the party does not consent to the assumption or assignment; or

"(B) the contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

"(2) Notwithstanding paragraph (1)(A) and applicable nonbankruptcy law, in a case under chapter 11 of this title, a trustee in a case in which a debtor is a corporation, or a debtor in possession, may assume an executory contract or unexpired lease of the debtor, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties.

"(3) The trustee may not assume or assign an unexpired lease of the debtor of nonresidential real property, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties, if the lease has been terminated under applicable nonbankruptcy law before the order for relief.".

(b) Section 365(d) of title 11, United States Code, is amended by striking paragraphs (5), (6), (7), (8), and (9), and redesignating paragraph (10) as paragraph (5).

(c) Section 365(e) of title 11, United States Code, is amended to read as follows:

"(e)(1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

"(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

"(B) the commencement of a case under this title; or

"(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

"(2) Paragraph (1) does not apply to an executory contract or unexpired lease of the debtor if the trustee may not assume or assign, and the debtor in possession may not assume, the contract or lease by reason of the provisions of subsection (c) of this section.".

(d) Section 365(f)(1) of title 11, United States Code, is amended by striking the semicolon and all that follows through "event".

# TITLE IV SMALL BUSINESS BANKRUPTCY PROVISIONS

**SEC. 401. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.**

(a) Section 1125(a)(1) of title 11, United States Code, is amended by inserting before the semicolon following:

"and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information".

(b) Section 1125(f) of title 11, United States Code, is amended to read as follows:

"(f) Notwithstanding subsection (b)—

"(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

"(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted pursuant to section 2075 of title 28; and

"(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

"(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not less than 20 days before the date of the hearing on confirmation of the plan; and

"(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.".

**SEC. 402. DEFINITIONS.**

(a) DEFINITIONS Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

"(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor; and

"(51D) 'small business debtor' means (A) a person (including affiliates of such person that are also debtors under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the

order for relief in an amount not more than $4,000,000 (excluding debts owed to 1 or more affiliates or insiders), except that if a group of affiliated debtors has aggregate noncontingent liquidated secured and unsecured debts greater than $4,000,000 (excluding debt owed to 1 or more affiliates or insiders), then no member of such group is a small business debtor;".

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting "debtor" after "small business" .

**SEC. 403. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.**

The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

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

(2) economy and simplicity for debtors.

**SEC. 404. UNIFORM NATIONAL REPORTING REQUIREMENTS.**

(a) REPORTING REQUIRED.—

(1) Title 11 of the United States Code is amended by inserting after section 307 the following:

**"§ 308. Debtor reporting requirements**

"A small business debtor shall file periodic financial and other reports containing information including—

"(1) the debtor's profitability, that is, approximately how much money the debtor has been earning or losing during current and recent fiscal periods;

"(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

"(3) comparisons of actual cash receipts and disbursements with projections in prior reports; and

"(4) whether the debtor is—

"(A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

"(B) timely filing tax returns and paying taxes and other administrative claims when due, and, if not, what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

"(5) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.".

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

"308. Debtor reporting requirements.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed pursuant to section 2075, title 28, United States Code to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

**SEC. 405. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.**

(a) PROPOSAL OF RULES AND FORMS.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

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

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

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

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

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

(3) the interest of all parties that the required reports help the small business debtor to understand its financial condition and plan its future.

**SEC. 406. DUTIES IN SMALL BUSINESS CASES.**

(a) DUTIES IN CHAPTER 11 CASES.—Title 11 of the United States Code is amended by inserting after section 1114 the following:

**"§ 1115. Duties of trustee or debtor in possession in small business cases**

"(a) In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

"(1) append to the voluntary petition or, in an involuntary case, file within 3 days after the date of the order for relief—

"(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

"(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

"(2) attend, through its responsible individual, meetings scheduled by the court or the United States trustee, including initial debtor interviews and meetings of creditors convened under section 341 of this title;

"(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

"(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

"(5) subject to section 363(c)(2) of this title, maintain insurance customary and appropriate to the industry;

"(6)(A) timely file tax returns;

"(B) subject to section 363(c)(2) of this title, timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

"(C) subject to section 363(c)(2) of this title, establish 1 or more separate deposit accounts not later than 10 business days after the date of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof or a responsible time set by the court, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units unless the court waives this requirement after notice and hearing; and

"(7) allow the United States trustee, or its designated representative, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.".

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 11, United States Code, is amended by inserting after the item relating to section 1114 the following:

"1115. Duties of trustee or debtor in possession in small business cases.".

**SEC. 407. PLAN FILING AND CONFIRMATION DEADLINES.**

Section 1121(e) of title 11, United States Code, is amended to read as follows:

"(e) In a small business case—

"(1) only the debtor may file a plan until after 90 days after the date of the order for relief, unless a trustee has been appointed under this chapter, or unless the court, on request of a party in interest and after notice and hearing, shortens such time;

"(2) the debtor shall file a plan, and any necessary disclosure statement, not later than 90 days after the date of the order for relief, unless the United States Trustee has appointed under section 1102(a)(1) of this title a committee of unsecured creditors that the court has determined, before the 90 days has expired, is sufficiently active and representative to provide effective oversight of the debtor; and

"(3) the time periods specified in paragraphs (1) and (2) of this subsection and the time fixed in section 1129(e) of this title for confirmation of a plan, may be extended only as follows:

"(A) On request of a party in interest made within the respective periods, and after notice and hearing, the court may for cause grant one or more extensions, cumulatively not to exceed 60 days, if the movant establishes—

"(i) that no cause exists to dismiss or convert the case or appoint a trustee or examiner under subparagraphs (A) (I) of section 1112(b) of this title; and

"(ii) that there is a reasonable possibility the court will confirm a plan within a reasonable time;

"(B) On request of a party in interest made within the respective periods, and after notice and hearing, the court may for cause grant one or more extensions in excess of those authorized under subparagraph (A) of this paragraph, if the movant establishes—

"(i) that no cause exists to dismiss or convert the case or appoint a trustee or examiner under subparagraphs (A) (I) of section 1112(b)(3) of this title; and

"(ii) that it is more likely than not that the court will confirm a plan within a reasonable time; and

"(C) a new deadline shall be imposed whenever an extension is granted.".

**SEC. 408. PLAN CONFIRMATION DEADLINE.**

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

"(e) In a small business case, the debtor shall confirm a plan not later than 150 days after the date of the order for relief unless—

"(1) the United States Trustee has appointed, under section 1102(a)(1) of this title, a committee of unsecured creditors that the court has determined, before the 150 days has expired, is sufficiently active and representative to provide effective oversight of the debtor; or

"(2) such 150-day period is extended as provided in section 1121(e)(3) of this title.".

**SEC. 409. PROHIBITION AGAINST EXTENSION OF TIME.**

Section 105(d) of title 11, United States Code, is amended—

(1) in paragraph (2)(B)(vi) by striking the period at the end and inserting "; and"; and

(2) by adding at the end the following:

"(3) in a small business case, not extend the time periods specified in sections 1121(e) and 1129(e) of this title except as provided in section 1121(e)(3) of this title.".

**SEC. 410. DUTIES OF THE UNITED STATES TRUSTEE.**

(a) DUTIES OF THE UNITED STATES TRUSTEE.—

Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

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

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

"(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases";

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

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

(4) by inserting after paragraph (7) the following:

"(7) in each of such small business cases—

"(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11 at which time the United States trustee shall begin to investigate the debtor's viability, inquire about the debtor's business plan, explain the debtor's obligations to file monthly operating reports and other required reports, attempt to develop an agreed scheduling order, and inform the debtor of other obligations;

"(B) when determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns; and

"(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

"(8) in cases in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly to the court for relief.".

**SEC. 411. SCHEDULING CONFERENCES.**

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1) by striking ", may";

(2) by amending paragraph (1) to read as follows:

"(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and"; and

(3) in paragraph (2) by striking "unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure", and inserting "may".

**SEC. 412. SERIAL FILER PROVISIONS.**

Section 362 of title 11, United States Code, as amended by section 302, is amended—

(1) in subsection (i) as so redesignated by section 122—

(A) by striking "An" and inserting "(1) Except as provided in paragraph (2), an"; and

(B) by adding at the end the following:

"(2) If such violation is based on an action taken by an entity in the good-faith belief that subsection (h) applies to the debtor, then recovery under paragraph (1) against such entity shall be limited to actual damages."; and

(2) by inserting after subsection (j), as added by section 302, the following:

"(k)(1) Except as provided in paragraph (2) of this subsection, the provisions of subsection (a) of thissection shall not apply in a case in which the debtor—

"(A) is a debtor in a case under this title pending at the time the petition is filed;

"(B) was a debtor in a case under this title which was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

"(C) was a debtor in a case under this title in which a chapter 11, 12, or 13 plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

"(D) is an entity that has succeeded to substantially all of the assets or business of a debtor described in subparagraph (A), (B), or (C).

"(2) This subsection shall not apply—

"(A) to a case initiated by an involuntary petition filed by a creditor that is not an insider or affiliate of the debtor; or

"(B) after such time as the debtor, after notice and a hearing, demonstrates by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor and not foreseeable at the time the earlier case was filed; and that it is more likely than not that the court will confirm a plan, other than a liquidating plan, within a reasonable time.".

**SEC. 413. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE OR EXAMINER.**

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112(b) of title 11, United States Code, is amended to read as follows:

"(b)(1) Except as provided in paragraphs (2) and (4) of this subsection, and in subsection (c) of this section, on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 of this title or dismiss a case under this chapter, or appoint a trustee or examiner under section 1104(e) of this title, whichever is in the best interest of creditors and the estate, if the movant establishes cause

"(2) The court may decline to grant the relief specified in paragraph (1) of this subsection if the debtor or another party in interest objects and establishes by a preponderance of the evidence that—

"(A) it is more likely than not that a plan will be confirmed within a time as fixed by this title or by order of the court entered pursuant to section 1121(e)(3), or within a reasonable time if no time has been fixed; and

"(B) if the cause is an act or omission of the debtor that—

"(i) there exists a reasonable justification for the act or omission; and

"(ii) the act or omission will be cured within a reasonable time fixed by the court not to exceed 30 days after the court decides the motion, unless the movant expressly consents to a continuance for a specific period of time, or compelling circumstances beyond the control of the debtor justify an extension.

"(3) For purposes of this subsection, cause includes—

"(A) substantial or continuing loss to or diminution of the estate;

"(B) gross mismanagement of the estate;

"(C) failure to maintain insurance that poses a material risk to the estate or the public;

"(D) unauthorized use of cash collateral harmful to 1 or more creditors;

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

"(F) failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

"(G) failure to attend the meeting of creditors convened under section 341(a) of this title;

"(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee or bankruptcy administrator;

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

"(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

"(K) failure to pay any fees or charges required under chapter 123 of title 28;

"(L) revocation of an order of confirmation under section 1144 of this title;

"(M) inability to effectuate substantial consummation of a confirmed plan;

"(N) material default by the debtor with respect to a confirmed plan; and

"(O) termination of a plan by reason of the occurrence of a condition specified in the plan.

"(4) The court may grant relief under this subsection for cause as defined in subparagraphs C, F, G, H, or K of paragraph 3 of this subsection only upon motion of the United States trustee or bankruptcy administrator or upon the court s own motion.

"(5) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.".

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE OR EXAMINER.—Section 1104 of title 11, United States Code, is amended by adding at the end the following:

"(e) If grounds exist to convert or dismiss the case under section 1112 of this title, the court may instead appoint a trustee or examiner, if it determines that such appointment is in the best interests of creditors and the estate.".

**SEC. 414. STUDY OF OPERATION OF TITLE 11 OF THE UNITED STATES CODE WITH RESPECT TO SMALL BUSINESSES.**

Not later than 2 years after the date of the enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

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

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

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

**SEC. 415. PAYMENT OF INTEREST.**

Section 362(d)(3) of title 11, United States Code, is amended—

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

(2) by amending subparagraph (B) to read as follows:

"(B) the debtor has commenced monthly payments (which payments may, in the debtor's sole discretion, notwithstanding section 363(c)(2) of this title, be made from rents or other income generated before or after the commencement of the case by or from the property) to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at the then-applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or"

# TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

**SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.**

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting "notwithstanding section 301(b)" before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "A voluntary"; and

(2) by amending the last sentence to read as follows:

"(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.".

**SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.**

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting "555, 556," after "553,"; and

(2) by inserting "559, 560, 561, 562" after "557,".

# TITLE VI—STREAMLINING THE BANKRUPTCY SYSTEM

**SEC. 601. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.**

Section 341(c) of title 11, United States Code, is amended by inserting after the first sentence the following: "Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than one creditor) shall be permitted to appear at and participate in the meeting of creditors and activities related thereto in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.".

**SEC. 602. AUDIT PROCEDURES.**

(a) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a) by amending striking paragraph (6) to read as follows:

"(6) make such reports as the Attorney General directs, including the results of audits performed under subsection (f); and"; and

(2) by adding at the end the following:

"(f)(1)(A) The Attorney General shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants.

"(B) Those procedures shall—

"(i) establish a method of selecting appropriate qualified persons to contract to perform those audits;

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

"(iii) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed; and

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

"(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1).

"(3)(A) The report of each audit conducted under this subsection shall be filed with the court and transmitted to the United States trustee Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit In any case where a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

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

"(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18, United States Code; and

"(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11, United States Code.".

(b) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as amended by section 603, is amended in paragraphs (3) and (4) by adding "or an auditor appointed pursuant to section 586 of title 28, United States Code" after "serving in the case".

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

(1) by deleting "or" at the end of paragraph (2);

(2) by substituting "; or" for the period at the end of paragraph (3); and

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

"(4) the debtor has failed to explain satisfactorily—

"(A) a material misstatement in an audit performed pursuant to section 586(f) of title 28, United States Code; or

"(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit conducted pursuant to section 586(f) of title 28, United States Code.".

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

**SEC. 603. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7 AND 13 CASES.**

(a) NOTICE.—Section 342 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) by striking ", but the failure of such notice to contain such information shall not invalidate the legal effect of such notice"; and

(B) by adding the following at the end:

"If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor which is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include such account number in any notice to the creditor required to be given under this title If the creditor has specified to the debtor an address at which the creditor wishes to receive correspondence regarding the debtor's account, any notice to the creditor required to be given by the debtor under this title shall be given at such address For the purposes of this section, 'notice' shall include, but shall not be limited to, any correspondence from the debtor to the creditor after the commencement of the case, any statement of the debtor's intention under section 521(a)(2) of this title, notice of the commencement of any proceeding in the case to which the creditor is a party, and any notice of the hearing under section 1324 of this title.";

(2) by adding at the end the following:

"(d) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case After 5 days following receipt of such notice, any notice the court or the debtor is required to give the creditor shall be given at that address.

"(e) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13 After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (d) with respect to a particular case.

"(f) Notice given to a creditor other than as provided in this section shall not be effective notice until it has been brought to the attention of the creditor If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that

bankruptcy notices received by the creditor will be delivered to such department or person, notice will not be brought to the attention of the creditor until received by such person or department No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.".

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 604, 120, and 302, is amended—

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

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

"(1) file—

"(A) a list of creditors; and

"(B) unless the court orders otherwise—

"(i) a schedule of assets and liabilities;

"(ii) a schedule of current monthly income and current expenditures prepared in accordance with section 707(b)(2);

"(iii) a statement of the debtor's financial affairs and, if applicable, a certificate—

"(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition pursuant to section 110(b)(1) of this title indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b) of this title; or

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

"(iv) copies of any Federal tax returns, including any schedules or attachments, filed by the debtor for the 3-year period preceding the order for relief;

"(v) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition; and

"(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;";

(3) by adding at the end the following:

"(e)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who requests those documents at a reasonable cost within 5 business days after such request.

"(2) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case, and the court shall make such plan available to the creditor who requests such plan at a reasonable cost and not later than 5 days after such request

"(f) An individual debtor in a case under chapter 7 or 13 shall file with the court—

"(1) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

"(2) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order for relief;

"(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

"(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's current monthly income and expenditures in the preceding tax year and current monthly income less expenditures for the month preceding the statement prepared in accordance with section 707(b)(2) that shows how the amounts are calculated—

"(A) beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and

"(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed

"(g)(1) A statement referred to in subsection (f)(4) shall disclose—

"(A) the amount and sources of income of the debtor;

"(B) the identity of any persons responsible with the debtor for the support of any dependents of the debtor; and

"(C) the identity of any persons who contributed, and the amount contributed, to the household in which the debtor resides

"(2) The tax returns, amendments, and statement of income and expenditures described in paragraph (1) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).

"(h)(1) Not later than 30 days after the date of enactment of the Consumer Bankruptcy Reform Act of 1999, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

"(2) The procedures under paragraph (1) shall include reasonable restrictions on creditor access to tax information that is required to be provided under this section to verify creditor identity and to restrict use of the information except with respect to the case.

"(3) Not later than 1 year after the date of enactment of the Consumer Bankruptcy Reform Act of 1999, the Director of the Administrative Office of the United States Courts shall prepare, and submit to Congress a report that—

"(A) assesses the effectiveness of the procedures under paragraph (1) to provide timely and sufficient information to creditors concerning the case; and

"(B) if appropriate, includes proposed legislation—

"(i) to further protect the confidentiality of tax information or to make it better available to creditors; and

"(ii) to provide penalties for the improper use by any person of the tax information required to be provided under this section.

"(i) If requested by the United States trustee or a trustee serving in the case, the debtor provide a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor and such other personal identifying information relating to the debtor that establishes the identity of the debtor.".

(c) Section 1324 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "After"; and

(2) by inserting at the end thereof—

"(c) Whenever a party in interest is given notice of a hearing on the confirmation or modification of a plan under this chapter, such notice shall include the information provided by the debtor on the most recent statement filed with the court pursuant to section 521(a)(1)(B)(ii) or (f)(4) of this title.".

**SEC. 604. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.**

Section 521 of title 11, United States Code, as amended by section 603 is amended by inserting after subsection (a) the following:

"(b)(1) Notwithstanding section 707(a) of this title, and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

"(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case The court shall, if so requested, enter an order of dismissal not later than 5 days after such request

"(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.".

**SEC. 605. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.**

(a) HEARING.—Section 1324 of title 11, United States Code, is amended—

(1) by striking "After" and inserting the following:

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

(2) by adding at the end the following:

"(b) The hearing on confirmation of the plan may be held not earlier than 20 days, and not later than 45 days, after the meeting of creditors under section 341(a) of this title.".

**SEC. 606. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.**

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

"(d) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 5 years If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than the highest national median family income for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.";

(2) in section 1325(b)(1)(B) as amended by section 130—

(A) by striking "three year period" and inserting "applicable commitment period"; and

(B) by inserting at the end of subparagraph (B) the following: "The 'applicable commitment period' shall be not less than 5 years if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family."; and

(3) in section 1329—

(A) by striking in subsection (c) "three years" and inserting "the applicable commitment period under section 1325(b)(1)(B)"; and

(B) by inserting at the end of subsection (c) the following:

"The duration period shall be 5 years if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, the national median household income for 1 earner, as of the date of the modification and shall be 3 years if the current monthly total income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, less than the national median household income for 1 earner as of the date of the modification Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.".

**SEC. 607. SENSE OF THE CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.**

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

**SEC. 608. ELIMINATION OF CERTAIN FEES PAYABLE IN CHAPTER 11 BANKRUPTCY CASES.**

(a) AMENDMENTS.—Section 1930(a)(6) of title 28, United States Code, is amended—

(1) in the 1st sentence by striking "until the case is converted or dismissed, whichever occurs first"; and

(2) in the 2d sentence—

(A) by striking "The" and inserting "Until the plan is confirmed or the case is converted (whichever occurs first) the"; and

(B) by striking "less than $300,000;" and inserting "less than $300,000 Until the case is converted, dismissed, or closed (whichever occurs first and without regard to confirmation of the plan) the fee shall be".

(b) DELAYED EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1999.

**SEC. 609. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.**

Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a study regarding the impact that the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled in post-secondary educational institutions,

has on the rate of cases filed under title 11 of the United States Code; and

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

**SEC. 610. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.**

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

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end the following:

"(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

"(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

"(B) that 60-day period is extended—

"(i) by agreement of all parties in interest; or

"(ii) by the court for such specific period of time as the court finds is required by for good cause as described in findings made by the court.".

**SEC. 611. STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.**

Section 348(f)(1) of title 11, United States Code, is amended—

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

(2) in subparagraph (B)—

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

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

(3) by adding at the end the following:

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

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

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

**SEC. 612. BANKRUPTCY APPEALS.**

Title 28 of the United States Code is amended by inserting after section 1292 the following:

**"§ 1293 Bankruptcy appeals**

"(a) The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from the following:

"(1) Final orders and judgments entered by bankruptcy courts and district courts in cases under title 11, in proceedings arising under title 11, and in proceedings arising in or related to a case under title 11, including final orders in proceedings regarding the automatic stay of section 362 of title 11.

"(2) Interlocutory orders entered by bankruptcy courts and district courts granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions in cases under title 11, in proceedings arising under title 11, and in proceedings arising in or related to a case under title 11,

other than interlocutory orders in proceedings regarding the automatic stay of section 362 of title 11.

"(3) Interlocutory orders of bankruptcy courts and district courts entered under section 1104(a) or 1121(d) of title 11, or the refusal to enter an order under such section.

"(4) An interlocutory order of a bankruptcy court or district court entered in a case under title 11, in a proceeding arising under title 11, or in a proceeding arising in or related to a case under title 11, if the court of appeals that would have jurisdiction of an appeal of a final order entered in such case or such proceeding permits, in its discretion, appeal to be taken from such interlocutory order.

"(b) Final decisions, judgments, orders, and decrees entered by a bankruptcy appellate panel under subsection (b) of this section.

"(c)(1) The judicial council of a circuit may establish a bankruptcy appellate panel composed of bankruptcy judges in the circuit who are appointed by the judicial council, which panel shall exercise the jurisdiction to review orders and judgments of bankruptcy courts described in paragraphs (1)–(4) of subsection (a) of this section unless—

"(A) the appellant elects at the time of filing the appeal; or

"(B) any other party elects, not later than 10 days after service of the notice of the appeal;

to have such jurisdiction exercised by the court of appeals.

"(2) An appeal to be heard by a bankruptcy appellate panel under this subsection (b) shall be heard by 3 members of the bankruptcy appellate panel, provided that a member of such panel may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

"(3) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel.".

**SEC. 613. GAO STUDY.**

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

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

# TITLE VII—BANKRUPTCY DATA

**SEC. 701. IMPROVED BANKRUPTCY STATISTICS.**

(a) AMENDMENT.—Chapter 6 of part I of title 28, United States Code, is amended by adding at the end the following:

**"§ 159. Bankruptcy statistics**

"(a) The clerk of each district shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11 Those statistics shall be in a form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Office')

"(b) The Director shall—

"(1) compile the statistics referred to in subsection (a);

"(2) make the statistics available to the public; and

"(3) not later than October 31, 2000, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

"(c) The compilation required under subsection (b) shall—

"(1) be itemized, by chapter, with respect to title 11;

"(2) be presented in the aggregate and for each district; and

"(3) include information concerning—

"(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the

schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

"(B) the current monthly income, and average income and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

"(C) the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

"(D) the average period of time between the filing of the petition and the closing of the case;

"(E) for the reporting period—

"(i) the number of cases in which a reaffirmation was filed; and

"(ii)(I) the total number of reaffirmations filed;

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

"(III) of those cases, the number of cases in which the reaffirmation was approved by the court;

"(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

"(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

"(II) the number of final orders determining the value of property securing a claim issued;

"(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

"(iii) the number of cases in which the debtor filed another case within the 6 years previous to the filing;

"(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

"(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's counsel and damages awarded under such Rule.".

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

"159. Bankruptcy statistics.".

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

**SEC. 702. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.**

(a) AMENDMENT.—Title 28 of the United States Code is amended by inserting after section 589a the following:

**"§ 589b. Bankruptcy data**

"(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

"(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

"(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

"(b) REPORTS.—All reports referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at 1 or more central filing locations, and by electronic access through the Internet or other appropriate media.

"(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

"(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; and

"(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports.

"(d) FINAL REPORTS.—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

"(1) information about the length of time the case was pending;

"(2) assets abandoned;

"(3) assets exempted;

"(4) receipts and disbursements of the estate;

"(5) expenses of administration;

"(6) claims asserted;

"(7) claims allowed; and

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

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

"(e) PERIODIC REPORTS.—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

"(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

"(2) length of time the case has been pending;

"(3) number of full-time employees as at the date of the order for relief and at end of each reporting period since the case was filed;

"(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

"(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

"(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, in for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

"(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.".

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

"589b. Bankruptcy data.".

**SEC. 703. SENSE OF THE CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.**

It is the sense of the Congress that—

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

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

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

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

# TITLE VIII—BANKRUPTCY TAX PROVISIONS

**SEC. 801. TREATMENT OF CERTAIN LIENS.**

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting "(other than to the extent that there is a properly perfected unavoidable tax lien

arising in connection with an ad valorem tax on real or personal property of the estate)" after "under this title";

(2) in subsection (b)(2), after "507(a)(1)", insert "(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)"; and

(3) by adding at the end the following:

"(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

"(1) exhaust the unencumbered assets of the estate; and

"(2) in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

"(f) Notwithstanding the exclusion of ad valorem tax liens set forth in this section and subject to the requirements of subsection (e)—

"(1) claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(3) of this title; or

"(2) claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4) of this title,

may be paid from property of the estate which secures a tax lien, or the proceeds of such property.".

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

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

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

(3) by adding at the end the following:

"(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.".

**SEC. 802. EFFECTIVE NOTICE TO GOVERNMENT.**

(a) EFFECTIVE NOTICE TO GOVERNMENTAL UNITS.—Section 342 of title 11, United States Code, as amended by section 603, is amended by adding at the end the following:

"(g) If a debtor lists a governmental unit as a creditor in a list or schedule, any notice required to be given by the debtor under this title, any rule, any applicable law, or any order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted The debtor shall identify (with information such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, where applicable), and describe the underlying basis for the governmental unit's claim If the debtor's liability to a governmental unit arises from a debt or obligation owed or incurred by another individual, entity, or organization, or under a different name, the debtor shall identify such individual, entity, organization, or name.

"(h) The clerk shall keep and update quarterly, in the form and manner as the Director of the Administrative Office of the United States Courts prescribes, and make available to debtors, a register in which a governmental unit may designate a safe harbor mailing address for service of notice in cases pending in the district A governmental unit may file a statement with the clerk designating a safe harbor address to which notices are to be sent, unless such governmental unit files a notice of change of address.".

(b) ADOPTION OF RULES PROVIDING NOTICE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption enhanced rules for providing notice to State, Federal, and local government units that have regulatory authority over the debtor or which may be creditors in the debtor's case Such rules shall be reasonably calculated to ensure that notice will reach the representatives of the governmental unit, or subdivision thereof, who will be the proper persons authorized to act upon the notice At a minimum, the rules should require that the debtor—

(1) identify in the schedules and the notice, the subdivision, agency, or entity in respect of which such notice should be received;

(2) provide sufficient information (such as case captions, permit numbers, taxpayer identification numbers, or similar identifying information) to permit the governmental unit or subdivision thereof, entitled to receive such notice, to

identify the debtor or the person or entity on behalf of which the debtor is providing notice where the debtor may be a successor in interest or may not be the same as the person or entity which incurred the debt or obligation; and

(3) identify, in appropriate schedules, served together with the notice, the property in respect of which the claim or regulatory obligation may have arisen, if any, the nature of such claim or regulatory obligation and the purpose for which notice is being given.

(c) EFFECT OF FAILURE OF NOTICE.—Section 342 of title 11, United States Code, as amended by section 603 and subsection (a), is amended by adding at the end the following:

"(i) A notice that does not comply with subsections (d) and (e) shall not be effective unless the debtor demonstrates, by clear and convincing evidence, that timely notice was given in a manner reasonably calculated to satisfy the requirements of this section was given, and that—

"(1) either the notice was timely sent to the safe harbor address provided in the register maintained by the clerk of the district in which the case was pending for such purposes; or

"(2) no safe harbor address was provided in such list for the governmental unit and that an officer of the governmental unit who is responsible for the matter or claim had actual knowledge of the case in sufficient time to act.".

**SEC. 803. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.**

Section 505(b) of title 11, United States Code, is amended by striking "Unless" at the beginning of the second sentence thereof and inserting "If the request is made substantially in the manner designated by the governmental unit and unless".

**SEC. 804. RATE OF INTEREST ON TAX CLAIMS.**

(a) AMENDMENT.—Chapter 5 of title 11, United States Code, is amended by adding at the end the following:

**"§ 511. Rate of interest on tax claims**

"If any provision of this title requires the payment of interest on a tax claim or requires the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be as follows:

"(1) In the case of ad valorem tax claims, whether secured or unsecured, other unsecured tax claims where interest is required to be paid under section 726(a)(5) of this title, secured tax claims, and administrative tax claims paid under section 503(b)(1) of this title, the rate shall be determined under applicable nonbankruptcy law.

"(2) In the case of all other tax claims, the minimum rate of interest shall be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code of 1986, plus 3 percentage points.

"(A) In the case of claims for Federal income taxes, such rate shall be subject to any adjustment that may be required under section 6621(d) of the Internal Revenue Code of 1986.

"(B) In the case of taxes paid under a confirmed plan or reorganization, such rate shall be determined as of the calendar month in which the plan is confirmed.".

(b) CONFORMING AMENDMENT.—The table of sections of chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 510 the following:

"511. Rate of interest on tax claims.".

**SEC. 805. TOLLING OF PRIORITY OF TAX CLAIM TIME PERIODS.**

Section 507(a)(8)(A) of title 11, United States Code, as so redesignated, is amended—

(1) in clause (i) by inserting after "petition" and before the semicolon ", plus any time, plus 6 months, during which the stay of proceedings was in effect in a prior case under this title"; and

(2) amend clause (ii) to read as follows:

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

"(I) any time plus 30 days during which an offer in compromise with respect of such tax, was pending or in effect during such 240-day period;

"(II) any time plus 30 days during which an installment agreement with respect of such tax was pending or in effect during such 240-day period, up to 1 year; and

"(III) any time plus 6 months during which a stay of proceedings against collections was in effect in a prior case under this title during such 240-day period.".

**SEC. 806. PRIORITY PROPERTY TAXES INCURRED.**

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking "assessed" and inserting "incurred".

**SEC. 807. CHAPTER 13 DISCHARGE OF FRAUDULENT AND OTHER TAXES.**

Section 1328(a)(2) of title 11, United States Code, is amended by inserting "(1)," after "paragraph".

**SEC. 808. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.**

Section 1141(d) of title 11, United States Code, is amended by adding at the end the following:

"(6) Notwithstanding the provisions of paragraph (1), the confirmation of a plan does not discharge a debtor which is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.".

**SEC. 809. STAY OF TAX PROCEEDINGS.**

(a) SECTION 362 STAY LIMITED TO PREPETITION TAXES.—Section 362(a)(8) of title 11, United States Code, is amended by striking the period at the end and inserting ", in respect of a tax liability for a taxable period ending before the order for relief.".

(b) APPEAL OF TAX COURT DECISIONS PERMITTED.—Section 362(b)(9) of title 11, United States Code, is amended—

(1) in subparagraph (C) by striking "or" at the end;

(2) in subparagraph (D) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(E) the appeal of a decision by a court or administrative tribunal which determines a tax liability of the debtor without regard to whether such determination was made prepetition or postpetition.".

**SEC. 810. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.**

Section 1129(a)(9) of title 11, United States Code, is amended—

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

(2) in subparagraph (C)—

(A) by striking "deferred cash payments, over a period not exceeding six years after the date of assessment of such claim," and inserting "regular installment payments in cash, but in no case with a balloon provision, and no more than three months apart, beginning no later than the effective date of the plan and ending on the earlier of five years after the petition date or the last date payments are to be made under the plan to unsecured creditors,";

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

(3) by adding at the end the following:

"(D) with respect to a secured claim which would be described in section 507(a)(8) of this title but for its secured status, the holder of such claim will receive on account of such claim cash payments of not less than is required in subparagraph (C) and over a period no greater than is required in such subparagraph.".

**SEC. 811. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.**

Section 545(2) of title 11, United States Code, is amended by striking the semicolon at the end and inserting ", except where such purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986 or similar provision of State or local law;".

**SEC. 812. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.**

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "Any"; and

(2) by adding at the end the following:

"(b) Such taxes shall be paid when due in the conduct of such business unless—

"(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable time after the lien attaches, by the trustee of a bankruptcy estate, pursuant to section 554 of title 11; or

"(2) payment of the tax is excused under a specific provision of title 11.

"(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11 if—

"(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

"(2) before the due date of the tax, the court has made a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as such tax.".

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B) of title 11, United States Code, is amended in clause (i) by inserting after "estate," and before "except" the following: "whether secured or unsecured, including property taxes for which liability is in rem only, in personam or both,".

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended by adding at the end the following:

"(D) notwithstanding the requirements of subsection (a) of this section, a governmental unit shall not be required to file a request for the payment of a claim described in subparagraph (B) or (C);".

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting "or State statute" after "agreement"; and

(2) in subsection (c) by inserting ", including the payment of all ad valorem property taxes in respect of the property" before the period at the end.

**SEC. 813. TARDILY FILED PRIORITY TAX CLAIMS.**

Section 726(a)(1) of title 11, United States Code, is amended by striking "before the date on which the trustee commences distribution under this section" and inserting "on or before the earlier of 10 days after the mailing to creditors of the summary of the trustee's final report or the date on which the trustee commences final distribution under this section".

**SEC. 814. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.**

Section 523(a)(1)(B) of title 11, United States Code, is amended—

(1) by inserting "or equivalent report or notice," after "a return,";

(2) in clause (i)—

(A) by inserting "or given" after "filed"; and

(B) by striking "or" at the end;

(3) in clause (ii)—

(A) by inserting "or given" after "filed"; and

(B) by inserting ", report, or notice" after "return"; and

(4) by adding at the end the following:

"(iii) for purposes of this subsection, a return—

"(I) must satisfy the requirements of applicable nonbankruptcy law, and includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or similar State or local law; and

"(II) must have been filed in a manner permitted by applicable nonbankruptcy law; or".

**SEC. 815. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.**

Section 505(b) of title 11, United States Code, is amended in the second sentence by inserting "the estate," after "misrepresentation,".

**SEC. 816. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.**

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by section 140, is amended—

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

(2) in paragraph (7) by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(8) if the debtor has filed all Federal, State, and local tax returns as required by section 1308 of this title.".

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—(1) Chapter 13 of title 11, United States Code, as amended by section 135, is amended by adding at the end the following:

**"§ 1308. Filing of prepetition tax returns**

"(a) On or before the day prior to the day on which the first meeting of the creditors is convened under section 341(a) of this title, the debtor shall have filed with appropriate tax authorities all tax returns for all taxable periods ending in the 3-year period ending on the date of filing of the petition.

"(b) If the tax returns required by subsection (a) have not been filed by the date on which the first meeting of creditors is convened under section 341(a) of this title, the trustee may continue such meeting for a reasonable period of time, to allow the debtor additional time to file any unfiled returns, but such additional time shall be no more than—

"(1) for returns that are past due as of the date of the filing of the petition, 120 days from such date;

"(2) for returns which are not past due as of the date of the filing of the petition, the later of 120 days from such date or the due date for such returns under the last automatic extension of time for filing such returns to which the debtor is entitled, and for which request has been timely made, according to applicable nonbankruptcy law; and

"(3) upon notice and hearing, and order entered before the lapse of any deadline fixed according to this subsection, where the debtor demonstrates, by clear and convincing evidence, that the failure to file the returns as required is because of circumstances beyond the control of the debtor, the court may extend the deadlines set by the trustee as provided in this subsection for—

"(A) a period of no more than 30 days for returns described in paragraph (1) of this subsection; and

"(B) for no more than the period of time ending on the applicable extended due date for the returns described in paragraph (2).

"(c) For purposes of this section only, a return includes a return prepared pursuant to section 6020 (a) or (b) of the Internal Revenue Code of 1986 or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal.".

(2) The table of sections of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

"1308. Filing of prepetition tax returns.".

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

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

"(e) Upon the failure of the debtor to file tax returns under section 1308 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interests of creditors and the estate.".

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by striking the period at the end and inserting ", and except that in a case under chapter 13 of this title, a claim of a governmental unit for a tax in respect of a return filed under section 1308 of this title shall be timely if it is filed on or before 60 days after such return or returns were filed as required.".

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of the Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference should, within a reasonable period of time after the date of the enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, a governmental unit may object to the confirmation of a plan on or before 60 days after the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax in respect of a return required to be filed under such section 1308 shall be filed until such return has been filed as required.

**SEC. 817. STANDARDS FOR TAX DISCLOSURE.**

Section 1125(a) of title 11, United States Code, is amended in paragraph (1)—

(1) by inserting after "records," the following: "including a full discussion of the potential material Federal, State, and local tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor domiciled

in the State in which the debtor resides or has its principal place of business typical of the holders of claims or interests in the case,";

(2) by inserting "such" after "enable"; and

(3) by striking "reasonable" where it appears after "hypothetical" and by striking "typical of holders of claims or interests" after "investor".

**SEC. 818. SETOFF OF TAX REFUNDS.**

Section 362(b) of title 11, United States Code, as amended by sections 118, 132, 136, and 203, is amended—

(1) in paragraph (29) by striking "or";

(2) in paragraph (30) by striking the period at the end and inserting "; or"; and

(3) by inserting after paragraph (30) the following:

"(31) under subsection (a) of the setoff of an income tax refund, by a governmental unit, in respect of a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief, unless—

"(A) prior to such setoff, an action to determine the amount or legality of such tax liability under section 505(a) was commenced; or

"(B) where the setoff of an income tax refund is not permitted because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action.".

# TITLE IX—ANCILLARY AND OTHER CROSS-BORDER CASES

**SEC. 901. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.**

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

## "CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

**"§ 1501. Purpose and scope of application**

"(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

"(1) cooperation between—

"(A) United States courts, United States trustees, trustees, examiners, debtors, and debtors in possession; and

"(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

"(2) greater legal certainty for trade and investment;

"(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

"(4) protection and maximization of the value of the debtor's assets; and

"(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

"(b) This chapter applies where—

"(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

"(2) assistance is sought in a foreign country in connection with a case under this title;

"(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

"(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

"(c) This chapter does not apply to—

"(1) a proceeding concerning an entity identified by exclusion in subsection 109(b);

"(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

"(3) an entity subject to a proceeding under the Securities Investor Protection Act, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

"SUBCHAPTER I—GENERAL PROVISIONS

**"§ 1502. Definitions**

"For the purposes of this chapter, the term—

"(1) 'debtor' means an entity that is the subject of a foreign proceeding;

"(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

"(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

"(4) 'foreign main proceeding' means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

"(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

"(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title; and

"(7) 'within the territorial jurisdiction of the United States' when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

**"§ 1503. International obligations of the United States**

"To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

**"§ 1504. Commencement of ancillary case**

"A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

**"§ 1505. Authorization to act in a foreign country**

"A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541 An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

**"§ 1506. Public policy exception**

"Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

**"§ 1507. Additional assistance**

"(a) Subject to the specific limitations stated elsewhere in this chapter the court, upon recognition of a foreign proceeding, the court may provide additional assistance to a foreign representative under this title or under other laws of the United States.

"(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

"(1) just treatment of all holders of claims against or interests in the debtor's property;

"(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

"(3) prevention of preferential or fraudulent dispositions of property of the debtor;

"(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

"(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

**"§ 1508. Interpretation**

"In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

"SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

**"§ 1509. Right of direct access**

"(a) A foreign representative may commence a case under section 1504 of this title by filing with the court a petition for recognition of a foreign proceeding under section 1515 of this title.

"(b) If the court grants recognition under section 1515 of this title, and subject to any limitations that the court may impose consistent with the policy of this chapter—

"(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

"(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

"(3) a court in the United States shall grant comity or cooperation to the foreign representative.

"(c) A request for comity or cooperation by a foreign representative in a court in the United States shall be accompanied by a certified copy of an order granting recognition under section 1517 of this title.

"(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

"(e) Whether or not the court grants recognition, and subject to sections 306 and 1510 of this title, a foreign representative is subject to applicable nonbankruptcy law.

"(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United State to collect or recover a claim which is the property of the debtor.".

**"§ 1510. Limited jurisdiction**

"The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

**"§ 1511. Commencement of case under section 301 or 303**

"(a) Upon recognition, a foreign representative may commence—

"(1) an involuntary case under section 303; or

"(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

"(b) The petition commencing a case under subsection (a) must be accompanied by certified copy of an order granting recognition The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

**"§ 1512. Participation of a foreign representative in a case under this title**

"Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

**"§ 1513. Access of foreign creditors to a case under this title**

"(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

"(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

"(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

"(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

**"§ 1514. Notification to foreign creditors concerning a case under this title**

"(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

"(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate No letters rogatory or other similar formality is required.

"(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

"(1) indicate the time period for filing proofs of claim and specify the place for their filing;

"(2) indicate whether secured creditors need to file their proofs of claim; and

"(3) contain any other information required to be included in such a notification to creditors under this title and the orders of the court.

"(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

"SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

**"§ 1515. Application for recognition of a foreign proceeding**

"(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

"(b) A petition for recognition shall be accompanied by—

"(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

"(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

"(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

"(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

"(d) The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English The court may require a translation into English of additional documents.

**"§ 1516. Presumptions concerning recognition**

"(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding as defined in section 101 and that the person or body is a foreign representative as defined in section 101, the court is entitled to so presume.

"(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

"(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

**"§ 1517. Order recognizing a foreign proceeding**

"(a) Subject to section 1506, after notice and a hearing an order recognizing a foreign proceeding shall be entered if—

"(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

"(2) the foreign representative applying for recognition is a person or body as defined in section 101; and

"(3) the petition meets the requirements of section 1515.

"(b) The foreign proceeding shall be recognized—

"(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

"(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

"(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

"(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition The case under this chapter may be closed in the manner prescribed under section 350.

**"§ 1518. Subsequent information**

"From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

"(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

"(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

**"§ 1519. Relief that may be granted upon petition for recognition of a foreign proceeding**

"(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

"(1) staying execution against the debtor's assets;

"(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

"(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

"(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.

"(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

"(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

"(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

**"§ 1520. Effects of recognition of a foreign main proceeding**

"(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

"(1) sections 361 and 362 with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;

"(2) sections 363, 549, and 552 of this title apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

"(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

"(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.".

"(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

"(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

**"§ 1521. Relief that may be granted upon recognition of a foreign proceeding**

"(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

"(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

"(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

"(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

"(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

"(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

"(6) extending relief granted under section 1519(a); and

"(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

"(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

"(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

"(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

"(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

**"§ 1522. Protection of creditors and other interested persons**

"(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

"(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.

"(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

"(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

**"§ 1523. Actions to avoid acts detrimental to creditors**

"(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).

"(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

**"§ 1524. Intervention by a foreign representative**

"Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

"SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

**"§ 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives**

"(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

"(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

**"§ 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives**

"(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

"(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

**"§ 1527. Forms of cooperation**

"Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

"(1) appointment of a person or body, including an examiner, to act at the direction of the court;

"(2) communication of information by any means considered appropriate by the court;

"(3) coordination of the administration and supervision of the debtor's assets and affairs;

"(4) approval or implementation of agreements concerning the coordination of proceedings; and

"(5) coordination of concurrent proceedings regarding the same debtor.

"SUBCHAPTER V—CONCURRENT PROCEEDINGS

**"§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding**

"After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to im-

plement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

**"§ 1529. Coordination of a case under this title and a foreign proceeding**

"Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

"(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

"(A) any relief granted under sections 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

"(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply.

"(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

"(A) any relief in effect under sections 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

"(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

"(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

"(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

**"§ 1530. Coordination of more than 1 foreign proceeding**

"In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

"(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

"(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

"(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

**"§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding**

"In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

**"§ 1532. Rule of payment in concurrent proceedings**

"Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.".

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

**"15. Ancillary and Other Cross-Border Cases ..... 1501".**

**SEC. 902. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11, UNITED STATES CODE.**

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: ", and this chapter, sections 307, 304, 555 through 557, 559, and 560 apply in a case under chapter 15"; and

(2) by adding at the end the following:

"(j) Chapter 15 applies only in a case under such chapter, except that—

"(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

"(2) section 1509 applies whether or not a case under this title is pending.".

(b) DEFINITIONS.—Paragraphs (23) and (24) of title 11, United States Code, are amended to read as follows:

"(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

"(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;".

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

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

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

(C) by adding at the end the following:

"(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.".

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking "Nothing in" and inserting "Except with respect to a case under chapter 15 of title 11, nothing in".

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by striking "or 13" and inserting "13, or 15," after "chapter".

(4) Section 305(a)(2) of title 11, United States Code, is amended to read:

"(2)(A) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted; and

"(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.".

(5) Section 508 of title 11, United States Code, is amended by striking subsection (a) and by striking out the letter "(b)" at the beginning of the second paragraph.

# TITLE X—FINANCIAL CONTRACT PROVISIONS

**SEC. 1001. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR —RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.**

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)(D)(i)) is amended by inserting ", resolution or order" after "any similar agreement that the Corporation determines by regulation".

(b) DEFINITION OF SECURITIES CONTRACT.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)(D)(ii)) is amended to read as follows:

"(ii) SECURITIES CONTRACT.—The term 'securities contract'—

"(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

"(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

"(III) means any option entered into on a national securities exchange relating to foreign currencies;

"(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index or option;

"(V) means any margin loan;

"(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) means any combination of the agreements or transactions referred to in this clause;

"(VIII) means any option to enter into any agreement or transaction referred to in this clause;

"(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

"(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.".

(c) DEFINITION OF COMMODITY CONTRACT.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)(D)(iii)) is amended to read as follows:

"(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

"(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

"(II) with respect to a foreign futures commission merchant, a foreign future;

"(III) with respect to a leverage transaction merchant, a leverage transaction;

"(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

"(V) with respect to a commodity options dealer, a commodity option;

"(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) any combination of the agreements or transactions referred to in this clause;

"(VIII) any option to enter into any agreement or transaction referred to in this clause;

"(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

"(X) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.".

(d) DEFINITION OF FORWARD CONTRACT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)(D)(iv)) is amended to read as follows:

"(iv) FORWARD CONTRACT.—The term 'forward contract' means—

"(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, but not limited to, a repurchase agreement, reverse repurchase agreement, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

"(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

"(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

"(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

"(V) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV).".

(e) DEFINITION OF REPURCHASE AGREEMENT.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)(D)(v)) is amended to read as follows:

"(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

"(I) mean an agreement, including related terms, which provides for the transfer of 1 or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

"(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

"(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

"(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

"(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

"(VI) means a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V).

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organiza-

tion for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).".

(f) DEFINITION OF SWAP AGREEMENT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)(D)(vi)) is amended to read as follows:

"(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

"(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement;

"(II) any agreement or transaction similar to any other agreement or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

"(III) any combination of agreements or transactions referred to in this clause;

"(IV) any option to enter into any agreement or transaction referred to in this clause;

"(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

"(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (I), (II), (III), or (IV).

Such term is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations promulgated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.".

(g) DEFINITION OF TRANSFER.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)(D)(viii)) is amended to read as follows:

"(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institutions's equity of redemption.".

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)) is amended—

(1) in subparagraph (A), by striking "paragraph (10)" and inserting "paragraphs (9) and (10)";

(2) in subparagraph (A)(i), by striking "to cause the termination or liquidation" and inserting "such person has to cause the termination, liquidation, or acceleration";

(3) by amending subparagraph (A)(ii) to read as follows:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);"; and

(4) by amending subparagraph (E)(ii) to read as follows:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);".

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)(C)(i)) is amended by inserting "section 5242 of the Revised Statutes of the United States (12 U.S.C 91) or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers," before "the Corporation".

**SEC. 1002. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.**

(a) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking "other than paragraph (12) of this subsection, subsection (d)(9)" and inserting "other than subsections (d)(9) and (e)(10)"; and

(2) by adding at the end the following new subparagraphs:

"(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

"(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

"(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

"(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(12)(A)) is amended by inserting "or the exercise of rights or powers" after "the appointment".

**SEC. 1003. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.**

(a) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(9)) is amended to read as follows:

"(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

"(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

"(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

"(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

"(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

"(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

"(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

"(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

"(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property pursuant to subparagraph (A)(i), the conservator or receiver for such depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

"(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property and credit enhancements pursuant to subparagraph (A)(i) and such contract is subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

"(D) DEFINITION.—For purposes of this section, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Corporation by regulation to be a financial institution.".

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(10)(A)) is amended by amending the flush material following clause (ii) to read as follows: "the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m (eastern time) on the business day following the date of the appointment of the receiver, in the case of a receivership, or the business day following such transfer, in the case of a conservatorship.".

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(10)) is further amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

"(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

"(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(A) or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

"(I) until 5:00 p.m (eastern time) on the business day following the date of the appointment of the receiver; or

"(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

"(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(E) or sections 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

"(iii) NOTICE.—For purposes of this subsection, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken

steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A) of this subsection.

"(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of subsection (e)(9)—

"(i) a bridge bank; or

"(ii) a depository institution organized by the Corporation, for which a conservator is appointed either—

"(I) immediately upon the organization of the institution; or

"(II) at the time of a purchase and assumption transaction between such institution and the Corporation as receiver for a depository institution in default.".

**SEC. 1004. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.**

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)) is further amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively; and

(2) by inserting after paragraph (10) the following new paragraph:

"(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

"(A) disaffirm or repudiate all qualified financial contracts between—

"(i) any person or any affiliate of such person; and

"(ii) the depository institution in default; or

"(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).".

**SEC. 1005. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.**

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)(D)(vii)) is amended to read as follows:

"(vii) TREATMENT OF MASTER AGREEMENT AS 1 AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.".

**SEC. 1006. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.**

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C 4402) is amended—

(1) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

"(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;"; and

(C) by amending subparagraph (C) (as redesignated) to read as follows:

"(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;";

(2) in paragraph (11), by adding before the period "and any other clearing organization with which such clearing organization has a netting contract";

(3) by amending paragraph (14)(A)(i) to read as follows:

"(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting

present or future payment obligations or payment entitlements (including liquidation or closeout values relating to such obligations or entitlements) among the parties to the agreement; and"; and

(4) by adding at the end the following new paragraph:

"(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.".

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C 4403) is amended—

(1) by amending subsection (a) to read as follows:

"(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11)."; and

(2) by adding at the end the following new subsection:

"(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to 1 or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11) and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).".

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C 4404) is amended—

(1) by amending subsection (a) to read as follows:

"(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970, the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code)."; and

(2) by adding at the end the following new subsection:

"(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to 1 or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code) and shall not be stayed, avoided, or otherwise limited by any State or Federal law other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970.".

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C 4401 et seq.) is amended—

(1) by redesignating section 407 as section 408; and

(2) by adding after section 406 the following new section:

**"SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.**

"(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency except—

"(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency;

"(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency; and

"(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank or an uninsured Federal branch or Federal agency.

"(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank or uninsured Federal branch or agency shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

"(c) REGULATORY AUTHORITY.—

"(1) IN GENERAL.—The Comptroller of the Currency, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations to implement this section.

"(2) SPECIFIC REQUIREMENT.—In promulgating regulations to implement this section, the Comptroller of the Currency shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

"(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meaning as in section 1(b) of the International Banking Act.".

**SEC. 1007. BANKRUPTCY CODE AMENDMENTS.**

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking "means a contract" and inserting "means—

"(A) a contract";

(ii) by striking ", or any combination thereof or option thereon;" and inserting ", or any other similar agreement;"; and

(iii) by adding at the end the following:

"(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

"(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

"(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B) or (C); or

"(E) a security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), but not to exceed the actual value of such contract, option, agreement, or transaction on the date of the filing of the petition;";

(B) in paragraph (46), by striking "on any day during the period beginning 90 days before the date of" and replacing it with "at any time before";

(C) by amending paragraph (47) to read as follows:

"(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement) means—

"(i) an agreement, including related terms, which provides for the transfer of 1 or more certificates of deposit, mortgage-related securities (as defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities; or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests; with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, loans, or interests of the kind described above, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

"(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

"(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

"(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

"(v) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), but not to exceed the actual value of such contract on the date of the filing of the petition; and

"(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;

and, for purposes of this paragraph, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development;";

(D) in paragraph (48) by inserting "or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission" after "1934"; and

(E) by amending paragraph (53B) to read as follows:

"(53B) 'swap agreement'

"(A) means—

"(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or an equity swap, option, future, or forward agreement; a debt index or a debt swap, option, future, or forward agreement; a credit spread or a credit swap, option, future, or forward agreement; or a commodity index or a commodity swap, option, future, or forward agreement;

"(ii) any agreement or transaction similar to any other agreement or transaction referred to in this paragraph that—

"(I) is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference therein); and

"(II) is a forward, swap, future, or option on 1 or more rates, currencies commodities, equity securities, or other equity instruments, debt securities or other debt instruments, or on an economic index or measure of economic risk or value;

"(iii) any combination of agreements or transactions referred to in this paragraph;

"(iv) any option to enter into an agreement or transaction referred to in this paragraph;

"(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

"(B) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (A); and

"(C) is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity

Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.";

(2) by amending section 741(7) to read as follows:

"(7) 'securities contract'—

"(A) means—

"(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security certificate of deposit, loan, interest, group or index or option;

"(ii) any option entered into on a national securities exchange relating to foreign currencies;

"(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security certificate of deposit, loan, interest, group or index or option;

"(iv) any margin loan;

"(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

"(vi) any combination of the agreements or transactions referred to in this paragraph;

"(vii) any option to enter into any agreement or transaction referred to in this paragraph;

"(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this paragraph, except that such master agreement shall be considered to be a securities contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

"(ix) any security agreement or arrangement, or other credit enhancement, related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition; and

"(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan."; and

(3) in section 761(4)—

(A) by striking "or" at the end of subparagraph (D); and

(B) by adding at the end the following:

"(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

"(G) any combination of the agreements or transactions referred to in this paragraph;

"(H) any option to enter into an agreement or transaction referred to in this paragraph;

"(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master netting agreement, without regard to whether the master netting agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

"(J) a security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition;".

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by amending paragraph (22) to read as follows:

"(22) 'financial institution' means—

"(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer; or

"(B) in connection with a securities contract, as defined in section 741 of this title, an investment company registered under the Investment Company Act of 1940;";

(2) by inserting after paragraph (22) the following:

"(22A) 'financial participant' means an entity that, at the time it enters into a securities contract, commodity contract or forward contract, or at the time of the filing of the petition, has 1 or more agreements or transactions that is described in section 561(a)(2) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of at least $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least $100,000,000 (aggregated across counterparties) in 1 or more such agreement or transaction with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period;"; and

(3) by amending paragraph (26) to read as follows:

"(26) 'forward contract merchant' means a Federal reserve bank, or an entity whose business consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761 of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing or in the forward contract trade;".

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

"(38A) 'master netting agreement' means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with 1 or more contracts that are described in any 1 or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to 1 or more of the foregoing If a master netting agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), the master netting agreement shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any 1 or more of the paragraphs (1) through (5) of section 561(a);

"(38B) 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;".

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 118, 132, 136, 142, 203 and 818, is amended—

(A) in paragraph (6), by inserting ", pledged to, and under the control of," after "held by";

(B) in paragraph (7), by inserting ", pledged to, and under the control of," after "held by";

(C) by amending paragraph (17) to read as follows:

"(17) under subsection (a), of the setoff by a swap participant of a mutual debt and claim under or in connection with 1 or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, and under the control of, or due from such swap participant to margin guarantee, secure, or settle a swap agreement;";

(D) in paragraph (30) by striking "or" at the end;

(E) in paragraph (31) by striking the period at the end and inserting "; or"; and

(F) by inserting after paragraph (31) the following new paragraph:

"(32) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with 1 or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged or and under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue.".

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by sections 120, 302, and 412, is amended by adding at the end the following:

"(*l*) LIMITATION.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), or (17), or (31) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.".

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, as amended by sections 207 and 302, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking "under a swap agreement";

(B) by striking "in connection with a swap agreement" and inserting "under or in connection with any swap agreement"; and

(2) by adding at the end the following:

"(j) Notwithstanding sections 544, 545, 547, 548(a)(2)(B), and 548(b) of this title, the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) of this title, and except to the extent the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.".

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking "and";

(2) in subparagraph (D), by striking the period and inserting "; and"; and

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

"(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except, with respect to a transfer under any individual contract covered thereby, to the extent such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.".

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**"§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract";**

and

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration".

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**"§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract"; and**

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration".

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**"§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement"; and**

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration".

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**"§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement"; and**

(2) in the first sentence, by striking "termination of a swap agreement" and inserting "liquidation, termination, or acceleration of 1 or more swap agreements"; and

(3) by striking "in connection with any swap agreement" and inserting "in connection with the termination, liquidation, or acceleration of 1 or more swap agreements".

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—(1) Title 11, United States Code, is amended by inserting after section 560 the following:

**"§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts**

"(a) IN GENERAL.—Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts or other transfer obligations arising under or in connection with 1 or more (or the termination, liquidation, or acceleration of 1 or more)—

"(1) securities contracts, as defined in section 741(7);

"(2) commodity contracts, as defined in section 761(4);

"(3) forward contracts;

"(4) repurchase agreements;

"(5) swap agreements; or

"(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

"(b) EXCEPTION.—

"(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

"(2) If a debtor is a commodity broker subject to subchapter IV of chapter 7 of this title—

"(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent the party has positive net equity in the commodity accounts at the debtor, as calculated under subchapter IV; and

"(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

"(c) DEFINITION.—As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.".

(2) CONFORMING AMENDMENT.—The table of sections of chapter 9 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

"561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts.

(l) ANCILLARY PROCEEDINGS.—Section 304 of title 11, United States Code, as amended by section 215, is amended by adding at the end the following:

"(c) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case ancillary to a foreign proceeding under this section or any other section of this title, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).".

(m) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

**"§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

"Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.".

(n) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

**"§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

"Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.".

(o) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(3)(C), by inserting "(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(19), 555, 556, 559, 560 or 561 of this title)" before the period; and

(2) in subsection (b)(1), by striking "362(b)(14)," and inserting "362(b)(17), 362(b)(19), 555, 556, 559, 560, 561".

(p) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking "financial institutions," each place such term appears and inserting "financial institution, financial participant";

(2) in section 546(e), by inserting "financial participant," after "financial institution,";

(3) in section 548(d)(2)(B), by inserting "financial participant," after "financial institution,";

(4) in section 555—

(A) by inserting "financial participant," after "financial institution,"; and

(B) by inserting before the period at the end ", a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice"; and

(5) in section 556, by inserting ", financial participant" after "commodity broker".

(q) CONFORMING AMENDMENTS.—Title 11 of the United States Code is amended—

(1) in the table of sections of chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

"555. Contractual right to liquidate, terminate, or accelerate a securities contract.
"556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.";

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

"559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.
"560. Contractual right to liquidate, terminate, or accelerate a swap agreement.";

and

(2) in the table of sections of chapter 7—

(A) by inserting after the item relating to section 766 the following:

"767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.";

and

(B) by inserting after the item relating to section 752 the following:

"753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.".

**SEC. 1008. RECORDKEEPING REQUIREMENTS.**

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C 1821(e)(8)) is amended by adding at the end the following new subparagraph:

"(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping with respect to qualified financial contracts (including market valuations) by insured depository institutions.".

**SEC. 1009. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION —REQUIREMENT.**

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C 1823(e)(2)) is amended to read as follows:

"(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

"(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

"(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

"(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

"(D) 1 or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.".

**SEC. 1010. DAMAGE MEASURE.**

(a) Title 11, United States Code, as amended by section 1007, is amended—

(1) by inserting after section 561 the following:

**"§ 562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements**

"If the trustee rejects a swap agreement, securities contract as defined in section 741 of this title, forward contract, commodity contract (as defined in section 761 of this title) repurchase agreement, or master netting agreement pursuant to section 365(a) of this title, or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

"(1) the date of such rejection; or

"(2) the date of such liquidation, termination, or acceleration."; and

(2) in the table of sections of chapter 5 by inserting after the item relating to section 561 the following:

"562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.".

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by designating the existing text as paragraph (1); and

(2) by adding at the end the following:

"(2) A claim for damages calculated in accordance with section 561 of this title shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.".

**SEC. 1011. SIPC STAY.**

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C 78eee(b)(2)) is amended by adding after subparagraph (B) the following new subparagraph:

"(C) EXCEPTION FROM STAY.—

"(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by Securities Investor Protection Corporation from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, each as defined in title 11, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with 1 or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor whether or not with respect to 1 or more of such contracts or agreements.

"(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on securities collateral pledged by the debtor, whether or not with respect to 1 or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement or securities lent under a securities lending agreement.

"(iii) As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.".

**SEC. 1012. ASSET-BACKED SECURITIZATIONS.**

Section 541 of title 11, United States Code, as amended by section 150, is amended—

(1) by redesignating paragraph (5) of subsection (b) as paragraph (6);

(2) by inserting after paragraph (4) of subsection (b) the following new paragraph:

"(5) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a);"; and

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

"(e) For purposes of this section, the following definitions shall apply:

"(1) the term 'asset-backed securitization' means a transaction in which eligible assets transferred to an eligible entity are used as the source of payment on securities, the most senior of which are rated investment grade by 1 or more nationally recognized securities rating organizations, issued by an issuer;

"(2) the term 'eligible asset' means—

"(A) financial assets (including interests therein and proceeds thereof), either fixed or revolving, including residential and commercial mortgage loans, consumer receivables, trade receivables, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any residual interest in property subject to receivables included in such financial assets plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

"(B) cash; and

"(C) securities.

"(3) the term 'eligible entity' means—

"(A) an issuer; or

"(B) a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;

"(4) the term 'issuer' means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto; and

"(5) the term 'transferred' means the debtor, pursuant to a written agreement, represented and warranted that eligible assets were sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to subsection (b)(5), irrespective, without limitation of—

"(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

"(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

"(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.".

**SEC. 1013. FEDERAL RESERVE COLLATERAL REQUIREMENTS.**

The 3d sentence of the 3d undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C 412) is amended by striking "acceptances acquired under the provisions of section 13 of this Act" and inserting "acceptances acquired under section 10A, 10B, 13, or 13A of this Act".

**SEC. 1014. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) EFFECTIVE DATE.—This title shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply with respect to cases commenced or appointments made under any Federal or State law after the date of enactment of this Act, but shall not apply with respect to cases commenced or appointments made under any Federal or State law before the date of enactment of this Act.

# TITLE XI—TECHNICAL CORRECTIONS

**SEC. 1101. DEFINITIONS.**

Section 101 of title 11, United States Code, as amended by sections 102, 105, 132, 138, 301, 302, 402, 902, and 1007, is amended—

(1) by striking "In this title—" and inserting "In this title:";

(2) in each paragraph, by inserting "The term" after the paragraph designation;

(3) in paragraph (35)(B), by striking "paragraphs (21B) and (33)(A)" and inserting "paragraphs (23) and (35)";

(4) in each of paragraphs (35A) and (38), by striking "; and" at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting "who is not a family farmer" after "debtor" the first place it appears; and

(B) by striking "thereto having aggregate" and all that follows through the end of the paragraph;

(6) by amending paragraph (54) to read as follows:

"(54) The term 'transfer' means—

"(A) the creation of a lien;

"(B) the retention of title as a security interest;

"(C) the foreclosure of a debtor's equity of redemption; or

"(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

"(i) property; or

"(ii) an interest in property;";

(7) in each of paragraphs (1) through (35), in each of paragraphs (36) and (37), and in each of paragraphs (40) through (55) (including paragraph (54), as amended by paragraph (6) of this section), by striking the semicolon at the end and inserting a period; and

(8) by redesignating paragraphs (4) through (55), including paragraph (54), as amended by paragraph (6) of this section, in entirely numerical sequence.

**SEC. 1102. ADJUSTMENT OF DOLLAR AMOUNTS.**

Section 104 of title 11, United States Code, is amended by inserting "522(f)(3), 707(b)(5)," after "522(d)," each place it appears.

**SEC. 1103. EXTENSION OF TIME.**

Section 108(c)(2) of title 11, United States Code, is amended by striking "922" and all that follows through "or", and inserting "922, 1201, or".

**SEC. 1104. TECHNICAL AMENDMENTS.**

Title 11 of the United States Code is amended—

(1) in section 109(b)(2) by striking "subsection (c) or (d) of"; and

(2) in section 552(b)(1) by striking "product" each place it appears and inserting "products".

**SEC. 1105. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.**

Section 110(j)(3) of title 11, United States Code, is amended by striking "attorney's" and inserting "attorneys' ".

**SEC. 1106. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.**

Section 328(a) of title 11, United States Code, is amended by inserting "on a fixed or percentage fee basis," after "hourly basis,".

**SEC. 1107. SPECIAL TAX PROVISIONS.**

Section 346(g)(1)(C) of title 11, United States Code, is amended by striking ", except" and all that follows through "1986".

**SEC. 1108. EFFECT OF CONVERSION.**

Section 348(f)(2) of title 11, United States Code, is amended by inserting "of the estate" after "property" the first place it appears.

**SEC. 1109. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

Section 503(b)(4) of title 11, United States Code, is amended by inserting "subparagraph (A), (B), (C), (D), or (E) of" before "paragraph (3)".

**SEC. 1110. PRIORITIES.**

Section 507(a) of title 11, United States Code, as amended by section 323, is amended in paragraph (4), as so redesignated by section 142, by striking the semicolon at the end and inserting a period.

**SEC. 1111. EXEMPTIONS.**

Section 522(g)(2) of title 11, United States Code, is amended by striking "subsection (f)(2)" and inserting "subsection (f)(1)(B)".

**SEC. 1112. EXCEPTIONS TO DISCHARGE.**

Section 523 of title 11, United States Code, as amended by section 146, is amended—

(1) in subsection (a)(3), by striking "or (6)" each place it appears and inserting "(6), or (15)";

(2) as amended by section 304(e) of Public Law 103–394 (108 Stat 4133), in paragraph (15), by transferring such paragraph so as to insert it after paragraph (14A) of subsection (a);

(3) in subsection (a)(9), by inserting ", watercraft, or aircraft" after "motor vehicle";

(4) in subsection (a)(15), as so redesignated by paragraph (2) of this subsection, by inserting "to a spouse, former spouse, or child of the debtor and" after "(15)"; and

(5) in subsection (e), by striking "a insured" and inserting "an insured".

**SEC. 1113. EFFECT OF DISCHARGE.**

Section 524(a)(3) of title 11, United States Code, is amended by striking "section 523" and all that follows through "or that" and inserting "section 523, 1228(a)(1), or 1328(a)(1) of this title, or that".

**SEC. 1114. PROTECTION AGAINST DISCRIMINATORY TREATMENT.**

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting "student" before "grant" the second place it appears; and

(2) in paragraph (2), by striking "the program operated under part B, D, or E of" and inserting "any program operated under".

**SEC. 1115. PROPERTY OF THE ESTATE.**

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting "365 or" before "542".

**SEC. 1116. PREFERENCES.**

(a) IN GENERAL.—Section 547 of title 11, United States Code, is amended—

(1) in subsection (b), by striking "subsection (c)" and inserting "subsections (c) and (i)"; and

(2) by adding at the end the following:

"(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer may be avoided under this section only with respect to the creditor that is an insider.".

(b) APPLICABILITY.—The amendments made by this section shall apply to any case that is pending or commenced on or after the date of enactment of this Act.

**SEC. 1117. POSTPETITION TRANSACTIONS.**

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting "an interest in" after "transfer of";

(2) by striking "such property" and inserting "such real property"; and

(3) by striking "the interest" and inserting "such interest".

**SEC. 1118. DISPOSITION OF PROPERTY OF THE ESTATE.**

Section 726(b) of title 11, United States Code, is amended by striking "1009,".

**SEC. 1119. GENERAL PROVISIONS.**

Section 901(a) of title 11, United States Code, is amended by inserting "1123(d)," after "1123(b),".

**SEC. 1120. APPOINTMENT OF ELECTED TRUSTEE.**

Section 1104(b) of title 11, United States Code, is amended—

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

(2) by adding at the end the following:

"(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election Upon the filing of a report under the preceding sentence—

"(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

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

"(B) In the case of any dispute arising out of an election under subparagraph (A), the court shall resolve the dispute.".

**SEC. 1121. ABANDONMENT OF RAILROAD LINE.**

Section 1170(e)(1) of title 11, United States Code, is amended by striking "section 11347" and inserting "section 11326(a)".

**SEC. 1122. CONTENTS OF PLAN.**

Section 1172(c)(1) of title 11, United States Code, is amended by striking "section 11347" and inserting "section 11326(a)".

**SEC. 1123. DISCHARGE UNDER CHAPTER 12.**

Subsections (a) and (c) of section 1228 of title 11, United States Code, are amended by striking "1222(b)(10)" each place it appears and inserting "1222(b)(9)".

**SEC. 1124. BANKRUPTCY CASES AND PROCEEDINGS.**

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking "made under this subsection" and inserting "made under subsection (c)"; and

(2) by striking "This subsection" and inserting "Subsection (c) and this subsection".

**SEC. 1125. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.**

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting "(1) the term" before "'bankruptcy"; and

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

(2) in the second undesignated paragraph—

(A) by inserting "(2) the term" before "'document"; and

(B) by striking "this title" and inserting "title 11".

**SEC. 1126. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.**

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended—

(1) by striking "only" and all that follows through the end of the subsection and inserting "only—

"(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

"(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362 of this title.".

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by section 140, is amended by adding at the end the following:

"(15) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.".

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, as amended by section 1102, is amended by adding at the end the following:

"(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.".

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, except that the court shall not confirm a plan under chapter 11 of this title without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be deemed to require the court in which a case under chapter 11 is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

**SEC. 1127. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.**

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

"(i) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.".

