

Senate Banking, Housing and Urban Affairs Committee

Subcommittee on Financial Institutions & Regulatory Relief

Hearing on Bankruptcy Reform

Prepared Testimony of Mr. James E. Smith On Behalf of the American Bankers Association

10:00 a.m., Wednesday, February 11, 1998

Chairman Faircloth and members of the Subcommittee, my name is James E. Smith. I am President and CEO of Union State Bank and Trust, in Clinton, Missouri, and Chairman of the American Bankers Association's Government Relations Council. I am pleased to be here today on behalf of the ABA. The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership-which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks - makes ABA the largest banking trade association in the country.

Mr. Chairman, the ABA welcomes the Subcommittee's inquiry into current bankruptcy issues. Given record numbers of bankruptcy filings and their inevitable impact upon lenders and borrowers, it is very timely.

Consumer credit is inextricably tied to our economy's health. Fortunately, the vast majority of borrowers repay their debts as they promised. Unfortunately, circumstances may change for some individuals, making it difficult for them to meet fully their obligations. We are well aware of the trauma, anxiety and embarrassment that accompany unintended and unavoidable financial difficulties. In those difficult times, the best result for both lenders and troubled borrowers can be achieved through timely restructuring of the debt. Banks are willing to work with troubled borrowers, either directly or through consumer credit counseling services, to avoid the "lose-lose" situation of personal bankruptcy. We strive to help consumers learn how to responsibly manage credit through educational activities and awareness campaigns.

Bankruptcy may ultimately be the last resort for some individuals, and we believe that protection should be provided to the extent that it is appropriate. Unfortunately, for a growing number of people, it has become the first resort, rather than the last resort. By taking advantage of flaws in the current bankruptcy system, individuals can wipe their debt-slates clean even though they have the capacity to repay all or a portion of their obligations. Moreover, there is ample evidence that a small but growing minority of borrowers is abusing the credit system by taking loans with no real intent to repay.

We believe that the flaws in the bankruptcy laws should be fixed. Abusive use of the bankruptcy laws already cost all citizens way too much and these costs will certainly grow if nothing is done.

The major points I will make in my remarks today are:

- The record number of personal bankruptcies - occurring at a time when our economy is very healthy - is a clear sign that our bankruptcy system is broken.
- The fundamental flaw of the current Bankruptcy Code is that debtors are permitted complete discretion as to whether they will enter into a Chapter 7 liquidation plan or a Chapter 13 repayment plan. Undeserved Chapter 7

relief is raising credit costs for millions of responsible borrowers.

- Only an administrative needs-based system can balance the two goals of debtor relief and creditor recovery. There is an emerging bipartisan consensus in favor of such an approach. In combination with other necessary reforms to assure complete and accurate information and prevent credit abuse, a needs-based system would send a strong message that bankruptcy should be a last resort for troubled borrowers.

I would like to discuss each of these points in detail. In addition, I have attached to my statement a brief discussion of some of the pending bills in both Houses of Congress. I have also attached a listing of ABA's grave concerns regarding the Bankruptcy Commission's recommendations in the consumer bankruptcy area. While the commissioners were dedicated and hard-working, the consumer proposals should be firmly rejected by Congress. Their effect would be to increase total consumer bankruptcy filings, while encouraging an even higher proportion to be filed in Chapter 7. Finally, while business bankruptcies are more in line with current economic conditions, suggestions are offered for improvement in those laws and in the laws affecting family farm bankruptcies (Chapter 12).

Record Bankruptcies Reveal Fundamental Flaws in Bankruptcy Laws

Mr. Chairman, when the final numbers are in on personal bankruptcies for 1997, they will break the old record with sonic-boom force. About 1.3 million people will have declared bankruptcy - a 19.5 percent increase over the 1996 level of 1.1 million. This means that one in every hundred U.S. households filed for bankruptcy in 1997. What is equally stunning is that this record was set in a year where Gross Domestic Product grew 3.8 percent - the highest in a decade - and the unemployment rate was 4.7 percent - the lowest in nearly 3 decades. Clearly, consumer bankruptcies are increasingly disconnected from the general state of the economy and suggest to us that underlying causes must be rooted in flawed bankruptcy laws.

Of total filings, approximately 96 percent were non-business bankruptcies. This is quite different from the experience of the 1980s. For example, from 1980 to 1987, consumer filings ranged between 82 to 86 percent of total filings. In 1988, personal bankruptcies grew to 89.6 percent of total filings, and the percentage has risen every year since then.

