years. That bill is caught up in controversy and is going nowhere. The President has said he would have to veto it. The provision in there relative to Medicare and Medicaid would be lost in that process.

It has been reported in the newspapers, and I think it is probably accurate, that the leadership has pulled away from that tax bill now and believes it cannot pass. But we would make a serious mistake if we backed off from our commitment to deal with Medicare and Medicaid before we adjourn this Congress. I think there is a will and there is a way.

I have spoken with the representative from the White House, Mr. Lew, who heads up the Office of Management and Budget, and my colleague and friend, the Speaker of the House DENNIS HASTERT, who understands the importance of this issue to the State of Illinois. I have talked to my colleagues on this floor. We clearly can achieve this. In achieving it, we can send back a message not only to rural hospitals, which frankly are facing the ruin of declining revenues at a time when they are trying to keep their doors open, but also hospitals in the inner cities and hospitals across America, teaching hospitals, and others that rely on these reimbursements.

I urge my colleagues, as we consider the next Congress, let's not forget the remaining agenda of this Congress. It is not enough to pack our bags, wish everyone a happy holiday, and head home. There are important items still to be resolved. We were elected and took an oath of office to resolve this. No excuse will do at this point. Let us pass those pending appropriations bills, make the compromises necessary to do so, and not forget our responsibility under Medicare and Medicaid across the United States to seniors, the disabled, and the disadvantaged, who rely on those programs for quality health care.

I think it can be done. I hope my colleagues join me in making certain we make that effort as we close this session of the Congress.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

BANKRUPTCY REFORM ACT OF 2000—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the conference report to accompany H.R. 2415, which the clerk will report.

The legislative clerk read as follows:

Conference report to accompany the bill (H.R. 2415) to enhance security of United States missions and personnel overseas, to authorize appropriations for the Department of State for fiscal year 2000, and for other purposes.

Mr. WELLSTONE. Mr. President, it is my understanding that we are now in debate on the bankruptcy bill; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. WELLSTONE. I thank the Chair.

Mr. President, I yield myself, from Senator LEAHY's time, 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I am sorry, I have my own time.

Mr. President, The proponents of this bill argue that people file because they want to get out of their obligations, because they're untrustworthy, because they're dishonest, because there is no stigma in filing for bankruptcy.

But any look at the data tells you otherwise. We know that in the vast majority of cases it is a drastic step taken by families in desperate financial circumstances and overburdened by debt. The main income earner may have lost his or her job. There may be sudden illness or a terrible accident requiring medical care.

Specifically we know that nearly half of all debtors report that high medical costs forced them into bankruptcy—this is an especially serious problem for the elderly. But when you think about it, a medical crisis can be a double financial whammy for any family. First there are the high costs associated with treatment of serious health problem. Costs that may not be fully covered by insurance, and certainly the over 30 million Americans without health insurance are especially vulnerable. But a serious accident or illness may disable—at least for a time—the primary wage earner in the household. Even if it isn't the person who draws the income, a parent may have to take significant time to care for a sick or disabled child. Or a son or daughter may need to care for an elderly parent. This means a loss in income. It means more debt and the inability to pay that debt.

Are people overwhelmed with medical debt or sidelined by illness deadbeats? This bill assumes they are. For example, it would force them into credit counseling before they could file—as if a serious illness or disability is something that can be counseled away.

Women single filers are now the largest group in bankruptcy, and are one third of all filers. They are also the fastest growing. Since 1981, the number of women filing alone increased by more than 700 percent. A woman single parent has a 500 percent greater likelihood of filing for bankruptcy than the population generally. Single women with children often earn far less than single men aside for the difficulties and costs of raising children alone. Divorce is also a major factor in bankruptcy. Income drops, women, again, are especially hard hit. They may not have worked prior to the divorce, and now have custody of the children.

Are single women with children deadbeats? This bill assumes they are. The new non-dischargeability of credit card debt will hit hard those women who use the cards to tide them over after a divorce until their income stabilizes. And the ''safe harbor'' in the conference report which proponents argue will shield low and moderate income debtors from the means test will not benefit many single mothers who need help the most because it is based on the combined income of the debtor and the debtor's spouse, even if they are separated, the spouse is not filing for bankruptcy, and the spouse is providing no support for the debtor and her children. In other words, a single mother who is being deprived of needed support from a well-off spouse is further harmed by this bill, which will deem the full income of that spouse available to pay debts for determination of whether the safe harbor and means test applies.

Mr. President, you will hear my colleagues talk about high economic growth and low unemployment and wonder how so many people could be in circumstances that would require them to file for bankruptcy. Well, the rosy statistics mask what has been modest real wage growth at the same time the debt burden on many families has skyrocketed. And it also masks what has been real pain in certain industries and certain communities as the economies restructure. Even temporary job loss may be enough to overwhelm a family that carries significant loans and often the reality is that a new job may be at a lower wage level—making a previously manageable debt burden unworkable.

So what does this bill do to keep people who undergo these wrenching experiences out of bankruptcy? Nothing. Zero. Tough luck. Instead, this conference report just makes the fresh start of bankruptcy harder to achieve. But this doesn't change anyone's circumstances, this doesn't change the fact that these folks no longer earn enough to sustain their debt. Mr. President, there is not one thing in this so called bankruptcy reform bill that would promote economic security in working families.