**SEC. 1128. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.**

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking "20" and inserting "30".

**SEC. 1129. TRUSTEES.**

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(d)"; and

(2) by adding at the end the following:

"(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11 of the United States Code may obtain judicial review of the final agency decision by commencing an action in the United States district court for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the United States district court for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies The Attorney General shall prescribe procedures to implement this paragraph The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.".

(b) EXPENSES OF STANDING TRUSTEES.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

"(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the United States district court in the district where the individual resides The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

"(4) The Attorney General shall prescribe procedures to implement this subsection.".

# TITLE XII—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

**SEC. 1201. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) EFFECTIVE DATE.—Except as provided otherwise in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—Except as otherwise provided in this Act, the amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the effective date of this Act.

## THE AMENDMENT

Inasmuch as H.R. 833, the Bankruptcy Reform Act of 1999, was ordered reported with a single amendment in the nature of a substitute, as amended, the contents of this report constitute an explanation of the bill as so amended.

## PURPOSE AND SUMMARY

H.R. 833 is a comprehensive package of reform measures pertaining to both consumer and business bankruptcy cases. The purpose of H.R. 833 is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system and by ensuring that it is fair for both debtors and creditors.

The heart of the bill's consumer bankruptcy reforms is the implementation of an income/expense screening mechanism ("needs-based bankruptcy relief") to ensure that debtors repay creditors the maximum they can afford. In addition to implementing needs-based bankruptcy relief, H.R. 833 institutes a panoply of other consumer bankruptcy reforms designed to enhance the protections available to debtors and creditors.

H.R. 833 also contains a comprehensive set of reforms pertinent to business bankruptcies. Many of these provisions are intended to heighten administrative scrutiny and judicial oversight of small business bankruptcy cases. In addition, the bill includes provisions designed to reduce "systemic risk" in the financial marketplace. It also creates a new form of bankruptcy relief for transnational insolvencies, includes provisions regarding the treatment of tax claims, and requires the collection of certain data relating to consumer bankruptcy cases.

## BACKGROUND AND NEED FOR THE LEGISLATION

### BACKGROUND

On February 24, 1999, Representative George Gekas (for himself and Representatives Rick Boucher (D-Va. ), Bill McCollum (R-Fla.), and James P. Moran (D-Va.)) introduced H.R. 833, the Bankruptcy Reform Act of 1999. The bill currently has more than 100 bipartisan cosponsors. As introduced, H.R. 833 was virtually identical to the conference report on H.R. 3150, the Bankruptcy Reform Act of

1998, which last year received overwhelming bipartisan support in the House as evidenced by a vote of 300 to 125.[1]

## NEED FOR THE LEGISLATION

### *Consumer bankruptcy*

*Overview.* According to statistics released by the Administrative Office of the United States Courts, more than 1.4 million bankruptcy cases were filed in 1998.[2] Bankruptcy filings, after passing the one-million mark for the first time in the twelve-month period ending June 30, 1996, "have risen steadily ever since."[3] The number of consumer bankruptcy cases filed per million adults, according to the Congressional Budget Office, increased nearly 77 percent between the end of 1994 and the end of 1997.[4] Paradoxically, this increase in consumer bankruptcy filing rates is occurring while the economy is basically healthy, unemployment is low, personal incomes are generally rising, and consumer confidence is high.[5]

According to some analyses, this increase in consumer bankruptcy filings has significant adverse economic consequences. For example, they estimate that more than $40 billion was written off as a result of losses discharged in bankruptcy cases in 1998,[6] which amounts to a loss of "at least $110 million every day."[7] This loss, according to one study, translates into more than $400 annually per household.[8] Last year, one economic analysis projected that even if the growth rate in personal bankruptcies slowed to 15 per-

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[1] 144 Cong. Rec. H10239–40 (daily ed. Oct. 9, 1998). The Committee reported H.R. 3150 favorably, as amended, H.R. Rep. No. 105–540 (1998), and thereafter, the House passed the bill, as further amended, by a vote of 306 to 118 on June 10, 1998. 144 Cong. Rec. H4442 (daily ed. June 10, 1998). Later that summer, the Senate Committee on the Judiciary favorably reported S. 1301, its consumer bankruptcy legislation. S. Rep. No. 105–253 (1998). The Senate then passed its version of H.R. 3150 by substituting the text of S. 1301, as amended, on September 23, 1998. On request of the Senate and consent of the House, a conference was appointed. On October 9, 1998, the House passed the conference report, H.R. Rep. No. 105–794 (1998), which had been filed two days earlier. The conference report was not acted upon by the Senate prior to the adjournment of the 105th Congress.

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

[3] Id. While the rate of the increase recently decreased (19.1 percent in 1997; 2.7 percent in 1998), bankruptcy filings are at record levels. Id.

[4] Congressional Budget Office, A Report of Data and Studies About Personal Bankruptcy, at 5 (preliminary draft Apr. 16, 1999).

[5] Id.; see, e.g., Bankruptcy Reform Act of 1999: Hearings on H.R. 833 Before the Subcomm. on Commercial and Admin. Law of the House Comm. on the Judiciary, 106th Cong. (1999) [hereinafter 1999 Hearings] (statement of Richard Stana, Associate Director, Administration of Justice Issues, General Government Division, General Accounting Office, at 1 (Mar. 17, 1999)).

[6] 1999 Hearings, supra note 5 (statement of Dean Sheaffer on behalf of the National Retail Federation, at 1 (Mar. 11, 1999)). A representative from the banking industry described the adverse economic consequences of the "precipitous increase in the number of consumer bankruptcy filings" and how it has impacted all Americans. Id. (statement of Bruce L. Hammonds, on behalf of MBNA America Bank, N.A., at 1 (Mar. 11, 1999)). Another witness explained the special concerns that increased bankruptcy filings present to credit unions and their members. Id. (statement of Larry Nuss on behalf of the Credit Union National Association, Inc., at 2 (Mar. 11, 1999)). The Committee received similar information last year. See, e.g., Bankruptcy Reform Act of 1998, Responsible Borrower Bankruptcy Protection Act, and Consumer Lenders and Borrowers Accountability Act of 1998: Hearings on H.R. 3150, 2500 and 3146 Before the Subcomm. on Commercial and Admin. Law of the House Comm. on the Judiciary, 105th Cong. (1998) [hereinafter 1998 Hearings] (statement of WEFA Group Resource Planning Service, Final Report: The Financial Costs of Personal Bankruptcy, at 16 (Feb. 1998)).

[7] 1999 Hearings, supra note 5 (statement of Dean Sheaffer on behalf of the National Retail Federation, at 1 (Mar. 11, 1999)) (emphasis supplied). This witness also testified that bankruptcy filings were "out of control." Id.

[8] 1998 Hearings, supra note 6 (statement of WEFA Group Resource Planning Service, Final Report: The Financial Costs of Personal Bankruptcy, at 16 (Feb. 1998)); see 1999 Hearings, supra note 5 (statement of Bruce L. Hammonds on behalf of MBNA America Bank, N.A., at 1 (Mar. 11, 1999)). Others questioned, however, the economic benefits of the legislation. See, e.g., 1999 Hearings, supra note 5.

cent over the next three years, the American economy may absorb a cumulative cost of more than $220 billion.[9] In addition, certain studies conclude that some debtors who file for bankruptcy relief do have the ability to repay some portion of their otherwise dischargeable debts.[10]

This legislation responds to many of the factors contributing to this increase in consumer bankruptcy filings, such as lack of personal responsibility,[11] the proliferation of serial filings, and the lack of effective oversight to eliminate abuse in the system. The consumer bankruptcy provisions of H.R. 833 address the needs of creditors as well as debtors. The bill's creditor protections generally are of three types: needs-based bankruptcy reforms, expanded protections for creditors in general, and protections for specific types of creditors. The debtor protections allow debtors to exempt certain education IRA plans, fortify the Bankruptcy Code's exemptions for certain retirement pension funds, enhance the professionalism standards for attorneys and others who assist consumer debtors with their bankruptcy cases, ensure that debtors receive notice of alternatives to bankruptcy relief, require debtors to participate in debt repayment programs, and institute a pilot program to study the effectiveness of consumer financial management programs.

*Consumer creditor protections: needs-based reforms.* Chapter 7 is a form of bankruptcy relief where an individual debtor receives an immediate discharge of personal liability for certain debts in exchange for turning over his or her nonexempt assets to the bankruptcy trustee for distribution to creditors.[12] 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.[13] The rationale of an unconditional discharge was explained by Congress more than 100 years ago:

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[9] 1998 Hearings, supra note 6 (statement of WEFA Group Resource Planning Service, "Final Report: The Financial Costs of Personal Bankruptcy," at 17–18 (Feb. 1998)).

[10] See, e.g., Marianne B. Culhane & Michaela M. White, "Taking the New Consumer Bankruptcy Model for a Test Drive: Means-Testing Real Chapter 7 Debtors,—Am. Bankr. L. J.—(to be published 1999) (concluding that 3.6% of sampled debtors "emerged as apparent can-pays"); 1999 Hearings, supra note 5 (statement of Dr. Thomas S. Neubig on behalf of Ernst & Young LLP—Policy Economics and Quantitative Analysis Group, at 2 (Mar. 17, 1999)) (stating, "we can confidently predict that if the needs based provision had been in effect in 1997, 10 percent of Chapter 7 filers, or about 100,000 filers, would likely have been required to file a Chapter 13 repayment plan"); id. (statement of Michael E. Staten on behalf of the Credit Research Center, at 2–3 (Mar. 17, 1999)) (concluding that, based on the debtors" own statements of monthly living expenses, "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 five 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 five years").

[11] Some have likened the moral weakness of the present bankruptcy system to "shoplifting." *1999 Hearings, supra* note 5 (statement of Prof. Todd Zywicki, George Mason Law School, at 3 (Mar. 11, 1999)).

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

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

> [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.[14]

The concept of needs-based bankruptcy relief has also long been debated by the Congress and others. President Herbert Hoover, for instance, recommended:

> The discretion of the courts in granting or refusing discharge 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.[15]

Congressional recognition of needs-based relief has been gradual. In 1938, chapter XIII was enacted, a purely voluntary form of bankruptcy relief that allowed a debtor to voluntarily propose a plan to repay creditors out of future earnings.[16] Over the ensuing years, there continued to be repeated expressions of support for and opposition to needs-based bankruptcy reform.[17] The Bankruptcy Reform Act of 1978,[18] however, retained the principle that a debtor's decision to choose relief premised on repayment to creditors had to be "completely voluntary."[19]

Although as originally enacted, the Bankruptcy Code provided that a chapter 7 case could only be dismissed for "cause," the Code was in 1984 amended to permit the court to dismiss a chapter 7 case for "substantial abuse."[20] This provision, codified in section 707(b) of the Bankruptcy Code, was added "as part of a package of consumer credit amendments designed to reduce perceived abuses in the use of chapter 7."[21] 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."[22] In 1986, sec-

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[14] H.R. Rep. No. 55–65, at 43 (1897).

[15] 1 Collier on Bankruptcy ¶ 0.04 (14th ed. 1974).

[16] Chandler Act of 1938, 52 Stat. 840 (1938); see 1999 Hearings, supra note 5 (statement of Prof. Lawrence P. King, Charles Seligson Professor of Law at New York University School of Law, at 4 (Mar. 16, 1999)).

[17] 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 13] should be denied relief in straight bankruptcy"); Hearings on H.R. 1057 and H.R. 5771 Before the Subcomm. No. 4 of the House Committee on the Judiciary, 90th Cong. (1967). Organizations that testified before Congress in 1967 in support of such reform included the American Bar Association, the American Bankers Association, the Chamber of Commerce of the United States, Credit Union National Association, Inc., the National Federation of Independent Businesses, and the American Industrial Bankers Association. Id. The Commission on the Bankruptcy Laws of the United States, while supporting the concept that repayment plans should be "fostered," nevertheless concluded in 1973 that "forced participation by a debtor in a plan requiring contributions out of future income has so little prospect for success that it should not be adopted as a feature of the bankruptcy system." Id. at 159.

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

[19] Bankruptcy Law Revision: Report of the Committee on the Judiciary to Accompany H.R. 8200, 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").

[20] 11 U.S.C. § 707(b).

[21] Collier on Bankruptcy ¶ 707.LH[2] (Lawrence P. King et al., 15th ed. rev. 1999).

[22] Id. at ¶ 707.04.

tion 707(b) was further amended to allow a United States trustee (a Department of Justice official) to move for dismissal.

Under current practice, section 707(b) motions are infrequently made for several reasons. First, neither the court nor the United States trustee is required to make these motions, even in cases evidencing obvious abuse of the bankruptcy system. Second, other parties in interest, such as chapter 7 trustees and creditors, are prohibited from filing these motions. In fact, section 707(b) provides that a section 707(b) motion may not even be made "at the request or suggestion of any party in interest."[23] Third, the standard for dismissal—substantial abuse—is inherently vague, which has lead to its disparate interpretation and application by the bankruptcy bench.[24] 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.[25] Others do not, absent some evidence of moral turpitude.[26] 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.[27]

Over the course of its hearings, both this year and last year, the Subcommittee on Commercial and Administrative Law received testimony that some chapter 7 debtors do have the ability to repay their debts[28] and that, if needs-based reforms and other measures were implemented, the rate of repayment to creditors would increase as more debtors are shifted into chapter 13 as opposed to chapter 7.[29]

H.R. 833's needs-based reforms strengthen section 707(b) in several respects to ensure that chapter 7 cases presenting evidence of abuse are promptly eliminated from the bankruptcy system. They institute a screening mechanism designed to identify chapter 7 debtors having the ability to repay their debts and to presume that their cases constitute an abuse thereby warranting their dismissal. Chapter 7 debtors with incomes below certain thresholds are not subject to this presumption of abuse.[30]

The needs-based reforms of H.R. 833 are implemented as follows. First, it amends section 707(b) of the Bankruptcy Code to allow—in addition to the courts and United States trustees—panel trustees and parties in interest (in certain circumstances) to seek dis-

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[23] 11 U.S.C. 707(b).

[24] 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").

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

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

[27] 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).

[28] See supra note 10.

[29] See, e.g., 1998 Hearings, supra note 6 (statement of WEFA Group Resource Planning Service, "Final Report: The Financial Costs of Personal Bankruptcy," at 20 (Feb. 1998)).

[30] This income threshold "safe harbor" should significantly reduce the number of debtors subject to the needs-based formula presumption of abuse based on ability to repay.

missal of a chapter 7 case or conversion to chapter 13 on consent of the debtor. Under current law, only the courts and United States Trustees may make a motion for dismissal. Second, it revises the ground for dismissal under section 707(b) from "substantial abuse" to "abuse" and replaces the present presumption in favor of the debtor with one that requires the court to presume abuse if the debtor has income available (after deduction of certain specified expenses, certain payments on debts, and ten percent of projected plan payments to account for estimated costs of administration) of at least $100 per month, determined over a five-year repayment period. Third, it provides for dismissal of these cases, unless the debtors consent to conversion to chapter 13.

Irrespective of a debtor's ability to repay, H.R. 833 provides that a chapter 7 case may be dismissed if the totality of the circumstances (including whether the case was filed by the debtor for the purpose of rejecting a personal services contract) demonstrates abuse, based on the debtor's financial situation.

*Protections for creditors—in general.* H.R. 833 contains a broad range of reforms to provide greater protections for creditors, while ensuring that the claims of those creditors entitled to priority treatment, such as spousal and child support claims, are not adversely impacted. The bill accomplishes this goal by (1) ensuring that creditors receive proper and timely notice of important events and proceedings in a bankruptcy case; (2) prohibiting abusive serial filings and extending the period between successive discharges; (3) implementing various provisions designed to improve the accuracy of the information contained in debtors' schedules, statements of financial affairs, and other documents; and (4) limiting abusive use of exemptions. It also clarifies that creditors holding consumer debts may participate without counsel at the section 341 meeting of creditors (which provides an opportunity for creditors to examine the debtor under oath) and with respect to activities related thereto.

*Protection of family support obligations.* Domestic support claimants receive a number of special protections under H.R. 833. The bill creates a uniform and expanded definition of domestic support obligations to include debts that accrue both before or after a bankruptcy case is filed. H.R. 833 accords the highest payment priority for these debts and gives new priority treatment to certain claims assigned to governmental units by a spouse, former spouse, child of the debtor, or parent of a child. The bill mandates that chapter 13 and 11 (reorganization) debtors must be current on their postpetition domestic support obligations to confirm their plans of reorganization. The same obligation is imposed on a chapter 13 debtor as a prerequisite to receiving a discharge. To facilitate the domestic support collection efforts by governmental units, H.R. 833 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.

*Protections for secured creditors.* H.R. 833 gives secured creditors a broad variety of enhanced protections: (1) a prohibition against bifurcation or "cramdown" of claims secured by personal property

acquired within five years of the bankruptcy filing, (2) clarification 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, (3) termination of the automatic stay with respect to personal property if the debtor does not timely reaffirm the underlying obligation or redeem the property, and (4) a requirement that a secured claimant retain its lien in a chapter 13 case until the underlying debt is paid or the debtor receives a discharge. H.R. 833 also clarifies certain important issues with respect to the rights of secured creditors in the bankruptcy context, such as the valuation of a secured interest, the debtor's retention of secured property, and the issue of "ride through" with respect to personal property.

*Protections for unsecured creditors.* H.R. 833 contains various reforms responsive to certain forms of abuse and fraud in the present bankruptcy system. For example, the bill substantially limits a debtor's ability to file successive bankruptcy cases. It addresses abusive practices by consumer debtors who, for example, knowingly load up with credit card purchases or recklessly obtain credit and then file for bankruptcy relief. In addition, H.R. 833 prevents the discharge of debts based on fraud, embezzlement, and malicious injury in a chapter 13 case.

*Protections for lessors.* With respect to the interests of lessors, H.R. 833 requires chapter 13 debtors to remain current on their personal property leases and provide proof of adequate insurance. The bill specifies that a lessor may condition assumption of a personal property lease on cure of any outstanding default and it provides that a lessor is not required to permit such assumption. The bill also addresses a problem faced by thousands of small landlords across the nation regarding the widespread practice of tenants who file for bankruptcy relief so that they can live "rent free."

*Debtor protections.* H.R. 833 codifies various debtor protections. These include provisions allowing a consumer debtor to exempt certain education IRA plans for their child's postsecondary education and fortifying the Bankruptcy Code's exemption provisions for certain tax-qualified retirement funds. 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. This requirement ensures that debtors are aware of viable and cost-effective alternatives to bankruptcy. The bill requires debtors to participate in debt repayment programs before filing for bankruptcy relief (unless special circumstances do not permit such participation). In addition, H.R. 833 directs the Director of the Executive Office for United States Trustees to institute a consumer financial management pilot program that will enable the effectiveness and costs of such programs to be evaluated.

The bill also enhances the standards of practice for attorneys and others who assist consumer debtors in connection with their bankruptcy cases. H.R. 833 mandates that certain services and specified notices be provided to consumers by professionals and others who render bankruptcy assistance. To ensure compliance with these provisions, H.R. 833 institutes various enforcement mechanisms.

*Business Bankruptcy.* H.R. 833 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. 833 establishes a new form of bankruptcy relief for transnational insolvencies intended to promote international comity and greater certainty. It also includes provisions concerning the treatment of certain financial contracts under the banking laws as well as under the Bankruptcy Code. H.R. 833 responds to the special needs of family farmers by making chapter 12 of the Bankruptcy Code, a form of bankruptcy relief available only to eligible family farmers, permanent.

*Small business/single asset real estate debtors.* The small business and single asset real estate provisions of H.R. 833 are largely derived from consensus recommendations of the National Bankruptcy Review Commission.[31] These provisions have also received broad support from many in the bankruptcy community, including various bankruptcy judges and creditor groups, and the Executive Office for United States Trustees.

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 does not often 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 expenditure of the necessary 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 actively. Nevertheless, the monitoring of these debtors by United States Trustees varies throughout the nation.

H.R. 833 addresses the special problems presented by small business cases by instituting a variety of time frames and enforcement mechanisms 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 single asset real estate debtors, H.R. 833 makes several amendments to the Bankruptcy Code's provisions. First, it eliminates the monetary cap from the definition currently in the Bankruptcy Code. Second, it makes these debtors subject to the small business provisions of the bill. Third, H.R. 833 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.* Title X of H.R. 833 contains a series of provisions pertaining to the treatment of certain financial transactions under the Bankruptcy Code and relevant banking laws. These provisions are intended to reduce "systemic risk" in the banking system and financial marketplace.[32] They amend provisions of the

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

[32] "Systemic risk" is explained as the following:

Continued

banking and investment laws, as well as the Bankruptcy Code, applicable to certain types of financial transactions. This is to minimize the risk of disruption when parties to these transactions become bankrupt or insolvent. In addition to the Bankruptcy Code, the bill amends the Federal Deposit Insurance Act; Financial Institutions Reform, Recovery and Enforcement Act of 1989; Federal Deposit Insurance Corporation Improvement Act of 1991; Federal Reserve Act; and Securities Investor Protection Act of 1971. Many of these provisions are derived from recommendations issued by a presidential interagency working group chaired by Treasury Secretary Robert Rubin [33] and revisions espoused by the financial industry. [34] Among these provisions is one that would treat certain asset-backed securitizations as valid transfers. Other provisions broaden the scope of certain definitions to include additional types of business transactions and limit the authority of a court or administrative agency to enjoin certain actions.

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

*Other Provisions Having General Impact.* H.R. 833 contains several provisions that generally impact bankruptcy law and practice. For example, it requires the Executive Office for United States Trustees to compile various statistics regarding chapter 7, 11, and 13 cases and to make these data available to the public. Another provision allows professionals to share compensation with bona fide public service attorney referral programs. H.R. 833 mandates that a bankruptcy court conduct a scheduling conference in a bankruptcy case, if necessary to further the expeditious and economical resolution of the case.

The bill also revises the Bankruptcy Code's preference provisions. Under H.R. 833, a defendant in a preference action may establish that the transfer was made in the ordinary course of the debtor's financial affairs or business, or that the transfer was made in accordance with ordinary business terms. Current law requires the

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

H. Rep. No. 105–688, Part 1, at 2 (1998).

[33] 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.

[34] The Bond Market Association (a group representing securities firms and banks that underwrite, trade and sell debt securities) and the International Swaps and Derivatives Association (an international financial trade association whose membership is comprised of commercial, merchant and investment banks that engage in swaps and other privately negotiated derivatives transactions). See, e.g., Statement of John D. Hawke, Jr., Treasury Under Secretary for Domestic Finance, before the U.S. House of Representatives Committee on Banking and Financial Services, at 1 (July 24, 1998) (stating that he was "pleased to report that we have negotiated compromise language with industry participants who wanted somewhat broader legislation than we were prepared to propose').

defendant to establish both defenses. The bill also prevents a preferential transfer action from being filed unless the transfer exceeds a specified monetary minimum. In addition, H.R. 833 amends the venue provisions for preferential transfer actions to require a preference action based on a transfer of $10,000 or less to be filed in the district where the defendant resides. Current law fixes this amount at $1,000.

## HEARINGS

The Committee's Subcommittee on Commercial and Administrative Law began its consideration of comprehensive bankruptcy reform more than two years ago. On April 16, 1997, the Subcommittee conducted a hearing on the operation of the bankruptcy system, which was combined with a status report from the National Bankruptcy Review Commission.[35] This would be the first of 13 hearings that the Subcommittee held on the subject of bankruptcy reform over the ensuing two years.[36] Eight of these hearings were devoted solely to consideration of H.R. 833 and its predecessor, H.R. 3150, the Bankruptcy Reform Act of 1998. 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 individuals and groups.

The Subcommittee's first hearing on H.R. 833 was held jointly with the Senate Subcommittee on Administrative Oversight and the Courts on March 11, 1999. This marked the first time in more than 60 years that a bicameral hearing was held on the subject of bankruptcy reform.[37] United States Senators who testified at the hearing included Senators Charles Grassley (R-Iowa), Joseph R. Biden (D-Del.) and Christopher J. Dodd (D-Conn.). House Members included Representatives James P. Moran (D-Va.), Pete Sessions (R-Texas) and Nick Smith (R-Mich.). Other witnesses included Dean Sheaffer, Vice President and Director of Credit at Boscov's Department Store, Inc., representing the National Retail Federation; Bruce L. Hammonds, Senior Vice Chairman and Chief Operating Officer, MBNA America Bank, N.A.; the Honorable Carol J. Kenner, United States Bankruptcy Judge for the District of Massachusetts; Larry Nuss, Chief Executive Officer, Cedar Falls Community Credit Union, representing Credit Union National Association,

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[35] Hearing Before the Subcommittee on Commercial and Administrative Law on the Operation of the Bankruptcy System and Status Report from the National Bankruptcy Review Commission, 105th Cong. (1997).

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

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

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

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

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

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

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

March 11, 16–18, 1999—Hearings on H.R. 833, the Bankruptcy Reform Act of 1999.

[37] Statement of Charles Grassley, U.S. Senator, at 1 (Mar. 11, 1999).

Inc.; Gary Klein, Senior Attorney with the National Consumer Law Center; the Honorable Edith Hollan Jones, Judge, United States Court of Appeals for the Fifth Circuit, and former member of the National Bankruptcy Review Commission; Judith Greenstone Miller, Clark Hill, PLC, representing the Commercial Law League of America; Professor Todd Zywicki, George Mason University School of Law; and Professor Elizabeth Warren, Leo Gottlieb Professor of Law at Harvard Law School.

Witnesses at the March 16, 1999 hearing included the following: Representatives James P. Moran (D-Va.), Bill McCollum (R-Fla.), Nick Smith (R-Mich.), Rick Boucher (D-Va.), Steven Rothman (D-NJ), Sheila Jackson Lee (D-Tex.), Louise McIntosh Slaughter (D-NY), and John LaFalce (D-NY). Other witnesses included: James I. Shepard, a bankruptcy tax consultant and former member of the National Bankruptcy Review Commission; Professor Eric Posner of the University of Chicago Law School; Professor David Skeel of the University of Pennsylvania Law School; Professor Lawrence P. King, Charles Seligson Professor of Law at New York University School of Law; Ralph R. Mabey, a practitioner and former United States Bankruptcy Judge; the Honorable Joe Lee, United States Bankruptcy Judge for the Eastern District of Kentucky; Leon Forman, a practitioner; James E. Smith, President and Chief Executive Officer, Union State Bank and Trust, representing the American Bankers Association; Janet Kubica, President and Chief Executive Officer, Postmark Credit Union, representing the Credit Union National Association; and Frank Torres, Legislative Counsel for Consumers Union.

Witnesses at the March 17, 1999 hearing included the following: George J. Wallace of Eckert, Seamans, Cherin & Mellott, LLC, representing the Consumer Bankruptcy Reform Coalition; the Honorable William Brown, United States Bankruptcy Judge for the Western District of Tennessee, representing the American Bankruptcy Institute; Professor Todd Zywicki of George Mason University School of Law; Professor Kenneth Klee of the University of California—Los Angeles School of Law, representing the National Bankruptcy Conference; Jeffrey A. Tassey, Senior Vice President of Governmental and Legal Affairs for the American Financial Services Association; Michael Moore, President of Badcock Home Furnishing Centers, representing the National Retail Federation; Wayne Sigmon, a partner with the law firm of Gray, Layton, Kersh, Solomon, Sigmon, Furr and Smith, representing the National Association of Consumer Bankruptcy Attorneys; the Honorable Thomas R. Carper, Governor of the State of Delaware, representing the National Governors' Association; the Honorable Randall J. Newsome, United States Bankruptcy Judge for the Northern District of California, representing the National Conference of Bankruptcy Judges; Robert Waldschmidt, a chapter 7 trustee, representing the National Association of Bankruptcy Trustees; Henry E. Hildebrand, III, a chapter 13 trustee, representing the National Association of Chapter 13 Trustees; Prof. Michael E. Staten, Director of the Credit Research Center, at the McDonough School of Business, Georgetown University; Professor Marianne B. Culhane, Creighton University School of Law; Lisa H. Ryu, Staff Economist at the National Association of Federal Credit Unions; Dr. Thomas

S. Neubig, Ernst & Young LLP; and Richard M. Stana, Associate Director Administration of Justice Issues, General Government Division at the General Accounting Office.

Witnesses at the fourth and final hearing held on March 18, 1999 included the following: Representatives Robert E. Andrews (D-NJ), James A. Leach (R-Iowa) and Marge Roukema (R-NJ); Philip L. Strauss, Assistant District Attorney, Family Support Bureau of the Office of the District Attorney; Joan Entmacher, Vice President and Director of the Family Economic Center, National Women's Law Center; Stephanie M. Saperstein, Assistant Attorney General, Office of the Utah Attorney General, representing the National Association of Attorneys General; Professor Karen Gross, New York Law School; the Honorable Thomas Carlson, United States Bankruptcy Judge for the Northern District of California; H. Elizabeth Baird, Assistant General Counsel for the Bank of America Corporation; William H. Schorling, Klett, Lieber, Rooney & Schorling, representing the American Bar Association—Business Bankruptcy Section; Charles M. Tatelbaum, a partner with the law firm of Cummings & Lockwood, representing the National Association of Credit Managers; Judith Greenstone Miller, a partner with the law firm of Clark Hill, PLC, representing the Commercial Law League of America; Damon Silvers, Associate General Counsel for the American Federation of Labor and Congress of Industrial Organizations; Jere W. Glover, Chief Counsel for the Office of Advocacy, United States Small Business Administration; Ray Valdes, Tax Collector for Seminole County in Florida, on behalf of the National Association of County Treasurers and Finance Officers, the National Association of County Officials, and the National League of Cities; Don Harris, Special Assistant to the Attorney General, State of New Mexico, representing the States' Association of Bankruptcy Attorneys; Paul H. Asofsky, a partner at the law firm of Weil, Gotshal & Manges, LLP, representing the American Bar Association—Section of Taxation; the Honorable Tina Brozman, Chief United States Bankruptcy Judge for the Southern District of New York; Oliver Ireland, Associate General Counsel for the Board of Governors of the Federal Reserve System; Professor Randal C. Picker, Leffmann Professor of Commercial Law at University of Chicago Law School, representing the National Bankruptcy Conference; Seth Grosshandler, a partner at the New York office of Cleary, Gottlieb, Steen & Hamilton; Joseph Peiffer, Peiffer Law Office; and Harley D. Bergmeyer, Chairman, President and Chief Executive Officer of the Saline State Bank, representing the American Bankers Association.

## COMMITTEE CONSIDERATION

On March 25, 1999, the Subcommittee on Commercial and Administrative Law met in open session and ordered favorably reported the bill H.R. 833, with a single amendment in the nature of a substitute, by a record vote of five to three, a quorum being present. On April 20, 21, 22 , 27, and 28, 1999, the Committee met in open session and on April 28, 1999 ordered favorably reported the bill H.R. 833 with amendment in the nature of a substitute by a recorded vote of 22 ayes to 13 nays with one Member voting present, a quorum being present.

VOTES OF THE COMMITTEE

1. An amendment by Mr. Hyde modifying the needs-based test in section 102 to require a minimum payment of at least $100 per month to general unsecured creditors after subtracting 10 percent of projected payments to account for the costs of administration. On unanimous consent, Mr. Nadler added "and reasonable attorney fees" after every reference to "administrative expenses" in the Hyde amendment. Passed 18 to 11.

| AYES | NAYS |
|---|---|
| Mr. Hyde | Mr. Gekas |
| Mr. Coble | Mr. Smith (TX) |
| Mr. Hutchinson | Mr. Gallegly |
| Mr. Rogan | Mr. Canady |
| Ms. Bono | Mr. Goodlatte |
| Mr. Bachus | Mr. Bryant |
| Mr. Frank | Mr. Chabot |
| Mr. Nadler | Mr. Barr |
| Mr. Scott | Mr. Jenkins |
| Mr. Watt | Mr. Pease |
| Ms. Lofgren | Mr. Graham |
| Ms. Jackson-Lee | |
| Mr. Meehan | |
| Mr. Delahunt | |
| Mr. Wexler | |
| Mr. Rothman | |
| Ms. Baldwin | |
| Mr. Weiner | |

2. An amendment by Mr. Hyde to replace the Internal Revenue Service expense allowance standards with a "reasonably necessary" standard in section 102 and to direct the Executive Office for United States Trustees to issue guidelines to assist in making assessments of whether living expenses are "reasonably necessary." Passed 13 to 11.

| AYES | NAYS |
|---|---|
| Mr. Hyde | Mr. Sensenbrenner |
| Mr. Rogan | Mr. Gekas |
| Ms. Bono | Mr. Coble |
| Mr. Berman | Mr. Smith (TX) |
| Mr. Nadler | Mr. Canady |
| Mr. Scott | Mr. Goodlatte |
| Mr. Watt | Mr. Bryant |
| Ms. Lofgren | Mr. Barr |
| Mr. Meehan | Mr. Jenkins |
| Mr. Delahunt | Mr. Hutchinson |
| Mr. Wexler | Mr. Boucher |
| Ms. Baldwin | |
| Mr. Weiner | |

3. An amendment offered by Mr. Watt to an amendment by Mr. Bryant (to deem an unexpired lease of nonresidential real property—where the debtor is the lessee—rejected under certain cir-

cumstances) to limit its application to a debtor who is delinquent on its lease payments. Defeated 7 to 17.

| AYES | NAYS |
|---|---|
| Mr. Conyers | Mr. Hyde |
| Mr. Nadler | Mr. Sensenbrenner |
| Mr. Watt | Mr. Gekas |
| Ms. Lofgren | Mr. Coble |
| Mr. Meehan | Mr. Smith (TX) |
| Ms. Baldwin | Mr. Gallegly |
| Mr. Weiner | Mr. Canady |
| | Mr. Goodlatte |
| | Mr. Bryant |
| | Mr. Chabot |
| | Mr. Barr |
| | Mr. Jenkins |
| | Mr. Hutchinson |
| | Mr. Rogan |
| | Mr. Graham |
| | Ms. Bono |
| | Mr. Frank |

4. An amendment by Mr. Nadler to an amendment by Mr. Bryant (to deem an unexpired lease of nonresidential real property—where the debtor is the lessee—rejected under certain circumstances) to permit the court to grant a subsequent extension (after expiration of the initial 120-day extension), if such further extension is substantially likely to preserve five or more jobs. Defeated 6 to 18.

| AYES | NAYS |
|---|---|
| Mr. Conyers | Mr. Hyde |
| Mr. Nadler | Mr. Sensenbrenner |
| Mr. Watt | Mr. Gekas |
| Mr. Meehan | Mr. Coble |
| Ms. Baldwin | Mr. Smith (TX) |
| Mr. Weiner | Mr. Gallegly |
| | Mr. Canady |
| | Mr. Goodlatte |
| | Mr. Bryant |
| | Mr. Chabot |
| | Mr. Barr |
| | Mr. Jenkins |
| | Mr. Hutchinson |
| | Mr. Rogan |
| | Mr. Graham |
| | Ms. Bono |
| | Mr. Frank |
| | Ms. Lofgren |

5. An amendment offered by Mr. Nadler to make specified debts relating to violations of law concerning certain health care facilities nondischargeable. Defeated 13 to 18.

| AYES | NAYS |
|---|---|
| Mr. Conyers | Mr. Hyde |

| | |
|---|---|
| Mr. Frank | Mr. Sensenbrenner |
| Mr. Berman | Mr. McCollum |
| Mr. Nadler | Mr. Gekas |
| Mr. Scott | Mr. Coble |
| Mr. Watt | Mr. Smith (TX) |
| Ms. Lofgren | Mr. Gallegly |
| Ms. Jackson-Lee | Mr. Canady |
| Ms. Waters | Mr. Goodlatte |
| Mr. Delahunt | Mr. Bryant |
| Mr. Wexler | Mr. Chabot |
| Ms. Baldwin | Mr. Barr |
| Mr. Weiner | Mr. Jenkins |
| | Mr. Hutchinson |
| | Mr. Cannon |
| | Mr. Rogan |
| | Mr. Graham |
| | Ms. Bono |

6. An amendment offered by Mr. Nadler to strike a provision prohibiting class action cases for certain discharge injunction violations. Defeated 12 to 16.

| AYES | NAYS |
|---|---|
| Mr. Hyde | Mr. McCollum |
| Mr. Conyers | Mr. Gekas |
| Mr. Berman | Mr. Coble |
| Mr. Nadler | Mr. Smith (TX) |
| Mr. Scott | Mr. Gallegly |
| Mr. Watt | Mr. Canady |
| Ms. Lofgren | Mr. Goodlatte |
| Ms. Jackson-Lee | Mr. Bryant |
| Mr. Meehan | Mr. Chabot |
| Mr. Delahunt | Mr. Jenkins |
| Ms. Baldwin | Mr. Hutchinson |
| Mr. Weiner | Mr. Cannon |
| | Mr. Rogan |
| | Mr. Graham |
| | Ms. Bono |
| | Mr. Scarborough |

7. A substitute amendment offered by Mr. Bryant to the amendment of Ms. Jackson-Lee (ensuring that state constitutional law prohibiting the forced sale of a homestead to pay debts is not preempted) to make the $250,000 homestead limitation inapplicable to debtors in states that enact legislation opting out of such limitation. Passed 18 to 12.

| AYES | NAYS |
|---|---|
| Mr. McCollum | Mr. Hyde |
| Mr. Gekas | Mr. Sensenbrenner |
| Mr. Coble | Mr. Pease |
| Mr. Smith (TX) | Mr. Conyers |
| Mr. Gallegly | Mr. Nadler |
| Mr. Canady | Mr. Scott |
| Mr. Goodlatte | Mr. Watt |
| Mr. Bryant | Mr. Meehan |

| | |
|---|---|
| Mr. Chabot | Mr. Delahunt |
| Mr. Barr | Mr. Rothman |
| Mr. Jenkins | Ms. Baldwin |
| Mr. Hutchinson | Mr. Weiner |
| Mr. Cannon | |
| Mr. Graham | |
| Ms. Bono | |
| Mr. Scarborough | |
| Ms. Jackson-Lee | |
| Mr. Wexler | |

8. An amendment offered by Ms. Jackson Lee (ensuring that state constitutional law prohibiting the forced sale of a homestead to pay debts is not preempted), as amended by Mr. Bryant's amendment, to make the $250,000 homestead limitation inapplicable to debtors in states that enact legislation opting out of such limitation. Passed 18 to 15.

| AYES | NAYS |
|---|---|
| Mr. McCollum | Mr. Hyde |
| Mr. Gekas | Mr. Sensenbrenner |
| Mr. Coble | Mr. Pease |
| Mr. Smith (TX) | Mr. Conyers |
| Mr. Gallegly | Mr. Berman |
| Mr. Canady | Mr. Nadler |
| Mr. Goodlatte | Mr. Scott |
| Mr. Bryant | Mr. Watt |
| Mr. Chabot | Ms. Lofgren |
| Mr. Barr | Ms. Waters |
| Mr. Jenkins | Mr. Meehan |
| Mr. Hutchinson | Mr. Delahunt |
| Mr. Cannon | Mr. Rothman |
| Mr. Graham | Ms. Baldwin |
| Ms. Bono | Mr. Weiner |
| Mr. Scarborough | |
| Ms. Jackson-Lee | |
| Mr. Wexler | |

9. An amendment offered by Mr. Watt to require individual chapter 7 and chapter 13 debtors to file with the court copies of tax returns and related documents at the request of any party of interest. Defeated 13 to 13.

| AYES | NAYS |
|---|---|
| Mr. Hyde | Mr. Sensenbrenner |
| Mr. Canady | Mr. Gekas |
| Mr. Pease | Mr. Coble |
| Mr. Conyers | Mr. Smith (TX) |
| Mr. Scott | Mr. Goodlatte |
| Mr. Watt | Mr. Bryant |
| Ms. Lofgren | Mr. Chabot |
| Ms. Jackson-Lee | Mr. Barr |
| Mr. Meehan | Mr. Jenkins |
| Mr. Delahunt | Mr. Cannon |
| Mr. Rothman | Mr. Rogan |

| | |
|---|---|
| Ms. Baldwin | Mr. Graham |
| Mr. Weiner | Ms. Bono |

10. An amendment offered by Mr. Meehan to prohibit the discharge of a debt resulting from the use or purchase of firearms, if such debt is based on fraud, recklessness, or misrepresentation or is a product liability claim. Defeated 8 to 19.

| AYES | NAYS |
|---|---|
| Mr. Conyers | Mr. Hyde |
| Ms. Lofgren | Mr. Sensenbrenner |
| Ms. Jackson-Lee | Mr. Gekas |
| Mr. Meehan | Mr. Coble |
| Mr. Delahunt | Mr. Smith (TX) |
| Mr. Rothman | Mr. Canady |
| Ms. Baldwin | Mr. Goodlatte |
| Mr. Weiner | Mr. Bryant |
| | Mr. Chabot |
| | Mr. Barr |
| | Mr. Jenkins |
| | Mr. Hutchinson |
| | Mr. Pease |
| | Mr. Cannon |
| | Mr. Rogan |
| | Mr. Graham |
| | Ms. Bono |
| | Mr. Scott |
| | Mr. Watt |

11. An amendment offered by Mr. Delahunt to disallow certain claims in bankruptcy cases if the creditor engaged in reckless lending practices. Defeated 10 to 19.

| AYES | NAYS |
|---|---|
| Mr. Conyers | Mr. Hyde |
| Mr. Frank | Mr. Sensenbrenner |
| Mr. Berman | Mr. McCollum |
| Mr. Nadler | Mr. Gekas |
| Mr. Watt | Mr. Coble |
| Ms. Lofgren | Mr. Smith |
| Ms. Jackson-Lee | Mr. Gallegly |
| Mr. Meehan | Mr. Canady |
| Mr. Delahunt | Mr. Bryant |
| Ms. Baldwin | Mr. Chabot |
| | Mr. Barr |
| | Mr. Jenkins |
| | Mr. Hutchinson |
| | Mr. Pease |
| | Mr. Cannon |
| | Mr. Rogan |
| | Mr. Graham |
| | Ms. Bono |
| | Mr. Boucher |

12. Reconsideration of an amendment offered by Mr. Nadler allowing a debtor to choose state or federal exemption law (which was agreed to by voice vote the previous day). Defeated 13 to 21.

| AYES | NAYS |
|---|---|
| Mr. Canady | Mr. Hyde |
| Mr. Conyers | Mr. Sensenbrenner |
| Mr. Berman | Mr. McCollum |
| Mr. Nadler | Mr. Gekas |
| Mr. Scott | Mr. Coble |
| Mr. Watt | Mr. Smith |
| Ms. Lofgren | Mr. Goodlatte |
| Ms. Jackson-Lee | Mr. Bryant |
| Ms. Waters | Mr. Chabot |
| Mr. Meehan | Mr. Barr |
| Mr. Delahunt | Mr. Jenkins |
| Mr. Wexler | Mr. Hutchinson |
| Ms. Baldwin | Mr. Pease |
| | Mr. Cannon |
| | Mr. Rogan |
| | Mr. Graham |
| | Ms. Bono |
| | Mr. Bachus |
| | Mr. Scarborough |
| | Mr. Frank |
| | Mr. Boucher |

13. An amendment offered by Mr. Graham to restore the Internal Revenue expense allowance standards (as adjusted) and to require the Executive Office for United States Trustees to prepare a report of its findings following a three-year study of the utilization of the Internal Revenue Service standards for determining current monthly expenses of debtors. Passed 20 to 17.

| AYES | NAYS |
|---|---|
| Mr. McCollum | Mr. Hyde |
| Mr. Gekas | Mr. Sensenbrenner |
| Mr. Coble | Mr. Bachus |
| Mr. Smith | Mr. Conyers |
| Mr. Gallegly | Mr. Frank |
| Mr. Canady | Mr. Berman |
| Mr. Goodlatte | Mr. Nadler |
| Mr. Bryant | Mr. Scott |
| Mr. Chabot | Mr. Watt |
| Mr. Barr | Ms. Lofgren |
| Mr. Jenkins | Ms. Jackson-Lee |
| Mr. Hutchinson | Ms. Waters |
| Mr. Pease | Mr. Meehan |
| Mr. Cannon | Mr. Delahunt |
| Mr. Rogan | Mr. Wexler |
| Mr. Graham | Ms. Baldwin |
| Ms. Bono | Mr. Weiner |
| Mr. Scarborough | |
| Mr. Boucher | |
| Mr. Rothman | |

14. An amendment offered by Mr. Nadler to strike section 132 of the bill, which makes the needs-based formula applicable to chapter 13. Defeated 9 to 12.

| AYES | NAYS |
|---|---|
| Mr. Conyers | Mr. Hyde |
| Mr. Berman | Mr. Gekas |
| Mr. Nadler | Mr. Smith (Tex.) |
| Mr. Scott | Mr. Canady |
| Mr. Watt | Mr. Goodlatte |
| Ms. Lofgren | Mr. Chabot |
| Ms. Waters | Mr. Jenkins |
| Mr. Delahunt | Mr. Pease |
| Ms. Baldwin | Mr. Cannon |
| | Mr. Rogan |
| | Mr. Graham |
| | Ms. Bono |

15. An amendment offered by Mr. Watt to replace section 114 of the bill (Enhanced Disclosures under an Open-End Credit Plan). Defeated 12 to 12.

| AYES | NAYS |
|---|---|
| Mr. Canady | Mr. Hyde |
| Mr. Conyers | Mr. McCollum |
| Mr. Frank | Mr. Gekas |
| Mr. Berman | Mr. Smith (Tex.) |
| Mr. Nadler | Mr. Gallegly |
| Mr. Scott | Mr. Goodlatte |
| Mr. Watt | Mr. Chabot |
| Ms. Lofgren | Mr. Jenkins |
| Ms. Waters | Mr. Cannon |
| Mr. Delahunt | Mr. Rogan |
| Ms. Baldwin | Mr. Graham |
| Mr. Weiner | Ms. Bono |

16. An amendment offered by Mr. Watt to add section 151 to the bill (Discouraging Reckless Lending Practices). Defeated 12 to 12.

| AYES | NAYS |
|---|---|
| Mr. Canady | Mr. Hyde |
| Mr. Conyers | Mr. McCollum |
| Mr. Frank | Mr. Gekas |
| Mr. Berman | Mr. Gallegly |
| Mr. Nadler | Mr. Goodlatte |
| Mr. Scott | Mr. Chabot |
| Mr. Watt | Mr. Jenkins |
| Ms. Lofgren | Mr. Cannon |
| Ms. Waters | Mr. Rogan |
| Mr. Wexler | Mr. Graham |
| Ms. Baldwin | Ms. Bono |
| Mr. Weiner | Mr. Boucher |

17. An amendment offered by Mr. Nadler to strike a reference to unsecured creditors in section 1325(b)(1) of the Bankruptcy Code, as amended by section 132 of the bill. Defeated 11 to 17.

| AYES | NAYS |
|---|---|
| Mr. Hyde | Mr. Sensenbrenner |
| Mr. Conyers | Mr. McCollum |
| Mr. Berman | Mr. Gekas |

| | |
|---|---|
| Mr. Nadler | Mr. Coble |
| Mr. Scott | Mr. Smith (TX) |
| Mr. Watt | Mr. Gallegly |
| Ms. Lofgren | Mr. Canady |
| Ms. Waters | Mr. Goodlatte |
| Mr. Delahunt | Mr. Bryant |
| Ms. Baldwin | Mr. Chabot |
| Mr. Weiner | Mr. Jenkins |
| | Mr. Hutchinson |
| | Mr. Pease |
| | Mr. Cannon |
| | Mr. Rogan |
| | Ms. Bono |
| | Mr. Frank |

18. An amendment offered by Mr. Watt striking section 106 of the bill (Disclosures) and part of section 107 (Debtor's Bill of Rights). Passed 13 to 12.

| AYES | NAYS |
|---|---|
| Mr. Canady | Mr. Hyde |
| Mr. Pease | Mr. Sensenbrenner |
| Mr. Graham | Mr. McCollum |
| Mr. Frank | Mr. Gekas |
| Mr. Nadler | Mr. Smith (Tex.) |
| Mr. Scott | Mr. Bryant |
| Mr. Watt | Mr. Chabot |
| Ms. Lofgren | Mr. Barr |
| Ms. Jackson-Lee | Mr. Jenkins |
| Ms. Waters | Mr. Hutchinson |
| Mr. Meehan | Mr. Rogan |
| Ms. Baldwin | Ms. Bono |
| Mr. Weiner | |

19. An amendment offered by Mr. Nadler to add section 151 (Discouraging Reckless Lending Practices). Defeated 4 to 19.

| AYES | NAYS |
|---|---|
| Mr. Nadler | Mr. Hyde |
| Ms. Jackson-Lee | Mr. Sensenbrenner |
| Mr. Delahunt | Mr. McCollum |
| Ms. Baldwin | Mr. Gekas |
| | Mr. Smith (Tex.) |
| | Mr. Canady |
| | Mr. Bryant |
| | Mr. Chabot |
| | Mr. Barr |
| | Mr. Jenkins |
| | Mr. Hutchinson |
| | Mr. Pease |
| | Mr. Rogan |
| | Mr. Graham |
| | Ms. Bono |
| | Mr. Scarborough |
| | Mr. Frank |

Ms. Lofgren
Ms. Waters

20. An amendment offered by Mr. Gekas, as a substitute to an amendment offered by Mr. Nadler, providing for exceptions to the automatic stay with respect to domestic support obligation proceedings. Passed 17 to 10.

| AYES | NAYS |
|---|---|
| Mr. Hyde | Mr. Conyers |
| Mr. Sensenbrenner | Mr. Frank |
| Mr. McCollum | Mr. Nadler |
| Mr. Gekas | Mr. Watt |
| Mr. Gallegly | Ms. Lofgren |
| Mr. Canady | Ms. Jackson-Lee |
| Mr. Goodlatte | Ms. Waters |
| Mr. Bryant | Mr. Meehan |
| Mr. Barr | Ms. Baldwin |
| Mr. Jenkins | Mr. Weiner |
| Mr. Hutchinson | |
| Mr. Pease | |
| Mr. Cannon | |
| Mr. Rogan | |
| Mr. Graham | |
| Ms. Bono | |
| Mr. Scarborough | |

21. An amendment offered by Ms. Jackson-Lee to exclude federal or state disaster assistance from the income component of the needs-based formula in section 102 of the bill. Defeated 12 to 21.

| AYES | NAYS |
|---|---|
| Mr. Conyers | Mr. Hyde |
| Mr. Berman | Mr. Sensenbrenner |
| Mr. Nadler | Mr. McCollum |
| Mr. Scott | Mr. Gekas |
| Mr. Watt | Mr. Coble |
| Ms. Lofgren | Mr. Smith (Tex.) |
| Ms. Jackson-Lee | Mr. Gallegly |
| Ms. Waters | Mr. Canady |
| Mr. Meehan | Mr. Goodlatte |
| Mr. Wexler | Mr. Bryant |
| Ms. Baldwin | Mr. Chabot |
| Mr. Weiner | Mr. Barr |
| | Mr. Jenkins |
| | Mr. Hutchinson |
| | Mr. Pease |
| | Mr. Cannon |
| | Mr. Rogan |
| | Mr. Graham |
| | Ms. Bono |
| | Mr. Bachus |
| | Mr. Frank |

22. An amendment offered by Mr. Scott and Mr. Meehan to exclude veterans benefits from the income component of the needs-based formula in section 102 of the bill. Defeated 10 to 19.

| AYES | NAYS |
|---|---|
| Mr. Conyers | Mr. Hyde |
| Mr. Nadler | Mr. Sensenbrenner |
| Mr. Scott | Mr. Gekas |
| Mr. Watt | Mr. Coble |
| Ms. Lofgren | Mr. Smith (Tex.) |
| Ms. Jackson-Lee | Mr. Canady |
| Ms. Waters | Mr. Goodlatte |
| Mr. Meehan | Mr. Bryant |
| Mr. Delahunt | Mr. Chabot |
| Ms. Baldwin | Mr. Barr |
| | Mr. Jenkins |
| | Mr. Hutchinson |
| | Mr. Pease |
| | Mr. Cannon |
| | Mr. Rogan |
| | Mr. Graham |
| | Ms. Bono |
| | Mr. Bachus |
| | Mr. Frank |

23. An amendment offered by Mr. Nadler to exclude disability payments from the income component of the needs-based formula in section 102. Defeated 8 to 16.

| AYES | NAYS |
|---|---|
| Mr. Conyers | Mr. Hyde |
| Mr. Nadler | Mr. Sensenbrenner |
| Mr. Scott | Mr. McCollum |
| Mr. Watt | Mr. Gekas |
| Ms. Lofgren | Mr. Coble |
| Ms. Jackson-Lee | Mr. Gallegly |
| Ms. Baldwin | Mr. Canady |
| Mr. Weiner | Mr. Goodlatte |
| | Mr. Chabot |
| | Mr. Jenkins |
| | Mr. Hutchinson |
| | Mr. Pease |
| | Mr. Cannon |
| | Mr. Rogan |
| | Mr. Scarborough |
| | Mr. Frank |

24. An amendment offered by Mr. Nadler to exclude compensation to victims of war crimes or crimes against humanity from the income component of the needs-based formula of section 102 of the bill. Passed 21 to 7.

| AYES | NAYS |
|---|---|
| Mr. Hyde | Mr. Gekas |
| Mr. Sensenbrenner | Mr. Coble |
| Mr. McCollum | Mr. Canady |
| Mr. Gallegly | Mr. Jenkins |
| Mr. Goodlatte | Mr. Hutchinson |
| Mr. Chabot | Mr. Pease |
| Mr. Rogan | Mr. Cannon |

Mr. Scarborough
Mr. Conyers
Mr. Frank
Mr. Berman
Mr. Nadler
Mr. Scott
Mr. Watt
Ms. Lofgren
Ms. Jackson-Lee
Ms. Waters
Mr. Meehan
Mr. Rothman
Ms. Baldwin
Mr. Weiner

25. An amendment offered by Mr. Gekas striking the requirement of extraordinary circumstances in section 406 of the bill (duties in small business cases). Passed 17 to 12.

| AYES | NAYS |
|---|---|
| Mr. Hyde | Mr. Hutchinson |
| Mr. Sensenbrenner | Mr. Conyers |
| Mr. Gekas | Mr. Frank |
| Mr. Coble | Mr. Berman |
| Mr. Smith (TX) | Mr. Nadler |
| Mr. Gallegly | Mr. Scott |
| Mr. Canady | Mr. Watt |
| Mr. Goodlatte | Ms. Lofgren |
| Mr. Bryant | Ms. Jackson-Lee |
| Mr. Chabot | Ms. Waters |
| Mr. Jenkins | Mr. Wexler |
| Mr. Pease | Ms. Baldwin |
| Mr. Cannon | |
| Mr. Rogan | |
| Mr. Graham | |
| Mr. Scarborough | |
| Mr. Boucher | |

26. Amendment offered by Ms. Jackson-Lee to make certain debts relating to consumption or consumer purchase of a tobacco product nondischargeable in a chapter 11 case. Defeated 11 to 21.

| AYES | NAYS |
|---|---|
| Mr. Conyers | Mr. Sensenbrenner |
| Mr. Berman | Mr. Gekas |
| Mr. Nadler | Mr. Coble |
| Ms. Lofgren | Mr. Smith (TX) |
| Ms. Jackson-Lee | Mr. Gallegly |
| Ms. Waters | Mr. Canady |
| Mr. Meehan | Mr. Goodlatte |
| Mr. Wexler | Mr. Bryant |
| Mr. Rothman | Mr. Chabot |
| Ms. Baldwin | Mr. Jenkins |
| Mr. Weiner | Mr. Hutchinson |
| | Mr. Pease |
| | Mr. Cannon |

Mr. Rogan
Mr. Graham
Mr. Bachus
Mr. Scarborough
Mr. Frank
Mr. Boucher
Mr. Scott
Mr. Watt

27. An amendment offered by Ms. Jackson-Lee substituting a new section 148 of the bill (relating to the definition of household goods). Passed 21 to 13.

| AYES | NAYS |
|---|---|
| Mr. Hyde | Mr. McCollum |
| Mr. Sensenbrenner | Mr. Gekas |
| Mr. Canady | Mr. Coble |
| Mr. Hutchinson | Mr. Gallegly |
| Mr. Rogan | Mr. Goodlatte |
| Mr. Bachus | Mr. Bryant |
| Mr. Conyers | Mr. Chabot |
| Mr. Frank | Mr. Jenkins |
| Mr. Berman | Mr. Pease |
| Mr. Boucher | Mr. Cannon |
| Mr. Nadler | Mr. Graham |
| Mr. Scott | Ms. Bono |
| Mr. Watt | Mr. Scarborough |
| Ms. Lofgren | |
| Ms. Jackson-Lee | |
| Ms. Waters | |
| Mr. Delahunt | |
| Mr. Wexler | |
| Mr. Rothman | |
| Ms. Baldwin | |
| Mr. Weiner | |

28. An amendment offered by Mr. Nadler making various amendments to section 143 of the bill (Requirements to Obtain Confirmation and Discharge in Cases Involving Domestic Support Obligations). Defeated 13 to 20.

| AYES | NAYS |
|---|---|
| Mr. Conyers | Mr. Hyde |
| Mr. Frank | Mr. Sensenbrenner |
| Mr. Berman | Mr. McCollum |
| Mr. Nadler | Mr. Gekas |
| Mr. Scott | Mr. Coble |
| Mr. Watt | Mr. Gallegly |
| Ms. Lofgren | Mr. Canady |
| Ms. Jackson-Lee | Mr. Goodlatte |
| Ms. Waters | Mr. Bryant |
| Mr. Wexler | Mr. Chabot |
| Mr. Rothman | Mr. Jenkins |
| Ms. Baldwin | Mr. Hutchinson |
| Mr. Weiner | Mr. Pease |
| | Mr. Cannon |

Mr. Rogan
Mr. Graham
Ms. Bono
Mr. Bachus
Mr. Scarborough
Mr. Boucher

29. Motion to report favorably the amendment in the nature of a substitute to H.R. 833, as amended. Passed 22 to 13, with one present.

| AYES | NAYS | PRESENT |
|---|---|---|
| Mr. Hyde | Mr. Conyers | Mr. Frank |
| Mr. Sensenbrenner | Mr. Berman | |
| Mr. McCollum | Mr. Nadler | |
| Mr. Gekas | Mr. Scott | |
| Mr. Coble | Mr. Watt | |
| Mr. Smith (Tex.) | Ms. Lofgren | |
| Mr. Gallegly | Ms. Jackson-Lee | |
| Mr. Canady | Ms. Waters | |
| Mr. Goodlatte | Mr. Meehan | |
| Mr. Bryant | Mr. Delahunt | |
| Mr. Chabot | Mr. Wexler | |
| Mr. Jenkins | Ms. Baldwin | |
| Mr. Hutchinson | Mr. Weiner | |
| Mr. Pease | | |
| Mr. Cannon | | |
| Mr. Rogan | | |
| Mr. Graham | | |
| Ms. Bono | | |
| Mr. Bachus | | |
| Mr. Scarborough | | |
| Mr. Boucher | | |
| Mr. Rothman | | |

## 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.

## COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

## COMMITTEE COST ESTIMATE

The estimate of the Congressional Budget Office (CBO) was not available at the time of the filing of this report. In compliance with clause 3(d)(2) of rule XIII of the rules of the House of Representatives, the Committee believes that the enactment of H.R. 833 will have a budget effect for fiscal year 2000 and subsequent years similar to that projected by the CBO for H.R. 3150, the Bankruptcy Reform Act of 1998, a bill substantially similar to H.R. 833 that was passed by the House during the 105th Congress, with some differences.

H.R. 833 authorizes 18 new temporary bankruptcy judges (which H.R. 3150 did not) and extends five existing judgeships, with salaries and benefits considered as mandatory costs that the Committee estimates at approximately $11 million a year over five years. However, the Committee believes that this provision is necessary to facilitate the improvements proposed by the legislation and will enhance the efficiency of the system. In addition, an amendment offered by Mr. Berman was adopted during the Committee's consideration that would waive bankruptcy filing fees for indigents. The Committee believes that this would have an effect on revenues to the government but is unable to project the extent of that effect other than to conclude it may not be substantial.

As indicated, H.R. 833 is substantially similar to H.R. 3150. In a letter dated June 5, 1998, the CBO prepared an initial federal cost estimate and an assessment of H.R. 3150's impact on state, local, and tribal governments. In that cost estimate, the CBO stated that implementing H.R. 3150 would have increased "discretionary spending by $214 million over the 1999–2003 period, subject to appropriation of the necessary funds." It also concluded that the bill would have affected direct spending and governmental receipts, so pay-as-you-go procedures apply. It estimated that the "net annual impact on direct spending would be negligible" and that a certain provision in Title I of that bill would have increased receipts "by about $3 million a year." In a supplemental letter, dated June 10, 1998, the CBO prepared a summary review of H.R. 3150 for private sector mandates. It found that certain provisions in the bill pertaining to its needs-based reforms would have imposed "new private sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA) with costs that exceed the statutory threshold ($100 million in 1996, adjusted for inflation)."

The Committee notes that H.R. 833 could result in some increased discretionary expenditures with regard to such matters integral to the reforms proposed as: a debtor financial management training test program; increased auditing procedures; the maintenance of tax returns; the compilation and publication of bankruptcy data and statistics as well as other provisions. However, costs related to some of these expenditures, such as increased auditing, are subject to appropriations and are likely to be offset by enhanced collections resulting from greater protections accorded to federal taxing authorities in Title VIII of the H.R. 833, as amended by the amendment in the nature of a substitute.

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON BANKING AND FINANCIAL SERVICES

ONE HUNDRED SIXTH CONGRESS

2129 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6050



(202) 225-7502

April 27, 1999

The Honorable Henry Hyde
Chairman
Committee on the Judiciary
2138 Rayburn HOB
Washington, D.C. 20515

Dear Chairman Hyde:

I am writing in regard to H.R. 833, the Bankruptcy Reform Act of 1999, which the Committee on the Judiciary ordered to be reported on April 27, 1999. The Committee on Banking and Financial Services also was given referral of H.R. 833 when it was introduced and has jurisdictional interests in sections 112, 113, 114, and 1128 and title X of this bill.

It is my understanding that the Judiciary Committee, in its consideration of H.R. 833, made no substantive changes to those provisions under the jurisdiction of the Banking Committee. Accordingly, in view of your desire to move this legislation to the Floor in an expeditious fashion, I will not seek additional time for the Banking Committee's consideration of H.R. 833. However, please be advised that my agreement to not seek a longer referral period is based on the understanding that the Banking Committee's jurisdictional claims over H.R. 833 and similar bills are not prejudiced and that the Banking Committee's jurisdiction will be protected through the appointment of conferees should H.R. 833 or a similar bill go to conference.

I appreciate your cooperation in these matters and would further appreciate the inclusion of this letter in the Judiciary Committee's report on H.R. 833.

Sincerely,

James Leach

JAMES A. LEACH
Chairman

JAL:glp

cc: The Honorable J. Dennis Hastert, Speaker
The Honorable John Conyers
The Honorable John J. LaFalce
Charles W. Johnson, House Parliamentarian

April 28, 1999

The Honorable James A. Leach
Chairman
Committee on Banking and Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515-6050

Dear Chairman Leach:

This letter responds to your letter, dated April 27, 1999, concerning H.R. 833, the Bankruptcy Reform Act of 1999, which was jointly referred to the Committee on the Judiciary and the Committee on Banking and Financial Services.

I agree that the bill contains matter within the Banking Committee's jurisdiction and I appreciate your Committee's willingness to be discharged from further consideration of H.R. 833 so that we may proceed to the floor.

Pursuant to your request, a copy of your letter will be included in the report of the Committee on the Judiciary on H.R. 833.

Sincerely yours,

HENRY J. HYDE
Chairman

c: The Honorable J. Dennis Hastert, Speaker
The Honorable John Conyers
The Honorable John J. LaFalce
Charles W. Johnson, House Parliamentarian

## CONSTITUTIONAL AUTHORITY STATEMENT

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

## PREEMPTION OF STATE LAW

Pursuant to Section 423(e) of the Congressional Budget and Impoundment Act, the Committee states that the following provisions of H.R. 833 may preempt state law to the extent described herein.

Section 108 contains provisions delineating the responsibilities that a "debt relief agency" is held to with respect to "an assisted person" and provides numerous procedures for those responsibilities to be enforced. Section 108(c) states that neither this section, nor sections 526 and 527, as enacted under the bill, "annul, alter, affect or exempt any persons subject to these provisions from complying with any law of any State except to the extent that such law is inconsistent with these sections, and then only to the extent of the inconsistency." While the provision is intended to preempt any inconsistent state laws, the Committee makes no determination as to which state laws may at this time be inconsistent.

Section 147 of H.R. 833 provides for a monetary limitation of certain exempt property not to exceed $250,000 under state or local law. While this is intended to be a uniform upper limit on property that can be exempted under state or local law, the Committee does not place any minimum requirement on states. Furthermore, the section provides that a state may enact legislation to make this limitation inapplicable to its citizens.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

### Title I. Consumer Bankruptcy Provisions

#### SUBTITLE A. NEEDS BASED BANKRUPTCY

*Section 101. Conversion*

Section 101 of the bill amends section 706(c) of the Bankruptcy Code, which provides that a court may not convert a chapter 7 case to a case under chapter 12 or chapter 13 unless the debtor requests such conversion, to add that such conversion is also permissible if the debtor consents to it.

Section 102. Dismissal or conversion

Section 102 implements H.R. 833's needs-based bankruptcy reforms by making various amendments to the Bankruptcy Code's consumer bankruptcy provisions.

Subsection (a) amends section 707(b) of the Bankruptcy Code to allow—in addition to the courts and United States Trustees—panel trustees and parties in interest (in certain circumstances) to seek dismissal of a chapter 7 case or its conversion to a case under chapter 13 on consent of the debtor. Under current law, only the courts and United States Trustees may seek dismissal of a chapter 7 case under section 707(b).

In addition, it revises the ground for dismissal under section 707(b) from "substantial abuse" to "abuse" and replaces the present presumption in favor of the debtor with one that requires the court

to presume abuse if the debtor has: (1) a certain threshold of income available after deduction of specified expenses and liabilities, and (2) income is not less than adjusted regional median income figures. Codified as section 707(b)(2), this provision requires the court to presume abuse exists if the debtor has at least $100 a month available to pay general (nonpriority) unsecured debts after subtracting from the debtor's current monthly income (1) ten percent of projected plan payments to account for estimated administrative expenses and reasonable attorney's fees, (2) monthly expenses (as determined under this provision) of the debtor, the debtor's dependents and the spouse of the debtor (if not otherwise a dependent), and (3) the debtor's monthly payments on account of secured and unsecured priority debts.

The court, the United States trustee, trustee or other party in interest, however, are prohibited from filing a motion under section 707(b)(2) if the current monthly income of the debtor and the debtor's spouse combined (as of the date of the order for relief) equals or is less than the regional median household income (calculated on a semi-annual basis) for a household of equal size. For households of more than four individuals, the median income is that of a household of four individuals plus $583 for each additional member of that household.

To determine whether the presumption of abuse based on ability to repay under section 707(b)(2) of the Bankruptcy Code applies, section 102 provides that the debtor's monthly expenses shall consist of: (1) the debtor's actual expenses for the education of a dependent child under the age of 18 for tuition, books and required fees at a private elementary or secondary school, not to exceed $10,000 per year (as adjusted pursuant to section 104(b) of the Bankruptcy Code), providing the child was a student at such school before the filing of the bankruptcy case; and (2) the applicable monthly expense amounts for certain categories of expenditures specified by the Internal Revenue Service in connection with the collection and compromise of delinquent tax obligations.

The specified Internal Revenue Service expense categories are the National Standards, Local Standards, and Other Necessary Expenses [38] in effect for the area in which the debtor resides on the date when the bankruptcy case is commenced.[39] The National Standards category applies to expenditures for food, housekeeping supplies, apparel and services (e.g., laundry and dry cleaning), personal care products, and miscellaneous items (up to $100 for one person and $25 for each additional person in a debtor's family).[40] If the debtor is able to demonstrate that it is reasonable and nec-

[38] The Conditional Expenses category of expenditures, although permitted by the Internal Revenue Service, may not be claimed by a debtor.

[39] The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206 (1998), directs the Internal Revenue Service to promulgate guidelines instructing its employees to "determine, on the basis of the facts and circumstances of each taxpayer, whether the use of the schedules . . . is appropriate" and to direct that they not be used "to the extent such use would result in the taxpayer not having adequate means to provide for basic living expenses." Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, § 3462 (1998).

[40] Internal Revenue Manual Collecting Contact Handbook (IRM 105.1), at 3–3–4, 3–5, 3–13. (Sept. 25, 1996) [hereinafter "IRS Manual"]. The permissible amount is based on the taxpayer's total gross monthly income and number of persons in the taxpayer's family. These standards are derived from the Bureau of Labor Statistics Consumer Expenditure Survey, except for a miscellaneous item expense category. Id. at 3–5.

essary, he or she may claim expenses for food and clothing up to five percent above the amounts specified by the Internal Revenue Service for these expenditures.