Today's consumer bankruptcy crisis poses no imminent danger to the safety and soundness of the financial system. Banks and other lenders have tightened underwriting standards and reviewed pricing in light of current conditions, and they have ample capital and reserves. But the fact that there is no immediate danger does not mean that there is no reason for great concern.

At some point, without bankruptcy reform, lenders will dramatically tighten lending standards, a move that will have consequences for the overall economy. For example, my bank is very active in making small "micro" loans to low income individuals. These loans are often as low as \$200-\$300 dollars. Given these small dollars, we cannot afford to do expensive background checks. Rather, these are truly "character" loans. The rise in personal bankruptcies have forced us to re-evaluate these types of loans, however. Even though the loans are not large, it does not take too many losses to make this entire line of micro loans not worth offering. The same process of reconsideration is likely to occur for many other banks in all kinds of consumer loans. Simply put, a tightening of underwriting standards means either the price of credit rises, or less credit is offered or both. In my case, it may determine whether a whole line of credit products will be eliminated - something that would be sad for my bank and my community.

Perhaps even more troubling is what I call "stealth bankruptcies" in which borrowers show excellent credit histories right up to the day they file and wipe out their lenders. Those borrowers look just like many others who never file bankruptcy. There are two examples from my community that I would like to share with your Subcommittee, Mr. Chairman. The first was a case where a borrower bought a brand new Dodge truck three weeks before declaring bankruptcy. It was nearly a year before he had to turn the now used and abused truck back into the lender. The second was a case of a rancher who borrowed to buy 50 head of cows and calves. He sold the animals in 30 days, declared bankruptcy and walked away with all the money.

Clearly, these are severe abuses of the system. There are many more that are not so obvious, but that represent borrowers who have chosen bankruptcy as a first resort, rather than a last resort after trying other available alternatives

such as working out revised payments with lenders or availing themselves of consumer credit counseling assistance.

A Fundamental Flaw - Complete Discretion for Choosing Chapter 7 over Chapter 13

The current Bankruptcy Code allows filers to exercise total discretion over whether they should file in Chapter 7 or Chapter 13, regardless of ability to repay. In Chapter 7, repayment is based upon assets. Filers must either reaffirm their secured debts by acknowledging post-bankruptcy personal responsibility to pay them, redeem their secured debts by making full payment, or surrender their collateral. Unsecured lenders receive payment, if any, out of the bankruptcy trustee's liquidation of debtor property which exceeds applicable exemption levels (which are mostly set by state law). *Nineteen out of twenty Chapter 7 filings are "no asset" cases in which there is no nonexempt property to liquidate and unsecured lenders lose 100 cents on the dollar.* Chapter 7 cases constitute about seventy per cent of all non-business filings.

In Chapter 13, repayment to creditors is based on income. The debtor agrees to a repayment plan with a three to five year duration. Home mortgage lenders are repaid according to the original payment schedule, other secured lenders are assured of full repayment of the portion of their loan which is collateralized, and unsecured lenders receive repayment based on remaining disposable income.

An individual filing in Chapter 7 may be directed to Chapter 13 under present law when the judge determines that a Chapter 7 discharge would constitute "substantial abuse." However, such instances are rare. This is due to the assembly line, overloaded nature of the consumer bankruptcy system and the lack of economic incentives for the trustee to undertake an in-depth inquiry into most cases. In addition, current law prevents those who most likely have information regarding debtor abuses - the lenders - from bringing it to the attention of the court.

Chapter 7 bankruptcy is an extra-ordinary and highly unusual legal process. In other civil cases one seeking an injunction to bar legal actions must generally demonstrate the imminent threat of irreparable harm as well as a high probability of succeeding on the merits. But in the current system, the mere filing of a bankruptcy petition provides an automatic stay, which halts all foreclosures, garnishments, and other legal proceedings against the debtor. In addition, while the law is what we look to for contract enforcement, in bankruptcy the law cancels or rewrites contracts to relieve debtors of their obligation to perform on their contractual promises to pay. These are extraordinarily potent legal powers. They may be necessary to further the renewal function of bankruptcy, but providing them to virtually anyone just for the asking opens up the bankruptcy system to abuse.