When you push the rhetoric aside, one thing becomes clear: The bankruptcy system is a critical safety net for working families in this country. It is a difficult demoralizing process, but for nearly all who decide to file, it means the difference between a financial disaster being temporary or permanent. The repercussions of tearing that safety net asunder will be tremendous, but the authors of the bill remain deaf to the chorus of protest and indignation that is beginning to swell as ordinary Americans and members of Congress begin to understand that bankrupt Americans are much like themselves—are exactly like themselves—and that they are only one layoff, one medical bill, one predatory loan away from joining the ranks.

For the debtor and his family the benefit of bankruptcy—despite the embarrassment, despite the humiliation of acknowledging financial failure—is obvious, to get out from crushing debt, to be able to once again attempt to live within one's means, to concentrate one's income on clear priorities such as food, housing and transportation. But it is also the fundamental principles of a just society to ensure that financial mistakes or unexpected circumstances do not mean banishment forever from productive society.

The ''fresh start'' that is under attack here in the Senate today is nothing less than a critical safety net that protects America's working families. As Sullivan Warren and Westbrook put it in ''The Fragile Middle Class'':

> Bankruptcy is a handhold for middle class debtors on the way down. These families have suffered economic dislocation, but the ones that file for bankruptcy have not given up. They have not uprooted their families and drifted from town to town in search of work. They have not gone to the underground economy, working for cash and saying off the books. Instead, these are middle class people fighting to stay where they are, trying to find a way to cope with their declining economic fortunes. Most have come to realize that their incomes will never be the same as they once were. As their comments show, they realize they can live on $30,000 or $20,000 or even $10,000. But they cannot do that and meet the obligations that they ran up while they were making much more. When put to a choice between paying credit card debt and mortgage debt, between dealing with a dunning notice from Sears and putting groceries on the table, they will go to the bankruptcy courts, declare themselves failures, and save their future income for their mortgage and their groceries.

I say to my colleagues, there may be many different standards that different members have for bringing legislation to the floor of the United States Senate. We come from different backgrounds, we come from different states, we have different philosophies about the role of government in society. We have differing priorities. But for God's sake, there should be one principle that all of us can get behind and that is that we should do no harm here in our work in America's working families.

That's what is at stake here. This is a debate about priorities. This is a debate about what side you're on. This is a debate about who you stand with. Will you stand with the big banks and the credit card companies or will you stand with working families, with seniors, with single women with children, with African Americans and hispanics.

But I would say to my colleagues on the floor of the United States Senate today that this is not a debate about winners and losers. Because we all lose if we erode the middle class in this country. We all lose if we take away some of the critical underpinnings that shore up our working families. Sure, in the short run big banks and credit card companies may pad their profits, but in the long run our families will be less secure, our entrepreneurs will become more risk adverse and less entrepreneurial.

How so? Well this how a Georgia Congressman described the issue in 1841:

> Many of those who become a victim to the reverses are among the most high-spirited and liberal-minded men of the country—men who build up your cities, sustain your benevolent institutions, open up new avenues to trade, and pour into channels before unfilled the tide of capital.

This is still true today.

This isn't a debate about reducing the high number of bankruptcies. No way will this legislation do that. Indeed, by rewarding the reckless lending that got us here in the first place we will see more consumers overburdened with debt.

No, this is a debate about punishing failure. Whether self inflicted or uncontrolled and unexpected. This is a debate about punishing failure. And if there is one that this country has learned, punishing failure doesn't work. You need to correct mistakes, prevent abuse. But you also need to lift people up when they've stumbled, not beat them down.

Of course, what the Congress is poised to do here with this bill is even worse within the context of this Congress. This is a Congress that has failed to address skyrocketing drug costs for seniors, this is a Congress that has failed to enact a Patients' Bill of Rights much less give all Americans access to affordable health care. This is a Congress that does not invest in education, that does not invest in affordable child care. This a Congress that has yet to raise the minimum wage.

But instead, we declare war on America's working families with this bill.

What is clear is that this bill will be a death of a thousand cuts for all debtors regardless of whether the means test applies. There are numerous provisions in the bankruptcy reform bill designed to raise the cost of bankruptcy, to delay its protection, to reduce the opportunity for a fresh start. But rather than falling the heaviest on the supposed rash of wealthy abusers of the code, they will fall hardest on low and middle income families who desperately need the safety net of bankruptcy.

I want to take some time to talk about the effect this bill will have on low and middle class debtors. Remember, nearly all debtors who file for bankruptcy are not wealthy scofflaws, but rather people in desperate economic circumstances who file as a last resort to try and rebuild their finances, and, in many cases, end harassment by their creditors. And in particular I want to remind my colleagues of the May 15, 2000 issue of Time magazine whose cover story on this so-called bankruptcy reform legislation was entitled ''Soaked by Congress.''