The Local Standards category applies to two general types of expenses: (1) housing and utilities (which includes mortgage or rent, property taxes, interest, necessary maintenance and repair, insurance, homeowner's and condominium fees, electricity, telephone, heat, and garbage collection); and (2) transportation (which includes public transportation, fuel, state/local license, registration, and inspection fees, tolls and auto insurance).[41]

The "Other Necessary Expenses" category does not set forth specified amounts for the types of expenses to which it applies.[42] Accordingly, the debtor must claim his or her actual expenses for the items listed under this category. They include the following:

(1) child care;

(2) dependent care: elderly, invalid, or disabled;

(3) taxes;

(4) health care;

(5) court-ordered payments and involuntary deductions;

(6) minimum payments on secured or legally perfected debts, if necessary for (a) the health or welfare of the debtor or the debtor's dependents, or (b) for the production of income;

(7) life insurance, if limited to term policies (expensive premiums must be justified), and disability insurance for self-employed individuals;

(8) education, if it is: (a) for a physically or mentally handicapped dependent of the debtor and is not provided by public schools, or (b) a condition of employment;

(9) union dues, professional association dues;

(10) minimum payments on unsecured debts, if necessary for (a) the health or welfare of the debtor or the debtor's dependents, or (b) for the production of income;[43] and

(11) optional telephone service (e.g., call waiting, caller identification) or long distance calls (if they meet the necessary expense test of health or welfare and/or the production of income).[44]

If the debtor does not have an applicable expense under these categories, the debtor may not claim it as an expense for purposes of this provision. Thus, for example, if the debtor does not own a car, he or she may not claim the car ownership and expense allowance under the Internal Revenue Service's Local Standards. In addition, the expenditures claimed by a debtor under the specified In-

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[41] Id. at 3–13. These standards are determined based on a combination of national and regional factors. The housing standards are based on the taxpayer's county of residence and the size of taxpayer's family. The transportation standard consists of two components: (1) ownership and (2) maintenance/public transportation costs. Id. at 3–7, 3–13.

[42] Under the Internal Revenue Manual, the only requirement is that the expense must provide for (1) the health and welfare of the taxpayer and the taxpayer's family, or (2) the production of income. Id. at 3–7.

[43] The Internal Revenue Manual states that payments on credit or charge cards are not permitted if the taxpayer can repay the tax liability within 90 days if such payments are eliminated. Id. at 3–7–8.

[44] Id. at 3–7–8. Examples of expenses that, according to the Internal Revenue Service, may not qualify as Other Necessary Expenses are voluntary (i.e., not pursuant to a court order) child support payments and payments to an IRA by a self-employed taxpayer who has no other source of retirement income. Id. at 3–14–18.

ternal Revenue expense categories may not include any payments for debts.[45]

Under section 707(b)(2) of the Bankruptcy Code, as amended by section 102(a) of the bill, the debtor may deduct from his or her current monthly income the debtor's average monthly payments on account of secured debts. These payments are calculated as the total of all amounts scheduled as contractually due to the debtor's secured creditors in each month of the 60 months following the filing of the bankruptcy case and dividing that total by 60 months. In addition, the debtor may deduct his or her payments on priority claims, such as child support and alimony claims, which is calculated as the total amount of debts entitled to priority, divided by 60 months.

Section 707(b), as amended by section 102(a) of the bill, provides that, for purposes of this subsection, a family or household of the debtor consists of the debtor, the debtor's spouse, and the debtor's dependents. It does not, however, include a legally separated spouse, unless such spouse filed a joint case with the debtor.

As amended by section 102(a) of the bill, section 707(b) provides that the presumption of abuse may be rebutted only if the debtor demonstrates extraordinary circumstances justifying additional expenses in excess of the amounts set forth above or requiring adjustment of the debtor's current monthly income. To establish extraordinary circumstances, the debtor must provide a detailed statement under oath explaining why each additional expense or adjustment of income is necessary and reasonable. The presumption of abuse may only be rebutted if such additional expenses or adjustment of income cause the debtor's current monthly income less various amounts to fall below the $100 per month threshold.

If the presumption does not apply or has been rebutted, the court must still consider (1) whether the debtor filed the chapter 7 case in bad faith; or (2) whether the totality of the circumstances based on the debtor's financial situation (including whether the debtor filed the chapter 7 case for the purpose of having a personal services contract rejected, and the debtor's financial need for such rejection) demonstrates abuse.

Should a court grant a motion filed by a trustee or bankruptcy administrator under section 707(b) and find that the action of debtor's counsel violated Federal Rule of Bankruptcy Procedure 9011 (a rule that allows courts to impose sanctions for frivolous or other inappropriate filings), section 102(a) mandates that the court shall assess sanctions. Section 102(a) specifies that these damages may include the payment of the trustee's reasonable attorney's fees and costs in connection with the motion. The court may also assess an appropriate civil penalty against debtor's counsel to be paid to the trustee, bankruptcy administrator, or the United States trustee.

Section 102(a) also mandates that for a voluntary, joint, or involuntary case, that a signature of an attorney constitutes a certificate

[45] Section 102(a) also provides that not later than three years after the bill's date of enactment, the Director of the Executive Office for United States Trustees shall submit a report to the House and Senate Judiciary Committees containing its findings regarding the utilization of the Internal Revenue Service expense standards for determining current monthly expenses under section 707(b)(2), as amended. In addition, the report must assess the impact that the application of these standards has on debtors and the bankruptcy courts. The report may also include recommendations for amendment of the Bankruptcy Code.

the attorney has (1) performed a reasonable investigation into the circumstances that gave rise to the petition, and (2) determined that the petition, schedules, lists, and related documents are well grounded in fact, are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and do not constitute an abuse under section 707(b) of the Bankruptcy Code, as amended.

Under section 102(a) of the bill, a court may award a debtor all reasonable costs, including reasonable attorney's fees, incurred by the debtor in contesting a section 707(b) motion brought by a party in interest (other than a trustee or the United States trustee), under certain circumstances. These circumstances exist if the court denies the motion and finds that either the creditor's action in filing the motion was not substantially justified or the motion was filed solely for the purpose of coercing the debtor into waiving a right guaranteed to the debtor under the Bankruptcy Code.

Section 102(a) specifies that a court, in determining whether to dismiss a case under section 707, may not take into consideration whether a debtor has made, or continues to make charitable contributions, as defined in section 548(d)(3) of the Bankruptcy Code, to any qualified religious or charitable entity or organization, as defined in section 548(d)(4) of the Bankruptcy Code.

Section 102(a) also requires the Director of the Office for United States Trustees to prepare a report containing findings with regard to the use of the Internal Revenue Service expense standards for determining a debtor's current monthly income.

Section 102(b) creates two new definitions under section 101 of the Bankruptcy Code. First, it defines "current monthly income" as the average monthly income from all sources derived that the debtor or, in a joint case, the debtor and the debtor's spouse receive, without regard to whether it is taxable income, in the 180 days preceding the date of determination. It includes any amount paid on a regular basis by anyone 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 compensation paid to victims of war crimes or crimes against humanity. Second it defines "estimated administrative expenses and reasonable attorneys" fees as ten percent of projected payments under a chapter 13 plan.

Section 102(c) requires a trustee, after reviewing all materials filed by a debtor and considering all information presented at the first meeting of creditors, to file a statement with the court as to whether or not the filing of the chapter 7 case should be presumed to be an abuse under section 707(b)(2). The court must provide a copy of the statement to all creditors within five days of its filing.

If the trustee determines that the chapter 7 case should be presumed to be an abuse under section 707(b)(2) and if the debtor's current monthly income and that of the debtor's spouse combined is not less than the highest national median family income for a family of equal or lesser size (or in the case of a household of one

person, the national median household income for one earner),[46] section 102(c) of the bill requires the trustee to file within 30 days of filing such statement either a motion to dismiss the case under section 707(b) or a statement explaining why such motion is not appropriate.

To implement the income and expense screening mechanism of this provision, section 102 of the bill amends section 521(a) of the Bankruptcy Code to require an individual debtor to file a statement of current monthly income together with the calculations to permit determination of whether a presumption of abuse arises under section 707(b)(2)(A)(i), as amended.

Other provisions of section 102 amend section 2075 of title 28 of the United State Code to direct that the Federal Rules of Bankruptcy Procedure and the Official Forms be revised to implement these additional mandatory disclosure requirements. Specifically, the rules must prescribe a form for the statement of current monthly income that a debtor is required to file under section 521 of the Bankruptcy Code, as amended by section 102 of this bill. In addition, it provides that general rules may be promulgated describing the content of such statement.

Section 102(d) makes a clerical amendment to the table of sections for chapter 7 of title 11.

*Section 103. Notice of alternatives*

Under current law, the bankruptcy clerk is required to provide written notice of the forms of bankruptcy relief to consumer debtors before they file for bankruptcy relief.[47] Nevertheless, some debtors may not be aware that there are alternatives to bankruptcy and the adverse consequences that bankruptcy relief may present.

To ensure that debtors know about alternatives to bankruptcy before they file for bankruptcy relief, section 103 mandates that notice of these alternatives to bankruptcy be supplied to these individuals before they file for bankruptcy relief.[48] The notice must provide a brief description of the various forms of bankruptcy relief and the general purpose, benefits, and costs of proceeding under each. In addition, the notice must briefly describe the services available from a credit counseling service approved by the United States trustee for that district. The debtor must also receive a warning specifying that a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury shall be subject to fine, imprisonment, or both. In addition, the debtor must be advised that all information supplied by a debtor in connection with the case is subject to examination by the Attorney General.

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[46] For families with more than four members, section 102 provides that the national family income shall be the national median family income last reported by the Bureau of the Census for a family of four individuals plus $583 for each additional family member.

[47] 11 U.S.C. § 342; Official Form 1—Voluntary Petition. This notice requirement is effectuated by requiring the consumer debtor and his or her attorney to sign a statement that appears on the petition used to commence the bankruptcy case: "I am aware that I may proceed under chapter 7, 11, or 12, or 13 of title 11, United States Code, understand the relief available under such chapter, and choose to proceed under chapter 7 of such title."

[48] This requirement only applies to individuals with primarily consumer debts. Section 101(8) of the Bankruptcy Code defines "consumer debt" as debt incurred by an individual primarily for a personal, family, or household purpose.

*Section 104. Debtor financial management training test program*

This provision requires the Director of the Executive Office for United States Trustees, after consultation with a wide range of individuals who are experts in the field of debtor education (such as Chapter 13 trustees who operate financial management education programs for debtors), to develop a financial management training curriculum to educate individual debtors on how to better manage their finances. It mandates that the Director select six judicial districts in which to test the effectiveness of the financial management training curriculum for an 18-month period beginning not later than 270 days after the bill's enactment date. In addition, the Director must evaluate the effectiveness of: (1) the financial management training curriculum; and (2) a sample of existing consumer education programs described in the Report of the National Bankruptcy Review Commission,[49] which are representative of consumer education programs sponsored by the credit industry, Chapter 13 trustees, and consumer counseling groups. Not later than 3 months after concluding such evaluation, the Director must submit a report 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 and cost of such curriculum and programs. The instructional course materials that the Director of the Executive Office for United States Trustees must make available in the six test districts must be the materials described in section 111 of the Bankruptcy Code, as enacted by the bill.

SUBTITLE B. CONSUMER BANKRUPTCY PROTECTIONS

*Section 105. Definitions*

Section 105 of the bill creates several mechanisms designed to regulate the activities of a "debt relief agency." As defined under this section, a debt relief agency includes any person who provides "bankruptcy assistance" to "assisted persons."[50] It applies to attorneys as well as to non-attorneys, such as petition preparers. It does not, however, apply to nonprofit organizations, creditors (to the extent a creditor assists the debtor to restructure a debt owed by the debtor to such creditor), or state and federal credit unions. The term "bankruptcy assistance" includes the provision of any goods or services with the "express or implied purpose of providing information, advice, counsel, document preparation, or filing," including the provision of legal representation.

*Section 105A. Requirements for debt relief agencies*

Section 105A of H.R. 833 mandates that a debt relief agency perform all services as stated to the assisted person in connection with the bankruptcy case. It prohibits a debt relief agency from advising any assisted person to make an untrue or misleading statement in connection with a bankruptcy case. In addition, such agency is prohibited from advising an assisted person or prospective assisted

[49] Report of the National Bankruptcy Review Commission, at 293–94; Recommendations for Reform of Consumer Bankruptcy Law by Four Dissenting Commissioners, at 49–51 (1997).

[50] H.R. 833 provides that the term, "assisted person," includes any person with primarily consumer debts and whose nonexempt assets were less than $150,000.

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 filing of a bankruptcy case. An exception applies for debts owed directly to the attorney or bankruptcy petition preparer for required legal fees.

*Section 106. Enforcement*

A series of enforcement and penalty mechanisms with regard to debt relief agencies are instituted under section 106 of the bill. It provides that any waiver by an assisted person of the protections and rights as established by this legislation is invalid. Section 106 mandates that any debt-relief-agency contract that does not comply with the requirements specified in the bill are not enforceable against the debtor. A debt relief agency may be required to return to the assisted person all fees such person paid to agency for any of the following reasons:

(1) the debt relief agency failed to comply with certain specified requirements;

(2) the debt relief agency provided assistance to a debtor whose case was dismissed or converted because of the agency's failure to file any requisite documents under section 521 of the Bankruptcy Code; or

(3) the debt relief agency negligently or intentionally disregarded the requirements of the Bankruptcy Code or Federal Rules of Bankruptcy Procedure.

Section 106 authorizes states to seek various remedies [51] for violation of the requirements imposed on debt relief agencies. It authorizes a federal court, under certain circumstances, to issue injunctions and to impose appropriate civil penalties. The United States District Court, under this provision, has concurrent jurisdiction with the state courts to hear such actions.

*Section 107. Sense of the Congress*

This provision states that it is the sense of the Congress that States should develop curricula relating to the subject of personal finance for use in elementary and secondary schools.

*Section 108. Discouraging abusive reaffirmation practices*

This provision adds a further requirement with respect to reaffirmation agreements. If the consideration for the agreement is based on a wholly unsecured consumer debt, the agreement must contain a clear and conspicuous statement advising the debtor that the debtor is entitled to a hearing before the court at which the debtor shall appear in person. The purpose of the hearing is to allow the court to determine if the agreement presents an undue hardship to the debtor, whether the agreement is in the debtor's best interest, and whether the debtor entered into the agreement as the result of a threat by the creditor to take any action that it cannot legally take or that it does not intend to take. If, however, the debtor is represented by counsel, the debtor may waive the right to such

[51] These include injunctions, actual damages, and the imposition of costs, including reasonable attorney's fees.

hearing by signing a statement waiving the hearing, stating that the debtor is represented by counsel, and identifying such counsel.

The provisions in this section do not apply to wholly unsecured debts owed to credit unions.

*Section 109. Promotion of alternative dispute resolution*

Section 109 of the bill permits the court, on motion of the debtor and after a hearing, to reduce an unsecured claim for a consumer debt by up to 20 percent, if the debtor can prove by clear and convincing evidence that the claim was filed by a creditor who unreasonably refused to negotiate an alternative repayment schedule proposed by an approved credit counseling agency acting on behalf of the debtor. The provision applies only if: (1) the offer was made within 60 days of the filing of the petition; (2) the offer provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and (3) no portion of the debt is nondischargeable, entitled to priority under section 507 of the Bankruptcy Code, or would be paid more under a chapter 13 plan than the amount offered by the debtor. The debtor has the burden of proving that the proposed alternative repayment schedule was made in the specified 60-day period and that the creditor unreasonably refused to consider the debtor's proposal.

Section 109 also prevents a trustee from setting aside a preferential transfer received by a creditor as part of an alternative repayment plan between the debtor and any creditor of the debtor created by an approved credit counseling agency.

*Section 110. Enhanced disclosure for credit extensions secured by a dwelling*

Section 110 of the bill requires the Board of Governors of the Federal Reserve to study the adequacy of information provided to a borrower with regard to the tax deductibility of interest paid in connection with an open-end credit transaction secured by the borrower's principal dwelling.

*Section 111. Dual use debit card*

Section 111 requires the Board of Governors of the Federal Reserve to study current protections limiting the liability of consumers for the unauthorized use of a debit card or similar access device.

*Section 112. Enhanced disclosures under an open-end credit plan*

Section 112 of the bill amends section 127 of the Truth in Lending Act to require certain open-end consumer credit plans with minimum monthly or periodic payments to include the following language on the billing statement:

> The minimum payment amount shown on your billing statement is the smallest payment which you can make in order to keep the account in good standing. This payment option is offered as a convenience and you may make larger payments at any time. Making only the minimum payment each month will increase the amount of interest you

pay and the length of time it takes to repay your outstanding balance.

If the creditor allows a consumer to forgo making a minimum payment during a specified billing cycle, the billing statement must state that finance charges will continue to accrue. In addition, the billing statement must contain an example that utilizes an annual percentage rate and method for determining minimum periodic payments recently in effect for that creditor based on a $500 outstanding balance. The example must disclose the estimated minimum periodic payment and approximate period of time it would take to repay the $500 outstanding balance if the consumer paid only the minimum periodic payment on each monthly or periodic statement and obtained no additional extensions of credit. These additional disclosures must be made with respect to one billing cycle per calendar year. In addition, it requires the creditor to give the consumer a worksheet prescribed by the Board of Governors of the Federal Reserve to assist the consumer in determining his or her household income and debt obligations.

In addition, section 112 requires the Federal Reserve Board to promulgate regulations regarding the above and to issue a model disclosure form to accompany the previously described example. The statement must advise the consumer that the example is intended to illustrate the approximate length of time it could take to repay a $500 balance based on the assumptions set forth therein without regard to any other factors that could impact an approximate repayment period. Compliance with such regulations would be enforceable exclusively by the Federal agencies. These regulations may not take effect for three years following the bill's date of enactment.

Section 114 also requires the Board to conduct a study to determine whether consumers have adequate information about borrowing activities that may lead to financial problems. In studying this issue, the Board must consider the extent to which:

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

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

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

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

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

The results of the study must be filed with Congress in two years.

Finally, this provision requires the Federal Reserve Board, pursuant to its authority under the Truth in Lending Act, to promulgate regulations requiring additional disclosures to consumers regarding minimum payment features, if the Board determines that such disclosures are necessary based on its findings. Any such regulations must become effective before January 1, 2002.

*Section 113. Protection of savings earmarked for the postsecondary education of children*

This provision permits a debtor to exempt funds placed in an education individual retirement account (as described in section 530(b)(1) of the Internal Revenue Code) not less than 365 days before the filing of the bankruptcy case if such funds have not been pledged or promised to any person in connection with any extension of credit. Other restrictions include the following:

(1) the funds are not excess contributions (as described in section 4973(e) of the Internal Revenue Code);

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

(3) the amounts in such postsecondary accounts may not exceed the lesser of $50,000 (in the aggregate) in accounts attributable to each such dependent child or $100,000 (in the aggregate) attributable to all such dependent children.

*Section 114. Effect of discharge*

This provision makes the willful failure of a creditor to credit payments received under a confirmed chapter 11, 12, or 13 plan in the manner required by the plan a violation of the discharge injunction. It also mandates that an individual injured by the willful failure of a creditor to comply with the requirements for a reaffirmation agreement, or by any willful violation of the discharge injunction, is entitled to recover costs and attorneys' fees and the greater of (1) the amount of actual damages or (2) $1,000. This provision prevents the imposition of punitive damages and prohibits the filing of a class action.

*Section 115. Limiting trustee liability*

Section 115 of the bill provides that a trustee is not liable personally or on the trustee's bond for acts taken within the scope of the trustee's duties or authority, except to the extent the trustee acted with gross negligence. It defines gross negligence as reckless indifference or deliberate disregard of a trustee's fiduciary duty. It also prohibits a suit against a trustee in his or her personal or representative capacity, or against the trustee's bond, for certain actions, including the dissemination of statistics and other information.

*Section 116. Reinforce the fresh start*

This provision makes a technical amendment with respect to the nondischargeability of certain court fees under section 523(a)(17) of the Bankruptcy Code.

*Section 117. Discouraging bad faith repeat filings*

Under current law, debtors may file successive bankruptcy cases following the dismissal of their prior cases with limited exceptions.[52] The filing of a bankruptcy case causes the immediate impo-

[52] Section 109(g) of title 11 only imposes a limited ban on repeat filings. Under this provision, a debtor is ineligible for bankruptcy relief if, within the preceding 180 days, the prior case was dismissed based on the debtor's willful failure to abide by orders of the court or "to appear before the court in proper prosecution of the case." 11 U.S.C. §109(g)(1). the preceding 180 days,

sition of an automatic stay, which prevents creditors from pursuing actions against debtors and their property.[53] In light of this, some debtors file successive bankruptcy cases to prevent secured creditors from foreclosing on their collateral.

Section 117 of the bill remedies this problem by terminating the automatic stay with respect to cases where the debtor has previously filed for bankruptcy relief, under certain circumstances. A case is deemed to be presumptively filed in bad faith as to all creditors if:

> (1) the debtor was the subject of a bankruptcy case under chapter 7, 11, or 13 pending within the one-year period preceding the filing of the instant bankruptcy case;
>
> (2) a prior chapter 7, 11, or 13 case of the debtor was dismissed within such one-year period for the debtor's failure to file any requisite bankruptcy document or to amend any bankruptcy document without substantial excuse;[54]
>
> (3) the prior bankruptcy case was dismissed for the debtor's failure to provide "adequate protection" (as defined in section 361 of the Bankruptcy Code); or
>
> (4) there has not been a 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 current case will successfully conclude.

In addition, a case is presumptively deemed filed in bad faith as to any creditor who sought relief from the automatic stay in the prior case if such action was still pending at the time of dismissal or had been resolved by the granting of relief from the automatic stay.

On request of a party in interest, the court must promptly enter an order confirming that the automatic stay does not apply in a bankruptcy case. Section 117 also permits the bankruptcy court to consider in reimposing the automatic stay in a later-filed bankruptcy case, whether the later case was filed in good faith as to the creditors who are stayed by the filing, subject to such conditions or limitations as the court directs. The presumption of bad faith under this provision may be rebutted by clear and convincing evidence.

If two or more bankruptcy cases were pending in the one-year preceding the filing of the pending case, the automatic stay will not apply in the pending case. A party in interest may make a request to the court within 30 days of the filing of the later case to reimpose the automatic stay if the party demonstrates that the later case was filed in good faith as to the creditors who are stayed by the filing. The provision provides that a case is presumptively not filed in good faith under certain specified circumstances.

*Section 118. Curbing abusive filings*

Section 118 of the bill terminates the Bankruptcy Code's automatic stay provisions with respect to creditors secured by real property if the bankruptcy case was filed as part of a scheme to delay,

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he or she in the prior case sought and obtained its dismissal following the filing of a request for relief from the automatic stay.

[53] 11 U.S.C. §362(a). Exceptions to the automatic stay are set forth in 11 U.S.C. §362(b).

[54] Mere inadvertence or negligence does not constitute substantial excuse, unless the dismissal was caused by the debtor's attorney.

hinder, and defraud creditors involving either a transfer of all or part ownership of the real property without the consent of the secured creditor or court approval, or if the bankruptcy case is one of several other bankruptcy filings affecting the real property.

If recorded in compliance with applicable federal, State, or local law governing notices of interests or liens in real property, an order entered pursuant to this provision is binding in any other bankruptcy case filed within two years from the date of such recordation. It permits, however, a debtor in a subsequent case to move for relief from this order based upon changed circumstances or for good cause shown, after notice and a hearing. In addition, it requires any federal, State, or local agency that accepts notices of interests or liens in property to accept any certified copy of an order described in this section. Further, it references the good faith standard of section 362(c) of the Bankruptcy Code, as amended by the bill. It also responds to another problem presented by successive filings. Occasionally, debtors transfer their property interests to others who then file for bankruptcy relief to invoke the protection of the automatic stay under section 362 of the Bankruptcy Code. Under section 121 of the bill, this type of abuse is addressed by allowing bankruptcy courts to grant prospective in rem relief from the automatic stay with respect to real or personal property in future bankruptcy cases filed by the debtor. It also extends this protection to bankruptcy cases filed by other entities to whom the subject property was transferred.[55] In addition, it requires in rem orders pertaining to real property to be recorded. Such recording constitutes notice to all parties having or claiming an interest in such property.

This provision also excepts from the automatic stay an act to enforce any lien against or security interest in real property if the debtor is ineligible to be a debtor in a bankruptcy case or the debtor filed the bankruptcy case in violation of a bankruptcy court order issued in a prior bankruptcy case filed by the debtor.

*Section 119. Debtor retention of personal property security*

Section 119 of the bill responds to two areas of uncertainty in the law with regard to how personal property interests are treated under the current law. One concerns the unsettled law as to whether a chapter 7 debtor may retain personal property without having either to reaffirm the underlying obligation[56] or redeem it.[57]

Section 129(1) responds to this problem by not allowing an individual chapter 7 debtor to 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 subject property is no longer property of the es-

[55] Both the majority and minority viewpoints expressed by the National Bankruptcy Review Commission's members supported in rem relief from the automatic stay. See Report of the National Bankruptcy Review Commission at 281–287; Recommendations for Reform of Consumer Bankruptcy Law by Four Dissenting Commissioners, at 57–59 (1997).

[56] 11 U.S.C. § 524(c).

[57] 11 U.S.C. § 722. See, e.g., *Capital Communications Fed. Credit Union* v. *Boodrow (In re Boodrow)*, 126 F.3d 43, 53 (2d Cir. 1997) (holding that 11 U.S.C. § 521(2) "does not prevent a bankruptcy court from allowing a debtor who is current on loan obligations to retain the collateral and keep making payments under the original loan agreement.").

tate, unless the court determines on motion of the trustee filed before the expiration of the 45-day that the property has consequential value or would benefit the bankruptcy estate. Thus, if no timely determination is made, a creditor, under this provision, would be permitted to take any action with respect to such property as permitted by applicable nonbankruptcy law.

This section also clarifies that the automatic stay terminates not only with respect to personal property that is property of the estate, but to property of the debtor as well. Further, it provides that the court must order appropriate adequate protection of the creditor's interest and it directs the debtor to deliver the collateral to the trustee if the debtor is in possession of such property.

Subsection 119(2) of the bill also responds to a current split in authority regarding the debtor's redemption rights under section 722 of the Bankruptcy Code. While most courts have interpreted this provision to require chapter 7 debtors to pay the redemption value in a lump sum payment, some permit debtors to stretch this payment out over time. This section specifies that the required payment must be made in full at the time of redemption.

*Section 120. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral*

This section of the bill provides that the automatic stay in an individual chapter 7, 11, or 13 case terminates with respect to property securing, in whole or in part, a claim or with respect to leased property if the debtor fails to file a statement of intention with respect to such property. The debtor must indicate in this statement whether he or she will surrender the property or retain it and, if retaining it, whether the debtor will (1) redeem the property, (2) reaffirm the debt, or (3) assume the obligation if it is an unexpired lease, if the trustee does not. This provision also terminates the automatic stay if the debtor fails to undertake the actions specified in his or her statement of intention, unless the statement of intention specifies reaffirmation and the creditor refuses to enter into the reaffirmation agreement on the original contract terms. An exception pertains where the court determines, on the motion of the trustee made within the specified 45-day period and after notice and a hearing, that such property is of consequential value or benefit to the estate.

This section also makes the requirement with respect to filing a statement of intention applicable to all debts, not just consumer debts, and it requires the debtor to carry out his or her intention within 30 days from the first date set for the meeting of creditors. As a result, the debtor's duty to surrender property, or to reaffirm or redeem, applies to all secured debts.

In addition, this section provides that a provision in a lease or agreement that places the debtor in default on the lease or agreement by reason of the debtor's filing for bankruptcy relief applies in the bankruptcy case, if otherwise valid under applicable nonbankruptcy law.

Further, section 120 clarifies that, if the debtor does not timely file his or her statement of intention or carry out his or her stated intention with respect to personal property, the property is no longer property of the estate. It also requires the court to order ap-

propriate adequate protection of the creditor's interest and to direct the debtor to deliver the collateral to the trustee if the debtor is in possession of the property.

*Section 121. Giving secured creditors fair treatment in chapter 13*

This provision requires a chapter 13 plan to provide that a secured creditor must retain its lien until the underlying debt is paid or the debtor receives a discharge. If the case is dismissed or converted prior to completion of the plan, section 121 of the bill provides that the secured creditor shall retain its lien to the extent recognized by applicable nonbankruptcy law.

*Section 122. Restraining abusive purchases on secured credit*

This provision addresses the following problem. Under present law, a debtor, for instance, can finance the purchase of a new automobile with a showroom value of $20,000 by giving the lender a security interest in the vehicle. If the debtor then files for bankruptcy relief one day later, then the value of the secured creditor's lien must be determined under section 506 of the Bankruptcy Code. Even though the vehicle is one day old, the amount of the secured creditor's claim is, under current law, limited to the value of the automobile taking into account the immediate effect of depreciation upon purchase. Accordingly, that secured creditor has an allowed secured claim in a reduced amount based on the value of a used automobile and an allowed unsecured claim for the difference between the present value of the automobile and the amount owed to the secured creditor.

Section 122 of the bill prevents the bifurcation of a secured claim in an individual chapter 7, 11, 12, or 13 case to the extent the claim is attributable in whole or in part to the purchase price of personal property acquired by the debtor within the five-year period preceding the bankruptcy filing. "Personal property" generally includes all property other than real estate. If the claim is secured only by personal property, the amount of the claim is the sum of the unpaid principal balance of the purchase price together with accrued and unpaid interest along with charges at the contract rate. If the claim is secured by other property, the amount of the claim cannot be not less than the unpaid principal balance of the purchase price of the personal property acquired and unpaid interest and charges at the contract rate. This amount, however, must be reduced by any payments actually received.

The valuations under section 122 apply to any subsequent case filed by or against the debtor in the two-year period beginning on date the original bankruptcy case is filed.

*Section 123. Fair valuation of collateral*

Section 123 of the bill provides that the value of personal property of individual Chapter 7 and 13 debtors is the "replacement value of such property" as of the filing date of the bankruptcy case without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value is the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time its value is determined.

*Section 124. Domiciliary requirements for exemptions*

This provision extends the time that a debtor must be domiciled in a state before he or she may claim that state's exemptions to 730 days. In addition, it clarifies that if the debtor's domicile was not located in a single state for the 730-day period, the state where the debtor was domiciled in the 180-day period preceding the 730-day period controls, or such longer portion of the 180-day period controls.

*Section 125. Restrictions on certain exempt property obtained through fraud*

This provision creates an exception to the exempt property provisions of the Bankruptcy Code. It provides that the value of an interest in (1) real or personal property that the debtor or a dependent of the debtor uses as a residence, (2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or (3) a burial plot must be reduced to the extent such value derived from the conversion of nonexempt property in the 730-day period preceding the filing of the bankruptcy case, if the conversion was done with the intent to hinder, delay, or defraud a creditor.

*Section 126. Rolling stock equipment*

Section 126 of the bill amends section 1168 of the Bankruptcy Code to better define the rights of parties in rolling stock equipment. It also amends section 1110(a)(1) of the Bankruptcy Code, which defines the rights of secured creditors and lessors having an interest in aircraft and aircraft equipment. It clarifies that a default under a security agreement, lease, or conditional sale contract with respect to both types of property must be cured within 60 days from the filing of the bankruptcy case. Section 126 also provides that if the default occurs after the expiration of this time period, it must be cured in accordance with the terms of the underlying security agreement, lease, or conditional sales contract.

*Section 127. Discharge under chapter 13*

Section 129 of the bill prevents the following debts from being discharged in a chapter 13 case:

(1) debts for money, property, services, or extensions of credit obtained through fraud or a false statement in writing;

(2) consumer debts owed to a single creditor that aggregate to more than $250 for "luxury goods or services," incurred by an individual debtor within 90 days before the filing of the bankruptcy case, and cash advances aggregating more than $250 that are extensions of consumer credit obtained by a debtor under an open-end credit plan within 90 days before the order for relief;

(3) debts resulting from fraud or defalcation by the debtor acting as a fiduciary;

(4) certain 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; 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.

*Section 128. Bankruptcy judgeships*

The ever-spiraling number of 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 128 of the bill generally incorporates H.R. 1596 as it passed the House with provisions extending five existing temporary judgeships and requiring that bankruptcy judges submit annual reports to their chief bankruptcy judges with respect to certain travel expenses.

*Section 129. Additional amendments to title 11, United States Code*

Section 129 adds a tenth-level priority for claims based on death or personal injuries resulting from the debtor's operation of a motor vehicle or vessel while intoxicated.

*Section 130. Amendment to section 1325*

Section 130 of the bill excepts from the definition of disposable income under section 102 of the bill child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law and which are reasonably necessary to be expended for such purposes. It also clarifies that disposable income is determined under the needs-based formula set out in section 102 of the bill.

*Section 131. Application of codebtor stay only when the stay protects the debtor*

Section 131 of the bill terminates the chapter 13 codebtor stay 30 days from the filing of the bankruptcy case where the debtor did not receive the consideration for the claim held by a creditor. An exception applies where the debtor is primarily obligated to pay the creditor with respect to a claim under a legally binding separation or property settlement agreement, or a divorce or dissolution decree.

In addition, this section terminates the Chapter 13 codebtor stay as of the date on which the Chapter 13 plan is confirmed if the plan provides that the debtor's interest in leased personal property (where the debtor is the lessee) will be surrendered or abandoned, or if the plan does not provide for payments to be made on account of such lease obligation.

*Section 132. Adequate protection for investors*

Section 132 creates an exception to the automatic stay for certain enforcement actions by a "securities self regulatory organization," a defined term which is defined in this provision.

*Section 133. Limitation on luxury goods*

This provision establishes a presumption that consumer debts owed to a single creditor and aggregating more than $250 for "luxury goods or services" incurred by an individual debtor within 90 days before the order for relief under this title, or cash advances aggregating more than $250 that are extensions of consumer credit under an open-end credit plan obtained by an individual debtor within 90 days prepetition, are nondischargeable. The term, "luxury goods or services," does not apply to 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 under this provision as it has under the Consumer Credit Protection Act.

*Section 134. Giving debtors the ability to keep leased personal property by assumption*

Section 134 of the bill provides that if a personal property lease is rejected or not timely assumed by the trustee, the leased property is no longer property of the estate and the automatic stay terminates. With regard to individual chapter 7 cases, it allows the debtor to notify the creditor in writing of his or her desire 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 and may condition such assumption on cure of any outstanding default on terms set by the contract. If, within 30 days of such notice, 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 bankruptcy estate.

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

*Section 135. Adequate protection of lessors and purchase money secured creditors*

This amendment requires a chapter 13 debtor to commence making postpetition payments in the "contract amount" within 30 days of the filing of the bankruptcy case to personal property lessors and creditors secured by personal property to the extent that the claim is attributable to the purchase of such property. It requires these payments to be made until the creditor receives "actual payments under the plan" or the debtor surrenders the property. While the court may, after notice and a hearing, alter the amount and timing of the payments, they must be at least monthly and not less than the amount of any weekly, biweekly, monthly, or other periodic payment schedule pursuant to the contract between the debtor and creditor.

This requirement is in addition to the debtor's obligation to make payments under a plan, which must be commenced within 30 days after the plan is filed, although the amount of the plan payments must be reduced by the amount the debtor pays as adequate protection. In addition, section 135 permits a secured creditor or lessor

to retain possession of property seized prepetition until the creditor or lessor receives the first required payment under this provision.

With respect to chapter 13 cases, section 135 requires the debtor to provide a secured creditor or lessor, within 60 days from the filing of the case, reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property. This requirement pertains for as long as the debtor retains possession of such property.

*Section 136. Automatic stay*

Section 136 of the bill amends the Bankruptcy Code's automatic stay provisions to except the following:

(1) transfers that are not avoidable under section 544 (trustee as lien creditor) or section 549 (postpetition transfers) of the Bankruptcy Code;

(2) the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property where the debtor has not paid rent to the lessor pursuant to the terms of the lease agreement or applicable State law after the filing of the bankruptcy case;

(3) the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property where the rental agreement has terminated pursuant to the lease agreement or applicable State law;

(4) any eviction, unlawful detainer action, or similar proceeding, if the debtor has filed for bankruptcy relief within the preceding year and failed to pay postpetition rent during the prior case; and

(5) eviction actions based on endangerment to property or person, or the use of illegal drugs.

*Section 137. Extend period between bankruptcy discharges*

Section 137 of the bill extends the period that a chapter 7 debtor may receive a subsequent chapter 7 discharge from six to eight years. In addition, it prohibits the issuance of a discharge in a subsequent chapter 13 case if the debtor received a discharge within 5 years preceding the filing of the subsequent chapter 13 case.

*Section 138. Definition of domestic support obligation*

Section 138 adds a definition to the Bankruptcy Code for "domestic support obligation." It defines this term as a debt that accrues pre- or postpetition and is owed or recoverable by a spouse, former spouse, or child of the debtor, or that child's legal guardian. It also includes a claim by 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) of such spouse, former spouse, or child, without regard to whether such debt is expressly so designated. It must be established or subject to establishment either pre- or postpetition pursuant to a (i) separation agreement, divorce decree, or property settlement agreement; (ii) an order of a court of record; or (iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit. It does not apply to a debt assigned

to a nongovernmental entity, unless it was assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt.

*Section 139. Priorities for claims for domestic support obligations*

Section 139 makes domestic support obligations payable before all other expenses, including expenses of administration (e.g., fees of the trustee and counsel for the trustee). Within this priority, allowed claims for domestic support obligations must be paid on the condition that funds received under this provision by a governmental unit be applied first to claims owed directly to a spouse, former spouse, or child of the debtor, or the parent of such child, without regard to whether the claim is filed by the spouse, former spouse, child, or parent, or is filed by a governmental unit on behalf of that person. Remaining funds may be used to satisfy claims assigned by a spouse, former spouse, child of the debtor, or the parent of that child to a governmental unit or which are owed directly to a governmental unit under applicable nonbankruptcy law.

*Section 140. Requirements to obtain confirmation and discharge in cases involving domestic support obligations*

Section 140 of the bill requires, as a condition of confirmation in a chapter 11 or 13 case, the debtor—if required by a judicial or administrative order or statute to pay a domestic support obligation—pay all postpetition amounts payable under such order or statute. It also requires a chapter 13 debtor to be current with these obligations as a condition of obtaining a discharge.

*Section 141. Exceptions to automatic stay in domestic support obligation proceedings*

Section 141 of the bill creates the following additional exceptions to the automatic stay: the withholding of income pursuant to an order as specified in section 466(b) of the Social Security Act; the withholding, suspension, or restriction of a driver's license, or a professional, occupational or recreational license pursuant to State law, as specified in section 466(a)(16) of the Social Security Act; the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act; the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act; and the enforcement of medical obligations as specified under title IV of the Social Security Act.

*Section 142. Nondischargeability of certain debts for alimony, maintenance and support*

Section 142 of the bill clarifies that "domestic support obligations," as defined in section 138 of the bill, are nondischargeable. It also makes obligations that are not domestic support obligations, but that are incurred in connection with a divorce or separation or related action, nondischargeable.

*Section 143. Continued liability of property*

This section makes exempt property liable for nondischargeable tax and domestic support obligations "notwithstanding any provi-

sion of applicable nonbankruptcy law to the contrary." It also makes a technical amendment to section 522(f)(1)(A) of the Bankruptcy Code, which pertains to the avoidability of certain liens.

*Section 144. Protection of domestic support claims against preferential transfer motions*

This section makes a technical amendment to section 547(c)(7), which prohibits a prepetition transfer from being avoided as a preferential transfer to the extent it was a bona fide payment of a debt for a domestic support obligation.

*Section 145. Clarification of meaning of household goods*

Under current law, debtors must list all personal property that they own.[58] The applicable official bankruptcy form requires inter alia that a description and current market valuation of these items be stated. Among the types of personal property items that are required to be disclosed by debtors are "household goods."[59] The Bankruptcy Code, however, does not define this term.

Section 145 defines "household goods" as including tangible personal property that is normally found in or around a residence. The term, however, does not include motorized vehicles used for transportation purposes.

*Section 146. Nondischargeable debts*

Section 146 of the bill creates two new categories of nondischargeable debts. First, it makes nondischargeable any debt incurred to pay a nondischargeable debt, without regard to intent, if such subsequent debt was incurred within 90 days of the filing of the bankruptcy case. Second, it makes nondischargeable any debt incurred with the intent to pay a nondischargeable debt, regardless of when such subsequent debt was incurred.

*Section 147. Monetary limitation on certain exempt property*

This provision imposes an aggregate monetary limitation of $250,000 for exempt property consisting 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; or

(3) a burial plot for the debtor or the debtor's dependent.

Two exceptions apply to this limitation. First, it does not apply to a family farmer's principal residence. Second, it does not apply to a debtor who resides in a state that enacts legislation opting out of this provision.

*Section 148. Bankruptcy fees*

This provision of the bill amends section 1930 of title 28 of the United States Code to permit a bankruptcy court or the district court to waive the requisite chapter 7 filing fee for an individual debtor who is unable to pay such fee in installments. In addition, this provision permits such courts to waive other specified fees.

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[58] 11 U.S.C. §521(1); Official Form 6—Schedule B.
[59] Official Form 6—Schedule B.

*Section 149. Collection of child support*

Section 149 requires a chapter 7 and chapter 13 trustee to provide certain notices to child support claimants and certain governmental units. First, the trustee must notify the claimant in writing of the claimant's right to use the services of a state child support enforcement agency established under sections 464 and 466 of the Social Security Act located in the state where the claimant resides. The notice must include the address and telephone number of the child support agency. Second, the trustee must supply in writing to the child support enforcement agency in the state where the claimant resides the name, address, and telephone number of the child support claimant.

Thereafter, the trustee must notify both the child support claimant and the state agency that the debtor was granted a discharge and supply the debtor's last known address together with the name of each creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) of the Bankruptcy Code.

If a child support claimant or state agency is not able to locate the debtor, this section permits them to request such information from a creditor holding a nondischargeable debt described in the prior paragraph.

*Section 150. Excluding employee benefit plan participant contributions and other property from the estate*

Section 150 of the bill excludes as property of the estate any interest in property to the extent that an employer has withheld it from the wages of employees for the purpose of contribution to an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974. It also excludes any interest in property that the employer received as the result of payments by participants or beneficiaries to an employer for contribution to an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974. Section 150 applies to bankruptcy cases commenced 180 days after the bill's effective date.

*Section 151. Clarification of postpetition wages and benefits*

This provision of the bill amends section 503(b)(1)(A) of the Bankruptcy Code (which accords administrative expense priority to certain claims for wages, salaries or commissions for services rendered after the commencement of a bankruptcy case) to clarify that it includes claims attributable to any period of time that commences after a bankruptcy case is filed as a result of the debtor's violation of federal law, without regard to when the original unlawful act occurred or whether any services were rendered.

*Section 152. Exceptions to automatic stay in domestic support obligation proceedings*

This section of the bill clarifies that the withholding of the debtor's income for the payment of certain domestic support obligations is not enjoined by the automatic stay provisions of section 362 of the Bankruptcy Code.

*Section 153. Automatic stay inapplicable to certain proceedings against the debtor*

This section excepts the commencement or continuation of the following proceedings from the automatic stay: (1) a proceeding concerning child custody or visitation; (2) an action alleging domestic violence; and (3) a proceeding seeking a dissolution of marriage, unless the proceeding concerns property of the estate.

## Title II. Discouraging Bankruptcy Abuse

*Section 201. Reenactment of Chapter 12*

Chapter 12 is a specialized form of bankruptcy relief available only to a "family farmer with regular annual income,"[60] a defined term.[61] It permits eligible family farmers, under the supervision of a bankruptcy trustee,[62] to reorganize their debts pursuant to a repayment plan.[63] 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[64] and chapter 13.[65]

Chapter 12 was enacted on a temporary seven-year basis as part of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986[66] in response to the farm financial crisis of the early- to mid-1980's.[67] It was subsequently extended on August 6, 1993 to September 30, 1998.[68] Last year, chapter 12 was further extended until April 1, 1999 as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.[69]

Section 201 makes chapter 12 a permanent component of the Bankruptcy Code. The National Bankruptcy Review Commission made a similar recommendation.[70]

*Section 202. Meetings of creditors and equity security holders*

Under current law, all chapter 11 debtors must appear for examination under oath pursuant to section 341 of the Bankruptcy

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[60] 11 U.S.C. § 109(f).
[61] 11 U.S.C. § 101(19).
[62] 11 U.S.C. § 1202.
[63] 11 U.S.C. § 1222.
[64] 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.
[65] 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).
[66] Pub. L. No. 99–554, § 255, 100 Stat. 3088, 3105 (1986).
[67] 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:

> 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 ouir 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.)).
[68] Pub. L. No. 103–65, 107 Stat. 311 (1993).
[69] Pub. L. No. 105–277, § 149 (1998).
[70] See Report of the National Bankruptcy Review Commission, at 1014–16 (1997).

Code. This examination provides an opportunity for the United States Trustee, creditors, and other parties in interest to assess the debtor's financial condition.

On request of a party in interest and after notice and a hearing, this section allows the bankruptcy court to dispense with this requirement for cause where the chapter 11 debtor solicited prepetition acceptances of its plan of reorganization.[71] This provision particularly applies to "prepackaged chapter 11 plans," that is, plans where the debtor, before filing for bankruptcy relief, obtained the acceptance of creditors and interest holders in its plan of reorganization.

*Section 203. Protection of retirement savings in bankruptcy*

This provision permits a debtor to exempt certain 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. It also applies to retirement monies in a fund that received a favorable determination pursuant to Internal Revenue Code section 7805. If the retirement monies are in a retirement fund that has not received a favorable determination pursuant to section 7805 of the Internal Revenue Code, those funds 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. This section also applies to certain rollover distributions and ensures that certain retirement funds are exempt under state as well as federal law.

In addition, this provision creates an exception to the automatic stay for the withholding of income from a debtor's wages pursuant to an agreement authorizing such withholding for the benefit of a pension, profit-sharing, stock bonus, or other employer-sponsored plan established under Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(a) to the extent that the amounts withheld are used solely to repay a loan from a plan as authorized by section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or that they are subject to Internal Revenue Code section 72(p). It also applies to certain thrift savings plan loans.

Section 203 also excepts from discharge any amount owed to a pension, profit-sharing, stock bonus, or other plan established under the Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(c) that is for a loan as authorized under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or that is subject to section 72(p) of the Internal Revenue Code of 1986. It also applies to certain thrift savings plan loans. Section 203 prohibits a Chapter 13 plan from including a provision materially altering the terms of a loan described above.

*Section 204. Protection of refinance of security interest*

Section 204 of the bill amends section 547(e)(2) of the Bankruptcy Code to extend the time period for determining when a

[71] The National Bankruptcy Review Commission made a similar recommendation. See Report of the National Bankruptcy Review Commission, at 487–89 (1997).

transfer is made based on when it is perfected from ten days to 30 days.

*Section 205. Unexpired leases of nonresidential real property*

Under current law, a bankruptcy trustee or a chapter 11 debtor in possession has 60 days to either assume, assign, or reject a nonresidential lease of real property in which the bankruptcy estate is a lessee.[72] In practice, however, trustees and chapter 11 debtors typically seek and obtain multiple extensions of this period.

Section 205 of the bill amends section 365(d)(4) of the Bankruptcy Code to establish finite deadlines by which a nonresidential lease of real property must be assumed or rejected. It provides that this period is the earlier of 120 days after the date of the order for relief or the entry of an order confirming a plan. The failure to act within that period causes the lease to be deemed rejected automatically.

Section 205 does permit the 120-day period to be extended for an additional 120 days on motion of the trustee or lessor for cause. If such extension is granted, the court may permit a subsequent extension only upon the lessor's written consent.

*Section 206. Creditors and equity security holders committees*

An important premise of a chapter 11 case is active creditor participation and oversight. This participation theoretically fosters the debtor's reorganization and serves an oversight function as well. One of the principal means by which creditor participation is encouraged and implemented is through the appointment of a creditors' committee.[73] The United States trustee is charged with the responsibility to appoint creditors' and equity security holders' committees. The membership of a committee ordinarily consists of creditors holding the seven largest claims that are representative of the types of creditors in the chapter 11 case.

Section 206 clarifies that, after notice and a hearing, a bankruptcy court may, on its own motion or on motion of a party in interest, order a change in a committee's membership to ensure adequate representation of other parties in a case.[74]

*Section 207. Amendment to section 546 of title 11, United States Code*

Section 207 of the bill amends section 546 of the Bankruptcy Code to provide that a trustee may not avoid a warehouse lien for storage, transportation, or other costs incidental to the storage and handling of goods, as provided by section 7–209 of the Uniform Commercial Code.

*Section 208. Limitation*

This section of the bill extends the period in which a seller may reclaim goods from 20 to 45 days after receipt of such goods by the debtor.

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[72] See 11 U.S.C. § 365(d)(4).

[73] Correlatively, if the debtor has equity security holders, a committee representing these interests can also be appointed. See 11 U.S.C. § 1102.

[74] The National Bankruptcy Review Commission made a similar recommendation. See Report of the National Bankruptcy Review Commission, at 492–01 (1997).

*Section 209. Amendment to section 330(a) of title 11, United States Code*

Section 209 of the bill clarifies that the compensation provisions of section 330(a)(3)(A) of the Bankruptcy Code apply to examiners, chapter 11 trustees, and professional persons. It adds a provision requiring the court to treat compensation awarded to a trustee as a commission based on results achieved.

*Section 210. Postpetition disclosure and solicitation*

Under current law, the acceptance or rejection of a chapter 11 plan of reorganization may not be solicited from parties affected by the plan absent a court-approved disclosure statement.[75] The disclosure statement is required to ensure that these parties receive adequate information about the plan and its consequences.

Section 210 permits postpetition solicitation of creditors and equity security holders in chapter 11 cases if they were solicited prepetition in compliance with applicable nonbankruptcy law.[76] This creates an exception to the requirement that these parties receive a court-approved disclosure statement prior to their solicitation.

*Section 211. Preferences*

One of the linchpins of the Bankruptcy Code is equality of treatment among similarly situated creditors. To effectuate this goal, section 547 of the Bankruptcy Code permits the avoidance of certain prepetition transfers of property made by the debtor that effectively prefer some creditors over others. While the Bankruptcy Code acknowledges defenses to preferential transfer actions,[77] defendants cite the difficulty of establishing certain defenses as well as the attendant inconvenience and costs of litigation.

Section 211 of the bill allows a defendant in a preference action to establish that the transfer was made in the ordinary course of the debtor's financial affairs or business or that the transfer was made in accordance with ordinary business terms.[78] Presently, the Bankruptcy Code requires both of these grounds to be established in order to sustain a defense to a preferential transfer action.

This section also establishes a threshold amount for a preferential transfer action.[79] To file a preferential transfer action in a case where the claims are not primarily consumer debts, the aggregate amount of all property constituting the transfer must be at least $5,000 or more.

*Section 212. Venue of certain proceedings*

This section of the bill amends the venue provisions for preferential transfer actions. A preferential transfer action in the

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[75] See 11 U.S.C. § 1125(b).

[76] The National Bankruptcy Review Commission made a similar recommendation. See Report of the National Bankruptcy Review Commission, at 595–98 (1997).

[77] See, e.g., 11 U.S.C. § 547(c).

[78] The National Bankruptcy Review Commission made a similar recommendation. See Report of the National Bankruptcy Review Commission, at 800–03 (1997).

[79] Id. at 797–98.

amount of $10,000 or less must be filed in the district where the defendant resides.[80] Currently, this amount is fixed at $1,000.[81]

*Section 213. Period for filing plan under chapter 11*

Section 213 of the bill mandates 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. It likewise provides that the debtor's exclusive period for obtaining acceptances of the plan may not be extended beyond 20 months after the order for relief.

*Section 214. Fees arising from certain ownership interests*

Section 214 of the bill amends section 523(a)(16) of the Bankruptcy Code to clarify that it applies 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) for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such property.

*Section 215. Cases relating to insurance deposits in cases ancillary to foreign proceedings*

Section 215 of the bill amends section 304 of the Bankruptcy Code to prohibit relief under chapter 15, as enacted by this bill, with respect to certain types of property. The property interests that are protected under this provision include a deposit, escrow, trust fund, or other security required or permitted under applicable State insurance law or regulation for the benefit of claim holders in the United States. Section 215 also defines several relevant terms.

*Section 216. Defaults based on nonmonetary obligations*

Section 216 of the bill amends section 365(b) of the Bankruptcy Code in response to the *Claremont* case,[82] which presented the issue of whether the debtors (operators of several automobile dealerships) had to cure certain nonmonetary defaults that were, in fact, incurable as a condition of their assumption and assignment of their dealer agreements to third parties, which would generate value for the estate.

Section 365(b)(2)(D) of the Bankruptcy Code provides that the requirement to cure a default prior to assumption and assignment does not apply to a default that is a breach of a provision relating to "the satisfaction of any penalty rate or provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease."[83]

The district court in *Claremont,* which affirmed the bankruptcy court's interpretation of this provision, held that section 365(b)(2)(D) means that "a trustee or debtor in possession is not re-

[80] Id. at 799-00.
[81] See 28 U.S.C. § 1409(b).
[82] *Worthington* v. *General Motors Corp.* (*In re Claremont Acquisition Corp., Inc.*), 113 F.3d 1029 (9th Cir. 1997).
[83] 11 U.S.C. § 365(b)(2)(D).

quired to cure nonmonetary defaults in order to assume and assign executory contracts and leases."[84]

Although this issue arose in the context of the treatment in bankruptcy of an automobile franchise agreement, a broad exemption from curing nonmonetary defaults would be particularly troublesome to equipment lessors. The failure to adhere to a specified maintenance schedule, for instance, could cause rapid deterioration or irreparable harm to the leased equipment. With personal property leases, the failure to perform nonmonetary obligations is an appropriate bar to a bankruptcy trustee's assumption of the lease.

The court of appeals in *Claremont* concluded that "subsection (D) provides an exception from cure for satisfaction of "penalty rates" and "penalty provisions,'" refuting the argument that the clause following "or" in (D) is a catch-all provision excepting from cure any "nonmonetary obligations."[85] Under this construction, therefore, nonmonetary defaults (with very limited exceptions) would have to be cured. Such a rule, although reasonable as a matter of public policy for a lease of equipment that can lose value quickly, might lead to inappropriate results in other potential applications. For that reason, the Committee sought to give legislative expression to principled approaches that would fairly treat the parties to a range of leases and executory contracts and protect the interests of creditors collectively.

Section 216 accords recognition to different policy considerations that are implicated in leasing arrangements and executory contracts. For reasons noted above, failure to perform nonmonetary obligations under a personal property lease bars assumption. With real estate leases, a bankruptcy trustee reasonably should be expected to cure defaults that are curable, but is not to be required to do the impossible and cure incurable defaults before assumption. The debtor's estate in the real estate context, for example, should not be deprived of a retail lease that is a valuable asset and may be needed for reorganization merely because the store has conducted a going-out-of-business sale or violated a clause against closing for a period of time. With contracts requiring substantial future performance on both sides—so-called executory contracts—the courts shall determine, based on the equities, whether incurable defaults prevent assumption. This would be the fairest approach, for example, with franchise agreements.

In the case of an automobile franchise agreement, for instance, the trustee for the estate of the dealer must cure curable defaults and may assume or assign the franchise only when defaults are impossible to cure and a bankruptcy judge—based on the equities—determines that the bar to assumption and assignment should not apply. It is expected that the court would be mindful of the ability of the trustee or debtor in possession to meet the manufacturer's contractual requirements with regard to quality assurance, warranty service, and trademark protection.

It is not the intention of the Committee to restrict the ability of the nondebtor party to a lease or executory contract to obtain compensation for any actual pecuniary loss resulting from the debtor's

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[84] *In re Claremont Acquisition Corp., Inc.,* 186 B.R. 977, 989–90 (C.D. Cal. 1995).

[85] *Worthington* v. *General Motors Corp.* (*In re Claremont Acquisition Corp., Inc.*), 113 F.3d at 1034.

incurable nonmonetary default or to obtain adequate assurance of future performance under such contract or lease.

Section 216 of the bill also amends section 1124(2) of the Bankruptcy Code, which concerns the impairment of claims and interests, to provide that the creditor remains entitled to compensation for actual pecuniary loss resulting from a default for the purpose of determining whether the creditor's claim or interest arising from the default is impaired.

*Section 217 Sharing of compensation*

Current law prohibits professionals in bankruptcy cases from sharing their fees with other persons.[86] Section 217 of the bill carves out a limited exception to this prohibition to allow compensation to be shared with bona fide public service attorney referral programs.[87]

*Section 218. Priority for administrative expenses*

Section 218 provides that if a lease is assumed under section 365 of the Bankruptcy Code and thereafter rejected, the resulting claim is equal to all monetary obligations due under the lease (excluding penalties and obligations arising from or relating to a failure to operate) for a one year period commencing the latter of the rejection date or actual turnover of the premises. Any claims for the remaining sums due under the lease are subject to section 502(b)(6) of the Bankruptcy Code.

Title III. General Business Bankruptcy Provisions

*Section 301. Definition of disinterested person*

Section 301 of the bill amends the definition of a disinterested person under section 101(14) of the Bankruptcy Code by eliminating its references to investment bankers.[88]

*Section 302. Miscellaneous Improvements*

Section 302 of the Bankruptcy Code amends section 109 of the Bankruptcy Code to create an additional eligibility requirement for individuals seeking bankruptcy relief. Under this provision, an individual is not eligible for bankruptcy relief unless such individual received credit counseling during the 90-day period preceding the filing of his or her bankruptcy case. The credit counseling must include, at a minimum, participation in an individual or group briefing that outlined the opportunities for available credit counseling and assisted the individual in performing an initial budget analysis.

This requirement does not apply to an individual who resides in a district for which the United States trustee or bankruptcy administrator has determined that the approved counseling services in that district are not reasonably able to provide adequate services. To effectuate this provision, section 302(a) requires the United States trustee or bankruptcy administrator to annually determine

[86] See 11 U.S.C. § 504.

[87] This proposal comports with one adopted by the National Bankruptcy Review Commission. See Report of the National Bankruptcy Review Commission, at 892–94 (1997).

[88] Section 101(14) of the Bankruptcy Code provides that an investment banker is not a disinterested person nor an attorney for such investment banker. See 11 U.S.C. § 101(14)(B), (C), (D).

whether counseling services in the district are reasonably able to provide these services.

In addition, this requirement does not apply to a debtor who submits to the court a certification (1) describing exigent circumstances that merit a waiver of this requirement, and (2) stating that the debtor requested credit counseling services from an approved credit counseling service, but was unable to obtain them within a specified five-day period. Such certification must be 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.

Section 302(b) of the bill amends section 727(a) of the Bankruptcy Code to add, as a ground for denying a debtor a discharge, the failure to complete an instructional course concerning personal financial management, unless the debtor resides in a district for which the United States trustee or bankruptcy administrator has determined that the approved counseling services in that district are not reasonably able to provide adequate services.

Section 302(c) of the bill provides that the bankruptcy court shall not grant a chapter 13 debtor a discharge unless the debtor completed an instructional course concerning personal financial management. An exception pertains if the debtor resides in a district for which the United States trustee or bankruptcy administrator has determined that the approved counseling services in that district are not reasonably able to provide adequate services.

Section 302(d) of the bill amends section 521 of the Bankruptcy Code to mandate that a debtor file a certificate from the credit counseling service that rendered the requisite services described under section 109(h) of the Bankruptcy Code, as amended. In addition, the debtor must file a copy of the repayment plan, if any, that was developed through such credit counseling service.

Section 302(e) of the bill institutes a new provision requiring the clerk for each district to maintain a list of credit counseling services that provide certain services and a list of instructional personal financial management courses that have been approved by the United States trustee or bankruptcy administrator for the district.

Section 302(g) of the bill defines the term, "debtor's principal residence," as a residential structure including incidental property that contains up to four units, whether or not such structure is attached to real property. The definition includes individual condominium or cooperative units as well as mobile homes, trailers, and manufactured homes.

This provision also defines "incidental property" as property incidental to such residence including, without limitation, property commonly conveyed with a principal residence in the area where the residence is located, including such items as window treatments, carpets, appliances, and equipment located in the residence as well as easements, appurtenances, fixtures, rents, royalties, mineral rights, oil and gas rights, escrow funds and insurance proceeds.

In addition, Section 302(g) of the bill creates an exception to the automatic stay provisions of the Bankruptcy Code with respect to the postponement, continuation, or similar delay of a prepetition

foreclosure proceeding or sale pending in a chapter 13 case where the debtor has not fully cured the prepetition default with respect to the underlying obligation that is the subject of such foreclosure proceeding or sale. It also prevents a chapter 13 debtor from modifying the rights of a creditor secured by property used as the debtor's principal residence within the 180-day period preceding the filing of the bankruptcy case.

Section 302(h) of the bill provides that if a chapter 7, 11, or 13 case is dismissed due to the creation of a debt repayment plan administered by an approved credit counseling agency, the presumption under section 362(c)(3) of the Bankruptcy Code, as amended, in the subsequent case shall not apply.

Section 302(i) amends section 546(g) of the Bankruptcy Code to institute certain protections if the court determines, on motion of the trustee made not later than 120 days after the order for relief in a chapter 11 case, that a return of goods is in the best interests of the estate. It provides that the debtor, on consent of the creditor and subject to prior rights of third parties, may return goods shipped prepetition and the creditor may offset the purchase price of such goods against any prepetition claim it has against the debtor.

*Section 303. Extensions*

This section of the bill amends section 302(d) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 to make the Bankruptcy Administrator Program permanent.

*Section 304. Local filing of bankruptcy cases*

Section 304 of the bill amends section 1408 of title 28, which pertains to the venue of bankruptcy cases, to provide that if the debtor is a corporation, the domicile and residence of the debtor are conclusively presumed to be where the debtor's principal place of business in the United States is located.

*Section 305. Permitting assumption of contracts*

Section 365(c)(1) of the Bankruptcy Code prohibits a trustee from assuming or assigning a contract that is, by its terms, personal to the debtor and thus, under applicable nonbankruptcy law, nonassignable. Section 305 makes a technical correction to section 365(c) of the Bankruptcy Code to clarify that in a corporate chapter 11 case the trustee or debtor in possession may assume an executory contract or unexpired lease of the debtor, whether or not the contract or lease prohibits or restricts assignment of rights or the delegation of duties.[89] This section also makes several technical amendments to Section 365.

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[89] See, e.g., *Perlman* v. *Catapult Entertainment, Inc.* (*In re Catapult Entertainment, Inc.*), 165 F.3d 747 (9th Cir. 1999) (holding that where applicable nonbankruptcy law makes an executory contract nonassignable because the identity of the nondebtor party is material, a debtor in possession may not assume the contract absent consent of the nondebtor party).

## Title IV. Small Business Bankruptcy Provisions

*Section 401. Flexible rules for disclosure statements and plans*

Under current law, a chapter 11 debtor must obtain court approval of a disclosure statement before it can solicit acceptances of its reorganization plan.[90] The disclosure statement must provide creditors and other interested parties basic information about the plan, including its feasibility and consequences. Typically, court approval is obtained after a hearing on 25 days' notice to all creditors and parties in interest. The current process can be costly and time-consuming.

Section 401 of the bill authorizes a bankruptcy court, in determining whether a disclosure statement provides adequate information, to consider the complexity of the small business debtor's case, the benefit of additional information to creditors and other parties in interest, and the cost of providing such additional information. If, for example, the court finds that the plan of reorganization itself provides adequate information, it may allow the debtor to solicit acceptances of the plan without having to prepare and send a disclosure statement along with the plan. In addition, it permits the court to approve a disclosure statement submitted on standard forms approved by the court or adopted pursuant to section 2075 of title 28 of the United States Code. Further, it permits a court to conditionally approve a disclosure statement subject to final approval after notice and hearing, which would then be combined with the confirmation hearing.

*Section 402. Definitions*

This section defines a "small business debtor" as a person (including affiliates that are also debtors) that has aggregate noncontingent, liquidated secured and unsecured debts in the amount of $4 million or less as of the commencement of the case (excluding debts owed to affiliates or insiders of the debtor). If a group of affiliate debtors has aggregate noncontingent, liquidated secured and unsecured debts in excess of this amount, then no member of such group is a small business debtor.

*Section 403. Standard form disclosure statements and plans*

Section 403 directs the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States Courts to issue standard disclosure statements and plans of reorganization forms for small business debtors. The forms are designed to achieve a practical balance between the needs of the court, those charged with administration of these cases, and parties in interest concerning reasonably complete information and the need for economy and simplicity.

*Section 404. Uniform national reporting requirements*

The United States Trustee Guidelines generally require chapter 11 debtors to report their financial circumstances on a monthly basis. These reports are used to determine a chapter 11 debtor's economic viability. If completed accurately, these reports can pro-

[90] See 11 U.S.C. § 1125(b).

vide valuable information about the case to the bankruptcy court, the United States Trustee, and parties in interest, such as creditors. In practice, however, some debtors fail to file these reports or file incomplete or inaccurate reports, thereby frustrating the ability of those charged with the oversight of these cases to fulfill their responsibility.

Section 404 of the bill mandates that a small business debtor file periodic financial reports containing the following information with regard to:

(1) the debtor's profitability;

(2) reasonable approximations of the debtor's projected cash receipts and disbursements;

(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

(4) a statement as to whether or not the debtor is in compliance with certain other postpetition requirements; and

(5) a statement as to whether the debtor has timely filed tax returns and paid taxes and other administrative expenses when due, among other matters.

*Section 405. Uniform reporting rules and forms*

This section mandates that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States propose Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business cases to file periodic financial and other information set forth in section 404 of the bill.

*Section 406. Duties in small business cases*

To implement greater administrative controls over small business chapter 11 debtors, section 406 of the bill institutes additional duties that these debtors must perform. First, the small business debtor must include with the bankruptcy petition its most recent financial statements, including a balance sheet, statement of operations, cash flow statement, and federal income tax return.[91]

Second, the small business debtor is required to attend, through its responsible individual, meetings scheduled by the bankruptcy court or the United States Trustee. These meetings include initial debtor interviews, and scheduling conferences, as well as the section 341 meetings of creditors. Scheduling conferences provide an opportunity for the court to fix deadlines by which a plan must be filed and confirmation achieved. "Initial debtor interviews" provide an opportunity for the United States Trustee to explain to the debtor various requirements such as the need to maintain insurance, to file periodic financial reports, and to remain current on postpetition obligations. Meetings held pursuant to section 341, alternatively known as "section 341 meetings" or the "first meetings of creditors," provide an opportunity for the debtor to be examined under oath by the United States Trustee and by other parties in interest, such as creditors.

Section 406 of the bill also requires the small business debtor to timely file all requisite schedules and the statement of financial af-

[91] If the debtor lacks such information, then it must file a statement under penalty of perjury verifying this fact.

fairs, as well as postpetition financial reports. In addition, the small business debtor must maintain insurance that is customary and appropriate for the industry.

With respect to the debtor's tax obligations, this section establishes special protections. All tax returns must be timely filed and all postpetition taxes must be paid, except for those that are contested, subject to section 363(c) of the Bankruptcy Code.[92] Separate bank accounts for the deposit of taxes collected or withheld for government authorities must be established not later than ten business days following the entry of the order for relief. Further, this section permits the United States Trustee to inspect the debtor's books and records and business premises at reasonable hours and with proper notice.

Nothing in this section is intended to restrict applicability of the court's powers under section 105 of the Bankruptcy Code to this provision.

*Section 407. Plan filing and confirmation deadlines*

Under current law, a chapter 11 debtor has the exclusive right to file a plan within the 120 days following the entry of the order for relief.[93] The Bankruptcy Court also extends to the chapter 11 debtor the exclusive right to effect confirmation of the plan within 180 days following the entry of the order for relief.[94] As a result of amendments made in 1994 to the Bankruptcy Code, the exclusive period that a small business debtor has to file a plan and achieve confirmation were reduced to 100 days and 160 days respectively from the entry of the order for relief.[95]

Section 407 reduces the time periods for filing plans and achieving confirmation for small business debtors. Under this provision, the small business debtor's exclusive period to file a plan is 90 days from the entry date of the order for relief, unless a trustee has been appointed in the case or the bankruptcy court shorts such period on request of a party in interest. An exception pertains if a creditors" committee is appointed in the case and is sufficiently active to provide effective oversight of the debtor.

The small debtor's exclusive time period for filing a plan and achieving confirmation may be extended by the court on request of a party in interest and for cause. Although the court may grant one or more extensions, they may not accumulate to more than 60 days. To obtain an extension, the movant must establish that: (1) no cause exists to dismiss or convert the case or to appoint a trustee, and (2) there is a reasonable possibility that the court will confirm a plan in a reasonable time. Further extensions are available if the movant establishes the first ground and that, more likely than not, the court will confirm a plan within a reasonable time. The court must impose a new deadline whenever an extension is granted.

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[92] Section 363(c)(2) prohibits the use of cash collateral without consent of those having an interest in such collateral or the court authorizes such use.

[93] *See* 11 U.S.C. § 1121(b).

[94] *See* 11 U.S.C. § 1121(c).

[95] *See* 11 U.S.C. § 1121(e). Under this provision, a party in interest may apply for an order reducing or enlarging this period. 11 U.S.C. § 1121(e)(3).

*Section 408. Plan confirmation deadline*

This section requires a small business debtor to confirm a plan not later than 150 days after the order for relief, unless a creditors" committee, is sufficiently active and representative to provide effective oversight of the debtor or the 150-day period is extended pursuant to section 407.

*Section 409. Prohibition against extension of time*

To ensure that the strict time frames instituted by this bill are not eviscerated, section 409 of this bill limits a court's authority to avoid the impact of these provisions. This section specifically limits the court's authority to use section 105(a) of the Bankruptcy Code to extend the time frames fixed for filing and confirming the plans of small business debtors.

*Section 410. Duties of the United States trustee and bankruptcy administrator*

This section mandates that the United States Trustee conduct an "initial debtor interview" of all small business debtors. This interview, which must be held shortly after the case is filed, is to be used by the United States Trustee to begin its investigation of the debtor's viability and business plan. It also provides an opportunity for the United States Trustee to explain the debtor's obligation to file monthly operating reports and other requirements. During the course of the interview, the United States Trustee attempts to obtain an agreed scheduling order fixing various time frames, such as the date for filing a plan and effecting confirmation.

Section 410 also authorizes the United States Trustee to inspect the debtor's premises, review its books and records, and verify that the debtor has filed its tax returns, when appropriate. The United States Trustee, under this provision, is responsible for diligently monitoring the small business debtor's activities and determining its ability to confirm a plan. Should the United States Trustee discover material grounds warranting either dismissal or conversion of the chapter 11 case to one under chapter 7 for liquidation, this section requires the United States Trustee to apply promptly for such relief.