Chapter 13 has also been abused by individuals under the current system. Many who file in Chapter 13 never complete their full repayment plan - a fact some critics cite to question the enforceability of a needs-based bankruptcy system. But the real issue here is the ability of these individuals to use Chapter 13 simply to cure mortgage defaults, with no intention to complete their plan; they later file a "Chapter 20" bankruptcy by converting to Chapter 7 and wiping out unsecured lenders. In other words, current law permits debtors to obtain many of the benefits of Chapter 13 without carrying out their repayment responsibilities.

The high proportion of Chapter 7 cases regardless of repayment ability, and the swiftly escalating total number of consumer bankruptcy cases, together constitute a great long-term threat to the availability of reasonably priced credit to U.S. consumers. The "bankruptcy tax", the cost of bankruptcies which is ultimately passed on to other borrowers, already is about \$400 per U.S. household. This does not even include the cost of the bankruptcy court system that has been overwhelmed by the record high filings. Adding new judges will cost taxpayers millions of dollars more. These unfair taxes on responsible borrowers will likely escalate absent Congressional action.

Bankruptcy Causes

There has been considerable debate and research on the causes of rising bankruptcies, none of it has been conclusive. The explanations fall into some general categories. The first is economic. With record low unemployment, involuntary job losses cannot be a major cause, although reduced income due to industry downsizing and generally flat income gains may be a factor. Divorce seems to cause some bankruptcies since it generally leads to higher total household expenses for the former spouses; the enactment and enforcement of "deadbeat dad" laws seems to have played a role in

some bankruptcies. Finally, the lack of adequate insurance against catastrophic events, such as medical emergency and auto accidents, can play a role.

Behavioral/societal factors are another probable cause. The spread of legalized gambling seems to be the fastest growing cause of bankruptcy. Some individuals are compulsive spenders, and others lack any financial education. Finally, there seems little doubt that the stigma associated with bankruptcy has substantially faded. We are a long way from the world portrayed in "It's A Wonderful Life", in which George Bailey viewed bankruptcy as a shameful tragedy. Today, Americans read about major companies restructuring in bankruptcy, see TV exposes on bankrupt celebrities residing in multimillion dollar mansions, or see smiling families on the cover of magazines recounting how they succeeded in running up huge amounts of debt only to walk away from it in bankruptcy. Others are likely to have a neighbor or family member who has declared bankruptcy. Moral stigmas are no match when the law allows abuse.

Finally, some have criticized lending practices. In particular, prescreened solicitations for credit cards have been blamed for rising bankruptcies. But those solicitations are only marketing devices which offer consumers more choices with lower rates and other benefits (such as rebates or frequent flier miles). And credit card debt constitutes only about 7 percent of total household debt. Even for bankruptcies, credit card debt averages only about 14 percent - about one out of every seven dollars owed - and much of that debt can be run up in months just before a bankruptcy filing as individuals use credit to temporarily bridge a cash gap. Some have simplistically correlated overall consumer credit with bankruptcy filings and claimed a direct connection. But the more meaningful measure is the ratio of consumer installment credit to disposable income. Today that ratio - about 20 percent - is the same as it was in 1987; but non-business bankruptcy filings reach 1.36 million, almost triple the half-million annual filings a decade earlier. Lenders have tightened credit standards in light of rising bankruptcies, but we have also tried to maintain readily available credit at reasonable rates. That is getting harder to accomplish.

There does not seem to be any one cause of rising bankruptcies; it is more likely to be a variety of factors working in tandem. In any event, public policy in this area cannot be based on assignment of blame. There is simply no way for the bankruptcy court system to even begin to delve into the basis for a particular bankruptcy filing and to mete out a result which is based on that analysis. Lenders, educators, credit counselors, the media, and others will do what they can to try to stem the rising tide of personal bankruptcy. But, regardless of cause, once an individual files for bankruptcy the system must, best as it can, try to balance its twin goals of debtor relief and creditor repayment.

A Needs-Based System Can Balance the Twin Goals of Debtor Relief and Creditor Recovery

Adoption of an administrative needs-based policy would best achieve the appropriate balance between debt or relief and credit or recovery. We are gratified by the emerging, bipartisan consensus that fundamental reforms are needed in the consumer bankruptcy process, and that the heart of these reforms is a needs-based bankruptcy system. Such a system would recognize that consumer bankruptcy, like every other part of the social safety net, should have safeguards to prevent abuse of its most generous benefits. It would also send a strong message that bankruptcy can no longer be regarded as an easy first resort for the financially reckless.