The article, written by reporters Don Bartlett and Jim Steele, is a detailed look at the true picture of who files for bankruptcy in America. You will find it far different from the skewed version being used to justify this legislation. The article carefully documents how low and middle income families—increasingly households headed by single women—will be denied the opportunity of a ''fresh start'' if this punitive legislation is enacted. As Brady Williamson, the Chairman of the National Bankruptcy Review Commission, notes in the article, the bankruptcy bill would condemn many working families to ''what essentially is a life term in debtor's prison.''

Now proponents of this legislation have tried to refute the Time magazine article. Indeed during these final days of debate you will hear the bill's supporters claim that low and moderate income debtors will be unaffected by this legislation. But colleagues, if you listen carefully to their statements you will hear that they only claim that such debtors will not be affected by the bill's means tests. Not only is that claim demonstrably false—the means test and the safe harbor have been written in a way that will capture many working families who are filing for Chapter 7 relief in good faith—but it ignores the vast majority of this legislation which will impose needless hurdles and punitive costs on all families who file for bankruptcy regardless of their income. Nor does the safe harbor apply to any of these provisions!

You might ask why the Congress has chosen to come down so hard on ordinary working folk down on their luck. How is it that this bill is so skewed against their interests and in favor of big banks and credit card companies? Maybe that's because these families don't have million-dollar lobbyists representing them before Congress. They don't give hundreds of thousands of dollars in soft money to the Democratic and Republican parties. They don't spend their days hanging outside the Senate chamber waiting to bend a Member's ear. Unfortunately it looks like the industry got to us first.

They may have lost a job, they may be struggling with a divorce, maybe there are unexpected medical bills. But you know what? They are busy trying to turn their lives around. And I think it is shameful that at the same time this story is unfolding for a million families across America, Congress is poised to make it harder for them to turn it around. Who do we represent?

I want to take a few minutes to explain exactly what the effects of this bill will be on real life debtors—the folks profiled in the Time article. I hope the authors of the bill will come to the floor to debate on these points. There could be the opportunity for some real progress on an issue that has yet to be addressed by the bill's supporters. Specifically, I challenge them to come to the floor and explain to their colleagues how making bankruptcy relief harder and much more costly to achieve will benefit working families.

Charles and Lisa Trapp were forced into bankruptcy by medical problems. Their daughter's medical treatment left them with medical debts well over $100,000, as well as a number of credit card debts. Because of her daughter's degenerative condition, Ms. Trapp had to leave her job as a letter carrier about two months before the bankruptcy case was filed to manage her daughter's care. Before she left her job, the family's annual income was about $83,000, or about $6900 per month, so under the bill, close to that amount, about $6200, the average monthly income for the previous six months, would be deemed to be their current monthly income, even though their gross monthly income at the time of filing was only $4800. Based on this fictitious deemed income, the Trapps would have been presumed to be abusing the Bankruptcy Code, since their allowed expenses under the IRS guidelines and secured debt payments amounted to $5339. The difference of about $850 per month would have been deemed available to pay unsecured debts and was over the $167 per month triggering a presumption of abuse. The Trapps would have had to submit detailed documentation to rebut this presumption, trying to show that their income should be adjusted downward because of special circumstances and that there was no reasonable alternative to Ms. Trapp leaving her job.

Because their ''current monthly income,'' although fictitious, was over the median income, the family would have been subject to motions for ''abuse'' filed by creditors, who might argue that Ms. Trapp should not have left her job, and that the Trapps should have tried to pay their debts in chapter 13. They also would not have been protected by the safe harbor. The Trapps would have had to pay their attorney to defend such motions and if they could not have afforded the thousand dollars or more that this would have cost, their case would have been dismissed and they would have received no bankruptcy relief. If they prevailed on the motion, it is very unlikely they could recover attorney's fees from a creditor who brought the motion, since recovery of fees is permitted only if the creditor's motion was frivolous and could not arguably be supported by any reasonable interpretation of the law (a much weaker standard than the original Senate bill.) Because the means test is so vague and ambiguous, and creditor could argue that it was simply making a good faith attempt to apply the means test, which after all created a presumption of abuse.

Of course, young Annelise Trapp's medical problems continue and are only getting worse. Under current law, if the Trapps again amass medical and other debts they can't pay, they could seek refuge in chapter 13 where they would be required to pay all that they could afford. Under the new bill, the Trapps could not file a chapter 13 case for five years. Even then, their payments would be determined by the IRS expense standards and they would have to stay in their plan for 5 years, rather than the 3 years required by current law. The time for filing a new chapter 7 would also be increased by the bill, from 6 years to 8 years.

Not only does the majority leader want to ram through bankruptcy legislation on the State Department authorization conference report, which he has literally hijacked for that purpose, there is no question that this is a significantly worse legislation than what passed the Senate. In fact, there is no pretending that this is a bill designed to curb real abuse of the bankruptcy code.

Does this bill take on wealthy debtors who file frivolous claims and shield their assets in multi million dollar mansions? No, it guts the cap on the homestead exemption adopted by the Senate. I ask my colleagues who support this bill: how can you claim that this bill is designed to crack down on wealthy scoff laws without closing the massive homestead loophole that exists in five states, and in a bill that falls so harshly on the backs of low and moderate income individuals?