*Section 411. Scheduling conferences*

Under current law, a bankruptcy court may conduct a scheduling conference on its own motion or on request of a party in interest in any bankruptcy case. In a chapter 11 case, for example, a scheduling conference provides an opportunity for the court to set certain dates by which the debtor must file and confirm a plan, among other matters.

This section mandates that a bankruptcy court conduct scheduling conferences in all bankruptcy cases, if necessary, to further the expeditious and economical resolution of such cases. Section 411 also amends section 105(d) of the Bankruptcy Code to eliminate the restriction on the authority of the court to issue an order under this provision. Current law precludes a court from issuing an order if it is inconsistent with another provision in the Bankruptcy Code or applicable Federal Rule of Bankruptcy Procedure.

*Section 412. Serial filer provisions*

This section consists of two provisions, the first one of which is not limited to business bankruptcies. Section 412(1) provides that if an individual is injured by a violation of the automatic stay based on a good faith belief, then that individual's recovery is limited to actual damages.

Section 412(2) provides that the automatic stay does not apply to four categories of small business chapter 11 debtors who have previously sought bankruptcy relief. The effect of this provision is to restrict repetitive filings by these debtors. The automatic stay does not apply when:

(1) the small business debtor is simultaneously a debtor in another bankruptcy case pending at the time of the filing of the second case;

(2) the small business debtor's prior case was dismissed for any reason by an order that became final within two years preceding the filing of the second case;

(3) the second case was filed within two years following the confirmation of the prior case; or

(4) an entity that acquired substantially all of the assets or business of a small business debtor described in the prior subparagraphs has itself filed for bankruptcy relief.

Two exceptions pertain. First, Section 412(2) provides that it does not apply to an involuntary petition filed by a creditor who is not an insider of the debtor. Second, it permits a debtor, after notice and a hearing, to demonstrate by a preponderance of the evidence that the filing of the subsequent case was necessitated by circumstances beyond its control and unforeseeable at the time the prior case was filed, and that it is more likely than not that it will confirm a plan of reorganization (but not a liquidating plan) within a reasonable time.

*Section 413. Expanded grounds for dismissal or conversion and appointment of trustee*

The Bankruptcy Code currently lists ten grounds that a bankruptcy court may consider in determining whether to convert a chapter 11 case to one under chapter 7 for liquidation, or to dismiss the case.[96] This section revises these grounds and mandates that the court convert or dismiss a chapter 11 case or appoint a chapter 11 trustee, whichever is in the best interests of creditors and the estate, if the movant establishes cause. An exception to this mandate applies if (1) the debtor or other party in interest objects and establishes by a preponderance of the evidence that it is more likely than not that a plan will be timely confirmed, and (2) the cause for dismissal is an act or omission for which there exists a reasonable justification and such act or omission will be cured within a reasonable time period not to exceed 30 days, unless the movant consents to a longer period, or compelling circumstances beyond the debtor's control justify such extension.

Cause warranting either mandatory conversion or dismissal of a chapter 11 case under section 413 includes the following:

[96] See 11 U.S.C. §1112(b). The ten grounds enumerated in this provision, however, are not exclusive.

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

(2) gross mismanagement of the estate;

(3) failure to maintain appropriate insurance that poses a material risk to the estate or the public;

(4) unauthorized use of cash collateral that is harmful to one or more creditors;

(5) failure to comply with a court order;

(6) failure to satisfy any filing or reporting requirement under the Bankruptcy Code or applicable rule;

(7) failure to attend the section 341 meeting of creditors;

(8) failure to timely provide information or to attend meetings reasonably requested by the United States Trustee;

(9) failure to pay postpetition taxes or file tax returns when due;

(10) failure to file a disclosure statement or to confirm a plan within the time fixed under the Bankruptcy Code or by court order;

(11) failure to pay any requisite fees or charges;

(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; and

(15) termination of a plan by reason of the occurrence of a condition specified in the plan.

Section 413 provides that the court may grant relief based on certain of the above stated grounds only on its own motion or on motion of the United States trustee or bankruptcy administrator.

The bankruptcy court must hold a hearing on a motion seeking either conversion or dismissal of the case within 30 days of the filing of such motion. In addition, the bankruptcy court is required to decide this motion within 15 days following the commencement of the hearing, unless the moving party expressly consents to a continuance or compelling circumstances prevent the court from meeting such time limits.

Section 413(b) creates additional grounds for the appointment of a chapter 11 trustee. If grounds exist for either conversion or dismissal of the chapter 11 case, the bankruptcy court has the authority to appoint a chapter 11 trustee if this is in the best interests of creditors and the bankruptcy estate.

*Section 414. Study of the operation of title 11 of the United States Code with respect to small businesses*

This section 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 for the purpose of determining certain matters. These include the internal and external factors that cause small businesses, especially sole proprietorships, to seek bankruptcy relief and factors that cause small businesses to successfully complete their chapter 11 cases. The study must also examine how the bank-

ruptcy laws may be made more effective and efficient in assisting small business to remain viable.

*Section 415. Payment of Interest*

This section amends the automatic stay termination provision that applies to single asset real estate debtors. Specifically, 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. Such payments must be an amount equal to the interest at the then-applicable nondefault contract rate based on the value of the creditor's interest in the property.

## Title V. Municipal Bankruptcy Provisions

*Section 501. Petition and proceedings related to petition*

This section clarifies that a court must enter the order for relief for chapter 9 cases.

*Section 502. Applicability of other sections to chapter 9*

This section makes certain specified provisions in title V of the Bankruptcy Code applicable to chapter 9 cases.

## Title VI. Streamlining the Bankruptcy System

*Section 601. Creditor participation at first meeting of creditors*

This section permits pro se creditors to appear and participate at the section 341 meeting of creditors in chapter 7 and 13 cases, and with respect to activities related thereto. Currently, some districts require corporate creditors and others to be represented by counsel in legal proceedings, such as the section 341 meeting of creditors. This amendment allows creditors to save the cost of obtaining legal representation to participate in the section 341 meeting and like activities.

*Section 602. Audit procedures*

This section requires the Attorney General to establish procedures for auditing the accuracy and completeness of information supplied by individual debtors in connection with their bankruptcy cases under chapter 7 and chapter 13 of the Bankruptcy Code. The audit must be performed pursuant to generally accepted auditing standards by independent certified public accountants or independent licensed public accountants. One in every 250 cases in a district must be selected randomly for audit. In addition, section 602 requires audits in cases where the schedules reflect greater than average variances from the statistical norm for the district. The percentage of cases in which a material misstatement of income or expenditures, together with other information, that is obtained as a result of these audits by district must be made available to the public not less than annually.

Should an audit disclose a material misstatement with regard to a debtor's income, expenses or assets, a statement must be filed with the court specifying the facts constituting the material misstatement. Notice thereof must also be provided to creditors.

Where appropriate, the matter could be referred to the United States Attorney for possible criminal prosecution.

In addition, section 602 amends section 521 of the Bankruptcy Code to make it a duty of the debtor to supply certain information to a auditor. Further, it amends section 727 of the Bankruptcy Code to add, as grounds for revocation of a debtor's discharge, a chapter 7 debtor's failure to satisfactorily explain a material misstatement discovered as the result of an audit described in section 602 and the failure to make available all necessary documents or property belonging to the debtor that are requested in connection with such audit.

*Section 603. Giving creditors fair notice in chapter 7 and 13 cases*

To ensure that a creditor receives proper notice, section 603(a)(1) requires debtors to identify in any notices to a creditor the account number for any debt held by such creditor against the debtor. In addition, the debtor must use the address specified by the creditor. It also strikes the Bankruptcy Code providing that failure to include certain specified information in a notice does not invalidate the legal effect of such notice.

If a creditor in an individual chapter 7 or 13 case has specified an address for notice, section 603(a)(2) requires the court and the debtor to use such address starting five days after receiving the address. Section 603(a)(2) also permits an entity to file a noticing address with the court to be used generally in chapter 7 and chapter 13 cases.

Section 603(a)(2) specifies that notice that does not comply with these requirements is not effective until it has been brought to the creditor's attention. If the creditor has designated an entity to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that these notices will be delivered to such entity, a notice will not be deemed to have been received by the creditor until it has been received by such entity. Section 603(a)(2) prohibits the imposition of any sanctions for violation of the automatic stay under section 362 of the Bankruptcy Code[97] or for the failure to comply with the Bankruptcy Code's turnover provisions in sections 542 and 543, if a creditor has not received proper notice.

Section 603(b) amends section 521 of the Bankruptcy Code (which sets forth the debtor's duties) to add further requirements. The debtor must file a schedule of current monthly income and current expenditures prepared in compliance with section 707(b)(2) of the Bankruptcy Code, as amended by section 102. It also requires the attorney for the debtor or the bankruptcy petitioner to file a certificate indicating that the requisite notices under section 342(b) of the Bankruptcy Code, as amended, were provided to the debtor. If the debtor lacks counsel or 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.

Under section 603(b), the debtor must also file copies of any Federal tax returns (including any schedules and attachments) for the

[97] Under present law, an individual injured as a result of any willful violation of the automatic stay is entitled to actual damages, including costs and attorney's fees, and may recover punitive damages in appropriate circumstances. 11 U.S.C. §362(h).

three year period preceding the order for relief and copies of all payment advices or other evidence of payment from any employer within 60 days of the bankruptcy filing. As amended by section 603(b), section 521 of the Bankruptcy Code additionally requires the debtor to file copies of all tax returns (including any schedules and attachments) at the time filed with the taxing authority with respect to any period during the pendency of the debtor's chapter 7 or chapter 13 case.

Section 603(b) also requires the court to make the debtor's petition, schedules, statement of financial affairs, or chapter 13 plan (if applicable), together with any amendments to such documents, available to a creditor upon request and at a reasonable cost within five days of such request. In addition, the debtor must file a statement disclosing any reasonably anticipated increase in the debtor's income or expenditures in the succeeding 12-month period.

For a chapter 13 case, section 603(b) requires the debtor to file a statement of current monthly income and expenditures in accordance with section 707(b)(2) of the Bankruptcy Code, as amended. This requirement also pertains to the postconfirmation period as well until the case is closed. This 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, and the amount contributed to the debtor's household.

With respect to the privacy issue presented by the availability of a debtor's tax returns to third parties, section 603 mandates that Director of the Administrative Office for United States Courts establish procedures for safeguarding the confidentiality of these documents. The procedures must include reasonable restrictions on creditor access to them that include verification of the creditor's identity and that limit the use of such information to the case. In addition, the Director must, within one year from the date of enactment of the bill, prepare and submit to the Congress a report that assesses the effectiveness of these procedures in providing information to creditors and that includes, if appropriate, recommendations for legislation to further protect the confidentiality of such tax information and to impose penalties for improper use.

Section 603(b) also requires the debtor to provide proof of identity on request of the United States trustee or case trustee. Such proof includes a driver's licence, passport, or other document that contains a photograph of the debtor.

Section 603(b)(4) also specifies that the notice of a chapter 13 confirmation hearing must include the most recent statement filed by the debtor pursuant to section 521(a)(1)(B)(ii) or (f)(4), as amended.

*Section 604. Dismissal for failure to timely file schedules or provide required information*

Should an individual chapter 7 or 13 debtor fail to provide any of the information required by section 521 of the Bankruptcy Code, as amended, within 45 days after the petition filing date, this section requires the debtor's bankruptcy case to be automatically dismissed, effective on the 46th day. No court order is necessary to effectuate this dismissal, unless a party in interest so requests. This

45-day time period may be extended on request of the debtor made before its expiration if the court finds justification for extending this period. In no event, however, may it be extended more than an additional 45 days.

*Section 605. Adequate time to prepare for hearing on confirmation of the plan*

This section requires the chapter 13 confirmation hearing to be held not earlier than 20 days following the first date set for the meeting of creditors and not later than 45 days from this date.

*Section 606. Chapter 13 plans to have a five-year duration in certain cases*

Under present law, the duration of a chapter 13 plan is three years, unless the court, for cause, extends it to a maximum of five years.[98] To ensure that creditors receive the maximum amount of repayment in a chapter 13 case, this section extends the permissible duration of a chapter 13 plan up to five years, under certain circumstances. If the total current monthly income of the debtor and the debtor's spouse, when multiplied by 12, is not less than the highest national family median income last reported by the Census Bureau for a family of equal or lesser size (or, for a household of one person, not less than the national median household income for one earner),[99] then the length of the debtor's plan may be as long as five years. If the income of the debtor and the debtor's spouse fall below this threshold, then the length of the plan may be three years, but not longer than five years.

Section 606(b)(2) mandates that the applicable commitment period for confirmation of a chapter 13 plan to be not less than five years if the current monthly income of the debtor and the debtor's spouse exceeds the thresholds stated above. Likewise, section 606(b)(3) mandates the same requirement with regard to chapter 13 plans modified postconfirmation.

*Section 607. Sense of the Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure*

To reaffirm the need for accuracy, completeness and truthfulness of documents filed by debtors and their counsel (both signed and unsigned), section 607 states that it is the sense of the Congress that all such documents may be filed only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information they contain is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. This requirement applies to signed as well as unsigned documents. Federal Rule of Bankruptcy Procedure 9011 presently only applies to signed documents.

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[98] 11 U.S.C. §1322(d).

[99] Section 606 provides that the national median family income for a family of more than four individuals shall be the national median family income last reported by the Census Bureau for a family of four individuals plus $583 for each additional member of the debtor's family.

*Section 608. Elimination of certain fees payable in chapter 11 bankruptcy cases*

Section 1930(6) of title 28 of the United States Code requires a chapter 11 debtor to pay a quarterly fee to the United States Trustee based on the amount of the debtor's disbursements made during the quarter. This requirement applies until the case is converted or dismissed and applies even after confirmation until the case is closed.[100]

This section limits this requirement's applicability to certain chapter 11 debtors. Specifically, debtors with disbursements of less than $300,000 would be required to pay this fee only until the case is converted or confirmation is obtained, whichever occurs first. For debtors having disbursements of $300,000 or more, the requirement to pay these quarterly fees would remain the same as under current law.

*Section 609. Study of bankruptcy impact of credit extended to dependent students*

This section directs the Comptroller General of the United States to conduct a study regarding 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 bankruptcy case filing rate.

*Section 610. Prompt relief from stay in individual cases*

Under current law, Section 362(e) of the Bankruptcy Code provides that within 30 days of a request for relief from the automatic stay, such stay is terminated unless the bankruptcy court orders the stay continued after notice and hearing. The hearing, as contemplated under section 362(e), can be preliminary or deemed final. If the hearing is preliminary, the final hearing must be concluded not later than 30 days from the conclusion of the preliminary hearing. This 30-day period can be extended by the court with consent of the parties or if the court finds that such extension is warranted based on compelling circumstances.

For chapter 7, 11, or 13 cases filed by individuals, this section creates an exception to section 362(e). Specifically, this section requires the automatic stay to terminate within 60 days following a request for relief from the stay, unless the bankruptcy court renders a final decision prior to the expiration of such 60-day time period, such 60-day time period is extended pursuant to agreement of all parties in interest, or a specific extension of time is required for good cause as described in findings made by the court.

*Section 611. Stopping abusive conversions from chapter 13*

Section 506 of the Bankruptcy Code provides that a creditor secured by a lien on property of the estate has an allowed secured claim to the extent of the value of the creditor's interest in the property and an unsecured claim to the extent that the value of the creditor's interest is less than the amount of the claim. A chapter 13 debtor may apply for a determination from the bankruptcy court that fixes the value of a secured creditor's interest in property of

[100] Pub. L. 104–91, § 101 (1996), as amended, Pub. L. No. 104–99, title II, § 211 (1996).

the estate. Under present law, if the chapter 13 case is subsequently converted to another chapter under the Bankruptcy Code, such valuations apply in the converted case, with allowance, of course, for any payments made on such secured claims.[101]

This section carves out an exception for a chapter 13 case converted to chapter 7. It specifies that a secured creditor in any bankruptcy case converted from chapter 13 continues to be secured unless its claim was paid in full as of the date of conversion, notwithstanding any valuation determination made during the pendency of the chapter 13 case.

*Section 612. Bankruptcy appeals*

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

To address these problems, section 612 permits appeals from final orders and judgments entered by a bankruptcy court decisions to be heard directly by the circuit court of appeals if the appellant so elects at the time of filing the notice of appeal.[102] Any other party may so elect not later than ten days after service of the notice of appeal. Absent such election, the bankruptcy appellate panel would hear the appeal. Direct appeal is also permitted for specified interlocutory orders.

*Section 613. GAO study*

Section 613 of the bill directs the Comptroller General of the United States to conduct a study of the feasibility, efficacy and cost of requiring pertinent information about debtors to be supplied to the Office of Child Support Enforcement. The purpose of this requirement would be to determine whether a debtor has outstanding child support obligations.

## Title VII. Bankruptcy Data

*Section 701. Improved bankruptcy statistics*

Section 701 requires the clerk for each district to compile various statistics regarding chapter 7, 11, and 13 cases in a form prescribed by the Director of the Administrative Office of the United States Courts and to make these data available to the public. In addition, the Director is required to report annually to the Congress on the information so collected and to prepare an analysis of it.

The statistics required to be compiled must be itemized by chapter of the Bankruptcy Code and presented in the aggregate. The specific categories of information that must be gathered include the following:

(1) the total assets and liabilities as scheduled by the debtor;

(2) the debtor's current monthly income, average income, and average expenses;

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[101] 11 U.S.C. § 348(f)(1)(B).

[102] The National Bankruptcy Review Commission made a similar recommendation. See National Bankruptcy Review Commission Report, at 752–67 (1997).

(3) the aggregate amount of debt discharged during the reporting period (determined based on the difference between the total amount of debt scheduled by the debtor and the total amount of debt scheduled by the debtor in categories that are predominantly nondischargeable);

(4) the average time between the filing of the bankruptcy case and the closing of the case;

(5) specified information regarding reaffirmation agreements;

(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) cases dismissed for failure to make payments under the plan, (c) cases refiled after dismissal of a prior case by the same debtor, (d) cases in which the plan was completed, (e) the number of cases in which the debtor had previously sought bankruptcy relief within the six 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 by the court for creditor misconduct; and

(8) the number of cases in which sanctions under Federal Rule of Bankruptcy Procedure 9011 were imposed against a debtor's counsel and the damages awarded in connection therewith.

*Section 702. Uniform rules for the collection of bankruptcy data*

To implement the data gathering provisions of section 701, this section requires the Attorney General to issue rules requiring the establishment of uniform forms for final reports filed by bankruptcy trustees and monthly operating reports filed by chapter 11 debtors in possession. It also specifies what information these reports should contain and that they be made publicly available for physical inspection (at one or more central filing locations) and by electronic access through the Internet or other appropriate media.

*Section 703. Sense of the Congress regarding the availability of bankruptcy data*

This section expresses the sense of the Congress that it is a national policy of the United States that all data collected by the bankruptcy clerks in electronic form (to the extent such data relates to public records, as defined in section 107 of the Bankruptcy Code) should be made available to the public in a usable 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 single 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 be aggregated in such electronic record.

## Title VIII. Bankruptcy Tax Provisions

*Section 801. Treatment of certain liens*

This section 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. Although

their subordination is still possible under section 724(b), the purposes are limited to pay for chapter 7 administrative expenses and priority claims for postpetition wages, salaries, and commissions, as well as claims for contributions to an employee plan entitled to priority under section 507(a)(4) of the Bankruptcy Code. Thus, subordination for the purpose of paying chapter 11 administrative expenses is not permitted.

Before subordinating a tax lien on real or personal property, the trustee, must exhaust all other unencumbered estate assets and, pursuant to section 506(c) of the Bankruptcy Code, recover from property securing an allowed secured claim the reasonable and necessary costs and expenses of preserving or disposing of such property.

In addition, this section prevents 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. This amendment addresses those instances where debtors or trustees use section 505 of the Bankruptcy Code as a means to have bankruptcy courts set aside these types of taxes to the detriment of the local communities that depend on them for revenue.

*Section 802. Effective notice to government*

To ensure that government units receive effective notice, section 802(a) requires the debtor to identify in the notice the specific department, agency, or instrumentality to which the debtor is indebted and to supply to such entity specified identifying information (e.g., taxpayer identification number, the number of the loan, account or contract, or real estate parcel number, if applicable). The debtor must also describe the basis of the claim. If the debtor's liability to a governmental unit arises from a debt or obligation owed or incurred by another entity, the debtor must identify such other entity. In addition, section 802(a) requires the bankruptcy clerk to maintain a current list, updated quarterly, of addresses designated by government units as "safe harbor" addresses for service of notices in cases pending in the district. This list is to be made available to debtors.

Section 802(b) requires the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States to adopt rules that enhance the provision of notice to Federal, State, and local governmental units that have regulatory authority over a debtor or who may be creditors in a bankruptcy case. The rules must be reasonably calculated to ensure that notice will reach the governmental unit by requiring that the debtor provide specified information.

Should the debtor fail to provide notice to governmental entities pursuant to the requirements of section 802(c), such notice is deemed to be ineffective unless the debtor demonstrates by clear and convincing evidence that timely notice was given in a manner reasonably calculated to satisfy the requirements of section 802(c). In addition, it must be established that either the notice was sent to the safe harbor address listed in the register maintained by the clerk for the district where the bankruptcy case is pending or, if no safe harbor address was specified by the governmental unit, an

officer of such unit who has responsibility for the matter and claim had actual knowledge of the case in sufficient time to act.

*Section 803. Notice of request for a determination of taxes*

This section amends section 505(b) of the Bankruptcy Code to require that notice of a request for a determination of taxes substantially comply with the taxing authority's notice procedures.[103]

*Section 804. Rate of interest on tax claims*

This section enacts a new provision in the Bankruptcy Code specifying the rate of interest for tax claims. For secured and unsecured ad valorem tax claims, other unsecured tax claims for which interest must be paid under Section 726(a)(5) of the Bankruptcy Code, secured tax claims, and administrative tax claims pursuant to section 503(b)(1) of the Bankruptcy Code, the rate is determined under applicable nonbankruptcy law.

For all other tax claims, this section mandates that the minimum interest rate shall be the Federal short-term rate rounded to the nearest full percent, as determined under section 1274(d) of the Internal Revenue Code of 1986, plus three percentage points. The rate for Federal income tax claims is subject to any adjustment required under section 6621(d) of the Internal Revenue Code. As to taxes paid under a confirmed plan of reorganization, the rate is determined as of the calendar month in which the plan is confirmed.

*Section 805. Tolling of priority of tax claim time periods*

This section suspends the applicable time periods pertaining to the priority status of tax claims determined. Under section 507(a) of the Bankruptcy Code. Specifically, it provides that the three-year period in section 507(a)(8)(A)(i) is extended for the period during which a stay of proceedings was in effect plus six months. This section also amends the 240-day provisions of section 507(a)(8)(A)(ii) to take into account the pendency of an installment agreement and a stay of proceedings against collection. Specifically, it tolls this period for 30 days plus the time that an installment agreement was pending during the 240-day period, up to one year. It also tolls the period for six months if a stay of proceedings against collections was in effect in a prior bankruptcy case during such 240-day period.

*Section 806. Priority property taxes incurred*

This section amends the Bankruptcy Code's priority provisions with respect to property taxes. Under section 507(a)(8)(B) of the Bankruptcy Code, these taxes are determined based on date of assessment. At the time a bankruptcy case is filed, however, a property tax may not have been assessed. This amendment addresses this problem by revising section 507(a)(8)(B) to make the determination based on when a priority tax claim is incurred.

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[103] The National Bankruptcy Review Commission made a similar recommendation. See Report of the National Bankruptcy Review Commission, at 951 (1997).

*Section 807. Chapter 13 discharge of fraudulent and other taxes*

Debtors who seek bankruptcy relief under chapter 7 of the Bankruptcy Code are not able to discharge certain types of tax claims as specified in section 523(a)(1) of the Bankruptcy Code. Under current law, however, these same tax claims are dischargeable in a chapter 13 case.[104] This section modifies chapter 13's discharge provisions to make these debts nondischargeable.

*Section 808. Chapter 11 discharge of fraudulent taxes*

Where the chapter 11 debtor is a corporation, this section amends chapter 11's discharge provisions to prohibit the discharge of any debt for a tax or customs duty resulting from a fraudulent tax return filed by the debtor. It also prevents the discharge of any unpaid tax or customs duty resulting from a corporate chapter 11 debtor's willful attempt to evade or defeat such obligation.

*Section 809. Stay of tax proceedings*

Upon the filing of a bankruptcy case, a broad stay of most creditor collection actions immediately and automatically goes into effect.[105] This section modifies the scope of the automatic stay to provide that it only prevents the commencement or continuation of tax proceedings for tax liabilities incurred for a tax period ending before the date on which the order for relief is entered. This section also carves out a specific exception from the automatic stay for appeals of tax determinations by courts or administrative tribunals. Under this provision, the automatic stay does not apply to an appeal of a decision in either a court or administrative tribunal that determines a tax liability of a debtor, regardless of whether such determination was made pre- or postpetition.

*Section 810. Periodic payment of taxes in chapter 11 cases*

Section 1129(a)(9)(C) of the Bankruptcy Code requires, as a condition of confirmation, that a chapter 11 plan must provide for payment of priority tax claims over a period that does not exceed six years from the date of assessment of such claims. This section amends this provision to require that these claims must be paid in cash by regular installment payments, not longer than three months apart, that begin on the plan's effective date. This provision specifically prohibits balloon payments. It also requires all payments to be made within five years of the petition date or the last date payments are to be made to other creditors under the chapter 11 plan.

For secured claims that would be entitled to priority under section 507(a)(8) of the Bankruptcy Code if they were unsecured claims, the holder of such claim must receive cash payments in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, as amended by this provision.

*Section 811. Avoidance of statutory tax liens prohibited*

This section creates an exception to section 545(2)'s avoidance provisions for statutory liens. Specifically, it provides that a statu-

[104] 11 U.S.C. § 1328(a).
[105] See 11 U.S.C. § 362(a).

tory lien on property of the debtor that is unperfected or unenforceable against a bona fide purchaser at the time the case is filed may be avoided unless the purchaser qualifies under section 6323 of the Internal Revenue Code [106] or similar provision under State or local law.

*Section 812. Payment of taxes in the conduct of business*

This section provides four additional protections to ensure the payment of tax obligations in bankruptcy cases. Section 812(a) requires bankruptcy trustees and chapter 11 debtors in possession to pay tax obligations when they are due in the course of the debtors' business,[107] with only one limited exception. [108] This provision does not apply if such payment is excused under a provision of the Bankruptcy Code. In addition, it permits a chapter 7 trustee to defer this payment if the tax was not incurred by the trustee or if the court has determined that there are insufficient funds in the estate to pay administrative expenses that have the same priority in distribution under section 726 as the unpaid tax obligation.

Section 812(b) amends section 503(b)(1)(B)(i) of the Bankruptcy Code to clarify that secured and unsecured tax obligations incurred postpetition by a bankruptcy estate, including property taxes, are entitled to administrative expense priority. The present provisions of the Bankruptcy Code do not so specify.[109]

Section 812(c) amends section 503(b)(1) of the Bankruptcy Code to eliminate the need for a governmental unit to file a request for payment of an administrative expense relating to a tax liability, as specified in section 503(b)(1)(B) or a tax penalty, as specified in section 503(b)(1)(C). Under current law, holders of administrative expense claims must submit a request for payment of such claims.

Section 812(d) amends section 506(b) of the Bankruptcy Code (which determines the entitlement of secured claimants to interest, fees, and costs pursuant to the underlying agreement) to extend this entitlement to state tax claimants. This provision also amends section 506(c) of the Bankruptcy Code (which allows a trustee to recover from property securing an allowed secured claim certain costs) to include provision for payment of ad valorem property taxes relating to such property.

*Section 813 Tardily filed priority tax claims*

To receive a payment in an asset chapter 7 case, a creditor must file a proof of claim.[110] Once the case is fully administered, the chapter 7 trustee prepares a final report and account,[111] which then is noticed to all creditors and other parties in interest. Thereafter, the chapter 7 trustee can commence making distribution to

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[106] Section 6323 of the Internal Revenue Code defines "purchaser" as a person who, for adequate consideration, acquires an interest (other than a lien or security interest) in property, which is valid under local law against subsequent purchasers without notice.

[107] Section 960 of Title 28 of the United States Code presently requires bankruptcy trustees and debtors in possession to pay tax obligations, but does not state how or when such payments must be made.

[108] The exception applies to property of the estate, subject to a secured property tax lien, that is abandoned.

[109] See 11 U.S.C. § 503(b)(1)(B). The National Bankruptcy Review Commission recommended that postpetition ad valorem real estate taxes be entitled to administrative expense status. See Report of the National Bankruptcy Review Commission, at 956 (1997).

[110] See 11 U.S.C. § 502.

[111] See 11 U.S.C. § 704(9).

creditors who have filed proofs of claim. Under current law, creditors holding priority claims in asset chapter 7 cases must file their proofs of claim before the date on which the trustee commences making distribution to creditors in the estate. Certain types of tax claims are entitled to priority status.[112]

This section permits a priority tax claim to be filed either before the trustee commences final distribution under section 726 or ten days following the mailing to creditors of the summary of the trustee's final report, whichever is earlier.

*Section 814. Income tax returns prepared by tax authorities*

Section 523(a)(1)(B) of the Bankruptcy Code prohibits the discharge of certain types of tax claims. This section extends these nondischargeability provisions to include obligations based on equivalent reports or notices. It also specifies that a tax return, for purposes of section 523(a)(1)(B) must satisfy the requirements of applicable nonbankruptcy law and that it must include a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986 or similar State or local law. A return, under this provision, also includes a written stipulation to a judgment entered by a nonbankruptcy tribunal, but it does not include a tax return prepared under section 6020(b) of the Internal Revenue Code or similar State or local law.

*Section 815. The discharge of the estate's liability for unpaid taxes*

Under certain conditions, section 505(b) of the Bankruptcy Code provides for the discharge of tax liability for a bankruptcy trustee, debtor, and successor of the debtor after the expiration of certain time periods following a request made to a government unit for a determination of such liability. This section clarifies that this protection extends to the bankruptcy estate.

*Section 816. Requirement to file tax returns to confirm chapter 13 plans*

As a condition of confirming a chapter 13 plan, section 816(a) requires a chapter 13 debtor to file all Federal, State, and local tax returns for the three-year period preceding the filing of the case on or before the first meeting of creditors.[113] If the debtor fails to meet this deadline, the trustee may continue the meeting for a reasonable period of time to give the debtor additional time to comply with this requirement, subject to certain limitations specified in section 816(b). A chapter 13 debtor may apply for an extension of these time periods upon a showing by clear and convincing evidence that the failure to file the returns was due to circumstances beyond his or her control.

Pursuant to section 816(c), if the chapter 13 debtor does not file the requisite tax returns, the court on request of a party in interest or the United States trustee must dismiss the case or convert it to one under chapter 7, whichever is in the best interests of creditors.

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[112] See, e.g., 11 U.S.C. § 507(a).

[113] For purposes of this provision, a "return" includes one prepared under section 6020(a) or (b) of the Internal Revenue Code or similar state or local law. In addition, it also includes a judgment entered by a nonbankruptcy tribunal.

Section 816(d) amends section 502(b)(9) to create an additional exception to this provision's disallowance of tardily filed claims. Specifically, section 816(d) provides that in a chapter 13 case, a governmental unit's tax claim with respect to a return filed by the debtor pursuant to section 1308, as codified by section 816(b), is timely filed if it is filed on or before 60 days after such return is filed.

Section 816(e) expresses a sense of the Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States should, within a reasonable period of time after enactment of the bill, propose rules setting forth procedures by which a governmental unit may object to confirmation of a chapter 13 debtor's plan under certain specified circumstances and with respect to the necessity to file an objection to certain tax claims relating to returns filed pursuant to section 1308, as codified by section 816(b).

*Section 817. Standards for tax disclosure*

A key component of the plan confirmation process in chapter 11 cases is the disclosure statement. The disclosure statement is a document that must be sent to creditors and other parties in interest who are affected by a chapter 11 plan.[114] The purpose of the disclosure statement is to provide adequate information about the plan so that those who are affected by it can make an informed judgment about the plan.[115]

This section mandates that the disclosure statement include a full discussion of the potential material Federal, State, and local tax consequences of the plan to the debtor, any successor of the debtor, and a hypothetical investor domiciled in the state where the debtor resides or has its principal place of business that is typical of creditors and interest holders in the case.[116]

*Section 818. Set off of tax refunds*

The automatic stay prevents the commencement and continuation of various efforts by creditors to collect prepetition obligations against either the debtor or the debtor's property.[117] This section creates an exception to allow a governmental unit to set off an income tax refund relating to a prepetition tax period against a prepetition income tax liability for a prepetition tax period.[118] This exception does not apply if, prior to such setoff, an action to determine the amount or legality of the underlying tax liability under section 505(a) was commenced. If the setoff is not permitted because of a pending action to determine the amount or legality of the underlying tax liability is pending, the governmental unit may hold the refund pending the resolution of such action.

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[114] See 11 U.S.C. § 1125(b).

[115] See 11 U.S.C. § 1125(a).

[116] The National Bankruptcy Review Commission made a similar recommendation. See Report of the National Bankruptcy Review Commission, at 960 (1997).

[117] See 11 U.S.C. § 362(a).

[118] The National Bankruptcy Review Commission made a similar recommendation. See Report of the National Bankruptcy Review Commission, at 818–22 (1997).

## Title IX—Ancillary and Other Cross-Border Cases

Title IX adds a new chapter to the Bankruptcy Code for transnational bankruptcy cases. This incorporates the Model Law on Cross-Border Insolvency to encourage cooperation between the United States and foreign countries with respect to transnational insolvency cases. Title IX 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 debtor's assets.

*Section 1501. Purpose and Scope of Application*

The chapter introduces into the Bankruptcy Code the Model Law on Cross-Border Insolvency ("Model Law"), which was promulgated by the United Nations Commission on International Trade Law ("UNCITRAL") at its Thirtieth Session, May 12–30, 1997.[119]

Cases brought under this chapter 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 of the Bankruptcy Code 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.[120] If the full case is not dismissed, it will be subject to the provisions of this chapter governing cooperation, communication and coordination with the foreign courts and representatives.

In any case, an order granting recognition is required as a prerequisite to the use of sections 301 and 303 by a foreign representative. Section 1501 combines the Preamble to the Model Law (subsection 1) with its article 1 (subsections 2 and 3).[121]

It largely follows the language of the Model Law and fills in blanks with appropriate United States references. However, it adds in subsection 3 an exclusion of certain natural persons who may be considered ordinary consumers. Although the consumer exclusion is not in the text of the Model Law, the discussions at UNCITRAL recognized that some such exclusion would be necessary in countries like the United States where there are special provisions for consumer debtors in the insolvency laws.[122]

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. This ensures that residents of other countries will not be able to

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[119] 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.

[120] See section 1529 and commentary.

[121] Guide at 16–19.

[122] See id. at 18 para. 60; 19 para. 66.

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.[123] The reference to section 109(b) interpolates to the entities governed by different insolvency regimes under United States law which are therefore currently excluded from liquidation proceedings under Title 11.

*Section 1502. Definitions*

"Debtor" is given a special definition for this chapter. That definition does not come from the Model Law but is necessary to eliminate the need to refer repeatedly to "the same debtor as in the foreign proceeding." With certain exceptions, the term "person" used in the Model Law has been replaced with "entity," which is defined broadly in section 101(15) to include natural persons and various legal entities, thus matching the intended breadth of the term "person" in the Model Law. The exceptions include contexts in which a natural person is intended and those in which the Model Law language already refers to both persons and entities other than persons. The definition of "trustee" for this chapter ensures that debtors in possession and debtors; as well as trustees, are included in the term.[124]

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.

Two key definitions of "foreign proceeding" and "foreign representative," are found in subsections 101(24)-(25), which have been amended consistent with Model Law article 2.[125]

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 terms have been placed in alphabetical order.[126]

In order to at least be recognized as a foreign non-main proceeding, the debtor must at least have an establishment in that foreign country.[127]

*Section 1503. International obligations of the United States*

This section is taken exactly from the Model Law with only minor adaptations of terminology.[128] Although this section makes an international obligation prevail, the courts will attempt to read the Model Law and the international obligation so as not to con-

[123] Id. at 17.
[124] See section 1505.
[125] Guide at 19–21 paras. 67–68.
[126] See Guide at 19, (Model Law) 21 para. 75 (concerning establishment) 21 para. 74 (concerning foreign court) 21 paras. 72, 73 and 75 (concerning foreign main and non-main proceedings).
[127] See id. at 21 para. 75.
[128] See id. at 22 Art. 3.

flict, especially if the international obligation addresses a subject matter less directly related than the Model Law to a case before the court.

*Section 1504. Commencement of ancillary case*

This section paraphrases current section 304(a), which is repealed. 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, subsection 1334(a) of title 28, gives exclusive jurisdiction to the district courts in a "case" under this title.[129]

Therefore, since the competent court has been determined in title 28, this section instead provides that a petition for recognition opens a "case," an approach that also invokes a number of other useful procedural provisions. In addition, a new subsection (P) of section 157 of title 28 makes cases under this chapter part of the core jurisdiction of bankruptcy courts when referred to them by the district courts, thus completing the designation of the competent court. Finally, the particular bankruptcy court that will rule on the petition is determined pursuant to section 1410 of title 28 governing venue and transfer.

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.

Additional assistance under the successor provision to current section 304 is set forth in section 1507.

*Section 1505. Authorization to act in a foreign country*

The language in this section varies from the wording of article 5 of the Model Law as necessary to comport with United States law and terminology. The slight alteration to the language in the last sentence is meant to emphasize that the identification of the entity entitled to act is under United States law, while the scope of actions that may be taken by [that entity] under foreign law is limited by the foreign law.[130]

The related amendments to chapters 7 and 11 make 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.[131]

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[129] See id. at 23 (Article 4).
[130] Id. at 24.
[131] See id. at 24 (Article 5).

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.[132]

*Section 1506. Public policy exception*

This provision follows the Model Law article 5 exactly, is standard in UNCITRAL texts and has been narrowly interpreted on a consistent basis in courts around the world. The word "manifestly" in international usage restricts the public policy exception to the most fundamental policies of the United States.[133]

*Section 1507. Additional assistance*

Subsection 1 follows the language of Model Law article 7.[134]

Subsection 2 makes the authority for additional relief subject to [the conditions for relief in] existing 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 the current subsection 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 clearly makes comity the central consideration, its physical placement as one of six factors in subsection (c) of section 304 is misleading. Therefore, in subsection 2 of this section, comity is raised to the introductory language to make it clear that it is the central concept to be addressed.[135]

*Section 1508. Interpretation*

This section follows conceptually Model Law article 8 and is a standard one in recent UNCITRAL treaties and model laws. Language changes were made to express the concepts more clearly in United States vernacular.[136]

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[132] See id. at 23–24 and para. 82.
[133] See id. at 25.
[134] Id. at 26.
[135] Id. at 26.
[136] Id. at 26 paras. 91.

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 texts promulgated by UNCITRAL. Not only are these sources persuasive, but they are important to the crucial goal of uniformity of interpretation. To the extent that the United States courts rely on these sources, their decisions will more likely be regarded as persuasive elsewhere.

*Section 1509. Right of direct access*

This section implements the purpose of article 9 of the Model Law, enabling a foreign representative to commence a case under this chapter by filing a petition directly with the court without preliminary formalities that may delay or prevent relief. It varies the language to fit United States procedural requirements and it imposes recognition of the foreign proceeding as a condition to further rights and duties of the foreign representative. Only if recognition is granted; the foreign representative will have full capacity under U.S. 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 a 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 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.[137]

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 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.[138]

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[137] See id. at 23, (Article 4, paras. 79–83) 27 (Article 9, para. 93).

[138] See id. at 27 (Article 9), 34–35 (Article 15 and paras. 116–119, 35), 39–40 (Article 18, paras. 133–134); see also subsection 1515(3) and Section 1518.

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 operations in the United States by a foreign representative subject to applicable United States law, just as 28 U.S.C. 959 does for a domestic trustee in bankruptcy.[139]

Subsection (f) provides a limited exception to the prior recognition requirement so that collection of a claim which is property of the debtor, for example an account receivable, by a foreign representative may proceed without commencement of a case or recognition under this chapter.

*Section 1510. Limited jurisdiction*

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

*Section 1511. Commencement of case under section 301 or 303*

This section follows the intent of article 11 of the Model Law, but adds language that conforms to United States law or that is otherwise necessary in the United States given its many bankruptcy court districts and the importance of full information-sharing and coordination among them.[140] Article 11 does not distinguish between voluntary and involuntary proceedings, but seems to have implicitly assumed an involuntary proceeding.[141]

Subsection 1(a)(2) goes farther and permits a voluntary filing, with its much simpler requirements, if the foreign proceeding is a main proceeding.

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

This section follows article 12 of the Model Law with a slight alteration to tie into United States procedural terminology.[142] 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.[143]

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.

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[139] Id. at 27, para. 93.
[140] See id. at 28 (Article 11).
[141] Id. at 28 paras. 97–99.
[142] Id. at 29 (Article 12).
[143] Id. at 29 paras. 10–102.

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

This section mandates nondiscriminatory or "national" treatment for foreign creditors, except as provided in subsection (b) and section 1514. It follows the intent of Model Law article 13, but the language has been altered to conform with the Bankruptcy Code.[144]

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.[145]

The Model Law allows for an exception to nondiscrimination as to foreign revenue and other public law claims.[146] Such claims (such as tax and social security claims) have been denied enforcement in the United States traditionally, inside and outside of bankruptcy. The Bankruptcy Code is silent on this point, so the rule is purely a matter of traditional case law. It is not clear if this policy should be maintained or modified, so this section leaves it to developing case law. It also allows the Department of Treasury to negotiate reciprocal arrangements with our tax treaty partners in this regard, although it does not mandate any restriction of the evolution of case law pending such negotiations.

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

This section ensures that foreign creditors receive proper notice of cases in the United States.[147] As "foreign creditor" is not a defined term; foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure should be amended to conform to the requirements of this section, including a special form for notice to such creditors. In particular, the rules must provide for additional time for such creditors to file proofs of claim where appropriate and must provide for the court to make specific orders in that regard in proper circumstances. Of course, if a foreign creditor has made an appropriate request for notice, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. 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.[148]

Subsection (d) replaces the reference to "a reasonable time period" in Model Law article 14(3)(a).[149] It makes clear that the Federal Rules of Bankruptcy Procedure, local rules, and court orders must make appropriate adjustments in time periods and bar dates

[144] Id. at 30 para. 103.
[145] See *id.* at 30 para. 104.
[146] See *Id.* at 31 para. 105.
[147] See Model Law Article 14 and Guide at 31–32 paras. 106–109.
[148] Guide at 33 para 111.
[149] Id. at 31 (Article 14(3)(a)).

so that foreign creditors have a reasonable time within which to receive notice or take an action.

*Section 1515. Application for recognition of a foreign proceeding*

This section follows article 15 of the Model Law with minor changes.[150] 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 of the Federal Rules of Bankruptcy Procedure to facilitate appropriate notices of the hearing on the petition for recognition, and to require filing of lists of creditors and other interested persons who should receive notices. Throughout the Model Law, the question of notice procedure is left to the law of the enacting state.[151]

*Section 1516. Presumptions concerning recognition*

This section follows article 16 of the Model Law with minor changes.[152]

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.[153]

"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.[154]

The presumption that the place of the registered office is also the center of the debtor's main interest is included for speed and convenience of proof where there is no serious controversy.

*Section 1517. Order recognizing a foreign proceeding*

This section closely follows article 17 of the Model Law, with a few exceptions.[155] 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). The requirements of this section, which incorporates the definitions in section 1502 and subsections 101(23) and (24), are all that must be fulfilled to attain recognition.

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

[150] Id. at 33.
[151] See *id*. at 36 para. 121.
[152] Id. at 36.
[153] Id. at 36 (Article 16(3)).
[154] Id. at 36 (Article 16(3)).
[155] Id. at 37.

proceeding is a main or a qualifying non-main proceeding in order to win recognition under this section.

Consistent with the position of various civil law representatives in the drafting of the Model Law, recognition creates a status with the effects set forth in section 1520, so those effects are not viewed as orders to be modified, as are orders granting relief under sections 1519 and 1521. Subsection 4 states the grounds for modifying or terminating recognition. On the other hand, the effects of recognition are subject to modification under section 362(d), made applicable by section 1520(2), which permits lifting the 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.[156]

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 or a court order may provide.[157]

*Section 1518. Subsequent information*

This section follows the Model Law, except to eliminate the word "same" which is rendered unnecessary by the definition of "debtor" in section 1502 and to provide for a formal document to be filed with the court.[158]

Judges in several jurisdictions, including the United States, have reported the need for a requirement of complete and candid reports to the court of all proceedings, worldwide, involving the debtor. This provision will ensure that such information is provided to the court on a timely basis. Any failure to comply with this section will be subject to the sanctions available to the court for violations of the statute. The section leaves to the Rules the form of the required notice and related questions of notice to parties in interest, the time for filing, and the like.

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

This section generally follows article 19 of the Model Law.[159] 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.

*Section 1520. Effects of recognition of a foreign main proceeding*

In general, this section 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. This chapter has no effect on any relief currently available under section 105 of the Bankruptcy Code.

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[156] Id. at 37 (Article 17(1)(d)).
[157] Id. at 37 (Article 17(1)(d)).
[158] Id. at 39–40 paras. 133–134.
[159] Id. at 40.

The stay created by article 20 of the Model Law is imported to chapter 15 from elsewhere in the Bankruptcy Code. Subsection (a)(1) combines subsection 1(a) and (b) of article 20 of the Model Law, because section 362 imposes the restrictions required by those two subsections and additional restrictions as well.[160]

Subsection (a)(2) and (4) apply the Bankruptcy Code sections that impose the restrictions called for by subsection 1(c) of the Model Law. In both cases, the provisions are broader and more complete than those contemplated by the Model Law, but include all the restraints the Model Law provisions would impose.[161]

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 section 362, subsection (a) makes applicable the United States exceptions and limitations to the restraints imposed on creditors, debtors, and others in a case under this title, as stated in article 20(2) of the Model Law.[162]

These exceptions and limitations include those set forth in subsections 362(b), (c), and (d). As one result, the court has the power to terminate the stay pursuant to section 362(d), for cause.[163]

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. Section 108 of the Bankruptcy Code provides the tolling protection intended by

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[160] Id. at 42 (Article 20 1(a)(b)).
[161] Id. at 42, 45.
[162] Id. at 42 (Article 20(2)); 44, paras. 148, 150.
[163] Id. at 42 (Article 20(3)); 44, 45 paras. 151, 152.

Model Law article 20(3), so no exception is necessary as to claims that might be extinguished under United States law.[164]

Subsection 3 permits suits in other countries to the extent such suits are required to preserve the existence of a claim.

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

This section follows article 21 of the Model Law, with detailed changes to fit United States law.[165] The exceptions in subsection (a)(7) relate to avoiding powers. The foreign representative's status as to such powers is governed by section 1523 below. The avoiding power in section 549 and the exceptions to that power are covered by section 1520(1)(b).

The word "adequately" in the Model Law, articles 21(2)and 22(1), has been changed to "sufficiently" in subsection 1521(b) and 1522(a) to avoid confusion with a very specialized legal term in United States bankruptcy, "adequate protection."[166]

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.[167]

This section does not expand or reduce the scope of relief currently available in ancillary cases under sections 105 and 304 of the Bankruptcy Code nor does it modify the sweep of sections 555 through 560.

*Section 1522. Protection of creditors and other interested persons*

This section follows article 22 of the Model Law with change for United States usage and references to relevant Bankruptcy Code sections.[168] It gives the bankruptcy court broad latitude to mold relief to circumstances, including appropriate responses if it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors. For 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. At the end, subsection (d) is new and simply makes clear that an examiner appointed in a case under chapter 15 shall be subject to certain duties and bonding requirements based on those imposed on trustees and examiners under other chapters of this title.

*Section 1523. Actions to avoid acts detrimental to creditors*

This section follows article 23 of the Model Law, with wording to fit it within procedure under this title.[169] It confers standing on a recognized foreign representative to assert an avoiding action but only in a pending case under another chapter of this title. The Model Law would grant such standing in a recognized foreign pro-

[164] Id. at 42 (Article 20(3)); 44, 45 paras. 151, 152.
[165] Id. at 45–46 (Article 21).
[166] Id. at 46 (Article 21(2), 47 (Article 22(1)).
[167] See id. at 46, 47, paras. 158, 160.
[168] Id. April 26, 1999 at 47..
[169] Id. at 48, 49.

ceeding if no full case were pending. This limitation reflects concerns raised by the United States delegation during the UNCITRAL debates that simply granting standing to bring avoidance actions neglected 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 or obligation.[170]

The courts will determine the nature and extent of any such action and what national law may be applicable to such action.

*Section 1564. Intervention by a foreign representative*

This section is worded the same as the Model Law, except for a few clarifying words.[171] This section gives the foreign representative the right to intervene in United States cases, state or federal, where the debtor is a party. Recognition being an act under federal bankruptcy law, it must take effect in state as well as federal courts. This section does not require substituting the foreign representative for the debtor, although that result may be appropriate in some circumstances.

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

The wording of this section is almost exactly that of the Model Law.[172] 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 should be promulgated.

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

This section follows the Model Law almost exactly.[173] 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.

*Section 1527. Forms of cooperation*

This section follows the Model Law exactly. Guide at 51–53. United States bankruptcy courts have already engaged in most of the forms of cooperation mentioned here, but they now have explicit statutory authorization for acts like the approval of protocols of the sort used in cases.[174]

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[170] See id. at 49, para. 166.
[171] Id. at 49.
[172] Id. at 50.
[173] Id. at 51.
[174] See e.g. *Inre Maxwell Communication Corp.,* 93 F.2d 1036 12d Cir. 1966).

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

This section follows the Model Law, with specifics of United States law replacing the general clause at the end to cover assets normally included within the jurisdiction of the United States courts in bankruptcy cases, except where assets are subject to the jurisdiction of another recognized proceeding.[175]

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.

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 section 629 of the bill and section 305 of the Bankruptcy Code to exercise its discretion to dismiss, stay, or limit a United States case that was filed after a petition for recognition of a foreign main proceeding has been filed but before it has been approved, if recognition is ultimately granted.

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

This section follows the Model Law almost exactly, but subsection (d) adds a reference to section 305 to make it clear that the bankruptcy court may continue to use that section, as under present law, to dismiss or suspend a United States case as part of coordination and cooperation with foreign proceedings.[176]

This provision is consistent with United States policy to act ancillary to a foreign main proceeding whenever possible.

*Section 1530. Coordination of more than one foreign proceeding*

This section exactly follows article 30 of the Model Law.[177] 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.

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

This section follows the Model Law exactly, inserting a reference to the standard for an involuntary case under this title.[178] Where an insolvency proceeding has begun in the home country of the debtor, and in the absence of contrary evidence, the foreign representative should not have to make a new showing that the debtor is in the sort of financial distress requiring a collective judicial remedy. The word "proof" here means "presumption." The presumption does not arise for any purpose outside this section.

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[175] Guide at 54, 55.
[176] Id. at 55, 56.
[177] Id. at 57.
[178] Id. at 58.

*Section 1532. Rule of payment in concurrent proceeding*

This section follows the Model Law exactly and is very similar to prior section 508(a), which is repealed. The Model Law language is somewhat clearer and broader than the equivalent language of prior section 508(a).[179]

This section provides that the bankruptcy court in any district in which there has been a reference under subsection 157(a) will have core jurisdiction over cases commenced under chapter 15, and ancillary cross-border cases.

Although the United States will continue to assert worldwide jurisdiction over property of a domestic or foreign debtor in a full bankruptcy case under chapters 7 and 13 of this title, subject to deference to foreign proceedings under chapter 15 and section 305, the situation is different in a case commenced under chapter 15. There, the United States is acting solely in an ancillary position, so jurisdiction over property is limited to that stated in chapter 15.

The third provision complements the automatic inclusion of chapter 15 in the U.S. Trustee's language of prior section 508(a).[180]

*Amendments to other chapters in title 11, United States Code*

The first amendment provides that the bankruptcy court in any district in which there has been a reference under subsection 157(a) will have core jurisdiction over cases commenced under chapter 15, ancillary cross-border 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 chapter 7 and 13 of this title, subject to deference to foreign proceedings under chapter 15 and section 305, the situation is different in a case commenced under chapter 15. There the United States is acting solely in an ancillary position, so jurisdiction over property is limited to that stated in chapter 15.

The third provision complements the automatic inclusion of chapter 15 in the United States trustee's standing under section 307 and provides authority for the United States trustee to act as necessary under section 626(3).

## TITLE X. FINANCIAL CONTRACT PROVISIONS [181]

*Section 1001. Treatment of certain agreements by conservators or receivers of insured depository institutions*

Subsections (a) through (f) of section 1001 amend the Federal Deposit Insurance Act's 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, as amended by title X of H.R. 833.

Subsection (a) amends the definition of "qualified financial contract" to include a reference to a resolution or order.

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[179] Id. at 59.
[180] Id. at 59.
[181] As title X is substantively very similar to H.R. 4393, the Financial Contract Netting Improvement Act of 1998, the Committee has relied on the report accompanying that bill. H.R. Rep. No. 105–688, Pt. 1 (1998).

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

Subsection (c) amends the definition of "commodity contract" to conform it with section 761(4) of the Bankruptcy Code, as amended by title X of the bill. Likewise, subsection (d) amends the definition of "forward contract" to conform it with section 101(25) of the Bankruptcy Code, as amended by title X of the bill.

Subsection (e) amends the definition of "repurchase agreement" to codify the substance of the Federal Deposit Insurance Corporation's 1995 regulation defining repurchase agreement to include those on qualified foreign government securities.[182] For purposes of this provision, 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). Subsection (e) reflects developments in the repurchase agreement markets which increasingly use foreign government securities as the underlying assets. Any risk presented by this modification is addressed by limiting it to those obligating or guaranteed by OECD member states.

Subsection (e), like subsection (b) for "securities contracts," specifies that repurchase obligations under a participation in an commercial mortgage loan do not make the participation agreement a "repurchase agreement." Such repurchase obligations embedded in participations in commercial loans (such as recourse obligations) do not constitute a "repurchase agreement." Nevertheless, 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 one year or less after such transfer could constitute a "repurchase agreement."

Subsection (f) amends the definition of "swap agreement" to include an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next forward or other foreign exchange agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit swap, option, future, or forward agreement; a commodity swap, option, future, or forward agreement or any other similar agreement. This amendment would achieve contractual netting across economically similar over-

[182] See 12 C.F.R. 360.5.

the-counter products that can be terminated and closed out on a mark-to-market basis.

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

Subsection (g) amends the Federal Deposit Insurance Act by adding a definition of "transfer," which is a key term used in the Act, to ensure that it is broadly construed to encompass dispositions of property or interests in property. The definition mirrors that in section 101(54) of the Bankruptcy Code.

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

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

*Section 1002. Authority of the corporation with respect to failed and failing institutions*

Section 1002 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 1002, as well as other provisions in the Act, clarify that FDICIA does not limit the transfer powers of the FDIC with respect to QFC.

In addition, Section 1002 denies enforcement to "walkaway" clauses in QFCs. A walkaway clause is defined as a provision that, after calculation of a value of a party's position or an amount due to or from one of the parties upon termination, liquidation or acceleration of the QFC, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole

or in part solely because of such party's status as a non-defaulting party.

*Section 1003. Amendments relating to transfers of qualified financial contracts*

Subsection (a) amends the FDIA to expand the transfer authority of the FDIC to permit transfer 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 provisions specify that when the FDIC transfers QFCs that are subject to the rules of a particular clearing organization, the transfer will not require the clearing organization to accept the transferee as a member of the organization. This provision gives the FDIC flexibility in resolving QFCs subject to the rules of a clearing organization, while preserving the ability of such organizations to enforce appropriate risk reducing membership requirements.

The new FDIA provision also permits transfers to an eligible financial institution that is a non-U.S. person, or the branch or agency of a non-U.S. person if, following the transfer, the contractual rights of the parties would be enforceable substantially to the same extent as under the FDIA.

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

Subsection (c) amends the FDIA to clarify the relationship between the FDIA and FDICIA. There has been some uncertainty whether FDICIA permits counterparties to terminate or liquidate a QFC before the expiration of the time period provided by the FDIA during which the FDIC may repudiate or transfer a QFC in a conservatorship or receivership. Subsection (c) provides that a party may not terminate a QFC based solely on the appointment of the FDIC as receiver until 5:00 p.m. (Eastern Time) on the business day following the appointment of the receiver or after the person has received notice of a transfer under FDIA section 11(d)(9), or based solely on the appointment of the FDIC as conservator, notwithstanding the provisions of FDICIA. This provides the FDIC with an opportunity to undertake an orderly of the insured depository institution.

The amendment also prohibits the enforcement of rights of termination or liquidation that are based solely on the "financial condition" of the depository institution in receivership or conservatorship. For example, termination based on a cross-default provision in a QFC that is triggered upon a default under another contract could be stayed if such other default was caused by an acceleration of amounts due under that other contract, and such acceleration was based solely on the appointment of a conservator or receiver for that depository institution. Similarly, a provision in a QFC per-

mitting 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. Nevertheless, any payment, delivery or other performance-based default, or breach of a representation or covenant putting in question the enforceability of the agreement, will not be deemed to be based solely on financial condition for purposes of this provision. The amendment is not intended to prevent counterparties from taking all actions permitted and recovering all damages authorized upon repudiation of any QFC by a conservator or receiver.

The amendment allows the FDIC to meet its obligation to provide notice to parties to transferred QFCs by taking steps reasonably calculated to provide notice to such parties by the required time. This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

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

*Section 1004. Amendments relating to disaffirmance or repudiation of qualified financial contracts*

Section 1004 limits the disaffirmance and repudiation authority of the FDIC with respect to QFCs so that such authority is consistent with the FDIC's transfer authority under FDIA section 11(e)(9). This ensures that no disaffirmance, repudiation or transfer authority of the FDIC may be exercised to "cherry-pick" or otherwise treat independently all the QFCs between a depository institution in default and a person or any affiliate of such person. The FDIC has announced that its policy is not to repudiate or disaffirm QFCs selectively. This unified treatment is fundamental to the reduction of systemic risk.

*Section 1005. Clarifying amendment relating to master agreements*

Section 1005 states that a master agreement for one or more securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements will be treated as a single QFC under the FDIA. This provision ensures that cross-product netting pursuant to a master agreement will be enforceable under the FDIA. Cross-product netting permits a wide variety of financial transactions between two parties to be netted, thereby maximizing the present and potential future risk-reducing benefits of the netting arrangement between the parties.

Express recognition of the enforceability of such cross-product master agreements furthers the policy of increasing legal certainty and reducing systemic risks in the case of an insolvency of a large financial participant. Similar Bankruptcy Code clarifications to rec-

ognize cross-product netting both under a master agreement and in the absence of a master agreement are described below.

*Section 1006. Federal Deposit Insurance Corporation Improvement Act of 1991*

The FDICIA provides that a netting arrangement will be enforced pursuant to its terms, notwithstanding the failure of a party to the agreement. However, the current netting provisions of FDICIA limit this protection to "financial institutions," which include depository institutions. Subsection (a)(1) amends the FDICIA definition of covered institutions to include (i) uninsured national and State member banks, irrespective of their eligibility for deposit insurance and (ii) foreign banks (including the foreign bank and its branches or agencies as a combined group or only the foreign bank parent of a branch or agency). The Federal Reserve Board already has by regulation included certain foreign banks in the definition of a "financial institution" for purposes of FDICIA and the latter change will statutorily extend the protections of FDICIA to ensure that U.S. financial organizations participating in netting agreements with foreign banks are covered by the Act, thereby enhancing the safety and soundness of these arrangements.

Subsection (a)(2) amends FDICIA to provide that, for purposes of FDICIA, two or more clearing organizations that enter into a netting contract are considered "members" of each other. This assures the enforceability of netting arrangements involving two or more clearing organizations and a member common to all such organizations, thus reducing systemic risk in the event of the failure of such a member. Under the current FDICIA provisions, the enforceability of such arrangements depends on a case-by-case determination that clearing organizations could be regarded as members of each other for purposes of FDICIA.

Subsection (a)(3) 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, particularly netting arrangements covering positions taken in foreign exchange dealings, however, 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 is not invalid under, or precluded by, Federal law.

Subsections (b) and (c) establish two exceptions to FDICIA's protection of the enforceability of the provisions of netting contracts between financial institutions and among clearing organization members. First, the termination provisions of netting contracts will not be enforceable based solely on (i) the appointment of a conservator for an insolvent depository institution under the FDIA or (ii) the appointment of a receiver for such institution under the FDIA, if such receiver transfers or repudiates QFCs in accordance with the FDIA and gives notice of a transfer by 5:00 p.m. on the business day following the appointment of a receiver. This change is made to confirm the FDIC's flexibility to transfer or repudiate the QFCs of an insolvent depository institution in accordance with the

terms of the FDIA. This modification also provides important legal certainty regarding the treatment of QFCs under the FDIA, because the current relationship between the FDIA and FDICIA is unclear.

The second exception provides that FDICIA does not override a stay order under SIPA with respect to foreclosure on securities (but not cash) collateral of a debtor.

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

Subsection (d) adds a new section 407 to FDICIA. This new section provides that, notwithstanding any other law, QFCs with uninsured national banks or uninsured Federal branches or agencies that are placed in receivership or conservatorship will be treated in the same manner as if the contract were with an insured national bank or insured Federal branch for which a receiver or conservator was appointed. This provision will ensure that parties to QFCs with uninsured national banks or uninsured Federal branches or agencies will have the same rights and obligations as parties entering into the same agreements with insured depository institutions. The new section also specifically limits the powers of a receiver or conservator for an uninsured national bank or uninsured Federal branch or agency to those contained in 12 U.S.C. 1821(e) (8), (9), and (11), which address QFCs. While the amendment would apply the same rules to uninsured national banks and Federal branches and agencies that apply to insured institutions, the provision would not change the rules that apply to insured institutions. Nothing in this section would amend the International Banking Act, the Federal Deposit Insurance Act, the National Bank Act, or other statutory provisions with respect to receivership of insured national banks or Federal branches. It is noted that new section 407 may need to be amended if legislation is enacted to permit the creation of so-called "wholesale financial institutions."

*Section 1007. Bankruptcy Code amendments*

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 1001. In connection with the definition of "repurchase agreement," the term, "qualified foreign government securities" is defined to include securities that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development (OECD). This language reflects developments in the repurchase agreement markets, which increasingly use foreign government securities as the underlying asset. Any risk presented by this modification is addressed by limiting it to those obligating or guaranteed by OECD member states.

Subsection (a)(1) specifies that repurchase obligations under a participation in 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 one year or less after such transfer, however, could constitute a "repurchase agreement."

The amendments to the definition of "repurchase agreement" are not intended to affect the interpretation of the definition of "securities contract." The definition of "swap agreement," in conjunction with the addition of "spot foreign exchange transactions" that was added to the definition in 1994, will achieve contractual netting across economically similar over-the-counter products that can be terminated and closed out on a mark-to-market basis.

The definition of "swap agreement" originally was intended to provide sufficient flexibility to avoid the need to amend the definition as the nature and use of swap transactions matured. For that reason, the phrase "or any other similar agreement" was included in the definition. The phrase "other similar agreement" encompasses any agreement that is, or in the future becomes, regularly entered into in the swap market that is a forward, swap or option on one or more rates, currencies, commodities, equity or debt securities or instruments, economic indices or measures of economic risk or value. Traditional commercial and lending arrangements, or other non-financial market transactions, such as commercial, residential or consumer loans, however, cannot be treated as "swaps" under either the FDIA or the Bankruptcy Code because the parties purport to document or label the transactions as "swap agreements."

Subsection (a)(1)(C) specifies that this definition of swap agreement applies only for purposes of the Bankruptcy Code and is inapplicable to the other statutes, rules and regulations enumerated in that section. The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement. This ensures that any such agreement, arrangement or enhancement is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the Bankruptcy Code and the FDIA. Similar changes are made in the definition of "forward contract, "commodity contract" and "repurchase agreement." An example of a security arrangement is a right of set off; examples of other credit enhancements are letters of credit, guarantees, reimbursement obligations and other similar agreements.

Subsections (a)(2) and (a)(3) amend the Bankruptcy Code definitions of "securities contract" and "forward contract," respectively, to conform them to the definition in the FDIA, and also to include any security agreements or arrangements or other credit enhancements related to one or more such contracts.

Subsection (a)(2), like the amendments to the FDIA amends the definition of "securities contract" to encompass options on securities and margin loans. The inclusion of "margin loans" in the definition is intended to encompass only those loans commonly known in the securities industry as "margin loans" and does not include other loans utilizing securities as collateral, however, documented.

Subsection (a)(2) also specifies that purchase, sale and repurchase obligations under a participation in a commercial mortgage loan do not constitute "securities contracts." While a contract for the purchase or sale or a participation may constitute a "securities

contract," the purchase, sale or repurchase obligation embedded in a participation agreement does not make that agreement a "securities contract."

Subsection (b) amends the Bankruptcy Code 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. 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), 546, 548, 555, and 556 even if the creditor could not qualify as, for example, a commodity broker. The new subsection preserves the limitations of the right to close-out and net such contracts, in most cases, to entities who qualify under the Bankruptcy Code's counterparty limitations. Where the counterparty, however, has transactions with a total gross dollar value of at least $1 billion in notional principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least $100 million (aggregated across counterparties) in one or more agreements or transactions on any day during the previous 15-month period, the new subsection and corresponding amendments would permit it to exercise netting rights irrespective of its inability otherwise to satisfy those counterparty limitations. This change will help prevent systemic impacts upon the markets from a single failure.

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

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

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

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

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

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

Subsection (k) adds a new section 561 to the Bankruptcy Code to protect the contractual right of a master netting agreement participant to enforce any rights of termination, liquidation, acceleration, offset or netting under a master netting agreement. Such rights include rights arising (i) from the rules of a securities exchange or clearing organization, (ii) under common law, law merchant or (iii) by reason of normal business practice. This is con-

sistent with the current treatment of rights under swap agreements under section 560 of the Bankruptcy Code.

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 bankruptcy or insolvent party. The protection of netting and offset rights in sections 560 and 561 is in addition to the protections afforded in section 362(b)(6), (b)(7) and (b)(17). For example, cross-product netting will be protected from the automatic stay under section 561 even in the absence of a master netting agreement.

Sections 561(b) (2) and (3) limit the exercise of contractual rights to net or to offset obligations where one leg of the obligations sought to be netted relates to commodity contracts. Under subsection (b)(2), netting or offset is not permitted if the obligations are not mutual. This means, for example, that proprietary obligations cannot be netted or offset against obligations held for, or on behalf of, some other party. Even if the obligations are mutual, under subsection (b)(3) netting or offset is not permitted in a commodity broker bankruptcy if the party seeking to net or to offset has no positive net equity in the commodity account at the debtor. Subsections (b)(2) and (b)(3) limit the depletion of assets available for distribution to customers of commodity brokers. This is consistent with the principle of subchapter IV of chapter 7 of the Bankruptcy Code, which gives priority to customer claims in the bankruptcy of a commodity broker.

Under title X of H.R. 833, 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.

Subsection (l) clarifies that, with respect to municipal bankruptcies, all the provisions of the Bankruptcy Code relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements (which by their terms are intended to apply in all cases under the Bankruptcy Code) apply to a chapter 9 case.

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

Subsections (n) and (o) amend those provisions in the Bankruptcy Code concerning the liquidation of commodity brokers [183] and stockbrokers.[184] These provisions of the Bankruptcy Code are designed to protect customers and customer property of an insolvent stockbroker or commodity broker. Subsections (n) and (o) clarify the rights of parties to commodity contracts, securities contracts, forward contracts, swap agreements, repurchase agreements and master netting agreements with an insolvent commodity broker or stockbroker. They ensure that noncustomers will not defeat the priority scheme of subchapter III or IV by gaining access to assets held in segregated customer accounts. The amendment also clarifies that the exercise of termination and netting rights will not otherwise affect customer property or distributions by the trustee of the insolvent commodity broker or stockbroker after the exercise of such rights.

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

Subsection (q) makes a series of conforming amendments to sections 362(b)(6), 546(e), 548(d)(2)(B), 555, and 556 to include references to "financial participant".

Subsection (r) makes technical and conforming amendments to the Bankruptcy Code's table of sections, as amended by title X.

*Section 1008. Recordkeeping requirements*

Section 1008 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 with respect to QFCs. Adequate recordkeeping for such transactions is essential to effective risk management and to the reduction of systemic risk permitted by the orderly resolution of depository institutions utilizing QFCs.

*Section 1009. Exemptions from contemporaneous execution requirement*

Section 1009 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.

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[183] Subchapter IV of chapter 7 of the Bankruptcy Code and regulations of the CFTC detail specific rules for the liquidation of commodity brokers.

[184] Subchapter III of chapter 7 of the Bankruptcy Code details specific rules for the liquidation of stockbrokers.

With respect to QFCs, this codification recognizes that QFCs often are subject to collateral and other security arrangements that may require posting and return of collateral on an ongoing basis based on the mark-to-market values of the collateralized transactions. The codification of only portions of the existing FDIC policy statements on these and related issues should not give rise to any negative implication regarding the continued validity of these policy statements.

*Section 1010. Damage measure*

Section 11 adds a new section 562 to the Bankruptcy Code to provide 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 of liquidation, termination or acceleration of such contract or agreement. New section 562 provides important legal certainty and makes the Bankruptcy Code consistent with the current provisions related to the timing of the calculation of damages under QFCs in the FDIA.

Section 1010 also clarifies the treatment of damage claims arising from rejection.

*Section 1011. SIPC stay*

Section 1011 amends the Securities Investment Protection Act (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 matter netting agreements (as defined in the Bankruptcy Code and including rights of foreclosure on collateral), except that such order or decree may stay any right to foreclose on securities (but not cash) collateral pledged by the debtor or sold by the debtor under a repurchase agreement. A creditor stayed in exercising rights against securities collateral would be entitled to post-insolvency interest to the extent of the collateral.