Needs-based bankruptcy is the centerpiece of a consumer bankruptcy system which reserves complete liquidation of unsecured debts for those borrowers who really need complete debt forgiveness. It is a system that prevents individuals with substantial disposable income from manipulating the bankruptcy system to avoid their repayment obligations if they are able to make good on them.

An administrative needs-based approach is easy to understand. First, for those individuals with incomes below a prescribed level, there would always be the option to file in Chapter 7. Second, for those individuals with higher than the prescribed income level, there would be a simple formula to calculate how much an individual can afford to repay based on income and obligations. For example, the clerk of the court or bankruptcy trustee would review the information in the debtor's petition to determine income, deducts the portion required to meet household expenses and pay secured debts and unsecured priority debts, and then calculates how much remains, if any, for the payment of unsecured non-priority debts. If the amount available to pay that latter category of debt exceeds a certain percentage over the normal span of a Chapter 13 plan, the debtor is denied eligibility for Chapter 7.

It is important to note that needs-based bankruptcy does not prevent debtors from obtaining substantial relief under the Federal bankruptcy laws. Those who cannot repay their debts would continue to be eligible for complete relief under Chapter 7. Furthermore, under a needs-based system, debtors still may file a Chapter 13 petition (or, in rare cases for high income individuals, Chapter 11) and obtain the injunctive relief of the automatic stay. Chapter 13 provides avenues for curing defaults and restructuring payments on secured debts which are not available in Chapter 7, and it provides a broader bankruptcy discharge upon completion of the repayment plan. And debtors still can void their legal responsibility to pay a substantial portion of their unsecured debts. But they cannot avoid all repayment obligation when they have the disposable income to make good on a significant portion of what they owe unsecured creditors.

There are other consumer bankruptcy abuses which also require legislative redress:

- Some debtors use unsecured debt to make payments on secured loans or other nondischargeable debt, and then file Chapter 7 shortly thereafter and avoid their repayment obligation to the unsecured lender.
- Debtors who obtain credit through fraud can have those obligations forgiven in Chapter 13, whereas fraud debt is never dischargeable in Chapter 7.
- There is substantial evidence, including reams of testimony before the Bankruptcy Commission, that many debtors' bankruptcy petitions are creative works of fiction which understate income and hide assets, and yet there are no documentation requirements nor regular post-filing audits.
- Some debtors file and subsequently dismiss bankruptcy petitions repeatedly, with no intent to complete their bankruptcy, but to gain the injunction against creditors' legal actions provided by the automatic stay.
- "Chapter 20" bankruptcies are a major abuse where debtors file in Chapter 11, obtain its restructuring and cramdown benefits, and then dismiss the case and refile in Chapter 7 while retaining those benefits. Similarly, debtors have made major secured purchases, such as automobiles, and then filed Chapter 13 shortly thereafter to obtain a significant cramdown of the amount owed on the loan.
- Some debtors move to states with unlimited homestead exemptions in contemplation of filing bankruptcy, and then file a Chapter 7 which eliminates their unsecured debt while they retain an expensive home.
- Debtors also face abuse in the bankruptcy process, when they are victimized by bankruptcy mills or shoddy lawyers who do not explain the alternatives to filing in Chapter 7. There have even been cases where debtors have been placed into a Chapter 7 bankruptcy without their knowledge, being told only that they are getting federal debt relief.

All of these problems and more would be effectively addressed by pending bankruptcy legislation described in an attachment to my statement.

Business and Farm Bankruptcies

As I noted, business bankruptcies now constitute less than 5 percent of all bankruptcy filings. There is no business bankruptcy crisis. While Chapter 11 of the Code does provide a viable framework for business reorganizations, worthwhile reforms can improve its operation and effectiveness. In particular, Chapter 11 does not work very well for small businesses. One of the Bankruptcy Commission's better recommendations was for the creation of a less complex and expedited Chapter 11 process for businesses with less than \$5 million in total debt. That proposal would encompass 85 percent of all Chapter 11 filings.

We are also generally supportive of the Commission's recommendations for adoption of the Model Law on Cross-Border Insolvencies (proposed by the United Nations Commission on International Trade Law or UNCITRAL) to bring greater certainty to the economic affairs of an interconnected world.

We are anxious to see the removal of the \$4 million debt cap which unwisely limits the effectiveness of the action

taken by Congress in 1994 to curb abusive single asset realty bankruptcies.