I wonder how my colleagues who vote for this conference report will explain this back home. How will they explain that they supported letting wealthy debtors shield their assets from creditors at the same time that voted to end the practice under current law of stopping eviction proceedings against tenants who are behind on rent who file for bankruptcy. With one hand we gut tenants rights, with the other we shield wealthy homeowners.

Nor does this bill contain another amendment offered by Senator SCHUMER and adopted by the Senate that would prevent violators of the Fair Access to Clinic entrances Act—which protects women's health clinics—from using the bankruptcy system to walk away from their punishment. Again, I thought the sponsors of the measure wanted to crack down on people who game the system. What could be a bigger misuse of the system then to use the bankruptcy code to get out of damages imposed because you committed an act of violence against a women's health clinic?

And yet the secret conferees on his bill simply walked away. They walked away from the real opportunity to prohibit an abuse that all sides recognize exist, but they also walked away from an opportunity to protect women from harassment. They walked away from the opportunity to protect women from violence.

So why shouldn't people be cynical about this process? Ever since bankruptcy reform was passed by the Senate this bill has gotten less balanced, less fair, and more punitive—but only for low and moderate income debtors. So again, I would say to my colleagues, this bill is a question of our priorities. Will we stand with wealthy dead beats or will we take a stand to protect women seeking reproductive health services from harassment?

But unfortunately, these were not the only areas where the shadow conferees beat a retreat from balance and fairness.

You know, a lot of folks must be watching the progress of this bankruptcy bill over the course of this year with awe and envy. Can my colleagues name one other bill that the leadership has worked so hard and with such determination to move by any and all means necessary? Certainly not an increase in the minimum wage. Certainly not a meaningful prescription drug benefit for seniors, certainly not the reauthorization of the Elementary and Secondary Education Act. On many issues, on most issues, this has been a do nothing Congress. But on so-called bankruptcy reform, the Senate and House leadership can't seem to do enough!

One can only wonder what we could have accomplished for working families if the leadership had the same determination on other issues. Unfortunately those other issues did have the financial services industry behind it. And you have to give them credit—no pun intended—over the past couple of years they have played the Congress like a violin. And what do you know, here we are trying to ram through this bankruptcy bill in the 11th hour as the 106th Congress draws to a close.

In reading the consumer credit industry's propaganda one would think the story of bankruptcy in America is one of large numbers of irresponsible, high income borrowers and their conniving attorney using the law to take advantage of naive and overly trusting lenders.

As it turns out, that picture of debtors is almost completely inaccurate. The number of bankruptcies has fallen steadily over the past months, charge offs (defaults on credit cards) are down and delinquencies have fallen to the lowest levels since 1995, and now all sides agree that nearly all debtors resort to bankruptcy not to game the system but rather as a desperate measure of economic survival.

It also turns out that the innocence of lenders in the admittedly still high numbers of bankruptcies has also been—to be charitable—overstated.

As high cost debt, credit cards, retail charge cards, and financing plans for consumer goods have skyrocketed in recent years, so have the number of bankruptcy filings. As the consumer credit industry has begun to aggressively court the poor and the vulnerable, bankruptcies have risen. Credit card companies brazenly dangle literally billions of card offers to high debt families every year. They encourage card holders to make low payments toward their card balances, guaranteeing that a few hundred dollars in clothing or food will take years to pay off. The lengths that companies go to keep their customers in debt is ridiculous.

In the interest of full disclosure—something that the industry itself isn't very good at—I would like my colleagues to be aware of what the consumer credit industry is practicing even as it preaches the sermon of responsible borrowing. After all, debt involves a borrower and a lender; poor choices or irresponsible behavior by either party can make the transaction go sour.

So how responsible has the industry been? I suppose that it depends on how you look at it. On the one hand, consumer lending is terrifically profitable, with high cost credit card lending the most profitable of all (except perhaps for even higher costs credit like payday loans). So I guess by the standard of responsibility to the bottom line they have done a good job.

On the other hand, if you define responsibility as promoting fiscal health among families, educating on judicious use of credit, ensuring that borrowers do not go beyond their means, then it is hard to imagine how the financial services industry could be bigger deadbeats.

According the Office of the Comptroller of Currency, the amount of revolving credit outstanding—i.e. the amount of open ended credit (like credit cards) being extended—increased seven times during 1980 and 1995. And between 1993 and 1997, during the sharpest increases in the bankruptcy filings, the amount of credit card debt doubled. Doesn't sound like lenders were too concerned about the high number of bankruptcies—at least it didn't stop them from pushing high cost credit like candy.

Indeed, what do credit card companies do in response to ''danger signals'' from a customer that they may be in over their head. According to ''The Fragile Middle Class'' an in depth study of who files for bankruptcy and why, the company's reaction isn't what you would think.

In other words, those folks who may have come into your office this year or last year talking about how they needed protection from customers who walked away from debts, who thought Congress should mandate credit counseling—to promote responsible money management—as a requirement for seeking bankruptcy protection, who argued that reform of the bankruptcy code is needed because of decline in the stigma of bankruptcy have been pouring gasoline on the flames the whole time. Of course, in the end, if this bill passes, it's working families who get burned.

But guess what? It gets even worse, because the consumer finance industry isn't just reckless in its lending habits, big name lenders all too often break or skirt the law in both marketing and collection.