*Section 1012. Asset-backed securitizations*

Section 1012 amends section 541 of the Bankruptcy Code to provide that certain assets transferred to an eligible entity in connection with an asset-backed securitization generally will not be included within the bankruptcy estate. This provision recognizes that a valid transfer of such assets to the eligible entity, which is defined as an issuer or an entity engaged exclusively in such securitization transactions, generally eliminates the debtor's legal or equitable interests in those assets. Accordingly, subject to the avoidance powers in section 548(a), the transfer will be treated as a sale of those assets not subject to avoidance. A significant exception to this provision is that if the trustee avoids the transfer from the debtor under section 548(a), then those assets will be included within the bankruptcy estate.

*Section 1013. Federal Reserve collateral requirements*

Section 16 of the Federal Reserve Act (FRA) specifies the types of assets the Federal Reserve may use to back the currency. These assets include U.S. Treasury and agency securities that the Federal Reserve holds in its portfolio and, among other things, discount window loans extended under the provisions of section 13 of the FRA. Over the years, sections were added to the FRA that permit lending under provisions other than section 13 and against a broader range of collateral than allowed under that section.

This amendment broadens the range of discount window loans eligible to back currency to include not only those extended under section 13 but also those extended under section 10A of the FRA relating to emergency advances to groups of member banks, section 10B relating to emergency advances to individual member banks, and section 13A relating to the discount of agricultural paper.

*Section 1014. Effective date; application of amendments*

Subsection (a) provides that the amendments under this title take effect on the date of H.R. 833's enactment. Subsection (b) provides that the amendments made by this title shall not apply with respect to cases commenced, or to conservator/receiver appointments made, before the date of enactment.

## Title XI. Technical Corrections

*Section 1101. Definitions*

Section 1101 amends the definitions contained in section 101 of title 11 of the United States Code. Paragraphs (1), (2), (4), (7), and (8) of section 1101 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 the necessary conforming amendment to cross references to the newly redesignated definitions and simplifies these references to avoid future reference errors.

Paragraph (5) of section 1101 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. For tax planning purposes, the limited partnership is formed to acquire the underlying asset. The largest creditor in a single asset real estate case is usually 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 owner-

ship of any business operating on the debtor's real property, the debtor may have few, if any, employees. Accordingly, there may be little interest on behalf of unsecured creditors in a single asset real estate case to serve on a creditors' committee.

In 1994, the Bankruptcy Code was amended to accord special treatment for a single asset real estate debtor. It defined this type of debtor as a bankruptcy estate comprised of a single piece of real property or project, other than residential real property with fewer than four residential units. The property or project must generate substantially all of the debtor's gross income. A debtor that conducts substantial business on the property beyond that relating to its operation is excluded from this definition. In addition, the definition fixed a monetary cap. To qualify as a single asset real estate debtor, the debtor could not have noncontingent, liquidated secured debts in excess of $4 million.[185]

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) (renumbered section 101(57)) 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 1101, together with section 1118 respond to a 1997 Ninth Circuit case,[186] in which two purchase money lenders (without knowledge that the debtor had recently filed an undisclosed chapter 11 case that was later converted to chapter 7), funded the debtor's acquisition of an apartment complex and recorded their purchase-money deed of trust immediately following recordation of the deed to the debtors. Specifically, it amends the definition of "transfer" to include the "creation of a lien." This amendment gives expression to a widely held understanding since the enactment of the Bankruptcy Reform Act of 1978,[187] that is, a transfer includes the creation of a lien.

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[185] See 11 U.S.C. § 101(51B).

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

[187] Pub. L. 95 598, 92 Stat. 2549 (1978).

*Section 1102. Adjustment of dollar amounts*

Section 1102 corrects an omission in section 104(b) of title11 of the United States Code, as added by Public Law 103–394, by including references to section 522(f)(3) so that the triennial adjustment required by section 104(b) extends to the figure representing an aggregate value of certain implements, professional books, tools of the trade, farm animals, and crops which the debtor may exempt from the property of the estate and thereby protect from creditors' liens. Section 522(f)(3) now sets the total permissible value of such property at $5,000.

*Section 1103. Extension of time*

Section 1103 of the bill 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 title 11 of the United States Code, the amendment made by section 257(b)(2)(B) of Public Law 99–554 could not be executed as stated.

*Section 1104. Technical amendments*

Section 1104 makes technical amendments to 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").

*Section 1105. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions*

Section 1105 makes a technical correction to change from the singular possessive to the plural possessive the reference to the fees payable to attorneys.

*Section 1106. 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 1106 amends section 328(a) to include compensation "on a fixed or percentage fee basis" in addition to the other specified forms of reimbursement.

*Section 1107. Special tax provisions*

Section 1107 makes a technical correction in section 346(g)(1)(C) of title 11 of the United States Code to delete language referring to a repealed section of the Internal Revenue Code of 1986. Additional information regarding the repealed section is indicated in the appropriate footnote, and contained in the notes under the heading "References in Text," found in the United States Code.

*Section 1108. Effect of conversion*

Section 1108 makes a technical correction in section 348(f)(2) of title 11 of the United States Code to clarify that the first reference to property, like the subsequent reference to property, is a reference to property of the estate.

*Section 1109. Amendment to table of sections*

Section 1109 of the bill makes a technical amendment to conform the wording of an item in the table of sections to the wording of the section heading represented by that item.

*Section 1110. Allowance of administrative expenses*

Section 1110 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' and equity security holders' committee would not be recoverable, but expenses incurred for such professional services by the committees themselves would be.

*Section 1111. Priorities*

Section 1111 of the bill makes technical amendments to section 507(a) of title 11 of the United States Code. The amendment made by section 1111(1) corrects an error in the punctuation at the end of section 507(a)(3). The amendment made by section 1111(2) corrects an omission in paragraph (7) of section 507(a) and conforms this paragraph with section 507(a)'s other paragraphs that provide priority only to unsecured claims.

*Section 1112. Exemptions*

This section makes grammatical and clarifying amendments to section 522(f)(1)(A) and a conforming amendment to section 522(g)(2) of the Bankruptcy Code.

*Section 1113. Exceptions to discharge*

Section 1113 of the bill amends section 523 of the Bankruptcy Code, relating to the discharge of debts, to correct the inadvertent omission of a cross-reference to paragraph (15) in paragraph (3)(A), 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, and to require that the debt must be owed to a spouse, former spouse, or child of the debtor. The effect of this amendment is to fulfill Congress's original intention to exclude from discharge certain family obligations if the debtor has the ability to pay them and the benefit of a discharge to the debtor does not outweigh the detriment to the spouse, former spouse, or child.

This section also amends section 523(a)(9), which makes nondischargeable any debt resulting from death or personal injury arising from the debtor's unlawful operation of a motor vehicle while intoxicated, to add "watercraft, or aircraft" after "motor vehicle." Neither additional term should be defined or included as a "motor vehicle" in section 523(a)(9) and each is intended to comprise unpowered as well as motor-powered craft. Congress previously made the policy judgment that the equities of persons injured by drunk drivers outweigh the responsible debtor's interest in a fresh start, and here clarifies that the policy applies not only on land but also on the water and in the air. Viewed from a practical standpoint, this provision closes a loophole that gives intoxicated

watercraft and aircraft operators preferred treatment over intoxicated motor vehicle drivers and denies victims of alcohol and drug related boat and plane accidents the same rights accorded to automobile accident victims under current law.

Finally, this section amends section 523(a)(17), added by the Omnibus Consolidated Rescissions and Appropriations Act of 1996,[188] to narrow its application in accordance with its original intent. Paragraph (17), enacted in the context of prison litigation reform, excepts from discharge the filing fees or related costs or expenses assessed by a court in a civil case or appeal. Because of a drafting error, however, this section might be construed to apply to filing fees, costs or expenses incurred by any debtor, not solely by those who are prisoners. This amendment eliminates the ambiguity and makes other conforming changes.

*Section 1114. Effect of discharge*

Section 1114 of the bill makes technical amendments to correct errors in section 524(a)(3) of title 11 of the United States Code, caused by section 257(o)(2) of Public Law 99–554 and section 501(d)(14)(A) of Public Law 103–394.[189]

*Section 1115. Protection against discriminatory treatment*

Section 1115 of the bill amends section 525(c) of the Bankruptcy Code to make a technical amendment to conform a reference to its antecedent reference. 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 1115 is intended to make clear that lenders involved in making government guaranteed or insured student loans are not barred by this Bankruptcy Code provision from denying other types of loans based on an applicant's bankruptcy history; only student loans and grants, therefore, cannot be denied under section 525(c) because of a prior bankruptcy.

*Section 1116. 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 1116 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 origi-

[188] Pub. L. No. 104–134, sec. 804(b).

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

nal Congressional intent to generally exclude production payments from the debtor's estate.

*Section 1117. Preferences*

Section 547 of the Bankruptcy Code authorizes trustees to avoid preferential payments made to creditors by a debtor within 90 days of filing, whether the creditor is an insider or an outsider. Because of the concern that corporate insiders (such as officers and directors) who are creditors of their own corporation have an unfair advantage over outside creditors, section 547 also authorizes trustees to avoid preferential payments made to insider creditors between 90 days and one year before filing. Several recent cases, including *DePrizio,*[190] allowed the trustee to "reach-back" and avoid a transfer to a noninsider creditor which fell within the 90-day to one 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 one 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 one year before bankruptcy, if the transfer benefitted an insider guarantor of the debtor's debt.

Accordingly, section 1117 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 one 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 one year pre-filing period.

*Section 1118. Postpetition transactions*

Section 1118 amends section 549(c) to clarify its application to an interest in real property. This amendment should be construed in conjunction with section 1101 of the bill.

*Section 1119. Disposition of property of the estate*

Section 1119 of the bill amends section 726(b) of title 11 of the United States Code to strike an erroneous reference to a nonexistent section.[191]

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[190] *In re V.N. DePrizio Constr. Co.,* 874 F.2d 1186 (7th Cir. 1989); see, e.g., *Ray* v. *City Bank & Trust Co. (In re C&L Cartage Co.),* 899 F.2d 1490 (6th Cir. 1990); *Manufacturers Hanover Leasing Cor.* v. *Lowrey (In re Robinson Bros. Drilling*), 892 F.2d 850 (10th Cir. 1989).

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

*Section 1120. General provisions*

Section 1120 of the bill amends section 901(a) of title 11 of the United States Code to correct an omission in a list of sections applicable to cases under chapter 9 of title 11.

*Section 1121. Appointment of elected trustee*

This section refines existing law by clarifying the procedure for giving effect to the election of a private trustee in a chapter 11 reorganization case. Section 702(b) of the Bankruptcy Code permits creditors at the meeting of creditors to elect one person to serve as trustee in the case, provided certain conditions are met. Section 1104(b) of the Bankruptcy Code relates to the convening of the meeting of creditors for this purpose and the conduct of the election. Section 1121 of the bill renumbers section 1104(b) as section 1104(b)(1) and adds a new subsection 1104(b)(2) requiring the United States trustee to file a report certifying the election when an eligible, disinterested trustee is elected under paragraph (1). The effect of such filing would be to consider such elected trustee as selected and appointed for purposes of section 1104 and to terminate the service of any trustee appointed under subsection (d), which provides for the appointment of a trustee or examiner by the United States trustee, subject to court approval, if the court orders such an appointment or in the event of a trustee or examiner's death, resignation, removal or failure to qualify.

*Sections 1122 and 1123. Abandonment of railroad line; contents of plan*

Sections 1122 and 1123 of the bill amend sections 1170(e)(1) and 1172(c)(1) of title 11 of the United States Code to reflect the facts that section 11347 of title 49 of the United States Code was repealed by section 102(a) of Public Law 104-88 and that provisions comparable to section 11347 appear in section 11326(a) of title 49 of the United States Code.

*Section 1124. Discharge under chapter 12*

Section 29 of the bill amends section 1228 of the Bankruptcy Code, dealing with discharge under chapter 12, to correct erroneous references.

*Section 1125. Bankruptcy cases and proceedings*

Section 1125 of the bill amends section 1334(d) of title 28 of the United States Code to correct erroneous references.[192]

*Section 1126. Knowing disregard of bankruptcy law or rule*

This section amends section 156(a) of title 18 of the United States Code, which defined "bankruptcy petition preparer" and "document for filing," by making stylistic changes and correcting a reference to title 11 of the United States Code.

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

*Section 1127. Transfers made by nonprofit charitable corporations.*

Section 1127 amends section 363(d) of the Bankruptcy Code to restrict the right of a trustee to use, sell, or lease property by a nonprofit corporation or trust. First, the use, sell or lease must be in accordance with applicable nonbankruptcy law and to the extent it is not inconsistent with any relief granted under certain specified provisions of section 362 of the Bankruptcy Code concerning the applicability of the automatic stay. Second, section 1127 imposes similar restrictions with regard to chapter 11's plan confirmation requirements. Third, it amends section 541 of the Bankruptcy Code to provide that any property of a bankruptcy estate where 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 H.R. 833's enactment. An limited exception pertains with confirmation of a chapter 11 plan.

*Section 1128. Prohibition on certain actions for failure to incur finance charges*

Section 1128 amends section 127 of the Truth in Lending Act to prohibit a creditor to terminate an open-end consumer credit plan prior to its expiration date solely because the consumer has not incurred finance charges on the account. This restriction does not prevent a creditor from terminating an account for inactivity for three or more consecutive months.

*Section 1129. Protection of valid purchase money security interests*

Section 1129 of the bill 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.

*Section 1130. Trustees*

Section 1130(a) sets up a series of procedural protections for chapter 7 and chapter 13 trustees (appointed respectively under section 586(a)(1) and (b)) concerning decisions relating to their appointment and future case assignments. It allows a trustee to obtain judicial review of final agency decisions by commencing an action in the United States district court after such trustee exhausts all available administrative remedies. It provides that the agency's decision shall be affirmed by the district court unless it is unreasonable and without cause.

Section 1130(b) requires a chapter 13 to obtain judicial review of certain final agency action relating to expenditures by such chapter 13 trustee. The decision of the agency shall be affirmed by the district court if is unreasonable and without cause based on the administrative record before the agency.

## XII. General Effective Date: Application of Amendments

*Section 1201. Effective date; application of amendments*

Section 1201 provides that the bill shall take effect 180 days after the date of its enactment. Except as otherwise provided in the

bill, the amendments made by H.R. 833 shall not apply to cases commenced under the Bankruptcy Code before the bill's effective date.

## AGENCY VIEWS

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
*Washington, DC, April 19, 1999.*

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

DEAR MR. CHAIRMAN: We understand that the Judiciary Committee will mark up H.R. 833, the Bankruptcy Reform Act of 1999, during the week of April 19, 1999. This letter supplements and incorporates by reference the views of the Justice Department on H.R. 833 set forth in our letter of March 24, 1999, to the Chairman of the Subcommittee on Commercial and Administrative Law. A copy of that letter is enclosed for your convenience. We would be pleased to meet with you to discuss our concerns in more detail.

*Section 102. Dismissal or conversion*

The Department continues to oppose this provision for the reasons stated in our earlier letter, but notes certain changes in the wording of proposed section 707(b)(2)(A)(ii) which cause additional concerns. Specifically, the new reference to "the debtor's applicable monthly expenses for the categories specifically listed as Other Necessary Expenses issued by the Internal Revenue Service" appears to limit what the debtor can claim to certain categories and no others. This limitation is too restrictive.

In addition, a new statement has been added that "[n]otwithstanding the foregoing, the debtor's monthly expenses shall not include any payments for debts." The purpose of this statement is unclear. This provision would, for example, appear to preclude a debtor from factoring in any payments on nondischargeable debt. We recommend that this sentence be deleted.

*Section 117. Trustee liability*

Section 117 of H.R. 833 is new, and was incorporated as part of the Amendment in Nature of a Substitute approved by the Subcommittee. This section establishes a uniform standard of trustee personal liability. We strongly oppose Section 117 as currently drafted, because it could seriously undermine the ability of innocent victims of a trustee's negligent conduct to obtain redress. It also contradicts the requirements of 28 U.S.C. §959 ("trustees and receivers suable") for trustees and receivers conducting business operations.

Subsection (a) would amend section 322 of the Bankruptcy Code (title 11, U.S.C.) to provide that a trustee is not liable personally or on such trustee's bond except to the extent that the trustee acted with gross negligence. This standard is designed to insulate a trustee from any liability arising from the trustee's negligence and could leave victims, whether creditors or innocent third parties, without recourse. Although a trustee's bond is conditioned

upon a trustee's "faithful performance," 11 U.S.C. §322(a), this provision could permit the surety on the bond to avoid payment on a negligence claim, because the principal on the claim, the trustee, would not be personally liable.

The risk of harm to innocent third parties is especially great when a trustee operates a business. Currently, 28 U.S.C. §959 requires all trustees engaged in business to comply with the requirements of the laws of the state in which the property is situated. Granting immunity for acts of negligence eviscerates the requirements of 959, and could create a safe haven from having to comply with applicable law in carrying on a business. The consequences of this change would be particularly severe in cases where trustees operate a hazardous enterprise such as a chemical weapons business or waste recycling business. If trustees elect to seek short-term profits for estate creditors through operation of an insolvent and hazardous business prior to liquidation, it is critical that innocent parties that may bear any costs of such profit-making activity be protected.

Trustees may currently protect themselves from negligence claims by purchasing insurance. Yet because the insurance protects the trustee personally as opposed to the estate, reimbursement of the premiums from estate funds has traditionally been disallowed. This provision would eliminate the trustee's incentive to carry any insurance.

To protect both the estate and innocent third parties, the Department would not object, in lieu of this provision, to amendments requiring trustees to obtain adequate insurance and permitting them to obtain reimbursement of their premiums as an "actual, necessary expense" of the estates, *See* 11 U.S.C. § 330(a)(1)(B). If this provision remains, however, we strongly recommend that any immunity provided by Section 117(a) be made inapplicable to a trustee "that is carrying on business," in order to conform to the requirements of 28 U.S.C. § 959. Moreover, nothing in this provision should compromise a court's ability to consider the trustee's negligent acts in awarding compensation to the trustee, or in considering whether the trustee should be removed from the case under 11 U.S.C. § 324. This is particularly important since section 209 of the bill, which we oppose, would create an entitlement for the trustee to recover maximum compensation.

Subsection (b) would amend section 323 the Bankruptcy Code to further immunize trustees from the consequences of their acts by stating that a trustee may not be sued, either personally or in a representative capacity, "for acts taken in furtherance of the trustee's duties or authority in a case in which the debtor is subsequently determined to be ineligible for relief." This provision could be interpreted to insulate a trustee from acts of gross negligence based on the mere fortuity that a bankruptcy case is later dismissed. We also oppose this provision because it fails to protect innocent third parties as discussed above.

Subsection (b) would also amend the Bankruptcy Code to immunize a trustee from liability "for the dissemination of statistics and other information regarding a case or cases, unless the trustee has actual knowledge that the information is false." Congress has recognized the need for data as well as the establishment of adequate

safeguards. Sections 701–703 of this bill evidence a congressional mandate for uniform data collection standards, including final reports in chapter 7, 11 and 13 cases. Acting pursuant to this mandate, the United States Trustees and the bankruptcy clerks will be developing and compiling uniform standards and statistical information. Since the data maintained by the trustees will be collected by the United States Trustees and clerks for purposes of meeting these requirements, this amendment appears unnecessary and may be redundant of other provisions.

Nevertheless, we would not oppose this provision if it were amended to address the following concerns:

No dissemination should violate protected privacy interests of an individual.

The trustee should not be permitted to disseminate statistics for the personal benefit or gain of the trustee or of any organization in which the trustee is a member.

The trustee should not be permitted to discriminate in the way statistics or information are disseminated.

Nothing in this provision should abrogate the trustee's fiduciary duty under 11 U.S.C. § 704 to provide information to parties in interest in a case or, upon request, to furnish statistics and information to the United States trustee or clerk of court.

Finally, subsection (b) further amends 11 U.S.C. § 323 to provide that a trustee "may not be sued in a personal capacity without leave of the bankruptcy court in which the case is pending." We oppose this provision as written, because it is inconsistent with section 959 of title 28, United States Code, which specifically provides that leave of court is not required for actions against trustees for acts arising from their operation of a business. Victims should not be forced to conduct litigation in forums that are distant from where the trustee has chosen to conduct business in a negligent, grossly negligent or intentionally wrongful manner.

With regard to non-operating cases, this provision appears to codify what is commonly known as the "Barton doctrine." Under that doctrine, a trustee who does not operate a business cannot be sued in a forum other than where the underlying bankruptcy case is pending, absent leave of court. See *DeLorean Motor Co.* v. *Weitzman,* 991 F.2d 1236 (6th Cir. 1993). If this provision is intended to insulate the trustee from personal liability actions, we oppose it for the reasons noted above, but if it is intended solely as a venue issue, we would not oppose codification of the "Barton doctrine" provided it applies only to non-operating cases and is inserted as an amendment to section 1409 of title 28, United States Code, instead of the Bankruptcy Code.

*Section 132. Amendment to section 1325 of title 11, United States Code*

Section 132 modifies what is commonly called the "disposable income" objection to confirmation of a chapter 13 plan. Under current law, a trustee or unsecured creditor may object to confirmation of a plan unless the plan provides that all of the debtor's disposable income for a three-year period is applied to payments under the plan. We oppose section 132 because it seriously weakens the effectiveness of chapter 13.

This section would require the use of the "means test" found in section 102 of the bill to determine a debtor's disposable income, instead of a personalized review of a debtor's necessary expenses. We oppose the application of the means test in chapter 13 for the same reasons that we oppose the means test in section 102. The rigid application of formulaic expenses could significantly reduce the ability of a debtor to successfully complete a chapter 13 plan because the plan is not based upon a debtor's actual expenses. We believe that the current "disposable income" test as applied by the courts is effective in protecting both the debtor and creditors.

In addition, section 132 eliminates payments received by the debtor for child support and other related payments from the determination of current monthly income. This could lead to double counting, insofar as income attributable to support is not recognized but support-related expenses are still deducted. Under the present disposable income test, such income and associated expenses are taken into account by the courts.

*Section 126. Residency requirement for State exemptions*

Section 126 specifies that, if a debtor has not been domiciled in a state for the entire 730-day period prior to filing, the debtor can claim exemptions under the laws of the state where the debtor was domiciled in the 180-day period prior to the 730-day period. We support the effort to address this problem, but have serious concerns about whether this provision will be effective. Much of this will depend on how states limit their exemptions or permit individuals to claim exemptions. Without a full understanding of how state exemption laws are applied, unintended gaps will still arise under this proposal as debtors attempt to claim exemptions under the laws of another state in which they no longer reside or have property. It is unlikely, for example, that a Missouri debtor could claim the Texas homestead for the debtor's new Missouri residence—two years after the debtor has moved himself and his property from Texas—thus leaving the debtor with no homestead exemption to claim.

*Section 150. Monetary limitation on certain exempt property*

Section 150 would limit the amount of the exemption a debtor can claim in homestead property to $250,000. Presently, a few states allow a debtor to claim an unlimited exemption in homestead property, which has led to highly visible cases of abuse by debtors who are clearly able to repay their debts but instead avoid repayment by using the unlimited exemptions in these states. The Department strongly supports the move to cap exemptions but urges the Committee to consider a lower ceiling such as $100,000.

*Section 402 and 407. Small business chapter 11 cases*

The Department commented in its earlier letter that the definition of a small business debtor set out in section 402 of the bill could lead to unnecessary litigation over whether a debtor is subject to the small business provisions that are being proposed. The delay resulting from such litigation could jeopardize a small business's ability to reorganize and defeat the purpose of these provisions—which is to provide a fair but expeditious way to shepherd

small business cases through the system. We appreciate the change in section 402 to resolve the definition problem and support it.

The substitute bill, however, appears to have moved the language in section 402 that we objected to earlier and inserted it in section 407 as an amendment to 11 U.S.C. § 1121(e). As presently drafted, a small business debtor is required to file a plan within 90 days unless the court makes a determination within the 90 days that the creditors committee "is sufficiently active and representative to provide effective oversight of the debtor." While we appreciate the intent to provide the debtor with more time to file a plan in certain circumstances, this provision seems to compromise the point of having a 90-day deadline. It will require extra hearings during a particularly crucial period when the debtor should not be distracted by collateral issues from working on the reorganization. We would be pleased to work with the Committee on appropriate changes.

We look forward to working with the Committee as it considers these and other issues raised by H.R. 833. The Office of the Management and Budget advises that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

DENNIS K. BURKE,
*Acting Assistant Attorney General.*

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U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
*Washington, DC, March 24, 1999.*

Hon. GEORGE W. GEKAS
*Chairman, Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: We understand that the House Judiciary Subcommittee on Commercial and Administrative Law is scheduled to mark up H.R. 833, the Bankruptcy Reform Act of 1999, on March 24, 1999. This letter provides the position of the Administration on consumer bankruptcy reform, and outlines the Justice Department's views on H.R. 833 as a whole. While we understand that this letter comes too late for your consideration before the markup of H.R. 833 by the Subcommittee, we hope you will take our comments into consideration prior to the markup by the full Committee. We would be pleased to meet with you to discuss these issues in more detail.

General Administration Perspectives

The President supports responsible bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly. The President remains hopeful that bipartisan consultation and compromise will result in legislation that he can enthusiastically sign this year.

Last year the Administration expressed its strong opposition to the House-passed version of H.R. 3150. We encouraged passage of

the Senate bill "as an important step toward balanced bankruptcy reform," but noted that the Administration would support its enactment "only if the essential reforms incorporated by the Senate managers' amendment [were] preserved and strengthened and the unbalanced and arbitrary elements of the current House bill [were] omitted." Although we thought that the Senate bill could be further improved, we believed that the extraordinary bipartisan support for the Senate bill was an endorsement of balance and moderation.

During this year's debate, the Administration will continue to encourage Congress to find an appropriate balance. Among the issues that must be addressed are:

*Access to Chapter 7:* Any "means test" imposed should deny access to Chapter 7 only to those who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. Thus, debtors affected by a means test must be given a meaningful opportunity to have their specific circumstances considered by bankruptcy courts with discretion to determine whether they genuinely have the capacity to repay a portion of their debts. In addition, the time periods and thresholds used in any means test should be set to ensure that only those with a strong likelihood of success are affected.

*Nondischargeable Debts:* It is generally inappropriate to make post-bankruptcy credit card debt a new category of nondischargeable debt. The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, such as in the cases of educational loans, tax obligations, or debts incurred by fraud. 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 this bill meet the standard of an overrding public purpose. If categories of nondischargeable debt are to be created, they should be narrowly tailored and limited to situations where the debtor is clearly abusing the system, such as when the debtor: (1) incurred the debt to pay nondischargeable debt with an intent to avoid the debt in bankruptcy; or (2) incurred the debt on the eve of bankruptcy for goods and services that are not reasonably acquired to support the debtor's household.

*Coercive Creditor Practices:* Particularly if we are to provide new opportunities for creditors to challenge debtors' use of the bankruptcy system under the 707(b) abuse test, it is imperative that we adequately limit prevalent abusive creditor practices such as coercive reaffirmations and violations of the automatic stay. While last year's Senate bill initially took laudable steps in this direction, the Conference Report rolled back existing consumer protections by denying consumers an effective means for remedying the harm from such practices and eliminating the current authorization for penalties for intentional violations of debtor rights.

*Consumer Information and Protection:* The challenge posed by the unprecedented level of bankruptcy filings requires us to ask greater responsibility of debtors and creditors both. Credit card companies must give consumers more and better information so that they can understand and better manage their debts.

*Homestead Exemptions:* At the same time that we are creating a system that will deny certain moderate-income Americans access

to the traditional "fresh start," we should also close the loopholes that allow the wealthy to shield hundreds of thousands of dollars of wealth from their creditors.

Justice Department Comments

## Title I: Consumer Bankruptcy Provisions

### SUBTITLE A: NEEDS BASED BANKRUPTCY

*Section 102. Dismissal or conversion*

Section 102 of H.R. 833 amends section 707(b) of the Bankruptcy Code (the "Code'). Under this amendment, a chapter 7 case filed by an individual with primarily consumer debts may be dismissed for abuse upon the motion of any party in interest, with certain limitations. Abuse is presumed when the debtor is able to repay at least 25 percent of non-priority unsecured debts or $5000 over 60 months, applying IRS expense guidelines. The debtor may rebut the presumption of abuse by demonstrating extraordinary circumstances that require additional expenses or an adjustment of current monthly income. In deciding whether a case is abusive, the court must also consider whether the case was filed in bad faith or whether the "totality of the circumstances" demonstrates abuse.

The Department supports strengthening the provisions of section 707 of the Code to ensure that debtors with an ability to repay their debts do not obtain a chapter 7 discharge. However, the proposed amendments raise a number of concerns, and for these reasons, we oppose section 102.

First, we are concerned that the "thresholds" are too low, and will have the effect of denying some debtors Chapter 7 relief who in fact have no significant ability to repay their debts. In addition, we believe that these thresholds unnecessarily saddle the bankruptcy system with extra costs, such as reviewing the income and expenses of low income debtors who are not able to repay their debts. We believe that changes should be made to minimize the costs to the bankruptcy system. And, as a technical matter, this section does not make clear whether the ability-to-repay standards apply only to an individual debtor, or also to joint debtors.

Second, the use of the Internal Revenue Service (IRS) Standards for allowable expenses is inappropriate because those standards were not intended for these purposes. The IRS standards were meant to provide guidelines for determining appropriate expenses. Last year during its consideration of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, Congress criticized the inflexible application of those guidelines and directed the IRS to also consider the taxpayer's facts and circumstances. The Joint Committee on Taxation explained the attitude of Congress regarding the guidelines in the following terms:

> The IRS is * * * required to consider the facts and circumstances of a particular taxpayer's case in determining whether the national and local schedules are adequate for that particular taxpayer. If the facts indicate that use of scheduled allowances would be *inadequate under the circumstances,* the taxpayer is not limited by the national or local allowances.

See General Explanation of Tax Legislation Enacted in 1998 at 107 (1998) (emphasis added).

Bankruptcy courts should be given as much discretion in applying the IRS guidelines. In particular, the "extraordinary circumstances" standard in section 102 of H.R. 833 is much stricter than the standard of "inadequate under the circumstances" which the IRS now applies for collecting tax debt, which is a higher public priority than debt that can be discharged in bankruptcy.

Third, the multiple hurdles for rebutting the presumption of abuse—"only" if the debtor can demonstrate "extraordinary circumstances" that make additional expenses or adjustments of income "necessary" and reasonable—are conflicting and so strict as to effectively preclude the debtor from proving the existence of reasonable expenses that are not included within the IRS standards. We believe that the words "only," "extraordinary" and "necessary" should be deleted from proposed section 707(b)(2)(B). The debtor still would be required to prove to the court that additional expenses are both warranted and reasonable.

Fourth, the procedures set forth in Section 102 would impose a substantial burden on the courts and the trustees. As a general matter, chapter 7 cases flow through the bankruptcy system fairly quickly. Any delays that are built in (including the trustees" statement, the extension of time to file paperwork, etc.) will slow that process accordingly. More specifically, section 102(b)(2) of the H.R. 833 would amend 11 U.S.C. 704 to expand the duties of a chapter 7 trustee to require the trustee to file a statement with the court 10 days before the meeting required under section 341 of the Code as to whether the debtor's case should be presumed to be an abuse under the means-test formulation. The court must then notice the statement to all creditors within 5 days. If the debtor makes more than the highest national median family income for a family of equal or lesser size, the trustee must file a motion to dismiss within 30 days or file a statement explaining why a motion would not be appropriate.

Since the section 341 meeting occurs within 20–40 days of filing, Fed. R. Bankr. P. 2003(a), the trustee's statement must be filed within 10 to 30 days after filing depending on when the 341 meeting is held. This means the trustee must make the determination before she even questions the debtor at the 341 meeting or before the documents are even filed. This is impractical, and is at odds with Section 604 of the bill, which appears to give debtors a 45-day grace period to file the requisite documents (under current law, 11 U.S.C. 707(a)(3) debtors have only 15 days to file the documents required by 11 U.S.C. 521(1)). It is not clear how the trustee can perform this assessment with any degree of due diligence in the time required. These problems threaten to significantly clog the formal bankruptcy processes. We stand ready to work with the Committee to craft proposals that minimize the costs to the bankruptcy system.

Fifth, we do not think it appropriate for Section 102 to impose a higher duty on debtor's counsel than that set forth in Rule 9011. We believe that the standards in Rule 9011 are appropriate and we are concerned that the formulation set forth in Section 102 adds unnecessary complexity and confusion to the Bankruptcy Code.

Sixth, we do not believe it is appropriate to remove the risk of sanctions from all creditors who bring unjustified Rule 707(b) motions just because those creditors' claims may be less than $1000. If the goal is to encourage small business creditors to bring appropriate Rule 707(b) motions, then the legislation should be drafted more narrowly to address those entities, while excluding large creditors with many small claims. Otherwise the bill will serve to protect large creditors with sub-$1000 claims who, due to their size and efficiencies of scale, do not merit this protection and who could use such protection to coerce debtors to reaffirm debts.

Seventh, section 102 also amends section 704 to require the trustee to file a statement with the court 10 days before the meeting of creditors, stating whether the debtor's case should be presumed abusive based upon ability to repay, and file a motion to dismiss within 30 days of filing the statement. It is impractical to require the trustee to file such a statement before the meeting of creditors, especially when section 604 of this bill gives debtors up to 45 days to complete their schedules, and liberal amendments to schedules are permitted. The necessity of such a statement is also doubtful insofar as section 102 requires the debtor to file a statement containing the necessary ability to repay calculations.

*Section 103. Notice of alternatives*

Section 103 of H.R. 833 would, in part, amend section 342 of the Code to ensure that consumer debtors receive information about debt counseling services and their options before filing bankruptcy. The form of the notice would be prescribed by the United States Trustee for the district and would contain a brief description of the bankruptcy chapters, the benefits and costs of each chapter and services available from a credit counseling service approved by the United States Trustee for that district. We support the concept of consumer education that underlies section 103.

*Section 104. Debtor financial management test program*

Section 104 of H.R. 833 would require the Executive Office for United States Trustees, in consultation with experts, to develop a financial management training curriculum for debtor education in three pilot districts for a one year period. The materials would also be made available to individual debtors on request. The courts in the pilot districts would be authorized to make attendance at the debtor education program a condition of discharge. The Director of the Executive Office would also be required to evaluate the effectiveness of the pilots and existing debtor education programs and to submit a report of his findings to Congress.

Provided that adequate resources are appropriated for the test program, the Department supports this as the best way to refine effective debtor education programs before they are extended nationwide. However, H.R. 833 creates confusion as to whether debtor education is to be a test or a permanent program. Section 302(b) and (c) of H.R. 833 condition the debtor's discharge upon completion of "an instructional course concerning personal financial management described in section 111." This language suggests a permanent program. Moreover, section 111 does not address such

courses. We believe these provisions may have been carried over inadvertently from an earlier draft, and suggest they be deleted.

SUBTITLE B: CONSUMER BANKRUPTCY PROTECTIONS

*Sections 105 to 108. Disclosures (Debt relief agencies)*

Sections 105 to 108 of H.R. 833 deal with debt relief agencies. Section 105 defines covered debt relief agencies. Section 106 would require such agencies to provide the person they are assisting in filing bankruptcy with written notice of the requirements that all bankruptcy schedules must be accurate, that the information is subject to audit, and that the failure to provide accurate information may result in dismissal of the bankruptcy case, sanctions or criminal prosecution. Debt relief agencies would be required to provide a separate notice advising the assisted person that the debt relief agency is required, inter alia, to enter a written contract. Finally, debt relief agencies would be required to inform assisted individuals on matters such as "how to determine what property is exempt and how to value exempt property at replacement value."

The Department opposes section 106 as currently drafted, because it would undercut the consumer protections currently contained in section 110 of the Code and state law. These provisions impose penalties on persons who negligently or fraudulently prepare bankruptcy petitions. Because debt relief agencies would be defined to include petition-preparers and other non-attorneys, the advice required to be given by a counseling agency could constitute the unauthorized practice of law. To avoid this problem, section 106 of H.R. 833 should be amended to exclude non-attorneys from the provisions of new section 526(c), and to add to the form notice outlined in section 526(b) a statement that the debt relief counseling agency employee cannot provide legal advice if he or she is not an attorney.

Section 107 of H.R. 833 would provide the assisted person certain substantive rights when using a debt relief agency, including the right to a written contract that fully discloses all services and all charges. We do not oppose this concept, but believe that the standard of liability in the provisions should be changed. Section 107(b)(2) provides that a debt relief agency shall not "make any statement * * * which is untrue and misleading or which upon the exercise of reasonable care, should be known by the debt relief agency to be untruthful or misleading." (emphasis added). The underlined disjunctive "or" would impose strict liability upon a debt relief agency by imposing liability if the statement is untrue and misleading, even if the agency had no reason to know of the untruthful or misleading nature of the statement. The Department suggests replacing the underlined "or" with "and" to establish a more appropriate standard of liability.

Finally, section 108 of H.R. 833 would provide penalties and other remedies on debt relief agencies for failing to comply with the requirements of section 106 and 107, or for providing bankruptcy assistance in a case which is dismissed or converted for a failure to file bankruptcy papers. Section 108 should be clarified to allow a debtor, as well as the trustee, to bring an action for a violation,

and to clarify that the remedies are in addition to any remedies provided in section 110 of the Code.

*Section 110. Discouraging abus[ive] reaffirmation practices*

Section 110 addresses a problem of great significance: unscrupulous creditor practices designed to coerce debtors into reaffirming debts, particularly unsecured debts, even when doing so clearly is not in the best interests of the debtor. Currently, section 524(c) of the Code imposes a number of limitations on reaffirmation agreements, but the extant evidence suggests that abusive reaffirmation practices continue. The National Bankruptcy Review Commission recommended even stricter rules regarding reaffirmation of secured debt, and the complete elimination of reaffirmations of unsecured debt.

Section 110 attempts to address this problem by requiring that creditors who seek reaffirmation of wholly unsecured consumer debt provide a disclosure that the debtor is entitled to a hearing. The debtor also can waive his right to a hearing if represented by counsel.

We believe that a far more effective approach would (1) require disclosure of the component amounts of any debt to be reaffirmed; (2) require court review for reaffirmations of relatively small amounts where the creditor claims a purchase money security interest; (3) prohibit the addition of costs and attorneys fees on at least these smaller claims. We would be happy to work with the Committee to develop stronger, more effective rules to discourage abusive reaffirmation practices.

*Section 111. Promoting alternative dispute resolution*

Section 111 would create an incentive for the parties to use alternative dispute resolution prior to the filing of a petition. We wholeheartedly support efforts to encourage the use of alternative dispute resolution in this context, but believe Section 111 is too restrictive because it applies only in limited circumstances. Under this section, alternative dispute resolution would be encouraged by imposing a penalty in cases where a creditor unreasonably refused to negotiate an alternative repayment schedule proposed by an approved credit counseling agency. The penalty applies only if the debtor's offer was made at least 60 days prior to the filing of the petition; and the offer provided a specified percentage payment (60% over a specified time). A more effective approach would be to encourage parties to use any appropriate neutral, and give them leeway to determine when it is appropriate to settle and for what amount. We would be happy to work with the Committee to draft a more effective rule.

*Sections 116 to 117. Effect of discharge; automatic stay*

Section 116 addresses several issues. First, it states that the willful failure of a creditor to credit payments received under a confirmed plan shall constitute a violation of a discharge injunction under subsection 524(a)(2) of the Code. We support this provision but suggest two modifications. First, the court should be given discretionary, rather than mandatory, authority to grant sanctions, so as to allow the court to consider situations where the creditor had

a good faith basis to believe the debt was not discharged. Second, we suggest the provision be amended to require the debtor first to exhaust efforts to obtain administrative relief where applicable.

Next, section 116 bars debtors who are injured by the failure of a creditor to comply with the law regarding reaffirmation agreements or the crediting of plan payments from bringing a class action suit. In addition, the provision would limit recovery to actual damages or $1000, whichever is greater, plus costs and attorneys' fees. Recent litigation has demonstrated that these kinds of violations do in fact occur, at times, on a class-wide basis in circumstances where individual damages may be too small to encourage a debtor to bring a claim. Moreover, we believe that treble damages would be a more effective incentive to debtors to bring these claims. Accordingly, we strongly oppose this provision.

Section 117 bars class actions for violations of the automatic stay, and limits debtor recovery to actual damages and reasonable costs, including attorneys fees. Once again, we strongly oppose the limitation on class actions, and support a treble damages provision as a more effective incentive to obtain compliance with the provisions of the automatic stay rules.

*Section 119. Discouraging bad faith repeat filings*

In cases of refiling within a year, section 119 would provide a 30-day limit on the application of the automatic stay of section 362 of the Code. This section would not apply if, prior to termination and upon request of a party-in-interest, the court provides notice and a hearing to affected parties regarding the potential extension of the stay. Serial filings are a serious problem in many jurisdictions and, accordingly, we endorse the adoption of firm measures to address this issue. Repeat filings—whether to obtain multiple discharges or to hold creditors at bay temporarily—should not be encouraged or abided. This provision would provide a welcome limitation to abuse of the automatic stay provision of the Code by serial filers who have no hope or intention of ever being granted a discharge in bankruptcy.

*Section 123. Giving secured creditors fair treatment in chapter 13*

Section 123 would amend section 1325(a)(5)(B)(i) of the Bankruptcy Code to protect the lien of a secured creditor from release by a chapter 13 plan if the debtor fails to complete the plan. This provision would resolve an issue on which the bankruptcy courts are split. The issue arises when the debtor confirms a chapter 13 plan that reduces a creditor's lien to the current value of the collateral (so-called "lien stripping") and then, after completing the payments due on the secured portion of the claim, but before the plan is completed, the debtor seeks to discharge the lien. Some courts hold that the collateral does not vest in the debtor until the entire plan is completed. See, e.g., *In re Pruitt,* 203 B.R. 134 (Bankr. N.D. Ind. 1996); *In re Schieirl,* 186 B.R. 498 (Bankr. D. Minn. 1995). Other courts have held that, upon payment of the secured portion of the creditor's claim, the collateral is released. See, e.g., *In re Lee,* 156 B.R. 628 (Bankr. D. Minn.), aff'd, 162 B.R. 217 (D. Minn. 1993); *In re Nicewonger,* 192 B.R. 886 (Bankr. N.D. Ohio 1996).

We support the limitations on lien discharge contained in section 123. A key advantage that chapter 13 offers debtors over chapter 7 is that a larger universe of property is subject to lien "strip down." Furthermore, in a chapter 13 plan, the debtor can redeem collateral with payment over time from future income. These advantages are often the debtor's chief reason for undertaking a chapter 13 plan. But because debtors may allocate their plan payments preferentially to pay secured indebtedness sooner than unsecured debt, the result can be a disincentive for debtors to finish their plans after paying enough to redeem the collateral. Debtors should not be permitted to obtain the benefits of chapter 13 without bearing its burdens.

*Section 124. Restraining abusive purchases on secured credit*

Section 124 amends Section 506 of the Code in individual cases by barring the stripping of liens for personal property acquired by the debtor within 5 years of filing the bankruptcy petition. Currently, the debtor's power to strip liens to the value of the collateral in plans under chapters 11, 12 and 13 is not limited by the time lapsed since purchase.

Expanding the "look back" to 5 years changes its character, and creates a significant limitation on the attractiveness of reorganizations for debtors, especially under chapter 13. A key advantage of chapter 13 for debtors is the expanded ability it affords to retain property subject to liens. Not only can debtors reduce the payments down to the value of the collateral, but they can also pay the liens off over time from the plan payments. Many courts allow debtors to "front load" the payments for their secured debt; in such cases, debtors who retire their secured debts under their plans may have no incentive to finish their plans, and may default without making substantial payments to their unsecured creditors. (The latter result is addressed by section 123, which precludes a strip down where the debtor fails to complete the plan; we support this provision.) This provision therefore may reduce substantially the number of debtors who voluntarily file chapter 13. This change benefits lenders who take personal property, such as cars, as collateral. The lack of strip down means that debtors must devote a greater percentage of their limited assets to secured creditors.

Although this modification may generally benefit the federal government, we believe a more balanced approach would be to return to the 180 day look back that was considered in the last year's legislative proposals.

*Section 126. Exemptions*

Section 126 would amend section 522(b)(2)(A) of the Code to permit the use of state exemptions only if the debtor has been domiciled in the respective state for at least two years before filing. As written, this amendment could deny a debtor who has not resided in a state for at least two years, but is otherwise a resident of that state, the use of any state's exemption because many states prohibit the use of federal exemption law under so- called "opt out" laws. To prevent this situation from resulting in the debtor being unable to claim any homestead, the opt-out language of section 522 should also be modified. Alternatively, this provision could be

amended to permit the use of a state's exemption law where the debtor's domicile has been located for the last two years, or for a longer portion of the last two years than in any other place.

Moreover, we urge that the homestead exemption be limited uniformly to $100,000 for the reasons set forth in the General Administration Perspectives section of this letter.

*Section 129. Discharge under chapter 13*

Section 129 governs the scope of discharge in Chapter 13 cases. Section 129 would limit the dischargeability of certain kinds of debt under section 523 of the code. We support this limitation. However, section 129 omits section 523(a)(3)(A) of the Code from its list of non-dischargeable debt, while it includes section 523(a)(3)(B). We see no basis for this bifurcation and suggest that entire section 523(a)(3) be included. Both subsections deal with a debtor's failure to schedule known debts. Subsection A deals with the unnotified creditor's ability to file a proof of claim. Subsection B deals with the unnotified creditor's ability to object to discharge on various grounds. As a matter of due process, the claims of such creditors who had no opportunity to participate in the bankruptcy should not be discharged.

*Section 135. Limitations on luxury goods*

Section 135 would amend Section 523(a)(2)(C) of the Code to change the non-dischargeability rules for certain so-called luxury goods. First, it defines "luxury goods or services" so as to exclude those "reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor." We prefer the formulation "reasonably required." Moreover, by including the word "necessary" the burden inappropriately shifts to the debtor to demonstrate that he or she "needed" the items expended. Second, it would establish a cap on dischargeable luxury goods or services of $250, or cash advances of $250, incurred within 90 days of filing the petition. We oppose the limitation. This would be a substantial change from the current law, which sets forth limits of $1075 during the preceding 60 day period. Moreover, it is important to bear in mind that cash advances are not always obtained for frivolous expenses; debtors sometimes use cash advances to buy absolute necessities such as groceries.

*Sections 141 to 147. Domestic support obligation*

Sections 141 defines domestic support obligations, and Section 142 establishes domestic support obligation as the first priority. We generally support this recognition of the critical societal importance of ensuring that domestic support obligations are not unduly reduced as a result of a debtor's bankruptcy. Without payments from domestic support obligations, the recipients of those payments may become destitute; it is therefore appropriate to give them a high priority. However, if an appropriate mechanism for funding the administrative costs of bankruptcy is not provided, too many debtors will go unrepresented. We would like to work with the Committee to ensure that there are no unintended consequences of this priority for domestic support obligations.

Sections 143 to 147 establish other special rules in the domestic support obligation context. Sections 143 and 144 establish special rules regarding confirmation and discharge, and exceptions to the automatic stay, in cases involving domestic support obligations. Section 145 makes certain domestic support obligations non-dischargeable. We support these provisions for the reasons stated above.

*Section 149. Nondischargeable debts*

Section 149 amends Section 523(a) of the Code in two ways. First, it would make non-dischargeable any debt that was incurred to pay an otherwise non-dischargeable debt with the intent to discharge the newly acquired debt. We support this change.

Second, Section 149 would also make non-dischargeable all debts incurred to pay non-dischargeable debts, without regard to intent, if incurred within 90 days of the petition. Proponents of this provision argue that one can presume that the debtor had the intent to avoid the debt in bankruptcy if they paid the nondischargeable debt with a dischargeable debt within 90 days of bankruptcy. Unfortunately, that is not a fair assumption. In the final months before filing a bankruptcy petition, a debtor may be struggling to retain a house or a car or feed a family. Accordingly, he or she may put debts on their credit card in a last attempt to meet their obligations. A review of the debtor's intent (for example, by looking at whether the debtor had yet consulted with bankruptcy counsel or whether the debtor had previously filed for bankruptcy and therefore was familiar with the rules) could uncover whether the payment in fact was abusive or not. By failing to weigh the intent of the debtor, this rule is overbroad and we strongly oppose its inclusion.

Title II: Discouraging Bankruptcy Abuse

*Section 201. Reenactment of Chapter 12*

Section 201 reenacts Chapter 12 of the Code, pertaining to family farmers. We support this provision.

*Section 202. Meetings of creditors and equity security holders*

Section 202 would amend section 341 of the Code to allow a court to direct the United States Trustee to dispense with the meeting of creditors in a case with a so-called "pre-packaged plan", i.e., a reorganization plan worked out with creditors in advance of the filing of a Chapter 11 petition. We oppose this provision, which would significantly hinder the ability of creditors and the United States Trustee to examine a debtor's affairs under oath. Dispensing with the meeting could also increase the possibility of fraud and collusion by a debtor and its major creditors. We suggest this provision be deleted.

*Section 203. Protection of retirement savings in bankruptcy*

Section 203 exempts from the bankruptcy estate a qualified retirement fund, pursuant to certain standards set forth in this section. The effect of the amendments would be to enhance debtors" ability to prevent their interests in retirement accounts and funds,

including Individual Retirement Accounts, from being used to satisfy their debts. The Administration has made encouraging adequate retirement savings a singular priority. We recognize that a fresh start is not meaningful if it requires the debtor to accept an impoverished retirement. However, a debtor should not be able to shield abundant resources from creditors, including federal, state and local governments, in the form of retirement savings. We look forward to working with the Committee to find the appropriate balance of these considerations.

*Section 205. Executory contracts and unexpired leases*

This section requires a debtor to assume an unexpired lease of non-residential real property within 180 days after filing the petition or the lease is deemed rejected. We support this provision.

*Section 206. Creditor and equity security holders committees*

Section 206 would amend section 1102 of the Code to allow a court to order changes in the membership of creditor and equity security holder committees. We strongly oppose this provision. Under section 1102 of the Code, United States Trustees are responsible for creating committees and appointing their members, while courts are called upon to resolve controversies arising from the committees. Section 206 would upset this balance and improperly involve the court in the administration of cases. This could create an appearance of favoritism if a court were called upon to resolve a controversy involving a committee it had constituted. The proposal could also result in increased cost and delay because early litigation over committee membership would inevitably decrease the ability of committees to participate at the early, critical stages of cases.

Nevertheless, the Department recognizes the desirability of revising section 1102 to ensure that effective and representative committees are appointed. Accordingly, we would suggest that this section be amended to require that any request to create or alter the membership of a committee be first directed to the United States Trustee and to permit the court, upon a request of a party in interest after an adverse decision by the United States Trustee, to make the requisite findings and order the United States Trustee to alter a committee. Such an amendment should also reaffirm the United States Trustee's authority to alter a committee. We would be happy to work with the Committee to draft language to accomplish this objective.

*Section 209. Amendment to section 330(a)*

Section 209 would provide that in determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission based on the results achieved. We oppose this provision, which would create a singular incentive that could lead to abuses, or the perception of abuses, on the part of the trustee. We prefer the current multifactor analysis set forth in section 330(a)(3) of the Code.

*Section 211. Preferences*

Section 211 would amend section 547(c) of the Code, which deals with preferential transfers of property to creditors after the filing of a bankruptcy petition. Section 207 would eliminate the ability of a trustee to avoid such a transfer in a case filed by a debtor whose debts are not primarily consumer debts, where all the property that constitutes or is affected by the transfer is worth less than $5,000.

We oppose this provision. Although this provision is apparently designed to protect the interests of smaller creditors, this section, without appropriate supervision, could lead to abuse and manipulation by debtors wishing to pay preferred creditors. For example, nothing in the provision would prohibit a debtor from breaking a larger payment into several smaller ones that each total less than $5,000. If such preferential payments are not avoidable, the result could be a substantial diminution of the property available to pay priority claims.

*Section 215 (listed in table of contents as section 216). Defaults based on nonmonetary obligations*

Section 215 amends Section 365 of the Bankruptcy Code to allow the debtor to reinstate a lease of real property under which the debtor is in default if the default is not curable by paying money. In addition, the debtor is allowed the same power for an executory contract with the additional requirement that the court find that the "equities" excuse the debtor's usual obligation to cure. We oppose this provision for the reasons outlined below, and suggest that it be deleted.

Currently, Section 365 of the Code allows a debtor to resume performance of (or "assume") an executory contract or an unexpired lease, notwithstanding a default that would normally cost the debtor that right. To do so, the debtor must cure the default, compensate for the monetary loss, and assure adequately its future performance. Waiving the debtor's obligation to cure if the default is not curable by money ignores that many defaults going to the essence of the agreement are not curable by money. The non-debtor party should not be forced to perform where deprived of the full benefit of the bargain.

If section 215 is intended to address the problem that minor contractual breaches could otherwise be an obstacle to the debtor's power to assume, then this fear is misplaced. The common law has long distinguished between defaults that are minor (entitling only damages) and major (voiding the agreement). This proposal replaces, in the case of executory contracts, this familiar concept with the wholly novel notion of "equities." This gives no guidance to the judge or parties as to what factors should be weighed, and will therefore generate confusion and litigation.

Title III: General Business Bankruptcy Provisions

*Section 302. Miscellaneous improvements*

Section 302 bars any debtor from filing a petition unless they have sought the assistance of credit counseling during the 90-day period prior to the filing of the petition. This provision does not

apply in certain circumstances, such as filings due to exigent circumstances. Section 302 also requires debtors to attend educational courses prior to discharge in Chapter 7 and 13 cases. Section 302 requires the clerk of the court to maintain a list of credit counseling services and educational courses that have been approved by the U.S. Trustee.

We support the concept of credit counseling but question whether the utility of making it mandatory in chapter 13 where individuals will already be seeking to repay their creditors through a debt repayment plan. We also have concern about the requirement for United States Trustees to approve credit counseling agencies because it is a large, unstructured and unregulated segment of the financial services industry. The list of approved agencies will serve as a Federal guide for would-be debtors, and we expect it will attract applicants of varying degrees of character and quality. It is important that the United States Trustees have sufficient tools and discretion to address the problems that will undoubtedly emerge. With one exception discussed below, the provision appears adequate, but sufficient resources must also be made available. We might also suggest, as an alternative, that a pilot program be created first in several districts to test the usefulness of credit counseling and its impact on filings.

One issue appears to have been overlooked and should be addressed. There is no automatic dismissal to enforce this provision if a debtor fails to file a certificate from a counselor pre- or post-petition. Assuming the petition gets filed without a certificate, a party would then have to move to dismiss the case under 707(a), 1112(b), 1208(c), or 1307(c) based on the debtor's ineligibility.

Section 302(b)–(c) provides that a chapter 7 and a chapter 13 discharge are conditioned upon the debtor's completion of a post-filing instructional course. As noted above in comments to section 104, H.R. 833 appears to contain provisions for a pilot program, but this provision seems to assume a permanent program. There is a need to clarify this provision. A pilot program is preferable.

*Section 303. Extensions*

Section 303 of H.R. 833 would amend section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 to eliminate the deadline for including the judicial districts in the States of Alabama and North Carolina within the United States Trustee system. The Department strongly opposes the amendment because it would retain two separate systems of bankruptcy administration within the country and may be vulnerable to Constitutional attack under the Uniformity Clause.

When Congress made the United States Trustee Program (USTP) a nationwide program in 1986, the date the program was to commence varied in different judicial districts. Six federal judicial districts in the States of North Carolina and Alabama remain outside the program, and the date for the inclusion of these districts has been postponed until October 1, 2002—sixteen years after the United States Trustee Program's nationwide expansion. Pub. L. No. 101–650, 317(a), (c), 104 Stat. 5115, 5116 (1992). In these six districts, "Bankruptcy Administrators" and court clerks employed by

the judicial branch perform many of the functions that are performed by United States Trustees in USTP districts.

This arrangement may not comply with Article I's mandate to "establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. Art I., § 8., cl. 4. Supreme Court precedent on what "uniformity" means in this context is ambiguous. The leading case on the issue is *Hanover National Bank* v. *Moyses,* 186 U.S. 181 (1902), where the court rejected a challenge to the Bankruptcy Act of 1898, which recognized state exemptions instead of establishing a system of uniform federal exemptions. The opinion suggests that Congress can account for differences in state law in the bankruptcy laws without violating the requirement of uniformity. More recently, in *Railway Labor Executives' Ass'n* v. *Gibbons,* 455 U.S. 457 (1982), the Supreme Court struck down, as violative of Article I's uniformity requirement, a statute requiring employees of the bankrupt Rock Island and Pacific Railroad Co. estate to receive certain benefits if not rehired by other carriers. According to the Court, "to survive scrutiny under the Bankruptcy Clause, a law must at least apply uniformly to a defined class of creditors." *Gibbons,* 455 U.S. at 473.

Given the lack of clarity on Article I's uniformity requirement and the doubts raised about the justification for maintaining both the USTP and Bankruptcy Administrator programs, additional challenges to the constitutionality of this dual system seem likely. See, e.g., *St. Angelo* v. *Victoria Farms, Inc.* 38 F.3d 1525, 1532 (1994); *Joelson* v. *United States,* 179 B.R. 857, 864 (N.D. Ohio 1995). In any event, maintaining a special system of bankruptcy administration for just six of the nation's 94 judicial districts is imprudent. No articulated policy justified maintaining the Bankruptcy Administrator program, and its continued existence not only threatens to inspire additional constitutional challenge, but is also contrary to the fair, effective and uniform administration of the bankruptcy laws.

Finally, we note that section 303 is not referenced in the table of contents set out in section 1 of H.R. 833.

## Title IV: Small Business Bankruptcy Provisions

### *Sections 401 and 403. Flexible rules for disclosure statement and plan; standard form disclosure statements and plans*

Section 401 would add a new section 1125(f) to the Code to allow the court to relax the plan confirmation procedures in small business bankruptcies. Specifically, for a small business case, the court would be empowered to: (i) waive the disclosure statement; (ii) use a form disclosure statement; (iii) allow plan solicitation based on a "conditionally approved" disclosure statement; or (iv) combine the confirmation and disclosure statement hearing. Section 403 would require the Judicial Conference to adopt "standard form" disclosure statements and plans of reorganization that balance the need for "reasonably complete information" with "economy and simplicity."

These provisions would remove procedural barriers to early confirmation and, to the extent they encourage quicker confirmations, are advantageous to debtors and creditors alike. Care will be need-

ed lest the execution of these provisions lead to confirmations without adequate disclosure to creditors and other affected parties. We believe, however, that this risk is manageable. Accordingly, we support this provision.

*Section 402. Definition of small business debtor*

Section 402(a) defines the terms "small business debtor" and "small business case." The definition of small business case is apparently missing some words, but it appears that the definition excepts cases where a creditors' committee is formed and the court determines that it is "sufficiently active and representative to provide effective oversight of the debtor." This apparent exception defeats the purpose of the small business provisions to minimize the time a case remains in bankruptcy because it could lead to litigation over the exception. See section 407. The exception should be eliminated so that there is certainty at the commencement of the case whether it involves a small business or debtor.

Section 402(b), concerning penalties for violation of the discharge injunction, is unrelated to small business cases and is identical to section 116. It should be eliminated as duplicative.

*Section 404. Uniform national reporting requirements*

Section 404 would add a new section 308 to the Code requiring a small business debtor to file periodic reports explaining: (i) its profitability; (ii) projected income and expenses; (iii) how prior projections compare with actuality; (iv) compliance with bankruptcy requirements; (v) whether taxes returns are timely filed; (vi) what taxes and other administrative claims are in default and when remedied; and (vii) "other matters" needed in the creditors' and the public's interest.

We support these disclosure requirements and the need for consistent financial reporting standards. By helping to identify faltering cases, financial reports prevent undue delay in the administration of chapter 11 cases. We further urge extending this section to all chapter 11 debtors, not just small business debtors.

*Section 405. Uniform reporting rules and forms*

Section 405 would require the Judicial Conference of the United States to propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to comply with the provisions added by Section 404 of the bill. We support this provision, with one exception: it should be amended to indicate that the Attorney General will promulgate the report forms. This is consistent with section 702 under which the Attorney General is to propose these forms and to collect data based on the information reported. It is essential that these two functions be merged under the same authority.

*Section 408. Plan confirmation deadline*

Section 408 of H.R. 833 requires that small business chapter 11 cases be confirmed within 150 days of filing. This time period may be enlarged only if the debtor demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable time.

The Department encourages the prompt disposition of cases, but the 150-days cutoff may be too short. Currently only 4% of chapter 11 confirmations occur within 150 days of filing. Although substantial improvements in processing times have occurred during the last decade, the majority of confirmations still occur more than one year after filing. Additionally, over 60% of dismissals and conversions to chapter 7 occur more than 150 days after filing. Although section 408 would allow enlargement of this time period, our statistics show that only about 30% of chapter 11 cases result in confirmation. Furthermore, based solely on when a case is filed, there is no age at which a chapter 11 cases has a 50% or better chance of being confirmed. Thus, while we support the purpose of this provision, we do not think it is necessary.

*Section 410. Duties of the United States Trustee*

Section 410 would amend 28 U.S.C. §586 to expand the United States Trustee's oversight of small business debtors. It would oblige the United States Trustee to interview the debtor before the first meeting of creditors, visit the debtor's premises, monitor the debtor's actions and, where grounds are found to do so, move to convert the case to a Chapter 7 or to dismiss the case altogether.

We support this provision, which would clarify and codify the United States Trustee's obligation to move hopeless cases out of chapter 11. This section reflects the current practice of the United States Trustees, except for the duty to visit the debtor's premises. We estimate that site visits would cost an additional $10 million over 5 years.

*Section 411. Scheduling conferences*

Section 411 would amend section 105(d) of the Code to require the courts to hold status conferences "as necessary." This provision would apply to all chapter 11 cases. In addition, it would allow the courts to vary from the Code and the Bankruptcy Rules if "necessary to further the expeditious and economical resolution of the case." To the extent it empowers the court to override requirements of the Code and Bankruptcy Rules, or to intrude into areas currently entrusted to the United States Trustee, it goes too far. While bankruptcy procedures should be somewhat flexible, we believe that it is important that bankruptcy judges not be permitted to vary, essentially at will, from statutory and rule requirements, potentially depriving creditors and other parties in interest of key procedural protections. We believe that the standard incorporated in section 411 does not adequately preserve these procedural protections, and we therefore oppose the provision.

*Section 412. Serial filer provisions*

Section 412 would amend section 362 of the Bankruptcy Code to disable the automatic stay for a small business filing where: (i) the debtor is already in bankruptcy; (ii) had a case dismissed or a plan confirmed within two years prior to filing; or (iii) acquired the assets of a debtor in a proceeding covered by (i) or (ii), unless the debtor shows that its filing resulted from causes unforeseeable during the prior case and that a non-liquidating plan may be confirmed within a reasonable time.

Serial filings are a serious problem in many jurisdictions and we endorse the adoption of firm measures to address this issue. Repeat filings—whether to obtain multiple discharges or to hold creditors at bay temporarily—should not be permitted. Accordingly, we support section 412 of the bill. However, we believe that applying this restriction only to small business debtors is too limited and that this provision instead should apply to all debtors in chapter 11.

*Section 413. Expanded grounds for dismissal or conversion and appointment of trustee*

Section 413 would amend section 1112 of the Code to require the conversion to chapter 7 or dismissal of any chapter 11 case where "cause" is shown. This requirement would not apply if the debtor could show that a plan may be confirmed within a reasonable time and, where the "cause" is a default, that the default is justified and will be cured promptly. "Cause" would be defined to include a variety of situations, including gross mismanagement; misuse of cash collateral; a violation of a court order; default of a filing or reporting requirement; the nonpayment of taxes or nonfiling of a return; and not filing timely a disclosure statement or plan or confirming a plan.

We support this provision. It is one of several in the bill designed to move cases that cannot be confirmed out of chapter 11. Defining "cause" using more objective standards would foster uniformity and enhance efficiency. Shifting the burden to the debtor to justify defaults and prove satisfactory progress when cause is shown appropriately conditions the debtor's enjoyment of the benefits of bankruptcy on responsible actions.

*Section 415. Payment of interest*

Section 415 would amend section 362(d)(3) of the Bankruptcy Code to limit the automatic stay in a single asset real estate (SARE) case, where the debtor fails to file a plan or commence interest payments within 90 days of filing, to: (i) allow the payment to commence 30 days after the court determines that the debtor is a SARE; (ii) allow the debtor to make the interests payments from post-petition rents of the SARE; and (iii) specify the non-default contract rate as the interest rate.

We oppose this change. Under current section 362(d)(3) of the Code, creditors of a SARE debtor may have the automatic stay lifted if the debtor has not filed a "feasible" reorganization plan within 90 days of filing or has not commenced monthly payments to secured creditors. Giving the debtor 30 days to comply after the court rules that the debtor is subject to section 362(d)(3) is unwise. The exception to the automatic stay in section 362(d)(3) takes its force from the 90 days time limit. That force is substantially diminished by relaxing that limit for debtors who claim, or who can find a pretext for claiming, that it does not apply. It is also unnecessary; the court currently can extend the 90 days for "cause."

Giving the debtor the "sole discretion" to override section 363(c)(2) and make interest payments out of post-petition rents is also ill-advised. First, the amendment does not require that the creditor receiving the rents be the same as the creditor whose rights are voided. Second, even if the creditor receiving the rents

is being paid its own collateral, the amendment serves to limit that creditor's rights. Currently, this section works largely as a predicate to allow the secured creditor and the debtor to negotiate a consensual payment schedule. Giving the debtor the discretion to override the secured creditor's interests stands the purpose of the section on its head.

Finally, allowing the debtor to pay at the contract rate is inconsistent with paying a "stripped down" value in the case of an undersecured creditor. If the payment's principal is a function of market value, the interest rate should be calculated the same way. We oppose this change as well.

## Title VI: Streamlining the Bankruptcy System

*Section 601. Creditor representation at first meeting of creditors*

Section 601 would amend section 341 of the Code to allow non-attorney consumer creditor representatives to attend and participate in chapter 7 and chapter 13 creditors' meetings notwithstanding federal, state or local non-bankruptcy law to the contrary. The Department supports this provision because it promotes the participation of creditors in the bankruptcy process. We strongly encourage further amendment to delete the phrase "holding a consumer debt" from the section to ensure the ability of all creditors, including non-lawyer representatives of governmental creditors, to participate in creditor meetings.

*Section 602. Audit procedures*

Section 602 would amend 28 U.S.C. § 586 to require the Attorney General to establish procedures for auditing of a debtor's petition, schedules, statement of financial affairs and other similar information in all consumer chapter 7 and 13 cases. At least one out of every 250 of the consumer cases in each judicial district would be randomly chosen for audit, in addition to those cases where the debtor's income and expenses exceed the mean variance in the judicial district.

The Department supports the concept of debtor audits. The bankruptcy system is dependent upon the full and voluntary disclosure by debtors of accurate information regarding their assets, liabilities and financial affairs. A systematic program of random audits would serve to deter those who might otherwise be tempted to conceal assets and information from their creditors. We also believe assigning this responsibility to the Department makes sense given the central role of United States Trustees in ensuring the integrity of the bankruptcy system.

The Department, however, opposes section 602 in its current form because of its feasibility and cost. The proposal requires independent Certified Public Accountants (CPAs) to conduct "audits" in accordance with "generally accepted auditing standards," a term of art within the accounting profession. It is questionable whether an audit conducted by an independent CPA and in accordance with these principles is feasible or desirable in most consumer cases given that a debtor's financial records are often nonexistent or in disarray.

Assuming that the practical problems associated with conducting an audit can be resolved, the provision as drafted would be costly. The Department has estimated that implementing the audit program contemplated by this section could cost from $18.6 million to more than $59 million over five years. This cost is in large part a function of the number audited and the use of independent CPAs. The cost of the audits could easily consume a significant portion of the total sum appropriated to fund the entire United States Trustee program in Fiscal Year 1998. Moreover, the bill provides no funding mechanism to cover these costs.

The use of an audit report is left similarly vague. Copies of the audit reports are to be filed with the Court, but it is uncertain if this would be merely for the purpose of providing a public repository for the report accessible to all parties in interest, or if it is intended that the Court would, sua sponte, initiate action based on the auditors" findings.

We recommend that the following changes be made to Section 602:

Require the Attorney General to establish a system to audit consumer debtor cases on either a random or targeted basis, but without a minimal prescribed percentage;

Eliminate the mandatory use of independent CPAs and generally accepted auditing standards;

Eliminate the requirement of filing the audit reports with the court;

Provide a civil sanction to ensure debtor's compliance with the audit and defer a section 727 discharge until the U.S. Trustee reports a satisfactory audit instead of placing the burden on the U.S. Trustee to file a complaint to bar the debtor's discharge in the case of noncompliance; and

Provide a source to fund the audits other than assessments upon the affected debtors.

Given the size of the audit program and its cost, the Department also urges the committee to consider a pilot program for audits that would allow the costs and benefits of various approaches to be considered. In addition, consideration should be given to limiting random audits to chapter 7 debtors.

*Section 603. Giving creditors fair notice in chapter 7 and 13 cases*

Section 603 would amend the notice provisions of section 342 of the Bankruptcy Code to require, in an individual bankruptcy case, that notices to creditors include any account number and be sent to the address that a creditor has specified. It also would require that a matrix of addresses prescribed by creditors for notices in a district be established. Further, unless actual notice is sent to the specified addresses and received by a responsible person or department at the creditor, notice would be ineffective, the creditor could not be sanctioned for violating the automatic stay and turnover of property could not be enforced.