Consideration is also being given to making Chapter 12 a permanent part of the Bankruptcy Code. The Senate passed a bill making that change, S. 1024, last October. While we would prefer to see Chapter 12 expire we believe that, at a minimum, its permanent adoption should be accompanied by such fundamental reforms as expediting cases and permitting lenders to share in appreciated collateral.

Conclusion

Mr. Chairman, the ABA appreciates this opportunity to address you this morning on bankruptcy issues. We think it would be a terrible mistake to ignore what the record levels of personal bankruptcies are telling us - namely, that the current system is broken and must be fixed. The recommendations of the National Bankruptcy Review Commission are not the answer - they would increase lender risk and make bankruptcy even less onerous and more attractive. That course will place an inevitable burden upon the vast majority of Americans who manage credit responsibly and honor their debts; a burden of lessened credit availability, higher borrowing costs, and reduced vigor in the overall economy. We strongly believe the correct approach is to develop a needs-based system.

Finally, Mr. Chairman, we appreciate your and the Subcommittee's interest in this issue - the record created here can help to build momentum for overdue reforms. We look forward to working with you and other Banking Committee members to take the steps necessary to assure that your constituents continue to have ready access to reasonably priced credit products.

Attachment A

The "Consumer Bankruptcy Reform Act of 1997" - S. 1301

S. 1301, the "Consumer Bankruptcy Reform Act of 1997", was introduced in October by Senators Grassley and Durbin. The bill would create a judicial needs-based system by allowing creditors to bring evidence of abuse to the court's attention, and by requiring the court to consider fundamental questions about the debtor's repayment capacity. S. 1301 would also provide panel trustees with additional incentives to pursue false or bad faith filings. It also provides creditors with significantly better notice of proceedings and information about debtors, curbs abusive multiple filings, and curbs "Chapter 20's".

The ABA believes this bill is a good starting point for Senate consideration of bankruptcy reform, and we will be providing constructive input to the Judiciary Committee when it holds hearings this year. However, we do believe that the legal, administrative and judicial costs of bringing "abuse" actions against improperly filed Chapter 7 cases can not be justified for many Chapter 7s where the debtor's substantial repayment capacity is evident.

Further, there are unfortunately many bankruptcy judges who are philosophically opposed to needs-based bankruptcy and who are therefore likely to exercise their discretion and permit abusive debtors to remain in Chapter 7. Therefore, we believe that an administrative needs-based component should be added to S.1301, along with a variety of additional provisions to curb other current abuses.

Finally, we are concerned that provisions of this bill exposing creditors to potential sanctions may be unduly harsh and subjective, and may therefore inhibit creditors from exercising their legitimate rights in the bankruptcy process.

Attachment B

"Bankruptcy Reform Act of 1998" - H.R. 3150

The ABA strongly supports the consumer bankruptcy provisions of H.R. 3150, the "Bankruptcy Reform Act of 1998", introduced on February 3)' by Representatives Gekas and Moran, along with Representatives McCollum and Boucher. This bipartisan package effectively deals with the rising tide of consumer bankruptcies.

The heart of this bill is an administrative needs-based approach managed by the clerk of the court using the basic information contained in the debtor's filing statement. This test would not effect lower income individuals at or below 75 percent of median family income. Those above that threshold would be required to enter into a Chapter 13 repayment plan if capable of paying off all secured and twenty percent of unsecured debt in a five-year period.

Some have charged that eliminating debtors' complete discretion to choose between Chapters 7 and 13 somehow takes away the bankruptcy "fresh start" or constitutes "involuntary servitude". These overblown criticisms are just wrong. This needs-based test would permit debtors to be relieved of their obligation to pay up to 4 out of 5 dollars of their unsecured debt, and would provide them with a bankruptcy discharge which is broader in scope than Chapter 7's. Further, adhering to a Chapter 13 plan would provide debtors with the educational experience of budgeting that would help them avoid future financial problems. One of the great tragedies of the present bankruptcy system is that many individuals leave it with no understanding of how they got into financial trouble or how to avoid it in the future.

Research done by the Credit Research Center (CRC) at Georgetown University indicates that, under this needs-based approach, two-thirds of those filing in Chapter 7 could continue to do so, while the remaining third would be directed to avail themselves of Chapter 13 relief. A draft General Accounting Office (GAO) analysis of that study found it to be "a useful first step in analyzing the ability of bankruptcy debtors to pay their debts", but raised some questions about the study's methodology. ABA believes that the CRC study is a solid effort and the best analysis available of potential repayment capacity among those currently filing in Chapter 7. The available evidence suggests that several hundred thousand individuals who filed in Chapter 7 in 1997 had the financial capacity to repay their unsecured creditors to a significant extent but were able to use current bankruptcy law to avoid their responsibility. Public policy must be adjusted to restore personal accountability to the consumer bankruptcy process.