For example:

In June of this year the Office of the Comptroller of the Currency reached a settlement with Providian Financial Corporation in which Providian agreed to pay at least $300 million to its customers to compensate them for using deceptive marketing tactics. Among these were baiting customers with ''no annual fees'' but then charging an annual fee unless the customer accepted the $156 credit protection program (coverage which was itself deceptively marketed). The company also misrepresented the savings their customers would get from transferring account balances from another card.

In 1999, Sears, Roebuck & Co. paid $498 million in settlement damages and $60 million in fines for illegally coercing reaffirmations—agreements with borrowers to repay debt—from its cardholders. But apparently this is just the cost of doing business: Bankruptcy judges in California, Vermont, and New York have claimed that Sears is still up to its old strong arm tactics, but is now using legal loopholes to avoid disclosure. Now colleagues, Sears is a creditor in one third of all personal bankruptcies. And by the way, this legislation contains provisions that would have protected Sears from paying back any monies that customers were tricked into paying under these plans.

This July, North American Capital Corp., a subsidiary of GE, agreed to pay a $250,000 fine to settle charges brought by the Federal Trade Commission that the company had violated the Fair Debt Collection Practices Act by lying to and harassing customers during collections.

In October 1998, the Department of Justice brought an antitrust suit against VISA and Mastercard, the two largest credit card associations, charging them with illegal collusion that reduced competition and made credit cards more expensive for borrowers.

These are just a few examples, I could go on and on. At a minimum, these illegal and unscrupulous practices rob honest creditors who play by the rules of repayment. And the cost to debtors and other creditors alike are tremendous.

But other practices are not illegal, merely unsavory.

Let me repeat myself in case my colleagues somehow missed the blatant hypocrisy of what's going on here: The big banks and credit card companies are pushing to rig the system so that you cannot file for bankruptcy unless you perform credit counseling at the same time that they are jeopardizing the health the credit counseling industry and making it significantly more costly for debtors.

That is pretty brazen, but as my colleagues will hear over and over in this debate, this isn't just an industry that wants to have it both ways, it wants to have it several different ways.

Of course, these are mild abuses compared to predatory lending. Schemes such as payday loans, car title pawns, and home equity loan scams harm tens of thousands of more Americans on top of those shaken down by the mainstream creditors. Such operators often target those on the economic fringe like the working poor and the recently bankrupt. They even claim to be performing a public service: providing loans to the uncreditworthy. It just also happens to be obscenely profitable to overwhelm vulnerable borrowers with debt at usurious rates of interest. Hey, who said good deeds don't get rewarded?

Reading this conference report makes it clear who has the clout in Washington. There is not one provision in this bill that holds the consumer credit industry truly responsible for their lending habits. My colleagues talk about the message they want to send to deadbeat debtors, that bankruptcy will no longer be a ''free ride'' to a clean slate. Well what message does this bill send to the banks, and the credit card companies? The message is clear: make risky loans, discourage savings, promote excess, and Congress will bail you out by letting you be more coercive in your collections, by putting barriers in between your customers and bankruptcy relief, and by ensuring that the debtor will emerge from bankruptcy with his vassalage to you intact. This is in stark contrast to the numerous punitive provisions of the bill aimed at borrowers.

The record is clear: lenders routinely discourage healthy borrowing practices, encourage excessive indebtedness and impose barriers to paying of debt all in the name of padding their profits. It would be a bitter irony if Congress were to reward big banks, credit card companies, retailers and other lenders for their bad behavior, but that exactly what passage of bankruptcy reform legislation would do.

I would characterize the debate like this and make it very simple for my colleagues. This is fundamentally a referendum on Congress' priorities and you simply need to ask yourself: whose side am I on? Am I on the side of the working families who need a financial fresh start because they are overburdened with debt? Am I for preserving this critical safety net for the middle class? Will I stand with the civil rights community, and religious community, and the women's community, and consumer groups and the labor unions who fight for ordinary Americans and who oppose this bill?

Or will you stand with the credit card companies, and the big banks, and the auto lenders who desperately want this bill to pad their profits? I hope the choice will be clear to colleagues.

Let me say a few words about the process on this legislation, which is terrible. The House and Senate Republicans have taken a secretly negotiated bankruptcy bill and stuffed it into the State Department authorization bill in which not one provision of the original bill remains. Of course, State Department authorization is the last of many targets. The majority leader has talked about doing this on an appropriations bill, on a crop insurance bill, on the electronic signatures bill, on the Violence Against Women Act. So disparate are we to serve the big banks and credit card companies that no bill has been safe from this controversial baggage.

We are again making a mockery of scope of conference. We are abdicating our right to amend legislation. We are abdicating our right to debate legislation. And for what? Expediency. Convenience.

However, I am not sure that we have ever been so brazen in the past. Yes we have combined unrelated, extraneous measures into conference reports. Usually because the majority wishes to pass one bill using the popularity of another. Putting it into a conference report makes it privileged. Putting into a conference report makes it unamenable. So they piggy back legislation. Fine. But this may be the first time in the Senate's history where the majority has hollowed out a piece of legislation in conference—left nothing behind but the bill number—and inserted a completely unrelated measure.