While this section has some technical difficulties, we strongly support the intent of this section to ensure that debtors know how to give effective notice and that the creditors, in fact, receive such notice. Indeed, we urge that this provision for fair notice apply to all bankruptcy chapters—there is no reason to limit this provision

only to chapter 7 and 13. We would be happy to work with the Committee to correct any technical problems.

*Section 604. Dismissal for failure to timely file schedules or required information*

Section 604 provides that in voluntary cases under chapters 7 or 13, a case shall automatically be dismissed if the debtor fails to file all required information within 45 after filing the petition. The Department does not oppose this provision, so long as dismissal is without prejudice, and we suggest an appropriate clarification.

*Section 605. Adequate time to prepare for hearing on confirmation of the plan*

Section 605 of H.R. 833, inter alia, would give a chapter 13 debtor up to 90 days after the order for relief to file a chapter 13 plan. Under current law, a debtor must file a plan within 15 days from entry of the order of relief. Fed. R. Bankr. P. 3015(b). The Department opposes this enlargement of time as contrary to the principles of expeditious case administration. Due to other provisions in H.R. 833 requiring the debtor to file certain information and documents with the petition, both the chapter 13 debtor and debtor's counsel should be well prepared to propose a plan within the current 15-day window.

*Section 608. Elimination of certain fees payable in chapter 11 bankruptcy cases*

Section 608 of H.R. 833 would amend section 1930(a)(6) of title 28, United States Code, to exempt all debtors whose quarterly disbursements are less than $300,000 from paying post- confirmation quarterly fees. The Department opposes this provision because it would eliminate one of the most effective tools to encourage the prompt administration and closing of chapter 11 cases. This section would also result in a revenue loss to the United States Trustee Program of at least $9 million annually and would require a new source of funding to replace that loss, since the Program is a fully fee funded agency.

*Section 609. Prompt relief from stay in individual cases*

Section 609 provides that, in any individual case under chapters 7, 11 or 13, the automatic stay shall terminate 60 days after requested by a party unless the court makes a final decision, the parties agree to an extension, or the court finds good cause supporting an extension. We support this provision.

*Section 610. Stopping abusive conversions from chapter 13*

Section 610 would amend section 348(f)(1) of the Code to reverse the bifurcation of a secured creditor's claim into secured and unsecured portions accomplished through a chapter 13 plan, if the case is converted to chapter 7. This provision thus would limit the debtor's ability to release the lien in a chapter 7 case under section 722 of the Code.

For the same reasons that we support section 123, we also support this change. This provision addresses a different aspect of the same problem dealt with in section 123 above. Both provisions con-

cern a debtor who confirms a chapter 13 plan that reduces a creditor's lien to the value of the collateral. Unlike section 123, however, section 610 deals with the situation where, after paying part of the secured portion of the claim, the debtor converts his unfinished 13 plan into chapter 7 liquidation. In the chapter 7 case, the debtor then redeems the collateral by tendering the balance due on the "stripped down" lien after taking credit for the payments made under the chapter 13 plan. Unless this option is barred, debtors will have an incentive to take the benefits conferred by chapter 13, and then convert to a chapter 7 without finishing their chapter 13 plans.

## Title VII: Bankruptcy Data

*Section 702. Uniform rules for the collection of bankruptcy data*

Section 702 requires the Attorney General to issue rules prescribing uniform reporting forms for final and periodic reports. The Department supports this provision, but notes two problems. Section 702 conflicts with section 405, which requires the Judicial Conference to create an official form for periodic reports in small business chapter 11 cases. Section 405 should be amended to reflect the role of the Attorney General in promulgating the form of these reports. We also question the provision in this section requiring the Attorney General to maintain final reports in one or more central locations. Currently, all final reports are filed with the courts, and section 702 provides for electronic access through the Internet. We would be happy to work with the committee to recommend appropriate changes to these provisions.

## Title VIII: Bankruptcy Tax Provisions

*Section 801. Treatment of certain liens*

Section 801 deals with subordination of tax liens under section 724(b) of the Code, and is identical to section 2 of S. 1149, the Investment in Education Act, a bill passed by the Senate on October 30, 1997. Under the proposed changes, ad valorem property taxes would generally be protected from subordination. Reversing current law, expenses of a failed chapter 11 proceeding would not be given preferential treatment over tax liens, with a limited exception. Exhaustion of unencumbered assets would be required before tax liens could be subordinated, and expenses of preserving or disposing of secured property must be recovered from the property (reducing the expenses to which a tax lien would be subordinated).

We support this provision. The public fisc should not be required to subsidize failed chapter 11 cases by having tax liens subordinated in order to pay administrative expenses of insolvent reorganization proceedings. Moreover, in chapter 7 cases, other unencumbered assets should be used to satisfy administrative expenses and any expenses properly allocable to secured claims should be recovered from the property.

*Section 802. Effective notice to government*

Section 802 would amend section 342 of the Code to improve notice to the entities most frequently participating in the bankruptcy

process—governmental units. It would require identification of the agency through which the debtor is indebted; disclosure of identifying information concerning the claim (such as taxpayer identification numbers and real estate parcel designations); and creation of a matrix of addresses of governmental units. In addition, it would give incentives to debtors to use the designated addresses.

We support these provisions. They are in accord with Recommendation 4.2.1 of the National Bankruptcy Review Commission, which urged redress of the current deficiencies in notifying governmental units. This provision would ensure reasonable identification of both the affected government agency and the debtor obligated on the debt. It would also create a mechanism for giving debtors accurate addresses to which notices should be sent. Finally, it would promote compliance with the mechanism by providing exceptions to bar dates and discharge-ability when a debtor fails to comply with the prescribed mechanism. We suggest, however, that the reference point in subsection (c) be corrected from notice of the bankruptcy "case" to notice of "the matter or proceeding in respect to which the notice was provided."

*Section 803. Notice of request for a determination of taxes*

Section 803 would amend section 505(b) of the Code to provide that a request for prompt audit of a tax return should be sent to the office designated by the taxing authority. Thus, for example, a notice sent to the Secretary of the Treasury in Washington, rather than to the Special Procedures unit of the IRS District Director where the bankruptcy is pending, would not suffice. We support this proposal.

*Section 804. Rate of interest on tax claims*

Section 804 would enact as Section 511 of the Code a new provision relating to the interest rate on, or determining the present value of, a tax claim. Under current law, the court must generally determine the "market rate" under such circumstances. Section 511 would provide that if the holder of an unsecured prepetition tax claim is entitled to interest on such claim, the minimum rate of interest will be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code for the calendar month in which the plan is confirmed, plus three percentage points. The section 6621(a)(2) rate is also based on the Federal short-term rate, plus three percentage points, but is fixed on a quarterly basis at the rate for the first month of a quarter rather than redetermined monthly. In the case of secured tax claims and administrative tax claims, the applicable nonbankruptcy rate would apply with respect to federal taxes, i.e., the section 6621(a)(2) rate.

We would prefer that the legislation simply fix the interest rate for all deferred tax payments at the applicable nonbankruptcy interest rate. On the other hand, the rate for unsecured taxes under section 804 of H.R. 833 is merely a minimum rate and does not preclude a taxing authority from insisting on a higher rate. Thus, we would not oppose this provision.

*Section 805. Tolling of priority of tax claims time periods*

Section 805 would suspend the time periods under the Code pertaining to the priority and discharge of tax claims during the pendency of a prior bankruptcy for the period in which the government was prohibited from collecting the claim, plus six months. We support this proposal, but suggest several modifications, outlined below. The filing of successive bankruptcies should not disadvantage governmental units by reducing their opportunity to collect a tax, and should not result in a more expansive discharge of tax claims for debtors. Adding six months to the suspension period mirrors section 6503(h) of the Internal Revenue Code (26 U.S.C.), and is appropriate given the disruption to collection efforts caused by the filing of a bankruptcy petition. The additional time is needed to get collection efforts back on track.

As noted above, we would suggest several modifications to this provision. First, the time periods applicable to employment and excise taxes should be suspended during the pendency of a prior bankruptcy case. Second, this section should be modified to suspend time periods in which collection was stayed under the terms of a confirmed plan under chapters 11, 12 or 13, plus six months. Third, the Internal Revenue Service Restructuring and Reform Act of 1998 gave taxpayers new rights to appeal collection actions that, when invoked, have the effect of staying collection. Thus, the time periods should also be suspended while the IRS is prohibited from collecting as a result of an appeal of a collection action taken under applicable nonbankruptcy law.

*Section 807. Chapter 13 discharge of fraudulent and other taxes*

Section 807 would generally conform the discharge of tax claims in chapter 13 cases to the discharge of such claims available in chapter 7 cases. We support this provision. Under current law, priority tax claims for which a proof of claim is filed must be paid in full pursuant to the plan, and if a proof of claim is not filed, such taxes may be discharged. Taxes attributable to fraud or unfiled returns can be discharged upon completion of all payments under the plan, but many jurisdictions permit plans providing for "zero payment" of taxes, or plans distributing payments covering only small percentages of such claims. Permitting taxes attributable to fraud, or for which returns have never been filed, to be discharged on the basis of a tax evader's commitment to make payments to his or her creditors for three or five years makes bankruptcy a tax haven. In our view, a debtor should be entitled to the same discharge in chapters 7 and 13, as proposed in section 507. Taxes attributable to fraud should not be discharged in a chapter 13 proceeding, and chapter 13 plans should not be confirmed unless prepetition tax returns are filed.

*Section 808. Chapter 11 discharge of fraudulent taxes*

Section 808 would deny a discharge to a chapter 11 corporate debtor for taxes that arose because of fraudulent tax returns or an attempt to evade taxes. We support this proposal. Corporations that engage in tax fraud or otherwise attempt to evade taxes should not be entitled to a discharge vis-a-vis those taxes.

*Section 809. Stay of tax proceedings*

Section 809 would limit the automatic stay applicable to Tax Court proceedings to proceedings regarding a tax liability for a tax period ending before the order for relief, and would clarify that the automatic stay does not apply to an appeal of a decision determining a tax liability of the debtor. We support these proposals. No purpose is served in staying the commencement or continuation of a Tax Court proceeding for taxes incurred postpetition. Moreover, a court of appeals case regarding the liability of a taxpayer for a tax should be allowed to continue to a decision.

*Section 810. periodic payment of taxes in chapter 11 cases*

Section 810 would amend section 1129(a)(9)(c) of the Code to provide that deferred payments of tax claims under a chapter 11 plan must be made in installments with the result that balloon payments would be proscribed. In lieu of the current five-year payment period measured from the date of assessment, such payments would end on the earlier of five years after the petition date or on the last date on which payments are to be made to unsecured creditors under the plan. In addition, secured tax claims would be treated as priority claims for deferred tax purposes, where such claims would have had priority absent their secured status. We support this provision.

*Section 811. The avoidance of statutory tax liens prohibited*

Section 811 would resolve litigation over the interaction of section 545(2) of the Code, and the protection accorded certain purchasers of property under 26 U.S.C. § 6323 even after a notice of tax lien has been filed. We support the proposal. The purpose of the special treatment for such purchasers is to facilitate the flow of these goods in commerce. Debtors would receive a windfall if section 545(2) of the Code applied to tax liens.

*Section 814. Income tax returns prepared by tax authorities*

Section 814 would confirm the exception from discharge for taxes relating to unfiled tax returns when substitute tax returns are prepared by taxing authorities. For tax purposes, a tax return prepared by the IRS is not considered a tax return, unless it is signed by the taxpayer. The proposal would confirm that a substitute return prepared by the IRS is not a return for discharge purposes, unless it is signed by the taxpayer. This section further provides, however, that a written stipulation to a judgment entered in a nonbankruptcy court would be treated in the same manner and have the same effect as a signed tax return. We are uneasy at the prospect of having different definitions of "tax returns" for Internal Revenue Code and Bankruptcy Code purposes. Furthermore, stipulation to a judgment represents a level of cooperation much different in degree and kind than the signing under penalty of perjury of a return prepared by a taxing authority. Thus, we do not support the provision equating a stipulated judgment with a signed return. It would also be helpful to clarify that the term "equivalent report or notice" applies only to the extent that state or local tax law provides for the filing of an equivalent report or notice, and has no application for federal income tax reporting purposes.

*Section 815. The discharge of the estate's liability for unpaid taxes*

Section 815 would absolve the debtor's estate of liability for administrative taxes after a request for a prompt audit is made in accordance with section 505(b) of the Code. Several courts have held that while a trustee, the debtor, and a successor to the debtor are discharged from liability for administrative period taxes after a prompt audit request is made, the estate remains liable for any taxes uncovered by a taxing authority in a subsequent audit. We oppose the proposal to extinguish the liability of the estate. Section 505(b) already protects the trustee, the debtor and the debtor's successors from liability, and extinguishing the liability of the estate for taxes that it should have reported on its return will result in an unjust windfall for other creditors.

*Section 816. Requirement to file tax returns to confirm chapter 13 plans*

Section 816 would require chapter 13 debtors to file tax returns due for three years prior to the petition date. Tax authorities are placed at a severe disadvantage in preparing and filing timely proofs of claim when a chapter 13 debtor has ignored his or her tax return filing obligations. Outside of bankruptcy, the IRS will typically ask a delinquent debtor to file tax returns for the prior six tax years. We submit that the Code should similarly require the filing of delinquent tax returns for six years rather than for three years, and we therefore urge that this provision be modified accordingly.

*Section 818. Setoff of tax refunds*

Section 818 would create an exception to the automatic stay allowing taxing authorities to set off prepetition tax refunds against prepetition tax claims. We support this proposal.

Even when consumer bankruptcy filings were a mere 300,000 cases a year, the cost to the government of filing lift stay motions for relief from the automatic stay in order to effect a setoff of tax refunds would have been significant. With consumer filings now surpassing 1.3 million cases a year, the cost of filing such lift stay motions would be prohibitive. Given the number of cases in which refund offset arises, the solution is to permit taxing authorities to use the administrative processes that apply outside of bankruptcy rather than dealing with the issue on a case-by-case basis using a litigation model.

In addition to the comments outlined above, the Department urges addition of a new provision in this title: Tax Year that Straddles the Petition Date. H.R. 833 should be amended to include an additional tax-related proposal to clarify the bankruptcy treatment of a tax year that straddles the petition date. The position of the Government is that an income tax is incurred on the last day of the tax year inasmuch as a taxpayer's liability for tax cannot be calculated until all income has been accrued or collected, and all deductions have been accrued or paid. Moreover, until the debtor reports its income tax liability, a taxing authority is not in any position to prepare and file a proof of claim. Nonetheless, several courts have held that a tax year straddling the petition date should be treated as partially a prepetition year and partially a

postpetition year. *In re O'Neill Shoe Co.,* 64 F.3d 1146 (8th Cir. 1995); *In re Pacific-Atlantic Trading Co.,* 64 F.3d 1292 (9th Cir. 1995); and *In re Hillsborough Holding Corp.,* 115 F.3d 1391 (11th Cir. 1997). Under these decisions, the prepetition portion of the year is treated as a priority tax, while the balance is treated as an administrative tax. These decisions create the opportunity for considerable mischief, particularly if the time for filing a proof of claim will run prior to the due date of the return in question. Furthermore, to the extent that straddle years are treated as prepetition tax years, debtors can stretch out the payment period for the related tax liability for five years under chapter 11, instead of paying the tax in full in cash on the effective date of the plan.

We submit that the Code should be amended to clarify that an income tax liability is incurred on the last day of the tax year for purposes of determining whether a tax is entitled to administrative expense or priority treatment. Clarification is needed because bankruptcy petitions are rarely filed immediately after the last day of the tax year, so that this issue can potentially arise in virtually any case.

## Title IX: Ancillary and Other Cross-Border Cases

*Section 901. Amendment to add chapter 15 to title 11*

Section 901 adds a new chapter to the Code to be codified as Chapter 15. This chapter would address insolvencies which cut across international borders. We generally support these provisions, with the following exceptions.

Proposed section 1507 allows the court to provide the representative of a foreign insolvency "additional assistance" based upon standards that are vague and duplicative of section 304 of the Code. This approach is inconsistent with the purpose of the cross-border chapter; namely, to create new and better treatment for international bankruptcies.

We also oppose proposed sections 1519 and 1521 to the extent they grant the court open-ended authority to enjoin anything needed to protect assets and creditors. As written, the sections are overbroad.

## Title XI: Technical Corrections

*Section 1130. Trustees*

Section 1130 of H.R. 833 would amend section 586 of title 28, United States Code, to establish procedures for judicial review of decisions by a United States Trustee to either terminate or suspend from a panel of trustees or as a standing trustee, and decisions to deny an expense request by standing trustees.

As an initial matter, the Department supports clarifying and improving the judicial review already available trustees who are aggrieved by the actions of the United States Trustee Program. Historically, a decision to terminate or suspend a trustee from the panel of trustees was not subject to judicial review. E.g., *Joelson* v. *United States,* 86 F.3d 1413 (6th Cir. 1996). In response to concerns about a lack of judicial review, the Department promulgated an administrative rule giving private trustees the ability to seek ju-

dicial review under the Administrative Procedure Act ("APA"), 5 U.S.C. § 552 et seq. of any action by the Department to suspend or remove a trustee from future case assignments. 28 C.F.R. § 58.6. The Department believes that standing trustee budget disputes are already subject to judicial review under the APA. In addition, the United States Trustee Program has implemented procedures for mediating standing trustee budget disputes.

Notwithstanding its position that review is available under the APA, the Department engaged in negotiations with the affected parties and Congressional staff and after much effort, a compromise was reached. Unfortunately, due to what appears to be a typographical error, Section 1130 does not reflect the compromise. Section 1130(b) sets forth the standard of review for standing trustee expense requests. This standard, unlike the proposed standard for review of trustee termination and suspension, is whether the decision is "unreasonable or without cause." The standard of review should be revised to "unreasonable and without cause" in keeping with the compromise. Provided that this correction is made, the Department will strongly support section 1130.

Finally, as noted in our comments above, many of the provisions set forth in this bill would impose substantial burdens on the United States Trustee Program. Currently, the Trustees program is fully self-funded through fees. However, to implement the requirements of this bill, the Trustees would be required to expend tens of millions of dollars that will diminish their ability to fulfill their other responsibilities, and this, in turn, will diminish the efficiency of the bankruptcy system. We therefore request that a special appropriation be authorized for each provision that imposes a new burden on the United States Trustee Program.

We look forward to working with the Committee as it considers these and other issues raised by H.R. 833. The Office of Management and Budget advises that it has no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

DENNIS K. BURKE,
*Acting Assistant Attorney General.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

## TITLE 11, UNITED STATES CODE

# TITLE 11—BANKRUPTCY

## CHAPTER 1—GENERAL PROVISIONS



### § 101. Definitions

[In this title—] *In this title:*

(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) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

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

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

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

*(5) 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 proceeding under this title.*

[(5)] *(6) The term* "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

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

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

**[**(9)**]** *(10) The term* "corporation"—

(A) includes—

(i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;

(ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;

(iii) joint-stock company;

(iv) unincorporated company or association; or

(v) business trust; but

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

**[**(10)**]** *(11) The term* "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

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

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

[(11)] *(13) The term* "custodian" means—

(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

(B) assignee under a general assignment for the benefit of the debtor's creditors; or

(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)] *(14) 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;]

*(15) 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 pursuant to section 110 of this title, but does not include any person that is any of the following or an officer, director, employee or agent thereof—*

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

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

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

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

[(13A)] *(17) The term "debtor's principal residence" means a residential structure including incidental property when the structure contains 1 to 4 units, whether or not that structure is attached to real property, and includes, without limitation, an individual condominium or cooperative unit or mobile or manufactured home or trailer.*

[(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)] *(18) 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)] *(19) The term "domestic support obligation" means a debt that accrues before or after the entry of an order for relief under this title that is—*

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or that child's legal guardian; or

(ii) a governmental unit;

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

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

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

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

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

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

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

[(16)] *(21) The term* "equity security" means—

(A) share in a corporation, whether or not transferable or denominated "stock", or similar security;

(B) interest of a limited partner in a limited partnership; or

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

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

[(18)] *(23) 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 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 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 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) more than 80 percent of the value of its assets consists of assets related to the farming 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 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)] *(24) The term* "family farmer with regular annual income" means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title[;].

[(20)] *(25) 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)] *(26) 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)] *(27) The term* "farmout agreement" means a written agreement in which—

(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and

(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)] *(28) The term* "Federal depository institutions regulatory agency" means—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);

(B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;

(C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and

(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) "financial institution" means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer]

*(29) 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 of this title, such customer; or*

*(B) in connection with a securities contract, as defined in section 741 of this title, an investment company registered under the Investment Company Act of 1940.*

*(30) The term "financial participant" means an entity that, at the time it enters into a securities contract, commodity contract or forward contract, or at the time of the filing of the petition, has 1 or more agreements or transactions that is described in section 561(a)(2) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of at least*

*$1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least $100,000,000 (aggregated across counterparties) in 1 or more such agreement or transaction with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period.*

**[**(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;**]**

*(31) 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;*

*(32) 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 the foreign proceeding.*

**[**(25)**]** *(33) 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) a security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), but not to exceed the actual value of such contract, option, agreement, or transaction on the date of the filing of the petition.*

**[**(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;**]**

*(34) The term "forward contract merchant" means a Federal reserve bank, or an entity whose business consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761 of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing or in the forward contract trade.*

**[**(27)**]** *(35) 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**[**;**]**.

*(36) The term "household goods" includes tangible personal property normally found in or around a residence, but does not include motorized vehicles used for transportation purposes.*

*(37) The term "incidental property" means property incidental to such residence including, without limitation, property commonly conveyed with a principal residence where the real estate is located, window treatments, carpets, appliances and equipment located in the residence, and easements, appurtenances, fixtures, rents, royalties, mineral rights, oil and gas rights, escrow funds and insurance proceeds.*

**[**(28)**]** *(38) 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)**]** *(39) The term* "indenture trustee" means trustee under an indenture**[**;**]**.

**[**(30)**]** *(40) 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)**]** *(41) The term* "insider" includes—

(A) if the debtor is an individual—

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(iv) partnership in which the debtor is a general partner;

(v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) general partner in the debtor;

(ii) relative of a general partner in, general partner of, or person in control of the debtor;

(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor**[**;**]**.

**[**(32)**]** *(42) The term* "insolvent" means—

(A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title;

(B) with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation—

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's nonpartnership property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner's nonpartnership debts; and

(C) with reference to a municipality, financial condition such that the municipality is—

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due**[**;**]**.

[(33)] *(43) The term* "institution-affiliated party"—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act; and

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act[;].

[(34)] *(44) The term* "insured credit union" has the meaning given it in section 101(7) of the Federal Credit Union Act[;].

[(35)] *(45) The term* "insured depository institution"—

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of [paragraphs (21B) and (33)(A)] *paragraphs (23) and (35)* of this subsection)[;].

[(35A)] *(46) The term* "intellectual property" means—

(A) trade secret;

(B) invention, process, design, or plant protected under title 35;

(C) patent application;

(D) plant variety;

(E) work of authorship protected under title 17; or

(F) mask work protected under chapter 9 of title 17;

to the extent protected by applicable nonbankruptcy law[; and].

[(36)] *(47) The term* "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding[;].

[(37)] *(48) The term* "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation[;].

[(38)] *(49) 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].

*(50) The term "master netting agreement" means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with 1 or more contracts that are described in any 1 or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to 1 or more of the foregoing. If a master netting agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), the master netting agreement shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any 1 or more of the paragraphs (1) through (5) of section 561(a).*

*(51) The term "master netting agreement participant" means an entity that, at any time before the filing of the petition, is*

*a party to an outstanding master netting agreement with the debtor.*

**[**(39)**]** *(52) The term* "mask work" has the meaning given it in section 901(a)(2) of title 17.

**[**(40)**]** *(53) The term* "municipality" means political subdivision or public agency or instrumentality of a State**[**;**]**.

**[**(41)**]** *(54) The term* "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) acquires an asset from a person—

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person;

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of—

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit**[**;**]**.

**[**(42)**]** *(55) 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)**]** *(56) The term* "production payment" means a term overriding royalty satisfiable in cash or in kind—

(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs**[**;**]**.

**[**(43)**]** *(57) The term* "purchaser" means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee**[**;**]**.

**[**(44)**]** *(58) 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)**]** *(59) 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)**]** *(60) 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;]

*(61) 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 1 or more certificates of deposit, mortgage-related securities (as defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities; or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests; with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, loans, or interests of the kind described above, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;*

*(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);*

*(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);*

*(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or*

*(v) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), but not to exceed the actual value of such contract on the date of the filing of the petition; and*

*(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;*

*and, for purposes of this paragraph, the term "qualified foreign government security" means a security that is a direct obligation of, or that is fully guaranteed by, the central government*

*of a member of the Organization for Economic Cooperation and Development.*

**[**(48)**]** *(62) 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**[**;**]**.

*(63) The term "securities self regulatory organization" means either a securities association registered with the Securities and Exchange Commission pursuant to section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934.*

**[**(49)**]** *(64) The term* "security"—

(A) includes—

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) debenture;

(vi) collateral trust certificate;

(vii) pre-organization certificate or subscription;

(viii) transferable share;

(ix) voting-trust certificate;

(x) certificate of deposit;

(xi) certificate of deposit for security;

(xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is required to be the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933, or is exempt under section 3(b) of such Act from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as "security"; and

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

(ii) leverage transaction, as defined in section 761 of this title;

(iii) commodity futures contract or forward contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 from the requirement to file such a statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered**[**;**]**.

**[**(50)**]** *(65) The term* "security agreement" means agreement that creates or provides for a security interest**[**;**]**.

**[**(51)**]** *(66) The term* "security interest" means lien created by an agreement**[**;**]**.

**[**(51A)**]** *(67) 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)**]** *(68) 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;**]**

*(69) The term "small business" case means a case filed under chapter 11 of this title in which the debtor is a small business debtor.*

*(70) The term "small business debtor" means a person (including affiliates of such person that are also debtors under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than $4,000,000 (excluding debts owed to 1 or more affiliates or insiders), except that if a group of affiliated debtors has aggregate noncontingent liquidated secured and unsecured debts greater than $4,000,000 (excluding debt owed to 1 or more affiliates or insiders), then no member of such group is a small business debtor.*

**[**(52)**]** *(71) 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)**]** *(72) 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)] *(73) The term* "stockbroker" means person—

(A) with respect to which there is a customer, as defined in section 741 of this title; and

(B) that is engaged in the business of effecting transactions in securities—

(i) for the account of others; or

(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[;].

*(74) The term "swap agreement"*

*(A) means—*

*(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or an equity swap, option, future, or forward agreement; a debt index or a debt swap, option, future, or forward agreement; a credit spread or a credit swap, option, future, or forward agreement; or a commodity index or a commodity swap, option, future, or forward agreement;*

*(ii) any agreement or transaction similar to any other agreement or transaction referred to in this paragraph that—*

*(I) is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference therein); and*

*(II) is a forward, swap, future, or option on 1 or more rates, currencies commodities, equity securities, or other equity instruments, debt securities or other debt instruments, or on an economic index or measure of economic risk or value;*

*(iii) any combination of agreements or transactions referred to in this paragraph;*

*(iv) any option to enter into an agreement or transaction referred to in this paragraph;*

*(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or*

*(B) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (A); and*

*(C) is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.*

**[**(53C)**]** *(75) 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)**]** *(76) 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)**]** *(77) 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)] (78) 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.*

[(55)] *(79) 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, 304, 555 through 557, 559, and 560 apply in a case under chapter 15*.

* * * * * * *

*(j) Chapter 15 applies only in a case under such chapter, except that—*

*(1) sections 1505, 1513, and 1514 apply in all cases under this title; and*

*(2) section 1509 applies whether or not a case under this title is pending.*

**§ 104. Adjustment of dollar amounts**

(a) * * *

(b)(1) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections *101(3),* 109(e), 303(b), 507(a), 522(d), *522(f)(3), 707(b)(5),* and 523(a)(2)(C) immediately before such April 1 shall be adjusted—

(A) * * *

* * * * * * *

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), 522(d), *522(f)(3), 707(b)(5),* and 523(a)(2)(C) 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*

(2) [unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure] *may*, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) * * *

* * * * * * *

**§ 109. Who may be a debtor**

(a) * * *

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) * * *

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a small business investment company licensed by the Small Business Administration under [subsection (c) or (d) of] section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act; or

* * * * * * *

*(h)(1) Subject to paragraphs (2) and (3) and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 90-day period preceding the date of filing of the petition of that individual, received credit counseling, including, at a minimum, participation in an individual or group briefing that outlined the opportunities for available credit counseling and assisted that individual in performing an initial budget analysis, through a credit counseling program (offered through an approved credit counseling service described in section 111(a)).*

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

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

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

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

*(ii) states that the debtor requested credit counseling services from an approved credit counseling service, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request or that the exigent circumstances require filing before such 5-day period expires; and*

*(iii) is satisfactory to the court.*

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

* * * * * * *

**§ 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions**

(a) * * *

* * * * * * *

(j)(1) * * *

* * * * * * *

(3) 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.

* * * * * * *

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

*The clerk of each district shall maintain a list of credit counseling services that provide 1 or more programs described in section 109(h) and a list of instructional courses concerning personal financial management that have been approved by—*

*(1) the United States trustee; or*

*(2) the bankruptcy administrator for the district.*

* * * * * * *

## CHAPTER 3—CASE ADMINISTRATION

SUBCHAPTER I—COMMENCEMENT OF A CASE

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.*

* * * * * * *

**[§ 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.**]**

***§ 304. Cases ancillary to foreign proceedings***

*(a) For purposes of this section—*

*(1) the term "domestic insurance company" means a domestic insurance company, as such term is used in section 109(b)(2);*

*(2) the term "foreign insurance company" means a foreign insurance company, as such term is used in section 109(b)(3);*

*(3) the term "United States claimant" means a beneficiary of any deposit referred to in subsection (b) or any multibeneficiary trust referred to in subsection (b);*

*(4) the term "United States creditor" means, with respect to a foreign insurance company—*

*(A) a United States claimant; or*

*(B) any business entity that operates in the United States and that is a creditor; and*

*(5) the term "United States policyholder" means a holder of an insurance policy issued in the United States.*

*(b) The court may not grant relief under chapter 15 of this title with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.*

*(c) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case ancillary to a foreign proceeding under this section or any other section of this title, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).*

* * * * * * *

**§ 305. Abstention**

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

**[**(2)(A) there is pending a foreign proceeding; and

**[**(B) the factors specified in section 304(c) of this title warrant such dismissal or suspension.**]**

*(2)(A) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted; and*

*(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.*

* * * * * * *

***§ 308. Debtor reporting requirements***

*A small business debtor shall file periodic financial and other reports containing information including—*

*(1) the debtor's profitability, that is, approximately how much money the debtor has been earning or losing during current and recent fiscal periods;*

*(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;*

*(3) comparisons of actual cash receipts and disbursements with projections in prior reports; and*

*(4) whether the debtor is—*

*(A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and*

*(B) timely filing tax returns and paying taxes and other administrative claims when due, and, if not, what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and*

*(5) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.*

* * * * * * *

SUBCHAPTER II—OFFICERS

* * * * * * *

**§ 322. Qualification of trustee**

(a) Except as provided in subsection (b)(1), a person selected under section 701, 702, 703, 1104, 1163, 1202, or 1302 of this title to serve as trustee in a case under this title qualifies if before five days after such selection, and before beginning official duties, such person has filed with the court a bond in favor of the United States conditioned on the faithful performance of such official duties. *The trustee in a case under this title is not liable personally or on such trustee's bond for acts taken within the scope of the trustee's duties or authority as delineated by other sections of this title or by order of the court, except to the extent that the trustee acted with gross negligence. Gross negligence shall be defined as reckless indifference or deliberate disregard of the trustee's fiduciary duty.*

* * * * * * *

(c) A trustee is not liable personally or on such trustee's bond in favor of the United States for any penalty or forfeiture incurred by the debtor *for any acts within the scope of the trustee's authority defined in subsection (a).*

* * * * * * *

**§ 323. Role and capacity of trustee**

(a) The trustee in a case under this title is the representative of the estate.

(b) The trustee in a case under this title has capacity to sue and be sued *in the trustee's official capacity as representative of the estate.*

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

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

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

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

* * * * * * *

**§ 328. Limitation on compensation of professional persons**

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, *on a fixed or percentage fee basis,* or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

* * * * * * *

**§ 330. Compensation of officers**

(a)(1) * * *

* * * * * * *

(3)(A) In determining the amount of reasonable compensation to be awarded *to an examiner, chapter 11 trustee, 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)**]** *(i)* the time spent on such services;

**[**(B)**]** *(ii)* the rates charged for such services;

**[**(C)**]** *(iii)* whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

**[**(D)**]** *(iv)* 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)**]** *(v)* whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

*(B) In determining the amount of reasonable compensation to be awarded a trustee, the court shall treat such compensation as a commission based on the results achieved.*

* * * * * * *

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. *Not-*

*withstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than one creditor) shall be permitted to appear at and participate in the meeting of creditors and activities related thereto in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.*

* * * * * * *

*(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.*

* * * * * * *

**§ 342. Notice**

(a) * * *

**[**(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed.**]**

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

*(1) a brief description of—*

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

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

*(2) statements specifying that—*

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

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

(c) 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**]**. *If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor which is the current ac-*

*count number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include such account number in any notice to the creditor required to be given under this title. If the creditor has specified to the debtor an address at which the creditor wishes to receive correspondence regarding the debtor's account, any notice to the creditor required to be given by the debtor under this title shall be given at such address. For the purposes of this section, 'notice' shall include, but shall not be limited to, any correspondence from the debtor to the creditor after the commencement of the case, any statement of the debtor's intention under section 521(a)(2) of this title, notice of the commencement of any proceeding in the case to which the creditor is a party, and any notice of the hearing under section 1324 of this title.*

*(d) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. After 5 days following receipt of such notice, any notice the court or the debtor is required to give the creditor shall be given at that address.*

*(e) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (d) with respect to a particular case.*

*(f) Notice given to a creditor other than as provided in this section shall not be effective notice until it has been brought to the attention of the creditor. If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to such department or person, notice will not be brought to the attention of the creditor until received by such person or department. No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.*

*(g) If a debtor lists a governmental unit as a creditor in a list or schedule, any notice required to be given by the debtor under this title, any rule, any applicable law, or any order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted. The debtor shall identify (with information such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, where applicable), and describe the underlying basis for the governmental unit's claim. If the debtor's liability to a governmental unit arises from a debt or obligation owed or incurred by another individual, entity, or organization, or under a different name, the debtor shall identify such individual, entity, organization, or name.*

*(h) The clerk shall keep and update quarterly, in the form and manner as the Director of the Administrative Office of the United States Courts prescribes, and make available to debtors, a register in which a governmental unit may designate a safe harbor mailing*

*address for service of notice in cases pending in the district. A governmental unit may file a statement with the clerk designating a safe harbor address to which notices are to be sent, unless such governmental unit files a notice of change of address.*

*(i) A notice that does not comply with subsections (d) and (e) shall not be effective unless the debtor demonstrates, by clear and convincing evidence, that timely notice was given in a manner reasonably calculated to satisfy the requirements of this section was given, and that—*

*(1) either the notice was timely sent to the safe harbor address provided in the register maintained by the clerk of the district in which the case was pending for such purposes; or*

*(2) no safe harbor address was provided in such list for the governmental unit and that an officer of the governmental unit who is responsible for the matter or claim had actual knowledge of the case in sufficient time to act.*

* * * * * * *

**§ 346. Special tax provisions**

(a) * * *

* * * * * * *

(g)(1) Neither gain nor loss shall be recognized on a transfer—

(A) * * *

* * * * * * *

(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**]**.

* * * * * * *

**§ 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 chapter 11 or 12 but not in a case converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12* reduced to the extent that they have been paid in accordance with the chapter 13 plan**[**.**]***; and*

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

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

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

(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.

* * * * * * *

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**[**.**]**, *in respect of a tax liability for a taxable period ending before the order for relief.*

(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;

*(C) under subsection (a) of—*

*(i) the withholding of income for payment of a domestic support obligation pursuant to a judicial or administrative order or statute for such obligation that first becomes payable after the date on which the petition is filed; or*

*(ii) the withholding of income for payment of a domestic support obligation owed directly to the spouse, former spouse or child of the debtor or the parent of such child, pursuant to a judicial or administrative*

*order or statute for such obligation that becomes payable before the date on which the petition is filed unless the court finds, after notice and hearing, that such withholding would render the plan infeasible;*

*(D) the commencement or continuation of a proceeding concerning a child custody or visitation;*

*(E) the commencement or continuation of a proceeding alleging domestic violence; or*

*(F) the commencement or continuation of a proceeding seeking a dissolution of marriage, except to the extent the proceeding concerns property of the estate;*

* * * * * * *

(6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker, **[**financial institutions,**]** *financial institution, financial participant* or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761 of this title, forward contracts, or securities contracts, as defined in section 741 of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, arising out of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by*, pledged to, and under the control of,* or due from such commodity broker, forward contract merchant, stockbroker, **[**financial institutions,**]** *financial institution, financial participant* or securities clearing agency to margin, guarantee, secure, or settle commodity contracts, forward contracts, or securities contracts;

(7) under subsection (a) of this section, of the setoff by a repo participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, arising out of repurchase agreements against cash, securities, or other property held by*, pledged to, and under the control of,* or due from such repo participant to margin, guarantee, secure or settle repurchase agreements;

* * * * * * *

(9) under subsection (a), of—

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; **[**or**]**

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property

or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor)[.]*; or*

*(E) the appeal of a decision by a court or administrative tribunal which determines a tax liability of the debtor without regard to whether such determination was made prepetition or postpetition.*

[(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]

*(17) under subsection (a), of the setoff by a swap participant of a mutual debt and claim under or in connection with 1 or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, and under the control of, or due from such swap participant to margin guarantee, secure, or settle a swap agreement;*

(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[.]*;*

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

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

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

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

*(21) under subsection (a), of the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power; of the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or*

*of any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;*

*(22) under subsection (a) of any transfer that is not avoidable under section 544 of this title and that is not avoidable under section 549 of this title;*

*(23) under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement and the debtor has not paid rent to the lessor pursuant to the terms of the lease agreement or applicable State law after the commencement and during the course of the case;*

*(24) under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated pursuant to the lease agreement or applicable State law;*

*(25) under subsection (a)(3), of any eviction, unlawful detainer action, or similar proceeding, if the debtor has previously filed within the last year and failed to pay post-petition rent during the course of that case;*

*(26) under subsection (a)(3), of eviction actions based on endangerment to property or person or the use of illegal drugs;*

*(27) under subsection (a) with respect to the withholding of income pursuant to an order as specified in section 466(b) of the Social Security Act (42 U.S.C. 666(b));*

*(28) under subsection (a) with respect to—*

*(A) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C. 666(a)(16)) or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7));*

*(B) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)); or*

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

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

*(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan that satisfies the requirements of section 408(b)(1) of the*

*Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or*

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

*(30) under subsection (a), until a prepetition default is cured fully in a case under chapter 13 of this title by actual payment of all arrears as required by the plan, of the postponement, continuation or other similar delay of a prepetition foreclosure proceeding or sale in accordance with applicable nonbankruptcy law, but nothing herein shall imply that such postponement, continuation or other similar delay is a violation of the stay under subsection (a);*

*(31) under subsection (a) of the setoff of an income tax refund, by a governmental unit, in respect of a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief, unless—*

*(A) prior to such setoff, an action to determine the amount or legality of such tax liability under section 505(a) was commenced; or*

*(B) where the setoff of an income tax refund is not permitted because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action; or*

*(32) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with 1 or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged or and under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue.*

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. *Paragraph (29) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (29) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.*

(c) 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) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied[.]*;*

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

*(A) as to all creditors if—*

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

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

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

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

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

*(A) as to all creditors if—*

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

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

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

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

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) * * *

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization; [or]

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) *or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later*—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

[(B) the debtor has commenced monthly payments to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at a current fair market rate on the value of the creditor's interest in the real estate.]

*(B) the debtor has commenced monthly payments (which payments may, in the debtor's sole discretion, notwithstanding section 363(c)(2) of this title, be made from rents or other income generated before or after the commencement of the case by or from the property) to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at the then-applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or*

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

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

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

*If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered pursuant to this subsection shall be binding in any other case under this title purporting to affect the real property filed not later than 2 years after that recording, except that a debtor in a subsequent case may move for relief from such order based*

*upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit which accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.*

(e)*(1)* Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

*(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—*

*(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or*

*(B) that 60-day period is extended—*

*(i) by agreement of all parties in interest; or*

*(ii) by the court for such specific period of time as the court finds is required by for good cause as described in findings made by the court.*

* * * * * * *

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

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

*(2) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for taking action, unless the statement of intention specifies reaffir-*

*mation and the creditor refuses to reaffirm on the original contract terms;*

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

[(h) An] *(i)(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, then recovery under paragraph (1) against such entity shall be limited to actual damages.*

*(j) If one case commenced under chapter 7, 11, or 13 of this title is dismissed due to the creation of a debt repayment plan administered by a credit counseling agency approved pursuant to section 111 of this title, then for purposes of section 362(c)(3) of this title the subsequent case commenced under any such chapter shall not be presumed to be filed not in good faith.*

*(k)(1) Except as provided in paragraph (2) of this subsection, the provisions of subsection (a) of this section shall not apply in a case in which the debtor—*

*(A) is a debtor in a case under this title pending at the time the petition is filed;*

*(B) was a debtor in a case under this title which was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;*

*(C) was a debtor in a case under this title in which a chapter 11, 12, or 13 plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or*

*(D) is an entity that has succeeded to substantially all of the assets or business of a debtor described in subparagraph (A), (B), or (C).*

*(2) This subsection shall not apply—*

*(A) to a case initiated by an involuntary petition filed by a creditor that is not an insider or affiliate of the debtor; or*

*(B) after such time as the debtor, after notice and a hearing, demonstrates by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor and not foreseeable at the time the earlier case was filed; and that it is more likely than not that the court will confirm a plan, other than a liquidating plan, within a reasonable time.*

*(l) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), or (17), or (19) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.*

**§ 363. Use, sale, or lease of property**

(a) * * *

* * * * * * *

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section [only to the extent not inconsistent with any relief granted under section 362(c), 362(d), 362(e), or 362(f) of this title.] *only—*

*(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and*

*(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362 of this title.*

* * * * * * *

**§ 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—*

*(i) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property (excluding executory contracts that transfer a right or interest under a filed or issued patent, copyright, trademark, trade dress, or trade secret), if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption; or*

*(ii) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an executory contract, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption and if the court determines, based on the equities of the case, that this subparagraph should not apply with respect to such default;*

* * * * * * *

(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 relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.]

*(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from a failure to perform nonmonetary obligations under an executory contract (excluding executory contracts that transfer a right or interest under a filed or issued patent, copyright, trademark, trade dress, or trade secret) or under an unexpired lease of real or personal property.*

* * * * * * *

[(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)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

[(B) such party does not consent to such assumption or assignment; or

[(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;

[(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.]

*(c)(1) The trustee may not assume or assign an executory contract or unexpired lease of the debtor, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties, if—*

*(A)(i) applicable law excuses a party to the contract or lease from accepting performance from or rendering performance to an assignee of the contract or lease, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties; and*

*(ii) the party does not consent to the assumption or assignment; or*

*(B) the contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.*

*(2) Notwithstanding paragraph (1)(A) and applicable nonbankruptcy law, in a case under chapter 11 of this title, a trustee in a case in which a debtor is a corporation, or a debtor in possession, may assume an executory contract or unexpired lease of the debtor, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties.*

*(3) The trustee may not assume or assign an unexpired lease of the debtor of nonresidential real property, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties, if the lease has been terminated under applicable nonbankruptcy law before the order for relief.*

*(d)(1) * * **

* * * * * * *

[(4) Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.]

*(4)(A) Subject to subparagraph (B), in any case under any chapter of this title, an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender such property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—*

*(i) the date that is 180 days after the date of the order for relief; or*

*(ii) the date of the entry of an order confirming a plan.*

*(B)(i) The court may extend the period determined under subparagraph (A) for 120 days upon motion of the trustee or the lessor for cause.*

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

[(5) Notwithstanding paragraphs (1) and (4) of this subsection, in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate before the occurrence of a termination event, then (unless the court orders the trustee to assume such unexpired leases within 5 days after the termination event), at the option of the airport operator, such lease is deemed rejected 5 days after the occurrence of a termination event and the trustee shall immediately surrender possession of the premises to the airport operator; except that the lease shall not be deemed to be rejected unless the airport operator first waives the right to damages related to the rejection. In the event that the lease is deemed to be rejected under this paragraph, the airport operator shall provide the affected air carrier adequate opportunity after the surrender of the premises to remove the fixtures and equipment installed by the affected air carrier.

[(6) For the purpose of paragraph (5) of this subsection and paragraph (f)(1) of this section, the occurrence of a termination event means, with respect to a debtor which is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate—

[(A) the entry under section 301 or 302 of this title of an order for relief under chapter 7 of this title;

[(B) the conversion of a case under any chapter of this title to a case under chapter 7 of this title; or

[(C) the granting of relief from the stay provided under section 362(a) of this title with respect to aircraft, aircraft engines, propellers, appliances, or spare parts, as defined in section 40102(a) of title 49, except for property of the debtor found by the court not to be necessary to an effective reorganization.

[(7) Any order entered by the court pursuant to paragraph (4) extending the period within which the trustee of an affected air carrier must assume or reject an unexpired lease of nonresidential real property shall be without prejudice to—

[(A) the right of the trustee to seek further extensions within such additional time period granted by the court pursuant to paragraph (4); and

[(B) the right of any lessor or any other party in interest to request, at any time, a shortening or termination of the period within which the trustee must assume or reject an unexpired lease of nonresidential real property.

[(8) The burden of proof for establishing cause for an extension by an affected air carrier under paragraph (4) or the maintenance of a previously granted extension under paragraph (7)(A) and (B) shall at all times remain with the trustee.

[(9) For purposes of determining cause under paragraph (7) with respect to an unexpired lease of nonresidential real property between the debtor that is an affected air carrier and an airport operator under which such debtor is the lessee of an airport terminal or an airport gate, the court shall consider, among other relevant factors, whether substantial harm will result to the airport operator or airline passengers as a result of the extension or the maintenance of a previously granted extension. In making the determination of substantial harm, the court shall consider, among other relevant factors, the level of actual use of the terminals or gates which are the subject of the lease, the public interest in actual use of such terminals or gates, the existence of competing demands for the use of such terminals or gates, the effect of the court's extension or termination of the period of time to assume or reject the lease on such debtor's ability to successfully reorganize under chapter 11 of this title, and whether the trustee of the affected air carrier is capable of continuing to comply with its obligations under section 365(d)(3) of this title.]

[(10)] *(5)* The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

[(e)(1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

[(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

[(B) the commencement of a case under this title; or

[(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.]

*(e)(1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—*

*(A) the insolvency or financial condition of the debtor at any time before the closing of the case;*

*(B) the commencement of a case under this title; or*

*(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.*

* * * * * * *

* * * * * * *

*(f)(1) Except as provided in subsection (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) of this title is automatically terminated.*

*(2) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may, at its option, condition such assumption on cure of any outstanding default on terms set by the contract. If within 30 days of the notice from the creditor the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate. The stay under section 362 of this title and the injunction under section 524(a) of this title shall not be violated by notification of the debtor and negotiation of*

*cure under this subsection. Nothing in this paragraph shall require a debtor to assume a lease, or a creditor to permit assumption.*

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

* * * * * * *

## CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER I—CREDITORS AND CLAIMS



### SUBCHAPTER I—CREDITORS AND CLAIMS

* * * * * * *

### § 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 of this title, a claim of a governmental unit for a tax in respect of a return filed under section 1308 of this title shall be timely if it is filed on or before 60 days after such return or returns were filed as required.*

* * * * * * *

(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 561 of this title shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.*

* * * * * * *

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

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

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

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

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

* * * * * * *

**§ 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 wages, salaries, or commissions for services rendered after the commencement of the case, and wages and benefits attributable to any period of time after commencement of the case as a result of the debtor's violation of Federal law, without regard to when the original unlawful act occurred or to whether any services were rendered;*

(B) any tax—

(i) incurred by the estate, *whether secured or unsecured, including property taxes for which liability is in rem only, in personam or both,* except a tax of a kind specified in section 507(a)(8) of this title; or

* * * * * * *

(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[.]*; and*

*(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or penalty provisions, for the period of one year following the later of the rejection date or date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor; and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6).*

* * * * * * *

*(D) notwithstanding the requirements of subsection (a) of this section, a governmental unit shall not be required to file a request for the payment of a claim described in subparagraph (B) or (C);*

* * * * * * *

(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;

* * * * * * *

**§ 504. Sharing of compensation**

(a) * * *

* * * * * * *

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

**§ 505. Determination of tax liability**

(a)(1) * * *

(2) The court may not so determine—

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title; **[**or**]**

(B) any right of the estate to a tax refund, before the earlier of—

(i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or

(ii) a determination by such governmental unit of such request**[**.**]***; or*

*(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.*

(b) 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. **[**Unless**]** *If the request is made substantially in the manner designated by the governmental unit and 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) * * *

* * * * * * *

**§ 506. Determination of secured status**

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

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement *or State statute* under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim*, including the payment of all ad valorem property taxes in respect of the property*.

* * * * * * *

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

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

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

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

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

**§ 507. Priorities**

(a) The following expenses and claims have priority in the following order:

*(1) First, allowed claims for domestic support obligations to be paid in the following order on the condition that funds received under this paragraph by a governmental unit in a case under this title be applied:*

*(A) Claims that, as of the date of entry of the order for relief, are owed directly to a spouse, former spouse, or child of the debtor, or the parent of such child, without regard to whether the claim is filed by the spouse, former spouse, child, or parent, or is filed by a governmental unit on behalf of that person.*

*(B) Claims that, as of the date of entry of the order for relief, are assigned by a spouse, former spouse, child of the debtor, or the parent of that child to a governmental unit or are owed directly to a governmental unit under applicable nonbankruptcy law.*

**[**(1)**]** *(2)* **[**First**]** *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)**]** *(3)* **[**Second**]** *Third*, unsecured claims allowed under section 502(f) of this title.

**[**(3)**]** *(4)* **[**Third**]** *Fourth*, allowed unsecured claims, but only to the extent of $4,000 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor**[**;**]**.

**[**(4)**]** *(5)* **[**Fourth**]** *Fifth*, allowed unsecured claims for contributions to an employee benefit plan—

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) for each such plan, to the extent of—

(i) the number of employees covered by each such plan multiplied by $4,000; less

(ii) the aggregate amount paid to such employees under paragraph (3) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

**[**(5)**]** *(6)* **[**Fifth**]** *Sixth*, allowed unsecured claims of persons—

(A) engaged in the production or raising of grain, as defined in section 557(b) of this title, against a debtor who owns or operates a grain storage facility, as defined in sec-

tion 557(b) of this title, for grain or the proceeds of grain, or

(B) engaged as a United States fisherman against a debtor who has acquired fish or fish produce from a fisherman through a sale or conversion, and who is engaged in operating a fish produce storage or processing facility—

but only to the extent of $4,000 for each such individual.

[(6)] *(7)* [Sixth] *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—

(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*, plus any time, plus 6 months, during which the stay of proceedings was in effect in a prior case under this title*;

[(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 plus 30 days during which an offer in compromise with respect of such tax, was pending or in effect during such 240-day period;*

*(II) any time plus 30 days during which an installment agreement with respect of such tax was pending or in effect during such 240-day period, up to 1 year; and*

*(III) any time plus 6 months during which a stay of proceedings against collections was in effect in a prior case under this title during such 240-day period.*

* * * * * * *

(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;

* * * * * * *

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

* * * * * * *

**§ 508. Effect of distribution other than under this title**

[(a) If a creditor receives, in a foreign proceeding, payment of, or a transfer of property on account of, a claim that is allowed under this title, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor in such foreign proceeding.

[(b)] If a creditor of a partnership debtor receives, from a general partner that is not a debtor in a case under chapter 7 of this title, payment of, or a transfer of property on account of, a claim that is allowed under this title and that is not secured by a lien on property of such partner, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor from such general partner.

* * * * * * *

***§ 511. Rate of interest on tax claims***

*If any provision of this title requires the payment of interest on a tax claim or requires the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be as follows:*

*(1) In the case of ad valorem tax claims, whether secured or unsecured, other unsecured tax claims where interest is required to be paid under section 726(a)(5) of this title, secured tax claims, and administrative tax claims paid under section 503(b)(1) of this title, the rate shall be determined under applicable nonbankruptcy law.*

*(2) In the case of all other tax claims, the minimum rate of interest shall be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code of 1986, plus 3 percentage points.*

*(A) In the case of claims for Federal income taxes, such rate shall be subject to any adjustment that may be required under section 6621(d) of the Internal Revenue Code of 1986.*

*(B) In the case of taxes paid under a confirmed plan or reorganization, such rate shall be determined as of the calendar month in which the plan is confirmed.*

SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

**§ 521. Debtor's duties**

*(a)* The debtor shall—

**[**(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs;**]**

*(1) file—*

*(A) a list of creditors; and*

*(B) unless the court orders otherwise—*

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

*(ii) a schedule of current monthly income and current expenditures prepared in accordance with section 707(b)(2);*

*(iii) a statement of the debtor's financial affairs and, if applicable, a certificate—*

*(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition pursuant to section 110(b)(1) of this title indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b) of this title; or*

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

*(iv) copies of any Federal tax returns, including any schedules or attachments, filed by the debtor for the 3-year period preceding the order for relief;*

*(v) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition; and*

*(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;*

(2) if an individual debtor's schedule of assets and liabilities includes **[**consumer**]** debts which are secured by property of the estate—

(A) * * *

(B) within **[**forty-five days after the filing of a notice of intent under this section**]** *30 days after the first date set for the meeting of creditors under section 341(a) of this title*, or within such additional time as the court, for cause, within such **[**forty-five day**]** *30-day* period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title *except as provided in section 362(h) of this title*;

(3) if a trustee is serving in the case *or an auditor appointed pursuant to section 586 of title 28, United States Code*, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case *or an auditor appointed pursuant to section 586 of title 28, United States Code*, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title**[**, and**]***;*

(5) appear at the hearing required under section 524(d) of this title**[**.**]***; and*

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

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

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

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

*(b)(1) Notwithstanding section 707(a) of this title, and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.*

*(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. The court shall, if so requested, enter an order of dismissal not later than 5 days after such request.*

*(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period not to exceed*

*45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.*

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

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

*(1) a certificate from the credit counseling service that provided the debtor services under section 109(h); and*

*(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the credit counseling service referred to in paragraph (1).*

*(e)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who requests those documents at a reasonable cost within 5 business days after such request.*

*(2) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case, and the court shall make such plan available to the creditor who requests such plan at a reasonable cost and not later than 5 days after such request.*

*(f) An individual debtor in a case under chapter 7 or 13 shall file with the court—*

*(1) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;*

*(2) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order for relief;*

*(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and*

*(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's current monthly income and expenditures in the preceding tax year and current monthly income less expenditures for the month preceding the statement prepared in accordance with section 707(b)(2) that shows how the amounts are calculated—*

*(A) beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and*

*(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.*

*(g)(1) A statement referred to in subsection (f)(4) shall disclose—*

*(A) the amount and sources of income of the debtor;*

*(B) the identity of any persons responsible with the debtor for the support of any dependents of the debtor; and*

*(C) the identity of any persons who contributed, and the amount contributed, to the household in which the debtor resides.*

*(2) The tax returns, amendments, and statement of income and expenditures described in paragraph (1) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).*

*(h)(1) Not later than 30 days after the date of enactment of the Consumer Bankruptcy Reform Act of 1999, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.*

*(2) The procedures under paragraph (1) shall include reasonable restrictions on creditor access to tax information that is required to be provided under this section to verify creditor identity and to restrict use of the information except with respect to the case.*

*(3) Not later than 1 year after the date of enactment of the Consumer Bankruptcy Reform Act of 1999, the Director of the Administrative Office of the United States Courts shall prepare, and submit to Congress a report that—*

*(A) assesses the effectiveness of the procedures under paragraph (1) to provide timely and sufficient information to creditors concerning the case; and*

*(B) if appropriate, includes proposed legislation—*

*(i) to further protect the confidentiality of tax information or to make it better available to creditors; and*

*(ii) to provide penalties for the improper use by any person of the tax information required to be provided under this section.*

*(i) If requested by the United States trustee or a trustee serving in the case, the debtor provide a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor and such other personal identifying information relating to the debtor that establishes the identity of the debtor.*

**§ 522. Exemptions**

(a) * * *

(b)*(1)* Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph **[**(1)**]** *(2)* or, in the alternative, paragraph **[**(2)**]** *(3)* of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title

by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph [(1)] *(2)* and the other debtor elect to exempt property listed in paragraph [(2)] *(3)* of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph [(1)] *(2)*, where such election is permitted under the law of the jurisdiction where the case is filed. [Such property is—

[(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,]

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

[(2)(A)] *(3) Property listed in this paragraph is—*

*(A) subject to subsections (o) and (p),* any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the [180] *730* days immediately preceding the date of the filing of the petition[, or for a longer portion of such 180-day period than in any other place] *or if the debtor's domicile has not been located at a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place*; [and]

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law[.]*;*

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

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

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

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

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

*(A) If the retirement funds are in a retirement fund that has received a favorable determination pursuant to section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the commencement of the case under*

*section 301, 302, or 303 of this title, those funds shall be presumed to be exempt from the estate.*

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

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

*(ii) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986.*

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

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

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

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

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

(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*

(B)*(i)* a nonpossessory, nonpurchase-money security interest in any—

**[**(i)**]** *(I)* household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

**[**(ii)**]** *(II)* implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

**[**(iii)**]** *(III)* professionally prescribed health aids for the debtor or a dependent of the debtor.

*(ii) "household goods" shall mean for the purposes of this subparagraph (B) clothing; furniture; appliances; one radio; one television; one VCR; linens; china; crockery; kitchenware; educational materials and educational equipment primarily for the use of minor dependent children of the debtor, but only one personal computer and only if used primarily for the education or entertainment of such minor children; medical equipment and supplies; furniture exclusively for the use of minor children, elderly or disabled dependents of the debtor; and personal effects (including wedding rings and the toys and hobby equipment of minor dependent children) of the debtor and his or her dependents: Provided, That the following are not included within the scope of the term "household goods":*

*(I) works of art (unless by or of the debtor or his or her dependents);*

*(II) electronic entertainment equipment (except one television, one radio, and one VCR and any electronic entertainment equipment which is a toy or hobby equipment of*

*minor dependent children which had an original purchase price of $100 or less);*

*(III) items acquired as antiques;*

*(IV) jewelry (except wedding rings); and*

*(V) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.*

* * * * * * *

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1) * * *

(2) the debtor could have avoided such transfer under subsection ⟦(f)(2)⟧ *(f)(1)(B)* of this section.

* * * * * * *

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

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

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

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

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

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

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

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

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

*(p)(1) Except as provided in paragraphs (2) and (3), as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any interest that exceeds $250,000 in value, in the aggregate, in—*

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

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

*(C) a burial plot for the debtor or a dependent of the debtor.*

*(2) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.*

*(3) Paragraph (1) shall not apply to debtors if applicable State law expressly provides by a statute enacted after the effective date of this paragraph that such paragraph shall not apply to debtors.*

**§ 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

*(iii) for purposes of this subsection, a return—*

*(I) must satisfy the requirements of applicable nonbankruptcy law, and includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or similar State or local law; and*

*(II) must have been filed in a manner permitted by applicable nonbankruptcy law; or*

* * * * * * *

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

*(ii) for purposes of this subparagraph—*

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

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

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), [or (6)] *(6), or (15)* of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), [or (6)] *(6), or (15)* of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

* * * * * * *

[(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;*

* * * * * * *

(9) for death or personal injury caused by the debtor's no, operation of a motor vehicle*, watercraft, or aircraft* if such oper-

ation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

* * * * * * *

*(14A) incurred to pay a debt that is nondischargeable by reason of section 727, 1141, 1228(a), 1228(b), or 1328(c), or any other provision of this subsection, if the debtor incurred the debt to pay such a nondischargeable debt with the intent to discharge in bankruptcy the newly-created debt, except that all debts incurred to pay nondischargeable debts, without regard to intent, are nondischargeable if incurred within 90 days of the filing of the petition;*

(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**]** *ownership,* in a share of a cooperative **[**housing**]** corporation, **[**but only if such fee or assessment is payable for a period during which—

**[**(A) the debtor physically occupied a dwelling unit in the condominium or cooperative project; or

**[**(B) the debtor rented the dwelling unit to a tenant and received payments from the tenant for such period,**]** *or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, and until such time as the debtor or trustee has surrendered any legal, equitable or possessory 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**]** *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 de-

fined in section 1915(h) of title 28 *(or a similar non-Federal law)*; [or]

(18) owed under State law to a State or municipality that is—

(A) in the nature of support, and

(B) enforceable under part D of title IV of the Social Security Act (42 U.S.C. 601 et seq.)[.]*; or*

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

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

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

*Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.*

* * * * * * *

(c)(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), [(6), or (15)] *or (6)* of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), [(6), or (15)] *or (6)*, as the case may be, of subsection (a) of this section.

* * * * * * *

(e) Any institution-affiliated party of [a] *an* insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

**§ 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) of this title, 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; *and*

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

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

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

* * * * * * *

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; **[**and**]**

(ii) in the best interest of the debtor**[**.**]***; and*

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

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1228, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement

of the kind specified in subsection (c) [of this section], and was not represented by an attorney during the course of negotiating such agreement *or if the consideration for such agreement is based on a wholly unsecured consumer debt (except for debts owed to creditors defined in section 461(b)(1)(A)(iv) of title 12,*
*United States Code) and the debtor has not waived the debtor's right to a hearing on the agreement in accordance with subsection (c)(2)(C) of this section*, then the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall—

(1) * * *

* * * * * * *

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

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

*(A) the greater of—*

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

*(ii) $1,000; and*

*(B) costs and attorneys' fees.*

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

**§ 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. Debt relief agency enforcement***

*(a) A debt relief agency shall not—*

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

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

*(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, what services the debt relief agency can reasonably expect to provide that person, or the benefits an assisted person may obtain or the difficulties the person may experience if the person seeks relief in a proceeding pursuant to this title; or*

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

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

*(c) NONCOMPLIANCE.—*

*(1) Any contract between a debt relief agency and an assisted person for bankruptcy assistance which does not comply with the material requirements of this section shall be treated as void and may not be enforced by any Federal or State court or by any other person.*

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

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

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

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

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

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

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

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

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

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

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

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

*(c) RELATION TO STATE LAW.—This section shall not annul, alter, affect or exempt any person subject to those sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency.*

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)(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or

(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section *365 or* 542 of this title; **[**or**]**

*(5) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection*

*with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a);*

**[**(5)**]** *(6)* any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

(A) * * *

* * * * * * *

unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition**[**.**]***; or*

*(7) any amount or interest in property to the extent that an employer has withheld amounts from the wages of employees for contribution to an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974, or to the extent that the employer has received amounts as a result of payments by participants or beneficiaries to an employer for contribution to an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974.*

*(e) For purposes of this section, the following definitions shall apply:*

*(1) the term "asset-backed securitization" means a transaction in which eligible assets transferred to an eligible entity are used as the source of payment on securities, the most senior of which are rated investment grade by 1 or more nationally recognized securities rating organizations, issued by an issuer;*

*(2) the term "eligible asset" means—*

*(A) financial assets (including interests therein and proceeds thereof), either fixed or revolving, including residential and commercial mortgage loans, consumer receivables, trade receivables, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any residual interest in property subject to receivables included in such financial assets plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;*

*(B) cash; and*

*(C) securities.*

*(3) the term "eligible entity" means—*

*(A) an issuer; or*

*(B) a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;*

*(4) the term "issuer" means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto; and*

*(5) the term "transferred" means the debtor, pursuant to a written agreement, represented and warranted that eligible assets were sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to subsection (b)(5), irrespective, without limitation of—*

*(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;*

*(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or*

*(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.*

*(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 where such purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986 or similar provision of State or local law;*

* * * * * * *

**§ 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) * * *

(B) if such 10-day period expires after the commencement of the case, before **[**20**]** *45* days after receipt of such goods by the debtor; and

* * * * * * *

(e) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, made by or to a commodity broker, forward contract merchant, stockbroker, financial institution, *financial participant,* or

securities clearing agency, that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

* * * * * * *

(g) Notwithstanding sections 544, 545, 547, 548(a)(1)(B) and 548(b) of this title, the trustee may not avoid a transfer [under a swap agreement,] made by or to a swap participant, [in connection with a swap agreement] *under or in connection with any swap agreement* and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

[(g) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.]

*(h) Notwithstanding sections 544, 545, 547, 548(a)(2)(B), and 548(b) of this title, the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) of this title, and except to the extent the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.*

*(i) Notwithstanding section 545 (2) and (3) of this title, the trustee may not avoid a warehouseman's lien for storage, transportation or other costs incidental to the storage and handling of goods, as provided by section 7–209 of the Uniform Commercial Code.*

*(j) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553 of this title, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and hearing, that a return is in the best interests of the estate, the debtor, with the consent of the creditor, and subject to the prior rights, if any, of third parties in such goods, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.*

**§ 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;

* * * * * * *

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $600[.]*; or*

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

* * * * * * *

(e)(1) * * *

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made—

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within [10] *30* days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such [10] *30* days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—

(i) * * *

(ii) [10] *30* days after such transfer takes effect between the transferor and the transferee.

* * * * * * *

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

*(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer may be avoided under this section only with respect to the creditor that is an insider.*

* * * * * * *

**§ 548. Fraudulent transfers and obligations**

(a) * * *

* * * * * * *

(d)(1) * * *

(2) In this section—

(A) * * *

(B) a commodity broker, forward contract merchant, stockbroker, financial institution, *financial participant,* or securities clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment;

(C) a repo participant that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment; [and]

(D) a swap participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer[.]*; and*

*(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except, with respect to a transfer under any individual contract covered thereby, to the extent such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.*

**§ 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 such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such *real* property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to [the interest] *such interest* of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

* * * * * * *

**§ 552. Postpetition effect of security interest**

(a) * * *

(b)(1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if

the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, **[**product**]** *products*, offspring, or profits of such property, then such security interest extends to such proceeds, **[**product**]** *products*, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

* * * * * * *

**§ 553. Setoff**

(a) Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—

(1) * * *

* * * * * * *

(3) the debt owed to the debtor by such creditor was incurred by such creditor—

(A) * * *

* * * * * * *

(C) for the purpose of obtaining a right of setoff against the debtor *(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(19), 555, 556, 559, 560 or 561 of this title)*.

(b)(1) Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), **[**362(b)(14)**]** *362(b)(17), 362(b)(19), 555, 556, 559, 560, 561*, 365(h), 546(h), or 365(i)(2) of this title, if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(A) * * *

* * * * * * *

**[§ 555. Contractual right to liquidate a securities contract]**

***§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract***

The exercise of a contractual right of a stockbroker, financial institution, *financial participant,* or securities clearing agency to cause the liquidation*, termination, or acceleration* of a securities contract, as defined in section 741 of this title, because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title unless such order is authorized under the provisions of the Securities Investor Protection Act of

1970 or any statute administered by the Securities and Exchange Commission. As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency*, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice*.

**[§ 556. Contractual right to liquidate a commodities contract or forward contract]**

***§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract***

The contractual right of a commodity broker*, financial participant* or forward contract merchant to cause the liquidation*, termination, or acceleration* of a commodity contract, as defined in section 761 of this title, or forward contract because of a condition of the kind specified in section 365(e)(1) of this title, and the right to a variation or maintenance margin payment received from a trustee with respect to open commodity contracts or forward contracts, shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by the order of a court in any proceeding under this title. As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a clearing organization or contract market or in a resolution of the governing board thereof and a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.

* * * * * * *

**[§ 559. Contractual right to liquidate a repurchase agreement]**

***§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement***

The exercise of a contractual right of a repo participant to cause the liquidation*, termination, or acceleration* of a repurchase agreement because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title, unless, where the debtor is a stockbroker or securities clearing agency, such order is authorized under the provisions of the Securities Investor Protection Act of 1970 or any statute administered by the Securities and Exchange Commission. In the event that a repo participant liquidates one or more repurchase agreements with a debtor and under the terms of one or more such agreements has agreed to deliver assets subject to repurchase agreements to the debtor, any excess of the market prices received on liquidation of such assets (or if any such assets are not disposed of on the date of liquidation of such repurchase agreements, at the prices available at the time of liquidation of such repurchase agreements from a generally recognized source or the most recent closing bid quotation

from such a source) over the sum of the stated repurchase prices and all expenses in connection with the liquidation of such repurchase agreements shall be deemed property of the estate, subject to the available rights of setoff. As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw, applicable to each party to the repurchase agreement, of a national securities exchange, a national securities association, or a securities clearing agency, and a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.