H.R. 3150 would also effect other welcome bankruptcy reforms. These include:

- Establishing that consumer debts incurred within 90 days prior to filing for bankruptcy should be presumed nondischargeable.
- Making nondischargeable any debt incurred to pay a debt that is already nondischargeable under the Code.
- Barring the discharge of fraudulently obtained debt in all consumer bankruptcy cases.
- Establishing auditing and documentation requirements for debtor filings, and providing for legal actions if material misstatements are submitted.
- Barring bankruptcy refiling for 10 years after discharge.
- Permitting lenders to bring evidence of "substantial abuse" to the court's attention.
- Creating a national bankruptcy information docket.
- Expediting the initiation of Chapter 13 payments.
- Clarifying that debtors lose the benefit of the cramdown of undersecured debts when they convert from Chapter 13 to

7.

- Establishing that collateral securing a note cannot be subject to cramdown in any bankruptcy filed up to 180 days later.
- Requiring that consumers receive information about alternatives to bankruptcy, and allowing the courts to require debtors to complete a financial management training program as a condition of the discharge.
- Doubling, to one year, the length of time a debtor must reside in a state to take advantage of its homestead exemption.
- Establishing a "debtor's bill of rights" to provide legal rights against bankruptcy practitioners who do not provide adequate information or full and fair representation, and by cracking down on misleading debt relief advertisements.

ABA believes that adoption of the provisions of H.R. 3150 would be an appropriate and effective response to the consumer bankruptcy crisis.

Attachment C

Concerns Regarding The National Bankruptcy Review Commission Consumer Bankruptcy Recommendations

Last October the National Bankruptcy Review Commission submitted its report to Congress. While the Commissioners were dedicated and hard-working and the Commission made worthwhile suggestions in a number of areas, their consumer proposals should be firmly rejected by Congress. They do not represent a consensus but are the result of a sharp 5-4 split. Their effect would be to increase total consumer bankruptcy filings while encouraging an even higher proportion to be filed in Chapter 7. Worst of all, they are silent on any notion of personal responsibility for one's debt.

There are many objectionable consumer bankruptcy recommendations forwarded by the Commission, including:

- Failing to adopt any needs-based approach or any strengthening of the existing "substantial abuse" provisions.
- Suggesting excessive national bankruptcy exemptions which would permit debtors to emerge from Chapter 7 with retained household wealth in the top quarter for all Americans (a proposal rejected by the Justice and Treasury Departments as far exceeding any reasonable notion of a "fresh start").
- Barring the voluntary reaffirmation of unsecured debt.
- Permitting cramdown of secured loans to wholesale value, in contradiction of a recent Supreme Court decision that replacement (generally retail) value is the proper standard.
- Inadequate payment guidelines for Chapter 13 plans.
- Allowing debtors to discharge all credit charges made more than 30 days prior to filing bankruptcy.
- Allowing student loans to be discharged immediately following graduation.
- Failing to establish financial education requirements.
- Retaining present law permitting a new bankruptcy to be filed every 6 years.

Adoption of these Commission recommendations would have a disastrous effect upon the bankruptcy courts and upon the availability and pricing of consumer credit.

Unfortunately, some of these bad ideas, plus a few new ones, are contained in a bill introduced on February 3d. H.R. 3 146, the "Consumer Lenders and Borrowers Bankruptcy and Accountability Act of 1998". We will save our detailed comments on this legislation for hearings to be held in the House Judiciary Committee. However, particularly objectionable provisions on this bill include:

- Creditors who made prudent loans accompanied by all required consumer disclosures and who exercised only valid legal rights could nevertheless find that they had no legal claim against a debtor.
- Most open-end consumer credit would be automatically dischargeable in bankruptcy.
- Secured lenders could be crammed down to a valuation of wholesale or less.
- Home equity lenders would lose their current legal protection against cramdown.

Needless to say, the ABA will vigorously oppose these proposals. In particular, it is inappropriate to dictate credit underwriting standards and practices through the Bankruptcy Code. Adoption of this approach would be contrary to all of the efforts undertaken by Congress over the past two decades to assure that low- and moderate-income individuals enjoy access to credit.

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