I challenge my colleagues to walk into any high school civics class room in America and explain this process. Explain this new way that a bill becomes law. What the majority has essentially done is started down the road toward a virtual tricameral legislature—House, Senate, and conference committee. But at least the House and the Senate have the power under the constitution to amend legislation passed by the other house—measures adopted by the all-powerful conference committee are not amendable.

Is bankruptcy reform so important that we should weaken the integrity of the Senate itself? It is not. I question whether any legislation is that important, but to make such a blatant mockery of the legislative process on a bill that is going to be vetoed anyway? That is effectively dead? Just to make a political point? What have we come to?

This is a game to the majority. The game is how to move legislation through the Senate with as little interference as possible from actual Senators.

I remind my colleagues of what Senator KENNEDY said 4 years ago when the Senate voted to gut rule XXVIII, the Senate rule limiting the scope of conference which we are violating with this conference report. Speaking very prophetically he said:

> The rule that a conference committee cannot include extraneous matter is central to the way that the Senate conducts its business. When we send a bill to conference we do so knowing that the conference committee's work is likely to become law. Conference reports are privileged. Motions to proceed to them cannot be debated, and such reports cannot be amended. So conference committees are already very powerful. But if conference committees are permitted to add completely extraneous matters in conference, that is, if the point of order against such conduct becomes a dead letter, conferees will acquire unprecedented power. They will acquire the power to legislate in a privileged, unreviewable fashion on virtually any subject. They will be able to completely bypass the deliberative process of the Senate. Mr. President, this is a highly dangerous situation. It will make all of us less willing to send bills to conference and leave all of us vulnerable to passage of controversial, extraneous legislation any time a bill goes to conference. I hope the Senate will not go down this road. Today the narrow issue is the status of one corporation under the labor laws. But tomorrow the issue might be civil rights, States' rights, health care, education, or anything else. It might be a matter much more sweeping than the labor law issue that is before us today.

He was absolutely right. We are headed down that slippery slope he described. For the last three years we have handled appropriations in this manner. We have combined bills, the text is written by a small group of Senators and Congressmen and these bills have been presented to the Senate as an up or down proposition. And now we're doing it with so-called bankruptcy reform.

Conference reports are privileged. It is very difficult for a minority in the Senate to stop a conference report as they can with other legislation. That is why these conference reports are being used in this way, and that is why the rules are supposed to restrict their scope.

Last year, Senator DASCHLE attempted to reinstate rule 28 on the Senate floor. He was voted down, and he spoke specifically about how we have corrupted the legislative process in the Senate:

> I wish this had been a one time event. Unfortunately, it happens over and over and over. It is a complete emasculation of the process that the Founding Fathers had set up. It has nothing to do with the legislative process. If you were to write a book on how a bill becomes a law, you would need several volumes. In fact, if the consequences were not so profound, some could say that you would need a comic book because it is hilarious to look at the lengths we have gone to thwart and undermine and, in an extraordinary way, destroy a process that has worked so well for 220 years.

So where does it stop? As long as the majority want to avoid debate, as long as the majority wants to avoid amendments and as long as Senators will go along to get along we will find ourselves forced to cast up or down votes on legislation—a rubber stamp yes or no—with no ability to actually legislate.

Each Senator who today votes for this conference report should know they may find themselves in the majority today, they may be OK with letting this bill go because they are not offended by what it contains, but be forewarned, the day will come when you will be on the other side of this tactic. Today it is bankruptcy reform, but someday you will be the one protesting the inclusion of a provision that you believe is outrageous.

Regardless of the merits of bankruptcy reform, this is a terrible process. I would urge my colleagues to vote no to send a message to the leadership. Send a message that you want your rights as Senators back.

Finally, I end on this note. I think many in this body believe that a society is judged by its treatment of its most vulnerable members. By that standard, this is an exceptionally rough bill in what has been a very rough Congress. All the consumer groups oppose this bill, 31 organizations devoted to women and children's issues oppose this legislation.

There is no doubt in my mind that this is a bad bill. It punishes the vulnerable and rewards the big banks and credit card companies for their own poor practices. And this legislation has only gotten worse in the sham conference.

Earlier, I used the word "injustice" to describe this bill—and that is exactly right. It will be a bitter irony if creditors are able to use a crisis—largely of their own making—to convince Congress to decrease borrower's access to bankruptcy relief. I hope my colleagues reject this scheme and reject this bill.

Mr. President, I will not repeat what I said yesterday at the beginning of this debate. I will respond to some comments that were made on the floor dealing with chapter 12.

Some of my colleagues have talked about chapter 12 farmers' bankruptcy relief, and they have made the argument that opposition to this bankruptcy bill has really held up chapter 12, which is very important for protection of family farmers. I point out to colleagues that it is precisely the opposite case.

A year ago when it first became clear that this bankruptcy bill, for very good reasons, was not going to move forward, under the able leadership of Senators and Representatives—Senators such as Senator GRASSLEY—legislation was introduced and passed which extended chapter 12 bankruptcy protection for farmers. Within about 20 days, it was signed by the White House and passed. No problem.

This past summer, in June, the House passed an extension, but for some reason the majority leader took no action over here. Then in October, the House passed a 1-year extension for chapter 12 for family farmers. Again, the majority leader took no action over here.