**[§ 560. Contractual right to terminate a swap agreement]**

***§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement***

The exercise of any contractual right of any swap participant to cause the **[**termination of a swap agreement**]** *liquidation, termination, or acceleration of 1 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 1 or more swap agreements* shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. As used in this section, the term "contractual right" includes a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

***§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts***

*(a) IN GENERAL.—Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts or other transfer obligations arising under or in connection with 1 or more (or the termination, liquidation, or acceleration of 1 or more)—*

*(1) securities contracts, as defined in section 741(7);*
*(2) commodity contracts, as defined in section 761(4);*
*(3) forward contracts;*
*(4) repurchase agreements;*
*(5) swap agreements; or*
*(6) master netting agreements,*

*shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.*

*(b) EXCEPTION.—*

*(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.*

*(2) If a debtor is a commodity broker subject to subchapter IV of chapter 7 of this title—*

*(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent the party has positive net equity in the commodity accounts at the debtor, as calculated under subchapter IV; and*

*(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).*

*(c) DEFINITION.—As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.*

***§ 562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements***

*If the trustee rejects a swap agreement, securities contract as defined in section 741 of this title, forward contract, commodity contract (as defined in section 761 of this title) repurchase agreement, or master netting agreement pursuant to section 365(a) of this title, or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—*

*(1) the date of such rejection; or*

*(2) the date of such liquidation, termination, or acceleration.*

## 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 13.*

* * * * * * *

SUBCHAPTER III—STOCKBROKER LIQUIDATION

* * * * * * *

*753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.*

SUBCHAPTER IV—COMMODITY BROKER LIQUIDATION

761. Definitions for this subchapter.

* * * * * * *

*767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.*

* * * * * * *

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

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

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

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

*(11) if, with respect to an individual debtor, there is a claim for support of a child of the debtor or a custodial parent of such*

*child entitled to receive priority under section 507(a)(1) of this title, provide the applicable notification specified in subsection (b).*

*(b)(1) In any case described in subsection (a)(11), the trustee shall—*

*(A)(i) notify in writing the holder of the claim of the right of such holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which the holder resides; and*

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

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

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

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

*(I) the granting of the discharge;*

*(II) the last recent known address of the debtor; and*

*(III) with respect to the debtor's case, the name of each creditor that holds a claim that is not discharged under paragraph (2), (4), or (14A) of section 523(a) of this title or that was reaffirmed by the debtor under section 524(c) of this title.*

*(2)(A) If, after receiving a notice under paragraph (1)(B)(iii), a holder of a claim or a State child support agency is unable to locate the debtor that is the subject of the notice, such holder or such agency may request from a creditor described in paragraph (1)(B)(iii)(III) the last known address of the debtor.*

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

* * * * * * *

**§ 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 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**]** *the trustee, 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 13 of this title,* if it finds that the granting of relief would be a **[**substantial**]** 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 less estimated administrative expenses and reasonable attorneys' fees, and amounts set forth in clauses (ii) for monthly expenses (which shall include, if applicable, the continuation of actual expenses of a dependent child under the age of 18 for tuition, books, and required fees at a private elementary or secondary school, not exceeding $10,000 per year, which amount shall be adjusted pursuant to section 104(b)), (iii) for monthly payments on account of secured debts, and (iv) for monthly unsecured priority debt payments, and multiplied by 60 months is not less than $6,000.*

*(ii) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's applicable monthly expenses for the categories specifically listed as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. In addition, if it is demonstrated that it is reasonable and necessary, the debtor may also subtract an allowance of up to 5% of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service. Notwithstanding any other provision of this clause, the debtor's monthly expenses shall not include any payments for debts.*

*(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition, and dividing that total by 60 months.*

*(iv) The debtor's monthly unsecured priority debt payments (including payments for priority child support and alimony claims) shall be calculated as the total amount of unsecured debts entitled to priority, and dividing the total by 60 months.*

*(v) For the purposes of this subsection, a family or household shall consist of the debtor, the debtor's spouse, and the debtor's dependents, but not a legally separated spouse unless the spouse files a joint case with the debtor.*

*(B) In any proceeding brought under this subsection, the presumption of abuse may be rebutted only by demonstrating extraordinary circumstances that require additional expenses or adjustment of current monthly income. In order to establish extraordinary circumstances, the debtor must itemize each additional expense or adjustment of income and provide documentation for such expenses or adjustment of income and a detailed explanation of the extraordinary circumstances which make such expenses or adjustment of income necessary and reasonable. The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustment to income are required. The presumption of abuse may be rebutted only if such additional expenses or adjustments to income cause the debtor's current monthly income less estimated administrative expenses and reasonable attorneys' fees, and the amounts set forth in clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than $6,000.*

*(C) As part of the schedule of current income and expenditures required under section 521 of this title, the debtor shall include a statement of the debtor's current monthly income, and the calculations which determine whether a presumption arises under subparagraph (A)(i), showing how each amount is calculated. The bankruptcy rules promulgated under section 2075 of title 28, United States Code, shall prescribe a form for such statement and may provide general rules on its content.*

*(D) No judge, United States trustee, panel trustee, bankruptcy administrator or other party in interest shall bring a motion under this paragraph if the debtor and the debtor's spouse combined, as of the date of the order for relief, have current monthly total income equal to or less than the regional median household monthly income calculated on a semiannual basis for a household of equal size. However, for a household of more than 4 individuals, the median income shall be that of a household of 4 individuals plus $583 for each additional member of that household.*

*(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not apply or has been rebutted, the court shall consider—*

*(A) whether the debtor filed the petition in bad faith; or*

*(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.*

*(4)(A) If a panel trustee appointed under section 586(a)(1) of title 28 or bankruptcy administrator brings a motion for dismissal or conversion under this subsection and the court grants that motion and finds that the action of the counsel for the debtor in filing under this chapter violated Rule 9011, the court shall assess damages which may include ordering:*

*(i) the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting the motion, including reasonable attorneys' fees.*

*(ii) the assessment of an appropriate civil penalty against the counsel for the debtor; and*

*(iii) the payment of the civil penalty to the panel trustee, bankruptcy administrator or the United States trustee.*

*(B) In the case of a petition filed under sections 301, 302, or 303 of this title and supporting lists, schedules and documents filed under section 521(a)(1) of this title, the signature of an attorney on the petition shall constitute a certificate that the attorney has—*

*(i) performed a reasonable investigation into the circumstances that gave rise to the petition; and*

*(ii) determined that the petition, lists, schedules, and documents—*

*(I) are well grounded in fact; and*

*(II) are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and do not constitute an abuse under paragraph (1) of this subsection.*

*(5) The court may award a debtor all reasonable costs in contesting a motion filed by a party in interest (not including a trustee or the United States trustee) under this subsection (including reasonable attorneys' fees) if—*

*(A) the court does not grant the motion; and*

*(B) the court finds that—*

*(i) the position of the party that brought the motion was not substantially justified; or*

*(ii) the party brought the motion solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.*

*(6) However, only the court, the United States trustee, or the trustee may file a motion to dismiss or convert a case under this subsection if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief, when multiplied by 12, is less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner. Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.*

*(7) In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).*

*(8) Not later than 3 years after the date of enactment of the Bankruptcy Reform Act of 1999, the Director of the Executive Office for United States Trustees shall submit a report, to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, containing its findings regarding the utilization of the Internal Revenue Service standards for determining the current monthly expenses under section 707(b)(1)(A)(ii) of title 11, United States Code, of debtors and the impact that the application of such standards has had on debtors and on the bank-*

*ruptcy courts. Such report may include recommendations for amendments to such title, consistent with the Director's findings.*

SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

**§ 722. Redemption**

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien *in full at the time of redemption*.

* * * * * * *

**§ 724. Treatment of certain liens**

(a) The trustee may avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title.

(b) Property in which the estate has an interest and that is subject to a lien that is not avoidable under this title *(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)* and that secures an allowed claim for a tax, or proceeds of such property, shall be distributed—

(1) first, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is senior to such tax lien;

(2) second, to any holder of a claim of a kind specified in section 507(a)(1) *(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)*, 507(a)(2), 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, to the extent of the amount of such allowed tax claim that is secured by such tax lien;

* * * * * * *

*(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—*

*(1) exhaust the unencumbered assets of the estate; and*

*(2) in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.*

*(f) Notwithstanding the exclusion of ad valorem tax liens set forth in this section and subject to the requirements of subsection (e)—*

*(1) claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(3) of this title; or*

*(2) claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4) of this title,*

*may be paid from property of the estate which secures a tax lien, or the proceeds of such property.*

* * * * * * *

**§ 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 10 days after the mailing to creditors of the summary of the trustee's final report or the date on which the trustee commences final distribution under this section*;

* * * * * * *

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section **[**1009,**]** 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

* * * * * * *

**§ 727. Discharge**

(a) The court shall grant the debtor a discharge, unless—

(1) * * *

* * * * * * *

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within **[**six**]** *8* years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case; or

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort; **[**or**]**

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter**[**.**]***; or*

*(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111 unless the debtor resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to provide service to the additional individuals who would be required to compete the instructional course by reason of the requirements of this section. Each United States trustee or bankruptcy administrator that makes such a determination shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.*

* * * * * * *

(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 performed pursuant to section 586(f) of title 28, United States Code; or*

*(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit conducted pursuant to section 586(f) of title 28, United States Code.*

* * * * * * *

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 in-*

*terest in a mortgage loan, a group or index of securities, certificates of deposit or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security certificate of deposit, loan, interest, group or index or option;*

*(ii) any option entered into on a national securities exchange relating to foreign currencies;*

*(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security certificate of deposit, loan, interest, group or index or option;*

*(iv) any margin loan;*

*(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;*

*(vi) any combination of the agreements or transactions referred to in this paragraph;*

*(vii) any option to enter into any agreement or transaction referred to in this paragraph;*

*(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this paragraph, except that such master agreement shall be considered to be a securities contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or*

*(ix) any security agreement or arrangement, or other credit enhancement, related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition; and*

*(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan.*

* * * * * * *

***§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants***

*Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stock-*

*broker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.*

SUBCHAPTER IV—COMMODITY BROKER LIQUIDATION

**§ 761. Definitions for this subchapter**

In this subchapter—

(1) * * *

* * * * * * *

(4) "commodity contract" means—

(A) * * *

* * * * * * *

(D) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; **[**or**]**

* * * * * * *

*(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;*

*(G) any combination of the agreements or transactions referred to in this paragraph;*

*(H) any option to enter into an agreement or transaction referred to in this paragraph;*

*(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master netting agreement, without regard to whether the master netting agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or*

*(J) a security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition;*

* * * * * * *

**§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.

* * * * * * *

## 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. Duties of trustee or debtor in possession in small business cases.*

* * * * * * *

**§ 1102. Creditors' and equity security holders' committees**

(a)(1) * * *

(2) *On its own motion or on request of a party in interest, and after notice and hearing, the court may order a change in the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders.* On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.

(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.

* * * * * * *

**§ 1104. Appointment of trustee or examiner**

(a) * * *

(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. Upon the filing of a report under the preceding sentence—*

*(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and*

*(ii) the service of any trustee appointed under subsection (d) shall terminate.*

*(B) In the case of any dispute arising out of an election under subparagraph (A), the court shall resolve the dispute.*

* * * * * * *

*(e) If grounds exist to convert or dismiss the case under section 1112 of this title, the court may instead appoint a trustee or examiner, if it determines that such appointment is in the best interests of creditors and the estate.*

* * * * * * *

**[§ 1110. Aircraft equipment and vessels**

[(a)(1) The right of a secured party with a security interest in equipment described in paragraph (2) or of a lessor or conditional vendor of such equipment to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract is not affected by section 362, 363, or 1129 or by any power of the court to enjoin the taking of possession unless—

[(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of the order under such security agreement, lease, or conditional sale contract; and

[(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

[(i) that occurs before the date of the order is cured before the expiration of such 60-day period; and

[(ii) that occurs after the date of the order is cured before the later of—

[(I) the date that is 30 days after the date of the default; or

[(II) the expiration of such 60-day period.

[(2) Equipment is described in this paragraph if it is—

[(A) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a citizen of the United States (as defined in section 40102 of title 49) holding an air carrier operating certificate issued by the Secretary of Transportation pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

[(B) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission.

[(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

[(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

[(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

[(1) the term "lease" includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

[(2) the term "security interest" means a purchase-money equipment security interest.]

### *§ 1110. Aircraft equipment and vessels*

*(a)(1) Except as provided in paragraph (2) and subject to subsection (b), the right of a secured party with a security interest in equipment described in paragraph (3), or of a lessor or conditional vendor of such equipment, to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies, under such*

*security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court.*

*(2) The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 of this title if—*

*(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and*

*(B) any default, other than a default of a kind specified in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract—*

*(i) that occurs before the date of the order is cured before the expiration of such 60-day period;*

*(ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of—*

*(I) the date that is 30 days after the date of the default; or*

*(II) the expiration of such 60-day period; and*

*(iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such security agreement, lease, or conditional sale contract, if a cure is permitted under that agreement, lease, or contract.*

*(3) The equipment described in this paragraph—*

*(A) is—*

*(i) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that, at the time such transaction is entered into, holds an air carrier operating certificate issued pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or*

*(ii) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that, at the time such transaction is entered into, holds a certificate of public convenience and necessity or permit issued by the Department of Transportation; and*

*(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.*

*(4) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.*

*(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a)*

*may agree, subject to the approval of the court, to extend the 60-day period specified in subsection (a)(1).*

*(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(3), if at any time after the date of the order for relief under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession to the trustee.*

*(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(3), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.*

*(d) With respect to equipment first placed in service on or before October 22, 1994, for purposes of this section—*

*(1) the term "lease" includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and*

*(2) the term "security interest" means a purchase-money equipment security interest.*

* * * * * * *

**§ 1112. Conversion or dismissal**

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

[(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 paragraphs (2) and (4) of this subsection, and in subsection (c) of this section, on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 of this title or dismiss a case under this chapter, or appoint a trustee or examiner under section 1104(e) of this title, whichever is in the best interest of creditors and the estate, if the movant establishes cause.*

*(2) The court may decline to grant the relief specified in paragraph (1) of this subsection if the debtor or another party in interest objects and establishes by a preponderance of the evidence that—*

*(A) it is more likely than not that a plan will be confirmed within a time as fixed by this title or by order of the court entered pursuant to section 1121(e)(3), or within a reasonable time if no time has been fixed; and*

*(B) if the cause is an act or omission of the debtor that—*

*(i) there exists a reasonable justification for the act or omission; and*

*(ii) the act or omission will be cured within a reasonable time fixed by the court not to exceed 30 days after the court decides the motion, unless the movant expressly consents to a continuance for a specific period of time, or compelling circumstances beyond the control of the debtor justify an extension.*

*(3) For purposes of this subsection, cause includes—*

*(A) substantial or continuing loss to or diminution of the estate;*

*(B) gross mismanagement of the estate;*

*(C) failure to maintain insurance that poses a material risk to the estate or the public;*

*(D) unauthorized use of cash collateral harmful to 1 or more creditors;*

*(E) failure to comply with an order of the court;*

*(F) failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;*

*(G) failure to attend the meeting of creditors convened under section 341(a) of this title;*

*(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee or bankruptcy administrator;*

*(I) failure timely to pay taxes due after the date of the order for relief or to file tax returns due after the order for relief;*

*(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;*

*(K) failure to pay any fees or charges required under chapter 123 of title 28;*

*(L) revocation of an order of confirmation under section 1144 of this title;*

*(M) inability to effectuate substantial consummation of a confirmed plan;*

*(N) material default by the debtor with respect to a confirmed plan; and*

*(O) termination of a plan by reason of the occurrence of a condition specified in the plan.*

*(4) The court may grant relief under this subsection for cause as defined in subparagraphs C, F, G, H, or K of paragraph 3 of this subsection only upon motion of the United States trustee or bankruptcy administrator or upon the court s own motion.*

*(5) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.*

*(6) In addition to any other relief granted under this subsection, if the cause established is an act or omission of the debtor, the court may impose monetary sanctions against the debtor, debtor's responsible person, and/or a professional employed by the debtor responsible for the act or omission.*

* * * * * * *

***§1115. Duties of trustee or debtor in possession in small business cases***

*(a) In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—*

*(1) append to the voluntary petition or, in an involuntary case, file within 3 days after the date of the order for relief—*

*(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or*

*(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;*

*(2) attend, through its responsible individual, meetings scheduled by the court or the United States trustee, including initial debtor interviews and meetings of creditors convened under section 341 of this title;*

*(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;*

*(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;*

*(5) subject to section 363(c)(2) of this title, maintain insurance customary and appropriate to the industry;*

*(6)(A) timely file tax returns;*

*(B) subject to section 363(c)(2) of this title, timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and*

*(C) subject to section 363(c)(2) of this title, establish 1 or more separate deposit accounts not later than 10 business days after the date of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof or a responsible time set by the court, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units unless the court waives this requirement after notice and hearing; and*

*(7) allow the United States trustee, or its designated representative, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.*

SUBCHAPTER II—THE PLAN

**§ 1121. Who may file a plan**

(a) * * *

* * * * * * *

(d) [On] *(1) Subject to paragraph (1), 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) Such 120-day period may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.*

*(B) Such 180-day period may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.*

[(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 90 days after the date of the order for relief, unless a trustee has been appointed under this chapter, or unless the court, on request of a party in interest and after notice and hearing, shortens such time;*

*(2) the debtor shall file a plan, and any necessary disclosure statement, not later than 90 days after the date of the order for relief, unless the United States Trustee has appointed under section 1102(a)(1) of this title a committee of unsecured creditors that the court has determined, before the 90 days has expired, is sufficiently active and representative to provide effective oversight of the debtor; and*

*(3) the time periods specified in paragraphs (1) and (2) of this subsection and the time fixed in section 1129(e) of this title for confirmation of a plan, may be extended only as follows:*

*(A) On request of a party in interest made within the respective periods, and after notice and hearing, the court may for cause grant one or more extensions, cumulatively not to exceed 60 days, if the movant establishes—*

*(i) that no cause exists to dismiss or convert the case or appoint a trustee or examiner under subparagraphs (A) (I) of section 1112(b) of this title; and*

*(ii) that there is a reasonable possibility the court will confirm a plan within a reasonable time;*

*(B) On request of a party in interest made within the respective periods, and after notice and hearing, the court may for cause grant one or more extensions in excess of those authorized under subparagraph (A) of this paragraph, if the movant establishes:*

*(i) that no cause exists to dismiss or convert the case or appoint a trustee or examiner under subparagraphs (A) (I) of section 1112(b)(3) of this title; and*

*(ii) that it is more likely than not that the court will confirm a plan within a reasonable time; and*

*(C) a new deadline shall be imposed whenever an extension is granted.*

* * * * * * *

**§ 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)(1)(A) of this title expressly does not require to be cured*;

* * * * * * *

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; **[**and**]**

*(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, 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 full discussion of the potential material Federal, State, and local tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor domiciled in the State in which the debtor resides or has its principal place of business typical of the holders of claims or interests in the case,* that would enable *such* a hypothetical **[**reasonable**]** investor **[**typical of holders of claims or interests**]** 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)—*

*(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;*

*(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted pursuant to section 2075 of title 28; and*

*(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;*

*(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not less than 20 days before the date of the hearing on confirmation of the plan; and*

*(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.*

*(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.*

* * * * * * *

**§ 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) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(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,**]** *regular installment payments in cash, but in no case with a balloon provision, and no more than three months apart, beginning no later than the effective date of the plan and ending on the earlier of five years after the petition date or the last date payments are to be made under the plan to unsecured creditors,* of a value, as of the effective date of the plan, equal to the allowed amount of such claim**[**.**]***; and*

*(D) with respect to a secured claim which would be described in section 507(a)(8) of this title but for its secured status, the holder of such claim will receive on account of such claim cash payments of not less than is required in*

*subparagraph (C) and over a period no greater than is required in such subparagraph.*

* * * * * * *

*(14) If the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that become payable after the date on which the petition is filed.*

*(15) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.*

* * * * * * *

*(e) In a small business case, the debtor shall confirm a plan not later than 150 days after the date of the order for relief unless—*

*(1) the United States Trustee has appointed, under section 1102(a)(1) of this title, a committee of unsecured creditors that the court has determined, before the 150 days has expired, is sufficiently active and representative to provide effective oversight of the debtor; or*

*(2) such 150-day period is extended as provided in section 1121(e)(3) of this title.*

* * * * * * *

SUBCHAPTER III—POSTCONFIRMATION MATTERS

**§ 1141. Effect of confirmation**

(a) * * *

* * * * * * *

(d)(1) * * *

* * * * * * *

*(6) Notwithstanding the provisions of paragraph (1), the confirmation of a plan does not discharge a debtor which is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.*

* * * * * * *

**[§ 1168. Rolling stock equipment**

[(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract is not affected by section 362, 363, or 1129 or by any power of the court to enjoin the taking of possession, unless—

[(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of commencement

of the case under such security agreement, lease, or conditional sale contract; and

[(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

[(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period; and

[(ii) that occurs or becomes an event of default after the date of commencement of the case is cured before the later of—

[(I) the date that is 30 days after the date of the default or event of default; or

[(II) the expiration of such 60-day period.

[(2) Equipment is described in this paragraph if it is rolling stock equipment or accessories used on such equipment, including superstructures and racks, that is subject to a security interest granted by, leased to, or conditionally sold to the debtor.

[(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

[(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

[(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

[(1) the term "lease" includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

[(2) the term "security interest" means a purchase-money equipment security interest.

[(d) With respect to equipment first placed in service after the date of enactment of this subsection, for purposes of this section, the term "rolling stock equipment" includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.]

***§ 1168. Rolling stock equipment***

*(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court, except that the right to take possession and enforce those other rights and remedies shall be subject to section 362 of this title, if—*

*(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and*

*(B) any default, other than a default of a kind described in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract—*

*(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period;*

*(ii) that occurs or becomes an event of default after the date of commencement of the case and before the expiration of such 60-day period is cured before the later of—*

*(I) the date that is 30 days after the date of the default or event of the default; or*

*(II) the expiration of such 60-day period; and*

*(iii) that occurs on or after the expiration of such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract, if cure is permitted under that agreement, lease, or conditional sale contract.*

*(2) The equipment described in this paragraph—*

*(A) is rolling stock equipment or accessories used on rolling stock equipment, including superstructures or racks, that is subject to a security interest granted by, leased to, or conditionally sold to a debtor; and*

*(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, that is to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.*

*(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.*

*(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).*

*(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(2), if at any time after the date of commencement of the case under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession of the trustee.*

*(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(2), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.*

*(d) With respect to equipment first placed in service on or prior to October 22, 1994, for purposes of this section—*

*(1) the term "lease" includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and*

*(2) the term "security interest" means a purchase-money equipment security interest.*

*(e) With respect to equipment first placed in service after October 22, 1994, for purposes of this section, the term "rolling stock equipment" includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.*

* * * * * * *

**§ 1170. Abandonment of railroad line**

(a) * * *

* * * * * * *

(e)(1) In authorizing any abandonment of a railroad line under this section, the court shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section **[**11347**]** *11326(a)* of title 49.

* * * * * * *

**§ 1172. Contents of plan**

(a) * * *

* * * * * * *

(c)(1) In approving an application under subsection (b) of this section, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section **[**11347**]** *11326(a)* of title 49.

* * * * * * *

## CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER WITH REGULAR ANNUAL INCOME

* * * * * * *

SUBCHAPTER II—THE PLAN

* * * * * * *

**§ 1228. Discharge**

(a) As soon as practicable after completion by the debtor of all payments under the plan, other than payments to holders of allowed claims provided for under section 1222(b)(5) or **[**1222(b)(10)**]** *1222(b)(9)* of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or **[**1222(b)(10**]** *1222(b)(9)*) of this title; or

(2) of the kind specified in section 523(a) of this title.

* * * * * * *

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or [1222(b)(10)] *1222(b)(9)* of this title; or

(2) of a kind specified in section 523(a) of this title.

* * * * * * *

## CHAPTER 13—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE



* * * * * * *

### SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

* * * * * * *

### § 1301. Stay of action against codebtor

(a) * * *

(b)*(1)* A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

*(2)(A) Notwithstanding subsection (c) and except as provided in subparagraph (B), in any case in which the debtor did not receive the consideration for the claim held by a creditor, the stay provided by subsection (a) shall apply to that creditor for a period not to exceed 30 days beginning on the date of the order for relief, to the extent the creditor proceeds against—*

*(i) the individual that received that consideration; or*

*(ii) property not in the possession of the debtor that secures that claim.*

*(B) Notwithstanding subparagraph (A), the stay provided by subsection (a) shall apply in any case in which the debtor is primarily obligated to pay the creditor in whole or in part with respect to a claim described in subparagraph (A) under a legally binding separation or property settlement agreement or divorce or dissolution decree with respect to—*

*(i) an individual described in subparagraph (A)(i); or*

*(ii) property described in subparagraph (A)(ii).*

*(3) Notwithstanding subsection (c), the stay provided by subsection (a) shall terminate as of the date of confirmation of the plan, in any case in which the plan of the debtor provides that the debtor's interest in personal property subject to a lease with respect to which the debtor is the lessee will be surrendered or abandoned or*

*no payments will be made under the plan on account of the debtor's obligations under the lease.*

* * * * * * *

***§ 1302. Trustee***

*(a)* * * *

*(b) The trustee shall—*

*(1)* * * *

* * * * * * *

*(4) advise, other than on legal matters, and assist the debtor in performance under the plan;* ***[****and****]***

*(5) ensure that the debtor commences making timely payments under section 1326 of this title****[****.****]****; and*

*(6) if, with respect to an individual debtor, there is a claim for support of a child of the debtor or a custodial parent of such child entitled to receive priority under section 507(a)(1) of this title, provide the applicable notification specified in subsection (d).*

* * * * * * *

*(d)(1) In any case described in subsection (b)(6), the trustee shall—*

*(A)(i) notify in writing the holder of the claim of the right of such holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which the holder resides; and*

*(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and*

*(B)(i) notify in writing the State child support agency of the State in which the holder of the claim resides of the claim; and*

*(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim;*

*(iii) at such time as the debtor is granted a discharge under section 1328 of this title, notify the holder of the claim and the State child support agency of the State in which such holder resides of—*

*(I) the granting of the discharge;*

*(II) the last recent known address of the debtor; and*

*(III) with respect to the debtor's case, the name of each creditor that holds a claim that is not discharged under paragraph (2), (4), or (14A) of section 523(a) of this title or that was reaffirmed by the debtor under section 524(c) of this title.*

*(2)(A) If, after receiving a notice under paragraph (1)(B)(iii), a holder of a claim or a State child support agency is unable to locate the debtor that is the subject of the notice, such holder or such agency may request from a creditor described in paragraph (1)(B)(iii) the last known address of the debtor.*

*(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be lia-*

*ble to the debtor or any other person by reason of making such disclosure.*

* * * * * * *

**§ 1307. Conversion or dismissal**

(a) * * *

* * * * * * *

*(e) Upon the failure of the debtor to file tax returns under section 1308 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interests of creditors and the estate.*

**[**(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.

***§ 1307A. Adequate protection in chapter 13 cases***

*(a)(1)(A) On or before the date that is 30 days after the filing of a case under this chapter, the debtor shall make cash payments in an amount determined under paragraph (2), to—*

*(i) any lessor of personal property; and*

*(ii) any creditor holding a claim secured by personal property to the extent that the claim is attributable to the purchase of that property by the debtor.*

*(B) The debtor or the plan shall continue making the adequate protection payments required under subparagraph (A) until the earlier of the date on which—*

*(i) the creditor begins to receive actual payments under the plan; or*

*(ii) the debtor relinquishes possession of the property referred to in subparagraph (A) to—*

*(I) the lessor or creditor; or*

*(II) any third party acting under claim of right, as applicable.*

*(2) The payments referred to in paragraph (1)(A) shall be the contract amount and shall reduce any amount payable under section 1326(a) of the title.*

*(b)(1) Subject to the limitations under paragraph (2), the court may, after notice and hearing, change the amount and timing of the dates of payment of payments made under subsection (a).*

*(2)(A) The payments referred to in paragraph (1) shall be payable not less frequently than monthly.*

*(B) The amount of payments referred to in paragraph (1) shall not be less than the amount of any weekly, biweekly, monthly, or other periodic payment scheduled as payable under the contract between the debtor and creditor.*

*(c) Notwithstanding section 1326(b), the payments referred to in subsection (a)(1)(A) shall be continued in addition to plan payments*

*under a confirmed plan until actual payments to the creditor begin under that plan, if the confirmed plan provides—*

*(1) for payments to a creditor or lessor described in subsection (a)(1); and*

*(2) for the deferral of payments to such creditor or lessor under the plan until the payment of amounts described in section 1326(b).*

*(d) Notwithstanding sections 362, 542, and 543, a lessor or creditor described in subsection (a) may retain possession of property described in that subsection that was obtained in accordance with applicable law before the date of filing of the petition until the first payment under subsection (a)(1)(A) is received by the lessor or creditor.*

*(e) On or before 60 days after the filling of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide each creditor or lessor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.*

***§ 1308. Filing of prepetition tax returns***

*(a) On or before the day prior to the day on which the first meeting of the creditors is convened under section 341(a) of this title, the debtor shall have filed with appropriate tax authorities all tax returns for all taxable periods ending in the 3-year period ending on the date of filing of the petition.*

*(b) If the tax returns required by subsection (a) have not been filed by the date on which the first meeting of creditors is convened under section 341(a) of this title, the trustee may continue such meeting for a reasonable period of time, to allow the debtor additional time to file any unfiled returns, but such additional time shall be no more than—*

*(1) for returns that are past due as of the date of the filing of the petition, 120 days from such date;*

*(2) for returns which are not past due as of the date of the filing of the petition, the later of 120 days from such date or the due date for such returns under the last automatic extension of time for filing such returns to which the debtor is entitled, and for which request has been timely made, according to applicable nonbankruptcy law; and*

*(3) upon notice and hearing, and order entered before the lapse of any deadline fixed according to this subsection, where the debtor demonstrates, by clear and convincing evidence, that the failure to file the returns as required is because of circumstances beyond the control of the debtor, the court may extend the deadlines set by the trustee as provided in this subsection for—*

*(A) a period of no more than 30 days for returns described in paragraph (1) of this subsection; and*

*(B) for no more than the period of time ending on the applicable extended due date for the returns described in paragraph (2).*

*(c) For purposes of this section only, a return includes a return prepared pursuant to section 6020 (a) or (b) of the Internal Revenue Code of 1986 or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal.*

SUBCHAPTER II—THE PLAN

* * * * * * *

**§ 1322. Contents of plan**

(a) * * *

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) * * *

**[**(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;**]**

*(2) modify the rights of holders of secured claims, other than a claim secured primarily by a security interest in property used as the debtor's principal residence at any time during 180 days prior to the filing of the petition, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;*

* * * * * * *

**[**(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) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 5 years. If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than the highest national median family income for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years. Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.*

* * * * * * *

*(f) A plan may not materially alter the terms of a loan described in section 362(b)(29) of this title.*

* * * * * * *

**§ 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 meeting of creditors under section 341(a) of this title.*

*(c) Whenever a party in interest is given notice of a hearing on the confirmation or modification of a plan under this chapter, such notice shall include the information provided by the debtor on the most recent statement filed with the court pursuant to section 521(a)(1)(B)(ii) or (f)(4) of this title.*

**§ 1325. Confirmation of plan**

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) * * *

* * * * * * *

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)**[**(i) the plan provides that the holder of such claim retain the lien securing such claim; and**]** *(i) the plan provides that the holder of such claim retain the lien securing such claim until the earlier of payment of the underlying debt determined under nonbankruptcy law or discharge under section 1328 of this title, and that if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and*

(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

(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) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order for such obligation that become payable after the date on which the petition is filed; and*

*(8) if the debtor has filed all Federal, State, and local tax returns as required by section 1308 of this title.*

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the [three-year period] *applicable commitment period* beginning on the date that the first payment is due under the plan will be applied to make payments *to unsecured creditors* under the plan. *The "applicable commitment period" shall be not less than 5 years if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner. Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.*

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor *(other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law and which is reasonably necessary to be expended)* and [which is not] *less amounts* reasonably necessary to be expended—

(A) for the maintenance or support of the debtor or a dependent of the debtor*, as determined in accordance with section 707(b)(2)(A) and if applicable 707(b)(2)(B)*, 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 *currently monthly* 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.

* * * * * * *

**§ 1328. Discharge**

(a) As soon as practicable after completion by the debtor of all payments under the plan*, and with respect to a debtor who is required by a judicial or administrative order to pay a domestic support obligation, certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before or after the petition was filed) have been paid*, 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) of this title;*

*(2) of the kind specified in paragraph (1), (2), (4), (3)(B), (5), (8), or (9) of section 523(a) of this title;*

*(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or*

*(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.*

* * * * * * *

*(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502 of this title if the debtor has received a discharge in any case filed under this title within 5 years of the order for relief under this chapter.*

*(g) The court shall not grant a discharge under this section to a debtor, unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.*

*(h) Subsection (g) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to provide service to the additional individuals who would be required to complete the instructional course by reason of the requirements of this section.*

*(i) Each United States trustee or bankruptcy administrator that makes a determination described in subsection (h) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.*

**§ 1329. Modification of plan after confirmation**

(a) * * *

* * * * * * *

(c) A plan modified under this section may not provide for payments over a period that expires after **[**three years**]** *the applicable commitment period under section 1325(b)(1)(B)* after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time. *The duration period shall be 5 years if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, the national median household income for 1 earner, as of the date of the modification and shall be 3 years if the current monthly total income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, less than the national median household income for 1 earner as of the date of the modification. Notwithstanding the foregoing, the national median family in-*

*come for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.*

* * * * * * *

## *CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES*

***§ 1501. Purpose and scope of application***

*(a) The purpose of this of chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—*

*(1) cooperation between—*

*(A) United States courts, United States trustees, trustees, examiners, debtors, and debtors in possession; and*

*(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;*

*(2) greater legal certainty for trade and investment;*

*(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;*

*(4) protection and maximization of the value of the debtor's assets; and*

*(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.*

*(b) This chapter applies where—*

*(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;*

*(2) assistance is sought in a foreign country in connection with a case under this title;*

*(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or*

*(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.*

*(c) This chapter does not apply to—*

*(1) a proceeding concerning an entity identified by exclusion in subsection 109(b);*

*(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or*

*(3) an entity subject to a proceeding under the Securities Investor Protection Act, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.*

*SUBCHAPTER I—GENERAL PROVISIONS*

***§ 1502. Definitions***

*For the purposes of this chapter, the term—*

*(1) "debtor" means an entity that is the subject of a foreign proceeding;*

*(2) "establishment" means any place of operations where the debtor carries out a nontransitory economic activity;*

*(3) "foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;*

*(4) "foreign main proceeding" means a foreign proceeding taking place in the country where the debtor has the center of its main interests;*

*(5) "foreign nonmain proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;*

*(6) "trustee" includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title; and*

*(7) "within the territorial jurisdiction of the United States" when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.*

***§ 1503. International obligations of the United States***

*To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.*

***§ 1504. Commencement of ancillary case***

*A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.*

***§ 1505. Authorization to act in a foreign country***

*A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.*

***§ 1506. Public policy exception***

*Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.*

***§ 1507. Additional assistance***

*(a) Subject to the specific limitations stated elsewhere in this chapter the court, upon recognition of a foreign proceeding, the court may provide additional assistance to a foreign representative under this title or under other laws of the United States.*

*(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—*

*(1) just treatment of all holders of claims against or interests in the debtor's property;*

*(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;*

*(3) prevention of preferential or fraudulent dispositions of property of the debtor;*

*(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and*

*(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.*

### *§ 1508. Interpretation*

*In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.*

## *SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT*

### *§ 1509. Right of direct access*

*(a) A foreign representative may commence a case under section 1504 of this title by filing with the court a petition for recognition of a foreign proceeding under section 1515 of this title.*

*(b) If the court grants recognition under section 1515 of this title, and subject to any limitations that the court may impose consistent with the policy of this chapter—*

*(1) the foreign representative has the capacity to sue and be sued in a court in the United States;*

*(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and*

*(3) a court in the United States shall grant comity or cooperation to the foreign representative.*

*(c) A request for comity or cooperation by a foreign representative in a court in the United States shall be accompanied by a certified copy of an order granting recognition under section 1517 of this title.*

*(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.*

*(e) Whether or not the court grants recognition, and subject to sections 306 and 1510 of this title, a foreign representative is subject to applicable nonbankruptcy law.*

*(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United State to collect or recover a claim which is the property of the debtor.*

### *§ 1510. Limited jurisdiction*

*The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.*

### *§ 1511. Commencement of case under section 301 or 303*

*(a) Upon recognition, a foreign representative may commence—*

*(1) an involuntary case under section 303; or*

*(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.*

*(b) The petition commencing a case under subsection (a) must be accompanied by certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.*

### *§ 1512. Participation of a foreign representative in a case under this title*

*Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.*

### *§ 1513. Access of foreign creditors to a case under this title*

*(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.*

*(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.*

*(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.*

*(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.*

### *§ 1514. Notification to foreign creditors concerning a case under this title*

*(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.*

*(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.*

*(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—*

*(1) indicate the time period for filing proofs of claim and specify the place for their filing;*

*(2) indicate whether secured creditors need to file their proofs of claim; and*

*(3) contain any other information required to be included in such a notification to creditors under this title and the orders of the court.*

*(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.*

*SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF*

***§ 1515. Application for recognition of a foreign proceeding***

*(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.*

*(b) A petition for recognition shall be accompanied by—*

*(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;*

*(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or*

*(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.*

*(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.*

*(d) The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.*

***§ 1516. Presumptions concerning recognition***

*(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding as defined in section 101 and that the person or body is a foreign representative as defined in section 101, the court is entitled to so presume.*

*(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.*

*(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.*

***§ 1517. Order recognizing a foreign proceeding***

*(a) Subject to section 1506, after notice and a hearing an order recognizing a foreign proceeding shall be entered if—*

*(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;*

*(2) the foreign representative applying for recognition is a person or body as defined in section 101; and*

*(3) the petition meets the requirements of section 1515.*

*(b) The foreign proceeding shall be recognized—*

*(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or*

*(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.*

*(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.*

*(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition. The case under this chapter may be closed in the manner prescribed for a case under section 350.*

***§ 1518. Subsequent information***

*From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—*

*(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and*

*(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.*

***§ 1519. Relief that may be granted upon petition for recognition of a foreign proceeding***

*(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—*

*(1) staying execution against the debtor's assets;*

*(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and*

*(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).*

*(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.*

*(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.*

*(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.*

*(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.*

***§ 1520. Effects of recognition of a foreign main proceeding***

*(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—*

*(1) sections 361 and 362 with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;*

*(2) sections 363, 549, and 552 of this title apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;*

*(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and*

*(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.*

*(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.*

*(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.*

***§ 1521. Relief that may be granted upon recognition of a foreign proceeding***

*(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—*

*(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);*

*(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);*

*(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);*

*(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;*

*(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;*

*(6) extending relief granted under section 1519(a); and*

*(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).*

*(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the*

*court is satisfied that the interests of creditors in the United States are sufficiently protected.*

*(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.*

*(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.*

*(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).*

### *§ 1522. Protection of creditors and other interested persons*

*(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.*

*(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.*

*(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.*

*(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.*

### *§ 1523. Actions to avoid acts detrimental to creditors*

*(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).*

*(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.*

### *§ 1524. Intervention by a foreign representative*

*Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.*

## *SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES*

### *§ 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives*

*(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.*

*(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.*

***§ 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives***

*(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.*

*(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.*

***§ 1527. Forms of cooperation***

*Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—*

*(1) appointment of a person or body, including an examiner, to act at the direction of the court;*

*(2) communication of information by any means considered appropriate by the court;*

*(3) coordination of the administration and supervision of the debtor's assets and affairs;*

*(4) approval or implementation of agreements concerning the coordination of proceedings; and*

*(5) coordination of concurrent proceedings regarding the same debtor.*

*SUBCHAPTER V—CONCURRENT PROCEEDINGS*

***§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding***

*After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.*

***§ 1529. Coordination of a case under this title and a foreign proceeding***

*Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:*

*(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—*

*(A) any relief granted under sections 1519 or 1521 must be consistent with the relief granted in the case in the United States; and*

*(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply.*

*(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—*

*(A) any relief in effect under sections 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and*

*(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.*

*(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.*

*(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.*

***§ 1530. Coordination of more than 1 foreign proceeding***

*In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:*

*(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.*

*(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.*

*(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.*

***§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding***

*In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.*

***§ 1532. Rule of payment in concurrent proceedings***

*Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.*

**SECTION 127 OF THE TRUTH IN LENDING ACT**

**§ 127. Open end consumer credit plans**

(a) Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) * * *

* * * * * * *

*(9) In the case of any credit or charge card account under an open-end consumer credit plan on which a minimum monthly or periodic payment will be required, other than an account described in paragraph (8)—*

*(A) the following statement: "The minimum payment amount shown on your billing statement is the smallest payment which you can make in order to keep the account in good standing. This payment option is offered as a convenience and you may make larger payments at any time. Making only the minimum payment each month will increase the amount of interest you pay and the length of time it takes to repay your outstanding balance."*

*(B) if the plan provides that the consumer will be permitted to forgo making a minimum payment during a specified billing cycle, a statement, if applicable, that if the consumer chooses to forgo making the minimum payment, finance charges will continue to accrue; and*

*(C) an example, based on an annual percentage rate and method for determining minimum periodic payments recently in effect for that creditor, and a $500 outstanding balance, showing the estimated minimum periodic payment, and the estimated period of time it would take to repay the $500 outstanding balance if the consumer paid only the minimum periodic payment on each monthly or periodic statement and obtained no additional extensions of credit.*

*(10) With respect to one billing cycle per calendar year, the creditor shall transmit the information required under paragraph (9) to each consumer to whom the creditor is required to transit a statement pursuant to subsection (b) for such billing cycle. The creditor shall also transmit to such consumer for such cycle a worksheet prescribed by the Board to assist the consumer in determining the consumer's household income and debt obligations.*

(b) 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) The following statement: "The minimum payment amount shown on your billing statement is the smallest payment which you can make in order to keep the account in good standing. This payment option is offered as a convenience and you may make larger payments at any time. Making only the minimum payment each month will increase the amount of interest you pay and the length of time it takes to repay your outstanding balance."*

* * * * * * *

*(h) In promulgating regulations to implement the disclosure of an example required under subsection (a)(9)(C) and (a)(10), the Board shall set forth a model disclosure to accompany the example stating that the credit features shown are only an example which does not obligate the creditor, but is intended to illustrate the approximate length of time it could take to repay using the assumptions set forth in subsection (a)(9)(C) without regard to any other factors that could impact an approximate repayment period, including other credit features or the consumer's payment or other behavior with respect to the account. Compliance with the disclosures required under subsection (a)(9)(C) and (a)(10) shall be enforced exclusively by the Federal agencies set forth in section 108.*

*(i) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.*

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## TITLE 28, UNITED STATES CODE

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# PART I—ORGANIZATION OF COURTS

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## CHAPTER 6—BANKRUPTCY JUDGES

Sec.
151 Designation of bankruptcy courts.

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*159. Bankruptcy statistics.*

* * * * * * *

**§ 152. Appointment of bankruptcy judges**

(a)(1) [The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph.] *Each bankruptcy judge to be appointed for a judicial district as provided in paragraph (2) shall be appointed by the United States court of appeals for the circuit in which such district is located.* Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

* * * * * * *

**§ 156. Staff; expenses**

(a) * * *

* * * * * * *

*(g)(1) In this subsection, the term "travel expenses"—*

*(A) means the expenses incurred by a bankruptcy judge for travel that is not directly related to any case assigned to such bankruptcy judge; and*

*(B) shall not include the travel expenses of a bankruptcy judge if—*

*(i) the payment for the travel expenses is paid by such bankruptcy judge from the personal funds of such bankruptcy judge; and*

*(ii) such bankruptcy judge does not receive funds (including reimbursement) from the United States or any other person or entity for the payment of such travel expenses.*

*(2) Each bankruptcy judge shall annually submit the information required under paragraph (3) to the chief bankruptcy judge for the district in which the bankruptcy judge is assigned.*

*(3)(A) Each chief bankruptcy judge shall submit an annual report to the Director of the Administrative Office of the United States Courts on the travel expenses of each bankruptcy judge assigned to the applicable district (including the travel expenses of the chief bankruptcy judge of such district).*

*(B) The annual report under this paragraph shall include—*

*(i) the travel expenses of each bankruptcy judge, with the name of the bankruptcy judge to whom the travel expenses apply;*

*(ii) a description of the subject matter and purpose of the travel relating to each travel expense identified under clause (i), with the name of the bankruptcy judge to whom the travel applies; and*

*(iii) the number of days of each travel described under clause (ii), with the name of the bankruptcy judge to whom the travel applies.*

*(4)(A) The Director of the Administrative Office of the United States Courts shall—*

*(i) consolidate the reports submitted under paragraph (3) into a single report; and*

*(ii) annually submit such consolidated report to Congress.*

*(B) The consolidated report submitted under this paragraph shall include the specific information required under paragraph (3)(B), including the name of each bankruptcy judge with respect to clauses (i), (ii), and (iii) of paragraph (3)(B).*

**§ 157. Procedures**

(a) * * *

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) * * *

* * * * * * *

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; **[**and**]**

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims**[**.**]***; and*

*(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.*

* * * * * * *

***§ 159. Bankruptcy statistics***

*(a) The clerk of each district shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the "Office").*

*(b) The Director shall—*

*(1) compile the statistics referred to in subsection (a);*

*(2) make the statistics available to the public; and*

*(3) not later than October 31, 2000, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.*

*(c) The compilation required under subsection (b) shall—*

*(1) be itemized, by chapter, with respect to title 11;*

*(2) be presented in the aggregate and for each district; and*

*(3) include information concerning—*

*(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and*

*liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;*

*(B) the current monthly income, and average income and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;*

*(C) the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;*

*(D) the average period of time between the filing of the petition and the closing of the case;*

*(E) for the reporting period—*

*(i) the number of cases in which a reaffirmation was filed; and*

*(ii)(I) the total number of reaffirmations filed;*

*(II) of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney; and*

*(III) of those cases, the number of cases in which the reaffirmation was approved by the court;*

*(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—*

*(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and*

*(II) the number of final orders determining the value of property securing a claim issued;*

*(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and*

*(iii) the number of cases in which the debtor filed another case within the 6 years previous to the filing;*

*(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and*

*(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's counsel and damages awarded under such Rule.*

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## PART II—DEPARTMENT OF JUSTICE

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## CHAPTER 39—UNITED STATES TRUSTEES



### § 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;*

[(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[.]*;*

*(7) in each of such small business cases—*

*(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11 at which time the United States trustee shall begin to investigate the debtor's viability, inquire about the debtor's business plan, explain the debtor's obligations to file monthly operating reports and other required reports, attempt to develop an agreed scheduling order, and inform the debtor of other obligations;*

*(B) when determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns; and*

*(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and*

*(8) in cases in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly to the court for relief.*

* * * * * * *

(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 of the United States Code may obtain judicial review of the final agency decision by commencing an action in the United States district court for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the United States district court for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.*

(e)(1) * * *

* * * * * * *

*(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the United States district court in the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.*

*(4) The Attorney General shall prescribe procedures to implement this subsection.*

* * * * * * *

***§ 589b. Bankruptcy data***

*(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—*

*(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and*

*(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.*

*(b) REPORTS.—All reports referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at 1 or more central filing locations, and by electronic access through the Internet or other appropriate media.*

*(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—*

*(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; and*

*(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports.*

*(d) FINAL REPORTS.—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—*

*(1) information about the length of time the case was pending;*

*(2) assets abandoned;*

*(3) assets exempted;*

*(4) receipts and disbursements of the estate;*

*(5) expenses of administration;*

*(6) claims asserted;*

*(7) claims allowed; and*

*(8) distributions to claimants and claims discharged without payment,*

*in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.*

*(e) PERIODIC REPORTS.—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—*

*(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;*

*(2) length of time the case has been pending;*

*(3) number of full-time employees as at the date of the order for relief and at end of each reporting period since the case was filed;*

*(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;*

*(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;*

*(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, in for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and*

*(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.*

* * * * * * *

# PART III—COURT OFFICERS AND EMPLOYEES

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## 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) Such taxes shall be paid when due in the conduct of such business unless—*

*(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable time after the lien attaches, by the trustee of a bankruptcy estate, pursuant to section 554 of title 11; or*

*(2) payment of the tax is excused under a specific provision of title 11.*

*(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11 if—*

*(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or*

*(2) before the due date of the tax, the court has made a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as such tax.*

* * * * * * *

# PART IV—JURISDICTION AND VENUE

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## CHAPTER 83—COURTS OF APPEALS

* * * * * * *

### *§ 1293. Bankruptcy appeals*

*(a) The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from the following:*

*(1) Final orders and judgments entered by bankruptcy courts and district courts in cases under title 11, in proceedings arising under title 11, and in proceedings arising in or related to a case under title 11, including final orders in proceedings regarding the automatic stay of section 362 of title 11.*

*(2) Interlocutory orders entered by bankruptcy courts and district courts granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions in cases under title 11, in proceedings arising under title 11, and in proceedings arising in or related to a case under title 11, other than interlocutory orders in proceedings regarding the automatic stay of section 362 of title 11.*

*(3) Interlocutory orders of bankruptcy courts and district courts entered under section 1104(a) or 1121(d) of title 11, or the refusal to enter an order under such section.*

*(4) An interlocutory order of a bankruptcy court or district court entered in a case under title 11, in a proceeding arising under title 11, or in a proceeding arising in or related to a case under title 11, if the court of appeals that would have jurisdiction of an appeal of a final order entered in such case or such proceeding permits, in its discretion, appeal to be taken from such interlocutory order.*

*(b) Final decisions, judgments, orders, and decrees entered by a bankruptcy appellate panel under subsection (b) of this section.*

*(c)(1) The judicial council of a circuit may establish a bankruptcy appellate panel composed of bankruptcy judges in the circuit who are appointed by the judicial council, which panel shall exercise the jurisdiction to review orders and judgments of bankruptcy courts described in paragraphs (1)–(4) of subsection (a) of this section unless—*

*(A) the appellant elects at the time of filing the appeal; or*

*(B) any other party elects, not later than 10 days after service of the notice of the appeal;*

*to have such jurisdiction exercised by the court of appeals.*

*(2) An appeal to be heard by a bankruptcy appellate panel under this subsection (b) shall be heard by 3 members of the bankruptcy appellate panel, provided that a member of such panel may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.*

*(3) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel.*

* * * * * * *

## CHAPTER 85—DISTRICT COURTS; JURISDICTION

### § 1334. Bankruptcy cases and proceedings

(a) * * *

* * * * * * *

(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.

* * * * * * *

## CHAPTER 87—DISTRICT COURTS; VENUE

### § 1408. Venue of cases under title 11

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district——

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

### § 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

(a) * * *

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,000 or a consumer debt of less than $5,000*, or a nonconsumer debt against a noninsider of less than $10,000,* only in the district court for the district in which the defendant resides.

* * * * * * *

## 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) * * *

* * * * * * *

(6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) [until the case is converted or dismissed, whichever occurs first]. [The] *Until the plan is confirmed or the case is converted (whichever occurs first) the* fee shall be $250 for each quarter in which disbursements total less than $15,000; $500 for each quarter in which disbursements total $15,000 or more but less than $75,000; $750 for each quarter in which disbursements total $75,000 or more but less than $150,000; $1,250 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1,500 for each quarter in which disbursements total $225,000 or more but less than [$300,000;] *less than $300,000. Until the case is converted, dismissed, or closed (whichever occurs first and without regard to confirmation of the plan) the fee shall be* $3,750 for each quarter in which disbursements total $300,000 or more but less than $1,000,000; $5,000 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $7,500 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $8,000 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $10,000 for each quarter in which disbursements total $5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

* * * * * * *

*(f)(1) Pursuant to procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual debtor who is unable to pay such fee in installments. For purposes of this paragraph, the term 'filing fee' means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7 of title 11.*

*(2) The district court or the bankruptcy court may also waive for such debtors other fees prescribed pursuant to subsections (b) and (c).*

*(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference*

*policy, fees prescribed pursuant to such subsections for other debtors and creditors.*

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## SECTION 302 OF THE BANKRUPTCY, JUDGES, UNITED STATES TRUSTEES, AND FAMILY FARMER BANKRUPTCY ACT OF 1986

**SEC. 302. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.**

(a) * * *

* * * * * * *

(d) APPLICATION OF AMENDMENTS TO JUDICIAL DISTRICTS.—

(1) * * *

* * * * * * *

(3) JUDICIAL DISTRICTS FOR THE STATES OF ALABAMA AND NORTH CAROLINA.—(A) Notwithstanding paragraphs (1) and (2), and any other provision of law, the amendments made by subtitle A of title II of this Act (Sec. 201 to 231 of Pub. L. 99-554, see Tables for classification), and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not—

(i) become effective in or with respect to a judicial district specified in subparagraph (E) until, or

(ii) apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, [or October 1, 2002, whichever occurs first], except that the amendment to section 105(a) of title 11, United States Code, shall become effective as of the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990.

* * * * * * *

(F)(i) Subject to clause (ii), with respect to cases under chapters 7, 11, 12, and 13 of title 11, United States Code—

(I) commenced before the effective date of this Act, and

(II) pending in a judicial district in the State of Alabama or the State of North Carolina before any election made under subparagraph (A) by such district becomes effective [or October 1, 2002, whichever occurs first],

the amendments made by section 113 (amending section 586 of this title) and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply until [October 1, 2003, or] the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first.

(ii) For purposes of clause (i), the amendments made by section 113 and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply with respect to a case under chapter 7, 11, 12, or 13 of title 11, United States Code, if -

(I) the trustee in the case files the final report and account of administration of the estate, required under section 704 of such title, or

(II) a plan is confirmed under section 1129, 1225, or 1325 of such title,

[before October 1, 2003, or] the expiration of the 1-year period beginning on the date such election becomes effective[, whichever occurs first.]

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## 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 1 or more qualified financial contracts described in clause (i);*

* * * * * * *

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), *section 5242 of the Revised Statutes of the United States (12 U.S.C. 91) or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,* the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or

other property in connection with any qualified financial contract with an insured depository institution.

* * * * * * *

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection—

(i) QUALIFIED FINANCIAL CONTRACT.—The term "qualified financial contract" means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation*, resolution or order* to be a qualified financial contract for purposes of this paragraph.

[(ii) SECURITIES CONTRACT.—The term "securities contract"—

[(I) has the meaning given to such term in section 741 of title 11, United States Code, except that the term "security" (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), and any interest in any mortgage loan or mortgage-related security; and

[(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

[(iii) COMMODITY CONTRACT.—The term "commodity contract" has the meaning given to such term in section 761 of title 11, United States Code.

[(iv) FORWARD CONTRACT.—The term "forward contract" has the meaning given to such term in section 101 of title 11, United States Code.

[(v) REPURCHASE AGREEMENT.—The term "repurchase agreement"—

[(I) has the meaning given to such term in section 101 of title 11, the United States Code, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 3(a)(41) of the Securities Exchange Act of 1934), any mortgage loan, and any interest in any mortgage loan; and

[(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

[(vi) SWAP AGREEMENT.—The term "swap agreement"—

[(I) means any agreement, including the terms and conditions incorporated by reference in any such agreement, which is a rate swap agreement, basis swap, commodity swap, forward rate agree-

ment, interest rate future, interest rate option purchased, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option purchased or any other similar agreement, and

[(II) includes any combination of such agreements and any option to enter into any such agreement.

[(vii) TREATMENT OF MASTER AGREEMENT AS 1 SWAP AGREEMENT.—Any master agreement for any agreements described in clause (vi)(I) together with all supplements to such master agreement shall be treated as 1 swap agreement.

[(viii) TRANSFER.—The term "transfer" has the meaning given to such term in section 101 of title 11, United States Code.]

*(ii) SECURITIES CONTRACT.—The term "securities contract"—*

*(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;*

*(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;*

*(III) means any option entered into on a national securities exchange relating to foreign currencies;*

*(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index or option;*

*(V) means any margin loan;*

*(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;*

*(VII) means any combination of the agreements or transactions referred to in this clause;*

*(VIII) means any option to enter into any agreement or transaction referred to in this clause;*

*(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is 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.*

*(iii) COMMODITY CONTRACT.—The term "commodity contract" means—*

*(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;*

*(II) with respect to a foreign futures commission merchant, a foreign future;*

*(III) with respect to a leverage transaction merchant, a leverage transaction;*

*(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;*

*(V) with respect to a commodity options dealer, a commodity option;*

*(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;*

*(VII) any combination of the agreements or transactions referred to in this clause;*

*(VIII) any option to enter into any agreement or transaction referred to in this clause;*

*(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this*

*clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or*

*(X) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.*

*(iv) FORWARD CONTRACT.—The term "forward contract" means—*

*(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, but not limited to, a repurchase agreement, reverse repurchase agreement, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;*

*(II) any combination of agreements or transactions referred to in subclauses (I) and (III);*

*(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);*

*(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or*

*(V) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV).*

*(v) REPURCHASE AGREEMENT.—The term "repurchase agreement" (which definition also applies to a reverse repurchase agreement)—*

*(I) mean an agreement, including related terms, which provides for the transfer of 1 or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United*

*States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;*

*(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;*

*(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);*

*(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);*

*(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and*

*(VI) means a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V).*

*For purposes of this clause, the term "qualified foreign government security" means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).*

*(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, op-*

*tion, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement;*

*(II) any agreement or transaction similar to any other agreement or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;*

*(III) any combination of agreements or transactions referred to in this clause;*

*(IV) any option to enter into any agreement or transaction referred to in this clause;*

*(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and*

*(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (I), (II), (III), or (IV).*

*Such term is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations promulgated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.*

*(vii) TREATMENT OF MASTER AGREEMENT AS 1 AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this*

*subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.*

*(viii) TRANSFER.—The term "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institutions's equity of redemption.*

(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 1 or more qualified financial contracts described in clause (i);*

* * * * * * *

*(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.*

*(G) WALKAWAY CLAUSES NOT EFFECTIVE.—*

*(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.*

*(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term "walkaway clause" means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extin-*

*guishes a payment obligation of a party in whole or in part solely because of such party's status as a non-defaulting party.*

*(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping with respect to qualified financial contracts (including market valuations) by insured depository institutions.*

[(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

[(A) transfer to 1 depository institution (other than a depository institution in default)—

[(i) all qualified financial contracts between—

[(I) any person or any affiliate of such person; and

[(II) the depository institution in default;

[(ii) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

[(iii) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

[(iv) all property securing any claim described in clause (ii) or (iii) under any such contract; or

[(B) transfer none of the financial contracts, claims, or property referred to in subparagraph (A) (with respect to such person and any affiliate of such person).]

*(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—*

*(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—*

*(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—*

*(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;*

*(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);*

*(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and*

*(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or*

*(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).*

*(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property pursuant to subparagraph (A)(i), the conservator or receiver for such depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.*

*(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property and credit enhancements pursuant to subparagraph (A)(i) and such contract is subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.*

*(D) DEFINITION.—For purposes of this section, the term "financial institution" means a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Corporation by regulation to be a financial institution.*

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—If—

(i) the conservator or receiver for an insured depository institution in default makes any transfer of the assets and liabilities of such institution; and

(ii) the transfer includes any qualified financial contract,

**[**the conservator or receiver shall use such conservator's or receiver's best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time) on the business day following such transfer.**]** *the conservator or receiver shall notify any person who is a*

*party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver, in the case of a receivership, or the business day following such transfer, in the case of a conservatorship.*

*(B) CERTAIN RIGHTS NOT ENFORCEABLE.—*

*(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(A) or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—*

*(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or*

*(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).*

*(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(E) or sections 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).*

*(iii) NOTICE.—For purposes of this subsection, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A) of this subsection.*

*(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of subsection (e)(9)—*

*(i) a bridge bank; or*

*(ii) a depository institution organized by the Corporation, for which a conservator is appointed either—*

*(I) immediately upon the organization of the institution; or*

*(II) at the time of a purchase and assumption transaction between such institution and the Cor-*

*poration 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 *or the exercise of rights or powers* of 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) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) any security interest in the assets of the institution securing any such extension of credit.

[(14)] *(15)* SELLING CREDIT CARD ACCOUNTS RECEIVABLE.—

(A) * * *

* * * * * * *

[(15)] *(16)* CERTAIN CREDIT CARD CUSTOMER LISTS PROTECTED.—

(A) * * *

* * * * * * *

SEC. 13. (a) * * *

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(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) 1 or more qualified financial contracts, as defined in section 11(e)(8)(D),*

*shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.*

* * * * * * *

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## SECTION 5 OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970

**SEC. 5. PROTECTION OF CUSTOMERS.**

(a) * * *

* * * * * * *

(b) COURT ACTION.—

(1) * * *

(2) JURISDICTION AND POWERS OF COURT.—

*(A)* * * *

* * * * * * *

*(C) EXCEPTION FROM STAY.—*

*(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by Securities Investor Protection Corporation from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract,*

*repurchase agreement, swap agreement, or master netting agreement, each as defined in title 11, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with 1 or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor whether or not with respect to 1 or more of such contracts or agreements.*

*(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on securities collateral pledged by the debtor, whether or not with respect to 1 or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement or securities lent under a securities lending agreement.*

*(iii) As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.*

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## SECTION 16 OF THE FEDERAL RESERVE ACT

SEC. 16. Federal Reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal Reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are hereby authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal Reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank. (12 U.S.C. 411)

Any Federal Reserve bank may make application to the local Federal Reserve agent for such amount of the Federal Reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal Reserve agent of collateral in amount equal to the sum of the Federal Reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or **[**acceptances acquired under the provisions of section 13 of this Act**]** *acceptances acquired under section 10A, 10B, 13, or 13A of this Act*, or bills of exchange endorsed by a member bank of any Federal Reserve district and purchased under the provisions of section 14 of this Act, or bankers' acceptances purchased under the provisions of said section 14, or gold certificates, or Special Drawing Right certificates, or any obligations which are direct obligations of, or are fully guaranteed as to principal and interest by, the United States or any agency thereof, or assets that Federal

Reserve banks may purchase or hold under section 14 of this Act. In no event shall such collateral security be less than the amount of Federal Reserve notes applied for. The Federal Reserve agent shall each day notify the Board of Governors of the Federal Reserve System of all issues and withdrawals of Federal Reserve notes to and by the Federal Reserve bank to which he is accredited. The said Board of Governors of the Federal Reserve System may at any time call upon a Federal Reserve bank for additional security to protect the Federal Reserve notes issued to it. Collateral shall not be required for Federal Reserve notes which are held in the vaults of Federal Reserve banks.

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## SECTION 156 OF TITLE 18, UNITED STATES CODE

### § 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*.

* * * * * * *

## ADDITIONAL VIEWS

An overwhelming majority of Americans believe it is too easy to declare bankruptcy and that individuals should not be allowed to erase their debt in bankruptcy if they are able to repay at least a portion of what they owe. The Bankruptcy Reform Act of 1999 would restore some degree of personal responsibility, fairness, and accountability to our nation's bankruptcy laws. The bill ends some of the abuses that have allowed individuals to file bankruptcy and walk away from their debts, even though many are able to repay a portion of what they owe.

The number of consumer bankruptcy filings hit a record high of 1,442,549 million in 1998—a 400 percent increase since 1980 and an 84.2 percent increase since 1990—erasing some $40 billion in consumer debt. Total filings in 1998 increased by 2.7 percent from 1997, when bankruptcies totaled 1,404,145. Those losses were borne by businesses and passed on to the consumer, costing every household that pays its bills $400 in hidden taxes.

In the first six months of 1997, Chapter 13 bankruptcies in Georgia rose 11 percent to a total of 10,576. Chapter 7 liquidations' filings rose even higher up 26 percent to a total of 6,789 in the same period. Georgia had the fifth highest number of bankruptcies in the entire nation. These numbers clearly illustrate why I cosponsored and fully supported H.R. 833.

The bankruptcy debate is really about nothing more than personal responsibility. Will we continue to allow a handful of individuals to abuse the process, by running high debts and then hiding their resources behind lenient bankruptcy laws, or will we require individuals to make good on their promises when they have the ability to do so? The Bankruptcy Reform Act changes these dynamics by initiating comprehensive reforms pertaining to consumer and business bankruptcy law and practice. The Act includes provisions regarding the treatment of tax claims and enhanced data collection regarding annual bankruptcy filings.

When we allow the bankruptcy process to be abused, everyone loses. Small businesses are forced to close, employers hire fewer employees, new retail establishments do not open, and we are all forced to pay higher prices at the cash register. The Bankruptcy Reform Act of 1999 will help remedy this problem. In the 105th Congress a Conference Report on Bankruptcy Reform passed by a vote of 300 to 125. Unfortunately, by a combination of factors, Congress was not able to send this comprehensive bankruptcy reform to the President before the election end of the session.

Due to a personal medical reason, I was absent on final passage in the Judiciary Committee on the vote on H.R. 833. However, my strong cosponsorship of this legislation is a clear indication of my belief it is time to reform our bankruptcy laws. I will continue to

support this important bill as it moves onto the floor to be considered by the entire House.

BOB BARR.

## ADDITIONAL VIEWS

While some of us support H.R. 833 and others oppose it, we are united in our disappointment at the committee's refusal to put an end to one of the most notorious abuses of the bankruptcy system—the "financial planning" strategy by which debtors purchase expensive homes in states which allow an unlimited homestead exemption under 11 U.S.C. § 522(b)(2)(A), declare bankruptcy, and continue to enjoy a life of luxury while their creditors get little or nothing.

During the subcommittee markup, Mr. Delahunt offered an amendment to eliminate this abuse—and implement a key recommendation of the National Bankruptcy Review Commission [1]—by placing a $100,000 national cap on the homestead exemption.[2] Mr. Watt proposed that the cap be set at $250,000, and with this modification the Delahunt amendment was agreed to by a vote of 10–2.

At full committee, Ms. Jackson-Lee offered an amendment to negate the Delahunt-Watt provision (section 150 of the subcommittee bill) to the extent that it purports to "modify or supersede any provision of State constitutional law that prohibits forced sale of a homestead for the payment of debts." Mr. Bryant offered a substitute amendment providing that the cap shall not apply in states which "opt out" by enacting a subsequent statute. After extensive debate, the Bryant amendment was agreed to by a vote of 18–15.

We opposed the Bryant amendment because it runs counter to the stated goals of bankruptcy reform, perpetuating an abuse so flagrant and notorious as to bring the entire system into disrepute. Proponents of the "means test" and other provisions included in H.R. 833 seek to eliminate what some have characterized as the use of the Bankruptcy Code as a "financial planning tool." Yet if we are truly serious about reform, we cannot confine our attention to those at the bottom of the economic ladder.

Rather, we should start with individuals like Marvin Warner, a former ambassador to Switzerland and the owner of a failed Ohio Savings & Loan, who paid off only a fraction of $300 million in

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[1] Recommendation 1.2.2 (Homestead Property), Nat'l Bankr. Rev. Comm'n, Final Report: Bankruptcy: The Next Twenty Years 125 (1997).

[2] The Delahunt amendment limited the aggregate amount that a debtor may exempt in (a) real or personal property that the debtor or a dependent of the debtor uses as a residence, (b) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or (c) a burial plot for the debtor or a dependent of the debtor. It protected farm families by specifying that the cap does not apply to an exemption claimed for the principal residence of a family farmer.

During the 105th Congress, the committee agreed by voice vote to an identical amendment offered by Mr. Delahunt to H.R. 3150. However, during floor consideration, the House agreed, by a vote of 222–204, to an amendment by Messrs. Gekas, Smith of Texas and McCollum, which eliminated the Delahunt provision and put in its place the residency requirement retained in section 127 of the present bill. That provision reduces the value of an interest in exempt property "to the extent such value is attributable to any portion of any property that the debtor disposed of in the 730-day period ending on the date of the filing of the petition, with the intent to hinder, delay, or defraud a creditor."

bankruptcy claims while keeping his multi-million-dollar horse ranch near Ocala, Florida.[3]

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.[4]

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.[5]

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.[6]

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.[7]

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.[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]

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 less than $250,000 are free to relocate to one of the five so-called "debtors' paradises" that have no cap at all.[10]

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[3] Larry Rohter, "Rich Debtors Finding Shelter Under a Populist Florida Law," N.Y. Times, July 25, 1993, at A1.

[4] Id.

[5] Id.

[6] David J. Morrow, "Key to a Cozier Bankruptcy: Location, Location, Location," N.Y. Times, Jan. 7, 1998, at A1.

[7] Id.

[8] Eliot Kleinberg, "Reynolds Gets Out from under Bankruptcy," The Palm Beach Post, Oct. 8, 1998.

[9] Judge A. Jay Cristol, quoted in Rohter, supra note 3.

[10] The following are the state exemption levels (per household, i.e., for joint debtors with two dependents), as of Fall 1997. In 18 jurisdictions, the debtor may choose between the state exemption and a Federal exemption (currently $16,150 per debtor):

Unlimited: Florida, Iowa, Kansas, South Dakota, Texas
$200,000: Minnesota
$125,000: Nevada
$100,000: Arizona, Massachusetts
$80,000: North Dakota
$75,000: California, Connecticut, Mississippi
$60,000: New Mexico
$54,000: Alaska
$50,000: Idaho
$40,000: Montana, Wisconsin, Wyoming
$33,000: Oregon
$30,000: Colorado, Hawaii, New Hampshire, Vermont, Virgin Islands, Washington
$20,000: New York
$15,000: Indiana, Louisiana
$12,500: Maine
$10,000: Alabama, Georgia, Nebraska, North Carolina, South Carolina, Utah

Continued

Some have suggested that a Federal cap is a "violation of states' rights."[11] Yet the Bankruptcy Code is a Federal statutory scheme, and the system it envisions is one which is administered by the Federal courts. To defer to the states on such a matter is like legislating a Federal income tax and leaving it to the state legislatures to determine what will count as a business deduction. Such an arrangement invites forum shopping and encourages gross inequities in the treatment of debtors who live in different states.

It is important to recognize that section 150 would have no effect whatsoever on the 45 jurisdictions that currently place their own cap on the exemption. But it will discourage residents of those jurisdictions from moving to one of the five states with no cap at all in order to take advantage of this enormous loophole in the law.

Nor will unscrupulous debtors be unduly hindered by section 127 of the bill, which disallows the exemption if the individual converted the property within 730 days of the filing of the petition "with the intent to hinder, delay, or defraud a creditor." Those already resident in a state with no exemption cap are unaffected by the limitation. And wealthy debtors from other states who are sophisticated enough to plan ahead can simply wait the 730 days and then file their petition. Debtors who have owned their homestead for two years or more can continue to use it to "hinder, delay, or defraud" their creditors out of millions of dollars.