This can pass within 24 hours. What we have here is a bit of a game going on where chapter 12 becomes held hostage to a bankruptcy bill with many harsh features which will be vetoed by the President and, in my view, either the veto will be sustained or we will not be here and it will be pocket vetoed and it will not become law and should not become law.

But let me be clear. Chapter 12, the bankruptcy relief for family farmers, can be passed separately within a day or two. It is not a problem. So no one from any ag State should believe that somehow you have to vote for a harsh piece of legislation, that targets the most vulnerable citizens, that is completely one sided, that calls for no accountability from credit card companies or larger banks, in order to get bankruptcy relief for family farmers. It is just simply not true.

The proponents of this bill have argued—they have been pretty explicit about this—that often the people who are filing for chapter 7 do so because they want to get out of their obligations, because they are untrustworthy, because they are dishonest, and because they sort of feel no stigma in filing for bankruptcy.

I would, one more time, like to point out on the floor of the Senate that about 50 percent of the people who file for chapter 7 do so because of major medical bills that have put them under. Quite often, it becomes a double whammy: Either you not only are faced with a major medical bill that puts your family under—we have not done anything to help our families afford health care—or, which is the double whammy, you cannot work because you are the one who is ill, in which case you lose your income, or it can be a loved one who is faced with a serious illness or disabling injury and you are the one who takes care of them, in which case, again, you can lose your job and your income.

So I do not really think we ought to be viewing families who file chapter 7 because of major medical bills as dishonest or untrustworthy.

Now the largest single group of those citizens who file for bankruptcy are women. They are one-third of all the filers. They are the fastest growing group. Since 1981, the number of women filing alone increased by more than 700 percent.

It is not so surprising that single parents—women with children—are among the largest or disproportionate number of people who file for bankruptcy. Because, in addition to medical costs, divorce is a major factor in bankruptcy—income drops—women again are especially hard hit. Many of them have not worked prior to divorce, and now they have custody of the children and find themselves in very difficult financial circumstances.

Are single women with children deadbeats? All too much of this bill assumes they are. The new nondischargeability of credit card debt will hit hard those women who use the cards to tide them over after divorce until their income stabilizes. The safe harbor in the conference report, which proponents argue will shield low- and moderate-income debtors from the means test, will not benefit many single mothers who need the help the most because it is based upon the combined income of the debtor and the debtor's spouse, even if they are separated. The spouse is not filing for bankruptcy, and the spouse is providing no support for the debtor or children, but that spouse's income is considered.

This piece of legislation does not provide a whole lot of help to many hard-pressed single parents, most of whom are women.

I have heard some of my colleagues out here on the floor talking about economic growth, low unemployment, saying: Given this economic performance, how can you have people filing for bankruptcy? Surely, it must be, again, that these are people who feel no stigma.

You know what. This rosy picture masks the fact that there is real pain in certain industries, and there are certain communities and certain families under siege.

This is a news release from the LTV Corporation, Hoyt Lakes, MN, which had previously announced on May 24, 2000, its intention to close the local mining operation. They were going to close at the end of the summer. Now they have said, in this release, that they are going to cease permanently on February 24, 2001. This is some holiday gift from this company to—I don't know—1,300 or 1,400 miners. These miners and their families wonder what is going to happen to them. These are the kinds of families who all too often find themselves in these difficult economic circumstances, even with this booming economy, and quite often have to file for chapter 7.

Are we going to make the argument that these families are without a sense of responsibility? Are we going to make the argument that these families are loafers and they feel no stigma?

What does this piece of legislation do to help keep people from having to undergo these wrenching experiences that force them into bankruptcy? Nothing. Zero. Tough luck. The only thing this piece of legislation does is make it harder for people to file bankruptcy, to file chapter 7, to rebuild their lives.

We do not do anything to help on health care costs. We do not do anything in terms of dealing with the unfair dumping of steel with a fair trade policy. We do not do anything in terms of passing an Elementary and Secondary Education Act. We do not do anything on affordable housing. We do not raise the minimum wage. We do not do anything to make these families more economically secure. But instead, what we do is we make it difficult for people to rebuild their lives.

This is sham reform. When you push the rhetoric aside, one thing becomes clear: The bankruptcy system is a critical safety net for many middle-class, working-class, low-income families. It is a difficult, demoralizing process, but it is a critical safety net for families. And we are tearing up that safety net.

I say to my colleagues, there may be many different standards that different Members have when they bring legislation to the floor of the Senate. We come from different backgrounds. We come from different States. We have different philosophies about the role of Government in society. We have different priorities. But, for God's sake, there should be one principle that all of us can get behind, and that is that we should do no harm to the most vulnerable people and most vulnerable families in this country.

I believe strongly—and I have argued yesterday and today—that that is exactly what we are doing. That is what is at stake here. This is a debate about priorities. This is a debate about what side you are on. This is a debate about with whom you stand. Will you stand with the big banks and credit card companies or will you stand with hard-pressed families, with seniors, with single women with children, with African Americans, with Hispanics, with people of color, with consumers?