During the committee debate, several speakers argued that these abuses are not common. That is true. We do not suggest that they are daily occurrences. But the fact that a particular form of misconduct occurs infrequently is not an argument that it should be condoned. By condoning these spectacular abuses by a handful of wealthy debtors, we bring the fairness and rationality of the entire system into disrepute.

JOHN CONYERS, JR.
HOWARD L. BERMAN.
JERROLD NADLER.
BOBBY SCOTT.
MELVIN L. WATT.
ZOE LOFGREN.
MAXINE WATERS.
MARTY T. MEEHAN.
WILLIAM D. DELAHUNT.
STEVEN R. ROTHMAN.
TAMMY BALDWIN.
ANTHONY D. WEINER.

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$8,000: Missouri
$7,500: Illinois, Tennessee, West Virginia
$6,500: Virginia
$5,500: Maryland
$5,000: Delaware, Kentucky, Ohio, Oklahoma
$3,500: Michigan
$2,500: Arkansas
$1,500: Puerto Rico
$0: District of Columbia, New Jersey, Pennsylvania, Rhode Island

Source: Nat'l Bankr. Rev. Comm'n, *supra* note 1 at 299–301; Morrow, *supra* note 6, at D3.

[11] See, e.g., Letter from 21 members of the Texas Congressional Delegation to Chairman Henry Hyde and Ranking Member John Conyers, Jr. (Apr. 19, 1999) (on file with the House Judiciary Committee).

## DISSENTING VIEWS

Although we could support a responsible and balanced bankruptcy reform effort that remedies debtor and creditor abuses in a balanced manner, we believe the legislation the Committee reported is far too extreme. Indeed, the bill is so one-sided and anti-consumer that its central element—the use of IRS expense standards to determine eligibility for bankruptcy—is opposed strongly by such conservative Republicans as Chairman Hyde (R–IL) and Rep. Bachus (R–AL).

H.R. 833 is an omnibus bankruptcy bill that includes titles concerning consumer bankruptcy, business bankruptcy, municipal bankruptcy, tax, and bankruptcy administration. Although some of the bill's titles and provisions are non-controversial and stem from recommendations of the congressionally-created National Bankruptcy Review Commission (which completed its two-year review of the bankruptcy laws in October 1997), the titles relating to consumer and business bankruptcies and tax matters constitute a significant departure from historical bankruptcy procedures and would harm low- and middle-income Americans, single mothers and children dependent upon domestic support, minorities, seniors, and small businesses.

In its present form, the legislation is strongly opposed by the Administration, and surely will be vetoed.[1] Moreover, a number of groups oppose, or have expressed serious concerns with, H.R. 833, including:

(1) Executive branch departments (such as the Justice Department); [2]

(2) 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")); [3]

(3) 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 Na-

[1] 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 (Mar. 23, 1999).

[2] Letter from Dennis K. Burke, Office of Legislative Affairs, U.S. Department of Justice, to the Honorable George W. Gekas, Chair, House Subcomm. on Commercial and Admin. Law (Mar. 24, 1999).

[3] 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).

tional 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"));[4]

(4) 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 Against Drunk Driving ("MADD"), the National Organization for Victim Assistance ("NOVA"), and the National Victim Center);[5] and

(5) 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).[6]

In certain respects, H.R. 833 is, relative to last Congress's Conference Report, even more anti-consumer, and the justifications for its provisions even weaker. For example, the means test in the bill does not allow a debtor to count as expenses the expenses of a legally-separated spouse receiving support for the debtor, even if that spouse is a dependent of the debtor.[7] Also, the bill imports into chapter 13 the rigid Internal Revenue Service Collection Standards,[8] which chapter 13 trustees have said would be a disaster for the administration of voluntary chapter 13 cases.

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[4] 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).

[5] 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).

[6] Letter from the Leadership Conference on Civil Rights to Members of Congress (Apr. 21, 1999); Letter from Gary Klein, Senior Attorney, National Consumer Law Center, to Members of Congress (Apr. 23, 1999); Press Release of National Consumer Law Center, Consumer Federation of America, Consumers Union, and U.S. PIRG (Apr. 19, 1999); Letter from Frank Clemente, Legislative Director, Public Citizen, to House Comm. on the Judiciary (May 11, 1998); Letter from Nan Aron, President, Alliance for Justice, to Members of the Senate Comm. on the Judiciary (Apr. 23, 1998); Letter from Dan Schulder, Director Legislation, National Council of Senior Citizens, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (June 9, 1998).

[7] H.R. 833, § 102 (proposed amendment to 11 U.S.C. § 707(b)(2)(A)(v)).

[8] H.R. 833, § 130.

Moreover, new information has become available since the vote on the Conference Report that contradicts the basic premises of the bill. The nonpartisan American Bankruptcy Institute, which includes many creditors and attorneys for creditors, released a study showing that, while the credit industry estimates it could recover $4 billion under the rigid standards of the means test, at most $450 million might be recovered.[9] The Executive Office of United States Trustees in the Justice Department conducted 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. This calls into question the hundreds of millions of dollars in bureaucratic expenses the means test would require of both government and private citizens. Finally, Sears Roebuck has pleaded guilty to criminal charges in connection with its illegal reaffirmation practices;[10] making the anti-class action provisions of this bill, which would deprive consumers of the most effective remedy they have against abusive creditors like Sears, even less defensible.

Section I of the Dissenting Views points out the general concerns we have with the bill. Section II describes concerns with 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. 833.

## I. General Concerns

### A. THE PROCESS HAS BEEN HURRIED AND PARTISAN

Up until last year, Congress consistently has addressed bankruptcy legislation in a deliberate and bipartisan manner. The last major overhaul of the bankruptcy laws—the 1978 Bankruptcy Code—was enacted a full five years and scores of hearings after the 1973 Bankruptcy Commission issued its report.[11] In addition, the House developed in close bipartisan cooperation and approved, on a consensus basis—typically on the suspension calendar—all of the recent bankruptcy law changes (enacted in 1978, 1984, and 1994). Such careful deliberation is important given the wide-ranging impact of the bankruptcy laws and the fact that more Americans

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[9] Culhane and White, "Means Testing for Chapter 7 Debtors: Repayment Capacity Untapped?" (American Bankruptcy Institute, 1998).

[10] Leslie Kaufman, "Sears to Pay Fine of $60 Million in Bankruptcy Fraud Lawsuit," N.Y. Times, Feb. 10, 1999, at C2.

[11] The 1971 Commission conducted four hearings and deliberated for 44 days before filing their two-part report with Congress; the second part of the report was a draft statute. Between May of 1975 and May 1976, the House Judiciary Committee's Subcommittee on Civil and Constitutional Rights held 35 days of hearings on bankruptcy reform producing more than 2,700 pages of testimony from over 100 witnesses. Kenneth N. Klee, "Legislative History of the New Bankruptcy Law," 28 DePaul L. Rev. 941, 943–44, 946 (1979). Three more days of hearings were held on the House side in December 1977. On the Senate side, between February and November 1975, the Senate Judiciary Committee's Subcommittee on Improvements in Judicial Machinery held 21 days of hearings. The Senate held three more hearings in November and December of 1977. Id. at 944, 950. Once developing the Bankruptcy Reform Act of 1978 specifically, the House Subcommittee on Civil and Constitutional Rights spent 42 hours debating the legislation in 22 separate markup sessions, during which the legislation was reviewed line- by-line. Over 120 amendments were offered and over 100 were adopted. Id. at 946. A 700–page briefing book was prepared for the full Judiciary Committee. Id. at 947. Full Committee markup took 3 days, and 6 amendments were adopted on the unanimous, bipartisan Subcommittee bill. The Senate held additional hearings as well.

come into contact with the bankruptcy courts—whether as debtors or as creditors—than all other Federal courts combined.

Unfortunately, the Committee abandoned this historic approach with respect to H.R. 833 and elected a rushed and partisan process. For H.R. 833, the Majority began four days of Subcommittee hearings on March 11, 1999, the day the Committee referred the bill to the Subcommittee,[12] with three of the hearings taking place in the same week.[13] The two-day Subcommittee markup of the bill started on March 24, 1999—the week immediately following the fourth hearing. Moreover, the Majority delivered to the Minority a copy of Chairman Gekas's substitute amendment at approximately 11:00 P.M. the night before the Subcommittee markup—barely fifteen hours before debate on the bill was to begin.

In its further rush to judgment, the Majority has scheduled the bill to go through the Rules Committee and to the floor less than one week after leaving the Committee. This effectively cuts off the Banking Committee, which has joint jurisdiction over portions of H.R. 833, from proper consideration of the bill; as a result, the House is being deprived of that Committee's expertise on issues relating to credit card abuse and disclosure of credit card terms. Furthermore, this constrained process is hardly sufficient time to make technical and conforming amendments and prepare a report and dissenting views to this more than 300–page legislation, let alone allow Members outside the Committee to understand the legislation's implications. This abbreviated period also will deny the House the benefit of any CBO cost estimate or estimate of the costs of unfunded mandates in this legislation.

### B. THE QUANTITATIVE EVIDENCE DOES NOT JUSTIFY RADICAL CHANGES IN BANKRUPTCY LAW

One of the major reasons accounting for the differing views regarding H.R. 833 relates to differing understandings of the quantitative evidence of the causes, costs, and effects of bankruptcy. H.R. 833's proponents point to (1) the fact that the United States is experiencing a record number of bankruptcy filings (1.4 million filings during the most recent calendar year),[14] and (2) credit industry-funded studies by Professor Michael Staten of Georgetown University's Credit Research Center,[15] Ernst & Young,[16] and the

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[12] Hearings on H.R. 833, the "Bankruptcy Reform Act of 1999," Before the House Subcomm. on Commercial and Admin. Law, 106th Cong., 1st Sess. (1999). Hearings were held on March 18, 1999; March 17, 1999; March 16, 1999; and March 11, 1999. The March 11, 1999 hearing was a joint hearing between the House Subcommittee on Commercial and Administrative Law and the Senate Subcommittee on Administrative Oversight and the Courts.

[13] Id.

[14] According to the American Bankruptcy Institute, there were 1,007,922 personal chapter 7 filings (72.1%), 862 personal chapter 11 filings, and 389,398 personal chapter 13 filings in 1998. Press Release of the American Bankruptcy Institute, "Bankruptcies Break Another Record in 1998" (Mar. 1, 1999). Personal bankruptcy filings represented 96.9% of all filings in 1998; they were 91.7% of all 1990 filings. Id.

[15] 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 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.

[16] 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

WEFA[17] 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 bankruptcy "reform," in general, and H.R. 833, in particular, point to the "easy" availability of filing for bankruptcy and the declining stigma associated with doing so to explain the increase in filings.[18]

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,[19] the General Accounting Office,[20] 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 paying full time jobs, and most notably, the deregulation of credit card interest rates and the dramatic increase in credit card solicita-

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Bankruptcy Petitioner's Ability to Repay: Additional Evidence from Bankruptcy Petition Files," Ernst & Young LLP (Feb. 1998).

[17] 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.

[18] 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).

[19] 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 one year later. Mr. Kowalewski has still not been made available to testify before the Subcommittee; the Minority has reserved its right under House rules for one day of hearings to hear his testimony.

[20] 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).

tions and overall consumer debt.[21] 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 three years and have had some significant change in their financial condition."[22] 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.[23]

The most recent study, however, is the most telling. 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.[24] 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 five-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%.

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

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[21] 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.

[22] March 11, 1999 Hearing (written statement of Bruce L. Hammonds, Senior Vice Chairman, MBNA Corporation).

[23] Both the American Bankruptcy Institute and Professor Ausubel pointed out, however, that the recent 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.

[24] 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).

[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 Hon-

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. The Consumer Provisions Are Arbitrary and Costly and Will Harm Vulnerable Segments of Society

### 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 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.[29]

While there are no specific financial criteria for determining who seeks chapter 7 relief, § 707(b) of the Bankruptcy Code grants the court the discretion to deny relief where the filing is found to be a "substantial abuse."[30] 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 specific criteria for chapter 7 eligibility, the belief that all honest, hard-working individuals are entitled to a "fresh start," and the importance of encouraging risk-taking and entrepreneurship, and avoiding situations where it is impossible for individuals to es-

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orable 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 1980s, 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).

[29] 11 U.S.C. § 523(a).

[30] 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 three 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 three 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 three years).

cape aggressive creditor collection tactics.[31] 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.[32] Under chapter 13, a debtor is permitted to retain his or her property, but is required to pay to creditors over a 3–5 year period out of future income at least as much as the creditors would have received under a chapter 7 liquidation, and is also required to pay all priority debts in full. To accomplish this, the debtor must propose a plan, administered by a trustee, that pays creditors in full or that devotes the debtor's "disposable income" after accounting for necessary support of the debtor, his or her family, or a business. In order to encourage the use of chapter 13 plans, which are currently voluntary to the debtor, Congress determined that persons who meet their chapter 13 obligations are entitled to a broader discharge of their unpaid debts than is available under chapter 7. This "superdischarge" results in the discharge of several types of debt that chapter 7 does not discharge. In addition, debtors are permitted to retain property whether or not the property is encumbered by liens and the debtor committed a prepetition default, so long as the chapter 13 plan cures any arrearages. In this manner, debtors can use chapter 13 to save their homes from foreclosure. In addition, in chapter 13 a debtor is permitted to bifurcate a loan on personal property, such as an automobile, into secured and unsecured portions based on its present value, and treat only the secured portion as a priority debt.[33] 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. 833 would institute a number of major changes to consumer bankruptcy, in general, and chapter 7 and 13, in particular, that may reduce the number of bankruptcy filings (but will not reduce the number of cases of financial hardship) and that are designed to increase pay-outs to non-priority unsecured creditors, particularly credit card companies.

*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. 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 to debtors with income above their regional median income levels who are able to

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[31] 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 six years.

[32] The eligibility requirements for chapter 13 may be found in 11 U.S.C. § 109(e). To be eligible for chapter 13, an individual must have regular income and unsecured debts of less than $269,250 and secured debts of less than $807,750. These numbers were indexed for inflation in April of 1998. Individuals also may reorganize their affairs under chapter 11.

[33] This is known as a "stripdown." Specifically, except for certain home mortgages, a debtor in chapter 13 may be able to bifurcate a debt to a secured creditor, treating only the current value of the collateral as secured, even if it is less than the full amount of the loan, and treating the remaining debt as unsecured.

pay out $6,000 to their unsecured non-priority creditors over 60 months (instead of 36 months),[34] after allowing for deductions for pro-rated portions of their secured and priority debts and projected living expenses, based on Internal Revenue Service collection standards, and other administrative expenses, reasonable attorneys' fees, and private elementary or secondary education costs not exceeding $10,000 per year.[35] Debtors fitting this profile would be forced to utilize chapter 13 or the expensive chapter 11 of the Bankruptcy Code if they wished to obtain bankruptcy relief and would be subject to mandatory repayment plans incorporating the same means test.[36]

The only way a debtor can rebut the presumption of abuse under the means test is to show that "extraordinary circumstances that require additional expenses or adjustment of current monthly total income."[37] The debtor must swear to the extraordinary circumstances statement, which includes detailed itemizations and explanations. To be successful in this rebuttal, a debtor must show that extraordinary expenses reduce the debtor's monthly income under the proposed formula to an extent that renders the debtor unable to pay $6,000 over 5 years.[38] The bill further mandates that private trustees file and litigate a motion to convert a case to chapter 13 in any case where the debtor has income greater than the debtor's regional household semiannual income for a family of equal or lesser size, regardless of any other extenuating circumstances.[39]

Even if a debtor is not barred from chapter 7 by virtue of having sufficient debts or expenses such that he or she cannot meet the means testing payment requirements, H.R. 833 provides another, independent ground for dismissal for debtors earning income above the regional median income. Under the bill, a court can dismiss or convert a case based upon (1) whether the debtor filed for chapter 7 in bad faith or (2) the "totality of the circumstances" (including whether the debtor sought to reject a personal service contract) indicates that "the debtor's financial situation demonstrates abuse."[40] Unlike current law, the bill requires that the court consider these factors when determining whether to dismiss or convert a case.[41] To implement this test, motions to dismiss or convert may be brought by creditors, rather than only the court or the U.S. Trustee (as under current law).[42] The court may award a debtor

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[34] H.R. 833, § 102 (proposed amendment to 11 U.S.C. § 707(b)(2)(A)).

[35] H.R. 833, § 102 (proposed amendment to 11 U.S.C. § 707). The consumer provisions were considered so one-sided, that the principal sponsor of a predecessor version setting forth these changes (H.R. 2500) received a "Golden Leash" special interest "award" from Public Campaign. The banking and credit industry spent approximately $40 million to lobby Congress in favor of the anti-debtor provisions of H.R. 3150, the 105th Congress version of H.R. 833. Sam Loewenberg, "Mad Dash as the Curtain Closes," Legal Times, Oct. 5, 1998, at 4; Katharine Q. Seelye, "House to Vote Today on Legislation for Bankruptcy Overhaul," N.Y. Times, June 10, 1998, at A18.

[36] Id.

[37] H.R. 833, §§ 102 (proposed amendment to 11 U.S.C. § 707(b)(2)(B)), 130.

[38] H.R. 833, § 102 (proposed amendment to 11 U.S.C. § 707(b)(2)(B)).

[39] H.R. 833, § 102 (proposed amendment to 11 U.S.C. § 707(b)(6)).

[40] H.R. 833, § 102 (proposed 11 U.S.C. § 707(b)(3)).

[41] *Id.*

[42] H.R. 833 § 102 (proposed amendment to 11 U.S.C. § 707(b)). Section 102 permits creditors to bring such motions against debtors, but states that, if the debtor's income is less than the highest national median family income for a household of equal size, only the court, a private trustee, or a U.S. Trustee could bring such a motion to dismiss or convert. H.R. 833, § 102 pro-

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reasonable costs and attorneys' fees if a creditor's motion was not "substantially justified" or if the creditor brought the motion solely for the purpose of coercing the debtor to waive a right guaranteed under the Bankruptcy Code.[43]

The bill also converts chapter 13 into a mandatory approach based upon IRS expense standards rather than a flexible approach based upon disposable income. Accordingly, under section 130 of the bill, debtors would be required to dedicate all of their available income to unsecured debt, again after allowing deductions for secured and priority debts and living expenses per the means test and its IRS collection standards, even if the debtor's actual expenses are reasonable but exceed the IRS permitted, but arbitrarily-created, expenses.[44] Section 130 of the bill also varies from current law by failing to allow the debtor to make up arrears on secured debts and leases. Although the provisions clarifying the means test allow for adjustments for "extraordinary circumstances that require additional expenses or adjustments of current monthly total income," this requires the debtor to file a motion with the court, which may be challenged by the trustee or any creditor, with the burden of proof lying with the debtor.[45]

The bill also goes on 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 five-year repayment plan. Although the bill does say debtors will not be forced into a five-year plan unless they are above the median income, once in chapter 13 based upon assumptions drawn from a five-year calculation, debtors will have little choice but to follow a five-year plan. This legislation also eliminates the broader discharge requirements currently applicable to chapter 13, eliminating any inducement for voluntary debtor participation in chapter 13.[46]

*2. Exceptions to Discharge & Loan Bifurcations*

H.R. 833 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 133 grants nondischargeable status to debts of $250 in the aggregate (as opposed to $1,075 under current law) or more owed to a single creditor for cash advances or luxury goods or services incurred within 90 days prior to the bankruptcy filing (as opposed to 60 days under current law).[47] Section 143 adds another exception to discharge when the "debtor incurred the debt to pay such a non-

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posed 11 U.S.C. § 707(b)(6)). This income threshold is based on "family" income while the threshold for the trustee's requirement to bring motions looks to the regional median "household" income, which is lower than the family income. The Census Bureau defines a "family" as a group of two or more people related by birth, marriage, or adoption who reside together." Bureau of the Census, Econ. and Stats. Admin., U.S. Dept. of Commerce, Money Income in the United States A–1 (1997). A "household" consists of all people who occupy a housing unit [and] includes the related family members and all the unrelated people, if any." Id. In 1997, the national median family income was $37,005, while the regional incomes ranged from $19,810 to $36,578. Id. at xi–xii.

[43] H.R. 833, § 102 (proposed 11 U.S.C. § 707(b)(5)).
[44] H.R. 833, §130 (proposed amendment to 11 U.S.C. § 1325(b)).
[45] H.R. 833, §102 (proposed amendment to 11 U.S.C. § 707).
[46] H.R. 833, § 127 (proposed amendment to 11 U.S.C. § 1328(a)).
[47] H.R. 833, § 133 (proposed amendment to 11 U.S.C. § 523(a)(2)(C)).

dischargeable debt with the intent to discharge in bankruptcy the newly-created debt."[48] Moreover, regardless of the debtor's intent, any debts incurred within 90 days to pay nondischargeable debts would be nondischargeable.[49]

The legislation would also largely eliminate the possibility of loan bifurcations in chapter 13 cases. As noted above, under current law a debtor is permitted to bifurcate a loan between the secured and unsecured portions, and to treat only the secured portion as a priority debt. Section 122 of the legislation prevents such bifurcations (including with regard to interest and penalty provisions) with respect to any personal property acquired within 5 years of the bankruptcy.

*3. Domestic support*

Sections 138–144 of the bill make a number of changes to current law purportedly intended to enhance the status of child support and alimony payments in bankruptcy. These changes are presumably being made in an effort to offset the considerable criticism the legislation has received from child and spouse support advocates.

Section 138 creates a new definition of "domestic support obligation."[50] In addition to applying to debts owed on account of child support and alimony, which are largely covered by current law, the new definition includes alimony and child support debts owed or recoverable to a governmental unit.[51] 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.[52]

In particular, section 139 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).[53] Section 140 prevents the confirmation of a reorganization plan unless the debtor has paid all domestic support obligations.[54] Section 141 provides that the automatic stay does not prevent legal actions enforcing wage orders for domestic support obligations and similar actions.[55] Section 142 makes nondischargeable all domestic support obligations, including obligations owed to government support agencies.[56] Section 143 permits nondischargeable domestic support obligations to be collected from property—notwithstanding state laws making that property exempt from col-

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[48] H.R. 833, § 143 (proposed amendment to 11 U.S.C. § 523(a)).
[49] Id.
[50] H.R. 833, § 138 (proposed amendment to 11 U.S.C. § 101).
[51] Id.
[52] See H.R. 833, § 139 et seq.
[53] H.R. 833, § 139 (proposed amendment to 11 U.S.C. § 507(a)). In the current enumeration of priority, the unsecured claims of person who raise grain or operate fish-processing facilities have fifth priority. 11 U.S.C. § 507(a)(5).
[54] H.R. 833, § 140 (proposed amendments to title 11, United States Code).
[55] H.R. 833, § 141 (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.
[56] H.R. 833, §142 (proposed amendment to 11 U.S.C. §523). Under current law, a property settlement that is not in the nature of support is excepted from discharge unless the court finds (1) that the debtor does not have the ability to pay the obligation or (2) that discharging the debt would result in a benefit to the debtor that outweighs the detrimental consequences to the ex-spouse or children.

lection or attachment—after bankruptcy.[57] Lastly, section 144 makes clear that a transfer that was a bona fide payment for a domestic support obligation will not be considered a fraudulent prepetition transfer.[58]

Finally, a few provisions concerning domestic support were added at the initiative of Democratic Members. Section 149 of the bill, added by an amendment of Representative Jackson Lee (D-TX), requires chapter 7 and chapter 13 trustees to send written notice to recipients of alimony and child support payments, and to the local and state child support agencies, notifying them that a debtor of such payments has filed for bankruptcy.[59] An amendment offered by Representative Nadler (D-NY), provisions of which were struck at markup by Representative Gekas (R-PA) creates exceptions to the automatic stay for: (1) wage garnishment to satisfy family claims for current payments and arrears, and for post-petition debts to the government,[60] and (2) child custody and visitation proceedings, proceedings to dissolve a marriage (except to the extent it involves property of the estate), and proceedings alleging domestic violence.[61]

*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."[62] Chairman Hyde himself noted that the bill contains at least 25 provisions detrimental to debtors and favorable to creditors. Among other things, the bill extends the period permitted between chapter 7 filings from six years (under current law) to eight years;[63] expands the ability of residential landlords to evict tenants without seeking permission from the court;[64] eliminates the right of debtors to bring class action lawsuits and seek punitive damages against creditors for abusive reaffirmation agreements;[65] requires debtors to make "adequate protection payments," or double payments, to retain property obtained on secured credit.[66]

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[57] H.R. 833, § 143 (proposed amendment to 11 U.S.C. § 522).
[58] H.R. 833, § 144 (proposed amendment to 11 U.S.C. § 547(c)(7)).
[59] Notices to domestic support recipients must also state that they can use the services of a government support enforcement agency to collect the support.
[60] H.R. 833, § 152.
[61] H.R. 833, § 153. Representative Gekas moved to strike many of the provisions in Representative Nadler's amendment that placed the claims of women and children above those of the government and other creditors. Among those protections were: (1) requiring that a debtor pay all domestic support obligations before obtaining confirmation of a plan; (2) exempting from the automatic stay actions all proceedings to establish paternity, to establish or modify a domestic support obligation order, to withhold state licenses, and to intercept tax refunds; (3) exempting from bankruptcy all support or property reasonably traceable to divorce decrees or property settlement agreements; and (4) requiring that creditors who are owed nondischargeable debts hold them, when paid, in trust for five years for domestic support creditors.
[62] March 11, 1999 Hearing (written statement of Professor Elizabeth Warren).
[63] H.R. 833, § 140.
[64] H.R. 833, § 139.
[65] H.R. 833, § 116 (proposed amendment to 11 U.S.C. § 425).
[66] H.R. 833, § 137.

B. PRINCIPAL PROBLEMS WITH PROPOSED CHANGES

*1. H.R. 833's means testing is arbitrary and unworkable in practice*

The National Bankruptcy Review Commission's majority specifically rejected the so-called "means testing" approach,[67] 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.[68]

The 1973 Commission on Bankruptcy Laws similarly considered and rejected industry calls for mandatory chapter 13's, noting that Congress had itself rejected similar proposals in 1967, and observed:

> [B]usiness debtors are not subject to any limitation on the availability of straight bankruptcy relief, including discharge from debts, and it was pointed out that, quite apart from bankruptcy, business debtors are able to incorporate and to limit their liability to their investments in corporate assets. To force unwilling wage earners to devote their future earnings to payment of past debts smacked to some of debt peonage, particularly when business debtors could not be subjected to the same kind of regimen under the Bankruptcy Act. * * * The Commission concluded that forced participation by a debtor in a plan requiring contributions out of future income has so little prospect for success that it should not be adopted as a feature of the bankruptcy system.[69]

The principal problem with the means that 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 by Chairman Hyde when he unsuccessfully sought to delete the use of the rigid IRS standards and instead substitute a more fact specific test based on the court's assessment of the facts and circumstances.[70] First, the bill relies upon IRS collection standards, which lay out no comprehensive or specific standards for the deduction of living expenses. Unless it is clear which of these expenses can be deducted from monthly income, it will be very difficult to determine if the individuals that are being denied access to chapter 7 actually would be

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[67] Only two members of the National Bankruptcy Review commission signed onto a dissenting statement supporting the consideration of various mens 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).

[68] "Bankruptcy: The Next Twenty Years," National Bankruptcy Review Commission Final Report 90–91 (Oct. 20, 1997).

[69] "Report of the Commission on Bankruptcy Laws," H.R. Doc. No. 137, Part I, 93rd Congress, 158–59 (1973) (citation omitted).

[70] 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. Bachus (R–AL), crossing party lines to join with most Democrats in opposing the reinsertion of the IRS standards.

able to meet their payment obligations in chapter 13. 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,[71] and local standards for expenses such as housing and transportation,[72] it leaves the determination of "other necessary expenses" to the discretion of the relevant IRS employee.[73] This means that the bill fails to provide specific guidance concerning the appropriateness of deducting part or all of the funds a debtor may expend for items such as health care (both medical expenses and health insurance), taxes, and accounting and legal fees, among other items. Even more dangerously, the IRS collection standards specify that it is generally inappropriate to allow expense allowances for such important items as school tuition,[74] and generally discourage payment for expenses relating to care for the elderly, invalid, or handicapped.[75] As a result, the means test will have the effect of requiring the payment of unsecured debt before allowing for payment of certain necessities such as health care.

Moreover, where the IRS has specific local expense standards, those standards do not provide adequately for normal expenses. For example, the permitted automobile expense in the San Francisco Bay area for two cars is only $373 per month, even though most families could barely cover the cost of automobile insurance, let alone car payments, gasoline, tolls, and insurance under this amount.[76] 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."[77] However, neither that law nor H.R. 833 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. 833—its bias against debtors without secured debts. This is because the bill allows all secured debt payments to be deducted from monthly income, but limits rental and lease payments to the amount permitted by the IRS standards. This means that persons renting apartments and leasing cars may not be able to deduct the full amount of their housing and transportation costs in bankruptcy, while persons with mortgages and automobile debt will be able to do so. There is no legitimate policy rationale for this discrepancy, which appears to punish personally-responsible individuals who

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[71] IRS Manual §5323.432.
[72] IRS Manual §5323.433.
[73] IRS Manual §5323.12.
[74] As amended by Representative Graham (R–SC), the bill allows a deduction for "the continuation of actual expenses of a dependent child under the age of 18 for tuition, books, and required fees at a private elementary or secondary school, not exceeding $10,000 per year."
[75] IRS Manual, Exhibit 5300–46.
[76] Hearing on H.R. 3150, the "Bankruptcy Reform Act of 1998," Before the House Subcomm. on Commercial and Admin. Law, 105th Cong., 2d Sess. (Mar. 10, 1998) (written statement of the Honorable Randall J. Newsome, U.S. Bankruptcy Judge, Northern District of California).
[77] Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, § 3462 (1998).

tightened their belts and tried to live modestly within their means and nonetheless had to resort to bankruptcy.

Also, it is important to note that the IRS collection standards can change the manner in which the bankruptcy laws are applied. The collection standards serve as internal guidelines for the IRS; they are not regulations that are subject to the Administrative Procedures Act. As such, the IRS does not need to provide notice and comment when introducing new standards or when changing the existing ones. If the bankruptcy law was amended to incorporate the collection standards, as H.R. 833 proposes, and IRS were to change the collection standards in the future, the alteration in the standards would completely change how the Bankruptcy Code is applied. In effect, H.R. 833 would delegate authority to the IRS to change the Bankruptcy Code.

It is no answer to assert, as the legislation's proponents have done, that the "glitches" in the collection standards can be resolved through the bill's allowance for "extraordinary circumstances." Establishing that a particular expense is "extraordinary" is not simple or cost or risk-free. Extraordinary circumstances may be established only upon a debtor's motion to the court.[78] The motion must be heavily detailed and documented; the "debtor must itemize each additional expense or adjustment of income and provide documentation for such expenses or adjustment of income and a detailed explanation of the extraordinary circumstances which make such expenses or adjustment of income necessary and reasonable."[79] Moreover, the burden of proof lies with the debtor in establishing extraordinary circumstances, and, if the debtor's motion fails, he or she is subject to paying the creditor's fees and costs.[80] 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.

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 completion rate is less than one-third,[81] and this is at a time when chapter 13 is voluntary and the disposable income tests are less rigid than this bill's proposal.

*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).

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[78] H.R. 833, § 102 (proposed amendment to 11 U.S.C. § 707(b)(2)(B)).
[79] Id.
[80] H.R. 833, § 102 (proposed amendment to 11 U.S.C. § 707(b)(2)(B)).
[81] National Bankruptcy Review Commission, Final Report: "Bankruptcy—The Next Twenty Years, 90–91" (Oct. 20, 1997).

*a. Costs to private parties*

Some of these costs would be borne by debtors through increased opportunities for creditor-initiated litigation by allowing (and, in some cases, mandating) trustees and creditors to bring motions for dismissal or conversion based on "bad faith" or the "totality of the circumstances," and new opportunities for creditors to challenge the dischargeability of certain consumer debts.[82]

Additional costs on debtors will be manifested through the many provisions providing for fee shifting against the debtor and his lawyer if a chapter 7 case is dismissed or converted. This could place debtor's attorneys in the position of choosing between their clients' best interests and their own—a clear conflict of interest. The bill provides no similar provisions for fee-shifting with respect to creditor motions. While the bill does allow a court to award a debtor all reasonable costs, including reasonable attorneys' fees, if a creditor brings an unsuccessful and unjustified motion to dismiss or convert, the bill does not require creditors' attorneys to vouch for their clients' filings.

The CBO has also noted that "the direct costs to the private sector of complying with mandates in [the predecessor legislation] would exceed the [$100 million] statutory threshold in [the Unfunded Mandates Reform Act] in each of the first five years that the new mandates were effective. The lion's share of the costs would be imposed on private trustees who administer bankruptcy estates, providers of debt relief counseling services, and attorneys."[83] In particular, with regard 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 five days before the § 341 hearing, (2) file a "certification" that the debtor is qualified to be a chapter 7 debtor at least five 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 five-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.[84]

*b. Costs to the Federal Government*

Increased administrative duties imposed on panel and standing trustees would also raise the overall cost of this legislation. Henry E. Hildebrand, Chair of the Legislative Committee of the National Association of Chapter Thirteen Trustees estimated that:

> * * * [i]f the investigation by a [chapter 7] trustee required about an hour and the preparation of the report required on half hour, then the time required would total about 1.5 million hours of time (assuming a bankruptcy fil-

[82] H.R. 833, § 102 (proposed amendment to 11 U.S.C. § 707(b)(4)(B)).

[83] Congressional Budget Office, H.R. 3150: Bankruptcy Reform Act of 1998—Private-Sector Mandates Statement (June 10, 1998).

[84] March 17, 1999 Hearing (written statement of Robert H. Waldschmidt, National Association of Bankruptcy Trustees at 3).

> ing rate of one million petitions filed in a year which would be a reduction of about 25%). If the value of that time were calculated at $150 per hour, the costs would be $225 million in time. * * * Assuming that one out of nine cases filing for chapter 7 relief would be contested and further assuming that the contest would require about two hours of pretrial preparation and one hour of court time, the litigation would require 276,000 additional hours, about 90,000 of which would occupy the court.[85]

Another likely source of higher costs for the government is the requirement that one in every 250 cases be randomly audited, presumably at taxpayer expense under generally-accepted auditing standards.[86] There are approximately 1.4 million bankruptcy filings per year; an audit of one in every 250 would result in a total of 5,600 audits. In his testimony in the 105th Congress, Kevyn Orr of the Executive Office for U.S. Trustees, stated that each audit, conducted under generally-accepted auditing standards by Certified Public Accountants, would cost approximately $2,000.[87] At this rate, the total annual cost for auditing 5,600 filings would be $11.2 million. 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."[88]

According to a CBO estimate of the costs to the government, means testing would require "between 15 and 30 additional bankruptcy judges * * * to meet the increased workload requirements that would be imposed on the courts. Costs for the salaries and benefits of judges would be between $2 million and $4 million annually, and costs for support personnel and other administrative expenses would be between $9 million and $12 million annually."[89] In the absence of creating new judgeships, the CBO estimated that the courts would suffer from a backlog of work because of the means-testing provisions.[90] An additional $5 million annually would be required by the U.S. Trustees for increased litigation.[91] Overall, CBO estimates that to implement the means testing provisions, exclusive of the audit costs, "would most likely cost $16 million to $20 million annually."[92]

In addition, provisions in the legislation mandating that all debtors file three years of tax returns with their bankruptcy petitions,

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[85] Henry E. Hildebrand, "The Hidden Costs of Bankruptcy Reform" 2 (1998)(unpublished manuscript on file with the Committee on the Judiciary, minority staff).

[86] H.R. 833, §602. 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.

[87] Hearing on Business Bankruptcy Issues in H.R. 3150, the "Bankruptcy Reform Act of 1998," Before the House Subcomm. on Commercial and Admin. Law, 105th Cong., 2d Sess. (Mar. 19, 1998).

[88] March 17, 1999 Hearing (testimony of the Honorable William Houston Brown).

[89] Congressional Budget Office, Comparison of the Means-Testing Provisions in S. 1301, as reported by the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts on April 2, 1998, and in H.R. 3150, as introduced on February 3, 1998 5 (May 8, 1998).

[90] Id. at 3.

[91] Id. at 5.

[92] Id.

even if no party in interest requests them,[93] would have required appropriations of $33 million over the next five years * * * to store and provide access to over 20 million tax returns."[94]

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."[95]

*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. 833's harmful provisions would be limited to individuals seeking bankruptcy relief who earn more than the regional median income. First, there are numerous, significant flaws in the manner in which median income is calculated. For example, the median income figure required under H.R. 833 will be outdated and understated. This is because the bill states that household income is to be based on the most recent Census Bureau figures available as of January 1. But as of January 1, the Census has information available for only the second year prior to the date. Accordingly, during this year, 1999, census figures are available for only 1997, not 1998. At times of inflation, this two-year lag could result in a significant increase in the number of individuals who are the subject of motions to dismiss or convert and who may earn more than the outdated median income figure being used. In addition, the starting point for the calculation of median income may be overstated.

Another flaw in the median income formula is that the test measures a debtor's income based upon how much the debtor earned in the six 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 Social Security Disability receipts, 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. 833, 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

[93] H.R. 833, § 603 (proposed amendment to 11 U.S.C. § 521).

[94] Congressional Budget Office, Comparison of the Means-Testing Provisions in S. 1301, as reported by the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts on April 2, 1998, and in H.R. 3150, as introduced on February 3, 1998 5 (May 8, 1998). Democratic Representative Melvin Watt, in an attempt to alleviate the burden and cost of this provision to low-income debtors, unsuccessfully offered an amendment that would have required debtors to submit tax returns only if requested by the court, trustee, or any party in interest.

[95] March 17, 1999 Hearing (written statement of the Honorable Randall J. Newsome, President, National Conference of Bankruptcy Judges at 1).

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.

Collectively, provisions forcing large number of individuals from chapter 7 into forced repayment plans under chapter 13 will have the effect of relegating large numbers of otherwise middle-income families into poverty level subsistence. This is because they will have no way of avoiding their crushing debt load, whether it was derived from a medical emergency or irresponsible credit card borrowing aggravated by high interest and penalty rates. Such individuals will actually be much worse off than other impoverished families because their nominal income is higher than the median income level and they cannot qualify for programs such as the earned income tax credit, school lunch programs, food stamps, or other subsistence provided to families with income below the poverty level.

Another problem with the new means test and its associated use of IRS expense standards in chapter 13 is that it will apply to low-income debtors with income far below the median income.[96] Previously, such individuals could have voluntarily elected chapter 13 over chapter 7 to attempt to catch up on their mortgages and save their homes; now, it is less likely this will occur. If the bill's authors chose to exempt such low-income individuals from the chapter 7 means test, its unclear why they would ensnare them in the chapter 13 means test.

*b. Other concerns*

As noted above, the bill grants nondischargeable status to a wider range of cash advances and debts incurred for so-called luxury goods and debts incurred to pay a nondischargeable debt.[97] 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 are opposed by the White House also, which has written 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. 833] meet the standard of an overriding public purpose."[98]

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 unsophisti-

[96] H.R. 833, § 130 (proposed amendment to 11 U.S.C. § 1325(b)).
[97] H.R. 833, §§ 133 (proposed amendment to 11 U.S.C. § 523(a)(2)(C)), 146.
[98] 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).

> cated, 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." [99]

The new ban on loan bifurcations for loans less than 5 years old will further obviate the possibility of obtaining a fresh start through bankruptcy.[100] The ban will be most pernicious in the case of automobile loans, very few of which exceed 5 years. Since an automobile depreciates rapidly when it leaves the showroom, it typically declines below its value and secured debt by several thousand dollars the day after it is bought. Such a prohibition on automobile bifurcation is likely to render many chapter 13 plans unfeasible because a debtor may be able to repay the entire secured value, but not the entire purchase price of the car along with penalties. The provision also permits the lender to come out of the bankruptcy in a superior position than if it had foreclosed on the loan, the usual rule that applies in bankruptcy cases.

Several other consumer provisions also will exact significant hardships on all debtors, regardless of income level or degree of culpability. For example, by allowing landlords to continue eviction or unlawful detainer actions even after debtors have obtained an automatic stay, the bill will force many battered women and families with children and seniors out on to the streets, without ever having an opportunity to use bankruptcy to catch up on their rent.[101] Extending the permitted period between bankruptcy filings to eight years [102] exceeds the period between filings set forth in the Bible,[103] and could prove a substantial hardship to families in already unstable economic situations.

*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. 833 will have a devastating 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—or women whose child care expenses exceed IRS standards—may be denied access to chapter 7 and forced into re-

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[99] Hearing on Consumer Bankruptcy Issues in H.R. 3150, the "Bankruptcy Reform Act of 1999," Before the House Subcomm. on Commerical and Admin. Law, 105th Cong., 2d Sess. (March 10, 1998) (written statement of Henry J. Sommer).

[100] H.R. 833, §122.

[101] H.R. 833, § 136.

[102] H.R. 833, § 137 (proposed amendment to 11 U.S.C. §§ 727(a)(8), 1328).

[103] The Biblical origin of debt forgiveness may be found in Deuteronomy 15:1–3: "[a]t the end of every seven 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."

strictive 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 six months after filing for bankruptcy from the property of the estate.[104] 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 they were purchased on credit in the last five years.[105] The new nondischargeability categories also are problematic—even if a single mother filing for bankruptcy believes they do not apply, it will be more difficult for her to litigate a credit card company's claim of nondischargeability.[106]

On the creditor side, the bill will have a particularly adverse impact on the payment of domestic support to women and children. The basic problem arises from the fact that bankruptcy and insolvency are by definition a zero-sum game. There is only so much money available to be divided among the creditors. By design, H.R. 833 will increase the amount of funds being paid to unsecured creditors, and it therefore should come as no surprise that such payments will often come at the expense of other, less-aggressive creditors, such as women and children owed alimony and child support. This problem is by no means insignificant given that an estimated 243,000–325,000 bankruptcy cases involved child support and alimony orders during the most recent years.[107]

Moreover, under current law, alimony and child support are treated as priority debt and are not subject to discharge.[108] 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. 833 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.

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[104] H.R. 833, § 102.
[105] H.R. 833, §§ 133, 146.
[106] H.R. 833, § 133.
[107] 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 sixteen 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).
[108] 11 U.S.C. §§ 507(a)(7) & 523(a)(5).

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 last year, under the 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." [109]

Of course, outside of the bankruptcy court is precisely the arena where sophisticated credit card companies have the greatest advantages. While federal bankruptcy court provides a strict set of priority and payment rules and generally seeks to provide equal treatment of creditors with similar legal rights, state law collection is far more akin to "survival of the fittest." Whichever creditor engages in the most aggressive tactic—be it through repeated collection demands and letters, cutting off access to future credit, garnishment wages or foreclose on assets—is most likely to be repaid. As Marshall Wolf has written on behalf of the Governing Counsel of the 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 form 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." [110]

It is for these reasons that groups concerned about the payment of alimony and child support have expressed their strong opposition to the bill. 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." [111] 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." [112] Last year, First Lady Hillary Rodham Clinton highlighted the predecessor legislation's impact on women and children, writing, "I do quarrel with aspects of the legislation that would force single parents to compete for their child support payments with bank banks trying to collect credit card debt." [113]

Assertions by the legislation's supporters that any disadvantages to women and children under H.R. 833 are offset by supposedly pro-child support provisions (sections 138–144) are not persuasive. It is useful to recall the context in which these provisions were added. First, last Congress, the bill's proponents adamantly denied

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[109] Congressional Research Service, Impact of Consumer Bankruptcy Reform Proposals on Child Support Obligations (May 13, 1998).

[110] Statement of Marshall J. Wolf (May 13, 1998) (on file with the House Comm. on the Judiciary).

[111] March 18, 1999 Hearing (written statement of Karen Gross, New York Law School).

[112] Id. (written statement of Joan Entmacher, National Women's Law Center).

[113] Hillary Rodham Clinton, Bankruptcy Shouldn't let Parents off the Hook, Wash. Times, May 7, 1998.

that the bill created any problems with regard to alimony and child support.[114] 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 138 provides a definition of "domestic support obligation" that includes funds owed to government units.[115] 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.[116]

Section 139 purportedly increases to first priority from seventh priority obligations for domestic support, including debts owed to the government. It is misleading to suggest that moving up to "first priority" to "seventh priority" makes a significant difference: the debts that have second through sixth priorities almost never appear in consumer cases.[117] However, knocking out the first priority for administrative expenses incurred by the trustee could thwart the original purpose of the provision. Putting support claims ahead of administrative expenses in priority may prevent trustees from liquidating assets because trustees need to use estate funds to liquidate property. If the trustee is not assured that the estate can cover the expenses of liquidating property, the trustee may have to abandon the property back to the debtor, resulting in the domestic support obligations receiving no distribution—the opposite of bill's intent.

Section 140, which requires that domestic support obligations be paid in full before the debtor receives any bankruptcy discharge, may reduce the likelihood that a feasible plan can be confirmed. This is because current law gives a woman owed support the option to agree to allow the Chapter 13 discharge to proceed, even if her arrears have not been fully paid. That might be in her best interest: her claim for arrears is nondischargeable, and allowing other debts to be discharged may make it easier for her to collect both current support and arrears in the future. Moreover, when combined with the other increased payments that must be made to se-

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[114] Letter from Representative George W. Gekas, et al., to Members of Congress (Apr. 29, 1998).

[115] Under current law, domestic support owed to families is a priority debt; support owed to the government is nondischargeable, but is not priority debt.

[116] 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.

[117] Those priorities—which would 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).

cured creditors under Chapter 13, the requirement that state arrears as well as family arrears must be paid in full would make it more difficult for a debtor to get a Chapter 13 plan confirmed and successfully completed, and could, therefore, adversely affect the family.

Section 141 creates additional exceptions to the automatic stay[118] 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.[119]

Section 142, which makes all property settlement obligations nondischargeable, also could have unintended consequences in practice. For example, under this provision, a financially-troubled ex-spouse who is owed alimony and child support could be forced to compete with another ex-spouse who is not in need of support but had a settlement agreement dealing with business debts. Alternatively, a financially-needy ex-spouse who files for bankruptcy may be left with nondischargeable debt owed to her wealthier ex-spouse because of a property settlement. Again, the result is the needy spouse and child could be placed at a disadvantage by these changes.

Section 143, which allows domestic support creditors to levy otherwise exempt homesteads and other exempt property, also does not go far enough. Like the other provisions, it is effective only if a single mother goes to the time and expense of hiring an attorney to enforce her new rights. It also grants state and local governments the right to pursue claims in possible competition with the single mother.

Finally, section 144's insulation of payments to the government from preference actions also may hurt an ex-spouse and child of the debtor. This is because those funds, which were preferentially paid to the government, otherwise may have been available for ongoing support payments.

The Majority's legislation also totally ignores another very serious problem facing women as a result of the Bankruptcy Code—the fear that violent and reckless individuals will be able to bomb abortion clinics and eliminate their liability from that action through

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[118] H.R. 833, § 141 (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. Furthermore, Representative Gekas struck many of the provisions from Representative Nadler's amendment creating new exceptions to the automatic stay. As altered by Representative Gekas, the exceptions to the automatic stay do not go far enough in protecting the interests of women and children because there is no exception for proceedings to establish paternity or to establish or modify a domestic support obligation. It is inconsistent for the bill to except from the stay some family-related proceedings, but to subject others to its requirements.

[119] 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).

the bankruptcy process. Although the current bankruptcy laws prevent discharge for "willful and malicious injuries,"[120] Supreme Court precedent has raised doubt whether this standard applies to a clinic bombing where a particular victim was not targeted.[121] It is also unclear whether the law applies to damages resulting for barricading clinic entrances. At the same time, notorious clinic bomber and "Operation Rescue" found Randall Terry has specifically filed for bankruptcy in order to void a $1.6 million judgment he owed to the National Organization for Women and Planned Parenthood.[122]

In our view, it is totally irresponsible to allow the Bankruptcy Code to be used to void debts of this nature committed by violent individuals in violation of federal law. As the National Abortion and Reproductive Rights Actions League has written, "[d]ebtors whose debts arise from their own clinic violence are not honest debtors and should not be able to escape the financial liabilities incurred by their illegal conduct."[123] Unfortunately, the Majority rejected along a party line vote an amendment offered by Mr. Nadler that would have made nondischargeable debts arising out of violations of the Freedom of Access to Clinic Entrances Act.

*b. Minorities, seniors, and victims of crimes and severe torts*

H.R. 833 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 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."[124] 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.[125]

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[120] 11 U.S.C. § 523(a)(6).

[121] 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.

[122] "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.

[123] Memorandum of NARAL 8 (Mar. 30, 1999).

[124] Letter from LCCR to Members of Congress (Apr. 21, 1999).

[125] Id.

Similar concerns have been raised on behalf of seniors, who could lose their retirement savings if forced into chapter 13 plans.[126] 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 may not be able to maintain or accumulate savings for retirement. As you know, approximately two-thirds of voluntary, Chapter 13 workout plans fail, and we believe that retirement savings must be protected for that purpose.[127]

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.[128] 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."[129] 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."[130] 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."[131] 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

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[126] 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).

[127] Id.

[128] 11 U.S.C. §§ 523(a)(6), (9), (13).

[129] Letter from Marlene A. Young, Executive Director, NOVA, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 26, 1999).

[130] 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).

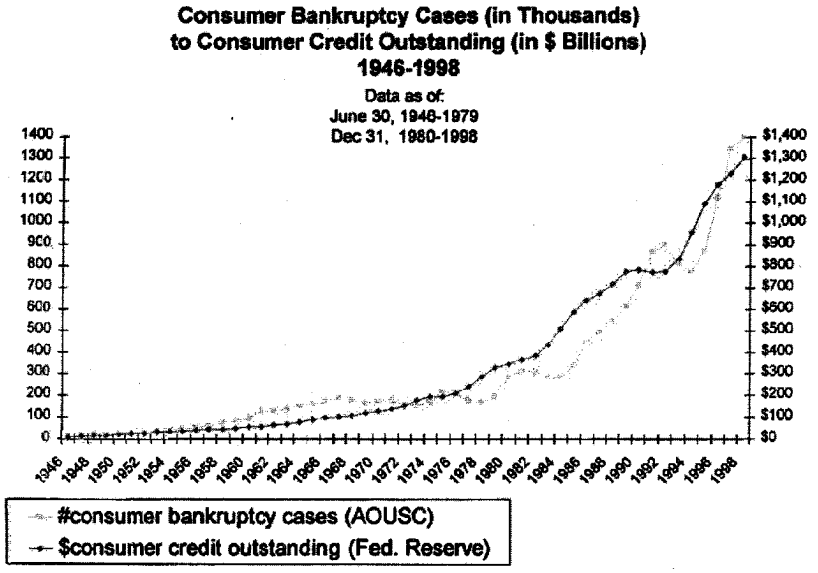
[131] Letter from Karolyn V. Nunnallee, National President, MADD, to Members of Congress (Apr. 26, 1999).

and they are in a better financial position to absorb losses, which to them is a cost of doing business."[132]

*5. The bill does not address abuses of the bankruptcy system by creditors*

Perhaps the bill's most glaring omission is its failure to address the problem of abusive lending practices. At the same time the legislation responds to every conceivable debtor excess—whether real or imagined—it gives a complete pass to the transgressions of the credit industry.

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.[133] The same basic correlation holds from 1946 through 1998, as the below chart indicates:




Review of this data indicates that the primary factor that led to the increase in bankruptcy filings after 1978 was not the enactment of the revised bankruptcy laws, but the deregulation of credit.

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[132] Id.

[133] 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.

The deregulation resulted from the Supreme Court decision in Marquette National Bank of Minneapolis v. First Omaha Service Corp.,[134] which held that out-of-state banks were not subject to the usury laws of the state where the consumer was located. This decision led credit card concerns to relocate to states with lax usury laws that gave banks the ability to charge exorbitant interest rates in all 50 states. Subsequently, other legal changes permitted a broad range of new entities to get into the ever-growing, and lucrative, credit card business.[135] 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.[136]

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 [137]—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.[138]

The credit card tactics are myriad, including offering gifts such as mugs, Slinkees, T-shirts, and Frisbees.[139] Campus groups managing credit card tables receive large cash payments from credit card companies.[140] Such tactics apparently work, as 61% of students responsible for their own bills have indicated that they received credit cards at college.[141] Some colleges have become so fed up with card marketing practices that they banned the credit card companies from their campus [142]—although they cannot stop mail solicitations.

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[134] 439 U.S. 299 (1978).
[135] See March 16, 1999 Hearing (written statement of Joe Lee at 1–3).
[136] Id. (written statement of Joe Lee at 4–5).
[137] Press Release of the National Consumer Law Center, Consumers Union, Consumer Federation of America, and U.S. PIRG (Apr. 19, 1999).
[138] Id. (quoting Agenda for Card Marketing Conference '98 (Nov. 9–11, 1998)).
[139] Id.
[140] Id.
[141] U.S. Public Interest Research Group, The Campus Credit Card Trap: Results of a PIRG Survey of College Students and Credit Cards (Sept. 1998).
[142] Press Release of the National Consumer Law Center, Consumers Union, Consumer Federation of America, and U.S. PIRG (Apr. 19, 1999).

Credit card companies even go so far as to solicit business from the developmentally disabled.[143] One developmentally-disabled 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 thirteen credit cards, generating a debt of $11,745.[144] When his counselor asked the bank to lower his credit limit to $500, his limit was instead raised to $4,900.[145] 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;[146] clearly, however, credit card companies have not been doing a sufficient job of screening their applicants. Unfortunately, H.R. 833 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."[147] 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.[148]

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.[149] 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.[150] 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

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[143] Dan Herbeck, "Where Credit Isn't Due: Developmentally-Disable Become Victims", Buffalo News, Apr. 7, 1998, at 1A.

[144] Id.

[145] Id.

[146] Id.

[147] March 11, 1999 Hearing (written statement of Gary Klein, National Consumer Law Center).

[148] Letter from American Bankruptcy Service to Michael Schwartz (Dec. 18, 1998).

[149] 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))).

[150] Section 112 of the bill requires only that credit card companies disclose 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.

typical minimum monthly payment rate on a credit card, it could take 34 years to pay off a $2,500 loan, and total payments would exceed 300 percent of the original principle. This is why many lenders encourage minimum payments that do not pay down the loan.[151] Nevertheless, the Majority defeated an amendment offered by Representative Watt (D–NC) that would have required credit card companies to disclose on each customer account statement how long it would take, and what the total cost would be, if the customer paid only the minimum amount due.

Finally, the legislation does nothing to address the problem of abuse in the area of reaffirmation agreements, by for example, banning their use with respect to unsecured and dischargeable loans.[152] Instead the bill actually weakens current law by preventing courts from awarding punitive damages to debtors in cases where creditor's actions have been particularly abusive, and by prohibiting civil lawsuits against such creditors from being brought as class actions.[153] This bans the primary mechanism that consumers use for challenging abusive practices on the part of creditors,[154] and the one which in March of this year caused Sears Bankruptcy Recovery Management Services to pay a $60 million fines for failing to file reaffirmation agreements with bankruptcy courts.[155]

## 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

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[151] March 16, 1999 Hearing (written statement of Frank Torres, Consumers Union).

[152] The bill fails to address the major problem with respect to reaffirmation agreements. It does not penalize creditors that coerce debtors into signing such agreements; instead, it merely penalizes creditors that violate the terms of such agreements. This does not protect already-bankrupt debtors who were coerced into signing reaffirmation agreements at the risk of losing appliances, children's toys, or clothing.

[153] H.R. 833, § 114.

[154] See Susan Chandler, "Sears Keeps Reporting Discharged Debts", Chicago Trib., Nov. 13, 1998, at 2.

[155] Leslie Kaufman, "Sears to Pay Fine of $60 Million in Bankruptcy Fraud Lawsuit", N.Y. Times, Feb. 10, 1999, at C2. Sears forced customers to sign such agreements and pay back debts despite the fact that the customers had filed for bankruptcy protection. Id. The company ultimately had to pay a $60 million criminal penalty following a guilty plea and another $180 million in reimbursements and penalties to cardholders, and $40 million to settle civil suits brought by state attorneys general. "Sears' Subsidiary Admits Bankruptcy Fraud, Agrees to $60 Million Fine", 8 Consumer Bankruptcy News 11 (Feb. 25, 1999). Some reaffirmation agreements are poorly understood by debtors and are obtained either through the debtor's lack of understanding or coercive creditor tactics. In a separate case involving Sears's reaffirmation practices, decided in the Eastern District of New York, In re Bruzzese, 214 B.R. 444 (E.D.N.Y. 1997), a debtor reaffirmed an $1,800 debt to obtain $500 in "new credit" that the court calculated would cost the debtor $621 in finance charges under the terms of the agreement in the first year, or an effective rate of 124.2%. Id. at 448. The court went on to point out, "[w]hat Sears did not disclose and what the debtor's attorney did not explain to his client is that, assuming no defaults in the timely payment of the reaffirmed amount, it would take 76 months to satisfy this amount. Over the 76 months, she would pay a stream of payments totaling $3,269.02, of which the aggregate interest would be $1,469.02. For a wholly-unsecured obligation, this would exceed the maximum payment term of 60 months permitted under a chapter 13 plan by 15 months. Other credit card issuers charge a far lower actual annual percentage rate for a $500 line of credit even to persons who have received a recent discharge in chapter 7 bankruptcy case." Id. Based on its findings, the court ordered Sears to repay all payments made by the debtor with respect to the reaffirmed debt, and annulled the reaffirmation agreement. Id. at 451.

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 any 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 modest 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 committees, receive only a 100-day plan exclusivity period, and are entitled to more flexible provisions for disclosure and solicitation for acceptances of their proposed reorganization plan. In 1994, Congress also developed a special set of rules applicable to "single asset real estate," generally defined as cases in which the principal asset is a single piece of real estate subject to debt of no more than $4 million. In cases falling within this definition, secured creditors are permitted to foreclose on their collateral unless the debtor files a reorganization plan which is likely to be confirmed or commences payment on the secured loan within a 90–day period. This exception to chapter 11 procedures was justified on the grounds that single asset real estate cases were seen as essentially private two-party loan disputes, which did not implicate ongoing businesses or jobs.

### 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. 833 would expand the definition of covered small business to those companies having debts of less than $4 million,[156] covering approximately 85% of all chapter 11 cases.[157] It would also make the small business requirements mandatory (rather than optional) and mandate the operation of numerous additional requirements on debtors.[158] For example, under H.R. 833, small business debtors would be required to provide balance sheets, statements of operations, cash-flow statements, and income tax returns within three days after filing a bankruptcy petition, the time period the debtor has the exclusive right to file a plan of reorganization would be further shortened (to 90 days), and the standards for being able to seek an extension of this time period would be substantially narrowed.[159]

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[156] H.R. 833, § 402 (proposed amendment to 11 U.S.C. § 101(51D)).

[157] *See March 18, 1999 Hearing* (written statement of Jere W. Glover, Chief Counsel for Advocacy, SBA).

[158] H.R. 833, § 406 (proposed 11 U.S.C. § 1115).

[159] H.R. 833, § 407 (proposed amendment to 11 U.S.C. § 1121(e)).

It is for these reasons that both the AFL–CIO, the Small Business Administration's Office of Advocacy, 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." [160] Similarly, Jere W. Glover of the Office of Advocacy has written that under H.R. 833, "[u]nder the proposals, small business owners who are legitimately using Chapter 11 proceedings to reorganize their businesses may be forced into a premature dismissal or conversion or may have to expend vital resources to fend off challenges by any creditor for relatively minor procedural infractions." [161]

This new bankruptcy mandate, particularly sections 407 through 409, would impose substantial new costs on small businesses, both in terms of document production and legal fees, and limit the time frame that the business has to develop a reasonable reorganization plan.[162] Section 407 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 ten-year period.[163]

The SBA's Office of Advocacy summed up the situation as follows: "the proposals in H.R. 833 go too far in addressing the relatively small number of problem cases." [164] Even more dangerously, it has been noted than many—if not most—of the business cases in the average district would fall prey to these harsh new rules.[165]

### B. SINGLE-ASSET REAL ESTATE PROVISIONS

A similar concern relates specifically to single-asset real estate ("SARE") debtors. While H.R. 833, in section 402, no longer specifically includes SARE in the definition of "Small Business," it would

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[160] Letter from Peggy Taylor, Director of Legislation, AFL–CIO, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 20, 1999).

[161] March 18, Hearing (written statement of Jere W. Glover, Small Business Administration).

[162] March 18, 1999 Hearing (written statement of Jere W. Glover, Chief Counsel for Advocacy, SBA).

[163] 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).

[164] March 18, 1999 Hearing (written statement of Jere W. Glover, Chief Counsel for Advocacy, SBA).

[165] 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).

significantly expand the definition of SARE by eliminating the $4 million debt cap. Small business are defined under current law as having aggregate non-contingent, liquidated secured and unsecured debts in an amount not more that $4 million. The definition 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 requirements when they seek to reorganize, not withstanding 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 create also new incentives for lenders to require that all of their real estate borrowers place their holdings in the single asset form in order to avoid ordinary bankruptcy rules in the future. The AFL–CIO noted, "the significant limiting factor in the application of these rules has been the $4 million cap. [Eliminating] the cap would place a wide variety of properties * * * at risk of foreclosure and threaten jobs at these properties. Absent rules that specifically exclude properties housing significant business enterprises, there should be no expansion in the definition of single asset real estate debtor." [166]

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." [167] This, in turn, would likely lead to significant job losses.[168] 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;[169] the imposition of mandatory deadlines for extensions of "exclusivity;" [170] amendments regarding asset securitization limiting the assets available to a debtor during a bankruptcy case;[171] extending the period for reclamation of goods by trade creditors;[172] and limits on repeat filings for troubled businesses (which was extended at markup to all businesses and not

[166] March 18, 1999 Hearing (written statement of Damon A. Silvers, Associate General Counsel, AFL–CIO).
[167] Letter from Peggy Taylor, Director of Legislation, AFL–CIO, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 1999).
[168] Id.
[169] March 18, 1999 Hearing (written statement of Damon A. Silvers, AFL–CIO); March 17, 1999 Hearing (written statement of Kenneth Klee, National Bankruptcy Conference).
[170] H.R. 833, § 213.
[171] H.R. 833, § 1012.
[172] H.R. 833, § 208.

just "small businesses").[173] In general, the AFL–CIO has warned that "the real danger posed by H.R. 833 is the threat is 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."[174]

Similar concerns relate to the power of creditors who lease retail property. Section 205 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 240-day period 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.[175] If the trustee or debtor in possession assumes a nonresidential lease in chapter 11, and the case subsequently converts to chapter 7, under the bill, the rent due for a one-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.[176] By giving the lessor veto power at the end of 240 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.

## 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 VIII 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. 833 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.[177] We are particularly concerned that the Majority chose to vary in many significant respects from the nonpartisan, and often unanimous, recommendations of the Bankruptcy Commission and its Tax Advisory Committee.

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[173] H.R. 833, § 412.

[174] Letter from Peggy Taylor, Director of Legislation, AFL–CIO, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 20, 1999).

[175] The value to the estate of retaining the ability to assign certain leases is often a significant issue in determining which lease to assume or reject because it impacts upon the ability to pay other creditors. It should also be noted that the lessor already is entitled to get paid post-petition for the use of the property—the debtor is not using it for free.

[176] In re Klein Sleep Prods., 78 F.3d 18 (2d Cir. 1996).

[177] 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).

Title VIII of the bill deals with the treatment of tax debts owed to the government by a debtor. It is ironic that the Majority, which has normally taken such an anti-tax posture on most issues, not only is using the IRS collection standards for the means test but also is pressing for changes to the Bankruptcy Code that favor governmental collections over the rights of debtors and private sector creditors. In his testimony on behalf of the American Bar Association's Section on Taxation, 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, 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." [178]

Mr. Asofsky provided a somewhat more detailed discussion of his concerns in a letter to the Subcommittee's Ranking Member.[179] Section 802 of the provides new rules for debtors to provide notice to a governmental entity. Notice is important in a bankruptcy case, because if the debtor is found not to have provided adequate notice to a creditor, the debtor will not be entitled to a discharge of the debt. Section 802 "sets forth detailed rules requiring the debtor, in providing notice to a governmental creditor, to identify the department or agency or instrumentality of a governmental unit through which the debtor is indebted and describe the underlying basis for the governmental unit's claim. It also requires the debtor to identify certain instances in which he may be derivatively liable to such governmental agency for a claim against a non-debtor. It also imposes certain burdens on debtors in identifying the particular governmental official to whom notice must be sent." [180] Forcing the debtor to divine the correct person or location for notice would place too high a burden on many individual debtors who would then be required to demonstrate "by clear and convincing evidence" that timely notice was given to the appropriate official. Instead of providing a fair means of providing notice to governmental units, it sets a trap of the unsophisticated and unwary debtor, and places governments in the enviable position of having their tax debts made non-dischargeable. The second part of the provision, which requires a debtor to determine whether she might have a derivative tax liability, for example for a trust fund tax penalty, places the onus on the debtor to identify and pursue claims rightly left to the taxing authority.

Section 804 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 at least the original issue discount rate of § 1274(d) of the Internal Revenue Code, plus three points. Of greater concern, local governments can set their

[178] March 18, 1999 Hearing (written statement of Paul Asofsky).
[179] Letter from Paul Asofsky to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (Feb. 5, 1999) [hereinafter Asofsky Letter].
[180] Id. at 2.

own interest rates, many of which are substantially higher than either of the IRS rates.[181]

Section 807 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[182] clearly do not leave many taxpayers with the minimum amounts necessary to provide for basic necessities, and so called "offers in compromise" are very difficult to obtain. Thus, for the most desperate of taxpayers, the chapter 13 superdischarge affords a safety net which is the only thing that provides them with the possibility of living somewhat of a normal life in dignity * * * elimination of the chapter 13 superdischarge would be devastating to large numbers of unfortunate individual debtors.[183]

Section 817 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 full disclosure of the potential material federal, state, and local tax consequences of the plan to the debtor, any successor to the debtor and a hypothetical investor domiciled in the state in which the debtor resides or has its principle place of business typical of the holders of claims or interest in the case." The use of the term "full disclosure" 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.[184]

Finally, section 818 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 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, non-governmental creditors.

## V. CONCLUSION

For nearly 100 years, Congress has carefully considered the bankruptcy laws and legislated on a deliberate and bipartisan basis. In the past, Congress has elected also to preserve carefully an insolvency system that provides a fresh start for honest, hard-

[181] Id. at 3–4.
[182] These are the same standards used in the means test in section 102 of H.R. 833.
[183] Asofsky Letter at 4.
[184] *Id.* at 5–6.

working debtors, protects on-going businesses and jobs, and balances the rights of and between debtors and creditors. Because H.R. 833 departs from these principles, we respectfully dissent.

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## ADDITIONAL DISSENTING VIEWS

We write separately to express our regret that in a bill which holds individual debtors to new, more draconian standards, two modest amendments which would each have held corporations accountable for their fraudulent activities which have taken the lives of average Americans, much the same way individual debtors are under current law, were rejected by the majority.

In each case, the amendment would simply create an exception to discharge in ch. 11 for civil judgements based on fraud or misrepresentation by the debtor in connection with the sale of a firearm, in the case of the first amendment, and tobacco, in the case of the second amendment. Section 523(a)(2) of the Bankruptcy Code already applies this rule to individual debtors. The rejected amendment would have merely have required gun manufacturers and tobacco companies to abide by the same rule as every other American.

The gun amendment was aimed at a real, not a hypothetical problem. For example, in 1996, Lorcin Engineering, one of the largest producers of sem-automatic pistols, filed for chapter 11 because of 18 product liability claims made against it. "Lorcin officials said they decided to 'take advantage of the system' when it became obvious that they would be unable to adequately defend themselves against * * * complaint without the additional time afforded by filing bankruptcy."[1] According to the Violence Policy Center, "In 1993, Lorcin was the number one pistol manufacturer in America, churning out 341,243 guns. Many of Lorcin's handguns are of such poor quality they are ineligible for importation under the Bureau of Alcohol, Tobacco and Firearms' (ATF) 'sporting purpose' test. Lorcin's .380 pistol tops the list of all guns traced to crime by ATF."[2] There are now suits against the gun industry filed by several U.S. Cities including Chicago, New Orleans, Miami, Atlanta, Cleveland, and Bridgeport Connecticut. Manufacturers of deadly weapons who commit fraud that results in serious injury and death should not be allowed to "take advantage of the system." We regret that the long arm of the gun lobby has succeeded in cheating the victims in these lawsuits from receiving their just compensation by preserving this loophole in the Bankruptcy Code.

Similarly, Rep. Jackson-Lee offered an amendment which would have prevented tobacco companies from discharging debt from civil judgements arising from the sale of tobacco products when fraud or misrepresentation was involved. Certainly there can be no industry more guilty of such misconduct than the tobacco industry—and the cost has been paid with the lives of millions of Americans.

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[1] Firearms Business 3 (Dec. 1, 1996).

[2] Violence Policy Center, Don't Let Gun Manufacturerers "Take Advantage of the System" 1 (Flyer on file with Minority Staff) (April 1999).

Who can forget the image of the heads of the seven leading tobacco companies swearing an oath before Congress, under penalty of perjury, that tobacco was neither harmful nor addictive? The Supreme Court has held that fraud and conspiracy claims against tobacco merchants could go forward.[3] Since that time numerous states, as well as individual and class action claims have been pursued against tobacco companies, in part, on these grounds. Many of them have proved successful, relying in part on the fraudulent and misleading claims of tobacco companies.

In the last Congress, this Committee accepted a similar provision, which was dropped out in a House-Senate conference from which the minority was excluded.[4] We regret that, in the face of mounting evidence of fraud, the dangers of smoking, and recognition by the courts, juries, and in some instances the tobacco companies themselves, of widespread misconduct, the majority has refused to hold these corporate giants to the same rules every other American must observe.

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[3] *Cipollone* v. *Liggett Group,* 505 U.S. 504 (1992).
[4] Sec. 119A of H.R. 3150 (105th Congress).