What the Congress is poised to do here with this bill is worse within the context of this Congress because this is a Congress that has failed to address skyrocketing drug costs for seniors; this is a Congress that has failed to pass a Patients' Bill of Rights; this is a Congress that has failed to make sure that Americans have access to affordable health care; this is a Congress that has failed to invest in education; this is a Congress that has failed to invest in affordable child care; this is a Congress that has failed to raise the minimum wage. But instead, with this bill we declare war on working families.

What is clear is that this piece of legislation will be a death of a thousand cuts for all debtors regardless of whether the means test applies.

There are numerous provisions in the bankruptcy reform bill designed to raise the cost of bankruptcy, to delay its protection, to reduce the opportunity for a fresh start. But rather than falling heaviest on the supposed rash of wealthy abusers of the Code, they will fall hardest on low- and middle-income families who desperately need this safety net of bankruptcy.

I commend to my colleagues, but I will not take a lot of time on it, the May 15, 2000, issue of Time magazine whose cover story on so-called bankruptcy reform legislation was entitled ''Soaked by Congress.'' I hope they will read it.

I will quote from Brady Williamson, Chairman of the National Bankruptcy Commission. Please remember, 116 law professors in this country who teach bankruptcy law, who do their scholarship in this area, have said this bill is harsh and one-sided, without balance, and should not pass.

Brady Williamson, Chairman of the National Bankruptcy Review Commission, notes in the article from Time magazine: The bankruptcy bill would condemn many working families to ''what essentially is a life term in debtors' prison.

I will talk a little bit about this piece of legislation in relation to what the Senate passed before. Not only does the majority leader want to ram through bankruptcy legislation on the State Department authorization conference report, which he has literally hijacked for this purpose, there is no question that this is a significantly worse piece of legislation—I heard colleagues yesterday say ''better''—than passed by the Senate. Does this piece of legislation take on wealthy debtors who file frivolous claims and shield their assets in multimillion-dollar mansions? No. It guts the cap on the homestead exemption which was adopted by the Senate. It was taken out in conference.

I ask my colleagues who support this bill, how can you claim that this bill is designed to crack down on wealthy scoff laws without closing the massive homestead loophole that exists in five States? And in a bill that falls so harshly on the backs of low- and moderate-income individuals, you have a huge exemption for people who can go buy million-dollar plus mansions. How do you explain that back home? How will you explain that you supported letting wealthy debtors shield their assets from creditors at the same time you voted to end the practice under current law of stopping eviction proceedings against tenants who were behind on rent and who filed for bankruptcy? Poor tenants are evicted. Wealthy people can shield their assets and go buy multimillion-dollar homes. On the one hand, we gut tenants' rights, while on the other hand we shield wealthy homeowners. That is what this piece of legislation is about.

Nor does this bill contain another amendment offered by Senator SCHUMER and adopted by the Senate that would prevent violators of the Fair Access to Clinic Entrances Act, which protects women's health clinics, from using the bankruptcy system to walk away from their punishment.

Some folks are watching the progress of this bill and they are watching the way this bill has developed over the last year with a considerable amount of awe and envy. Can my colleagues name one other bill on which the leadership has worked so hard and with such determination to move by any and all means necessary? Certainly not an increase in the minimum wage; that is not a priority. Certainly not a meaningful prescription drug benefit for seniors; that is not a priority. Certainly not reauthorization of the Elementary Secondary Education Act. On many issues, on most issues, there has been nothing done in this do-nothing Congress. But on the so-called bankruptcy reform, the Senate and House leadership can't seem to get enough. One can only wonder what we could have accomplished for working families if the leadership had the same determination on these other issues. Unfortunately, those other issues did not have the financial services industry behind them.

You have to give them credit, no pun intended. Over the past couple of years, the financial services industry has played this Congress like a violin. And what do you know, we are trying to ram through this bankruptcy bill in the 11th hour as the 106th Congress comes to a close.

In reading the consumer credit industry's propaganda, you would think the story of bankruptcy in America is one of large numbers of irresponsible, high-income borrowers and their conniving attorneys using the law to take advantage of naive and overly trusting lenders. As it turns out, that picture of the debtors is almost completely inaccurate. The number of bankruptcies has fallen steadily over the past several months. It turns out that the people about whom we are talking are vulnerable citizens. The major reason is major medical costs. I have made that argument.

As high-cost debt, credit cards, retail charge cards and financing plans for consumer goods have skyrocketed in recent years, so have the number of bankruptcy filings. As the consumer credit industry has begun to aggressively court the poor and the vulnerable, bankruptcies have risen. Credit card companies brazenly dangle literally billions of credit card offers to high-debt families every year. There is no accountability for them. They encourage credit card holders to make low payments toward the card balances, guaranteeing that a few $100 in clothing or food will take years to pay off. The lengths these companies go to keep their consumers in debt is ridiculous.

So in the interest of full disclosure, something that the industry itself is not very good at, I would like my colleagues to be aware of what the credit card industry is practicing even as it preaches the sermon of responsible borrowing. After all, debt involves a borrower and a lender. Poor choice, irresponsible behavior by either party can make the transaction go sour. So how responsible has the industry been? It depends upon how you look at it.

On the one hand, consumer lending is terrifically profitable, with high-cost credit card lending the most profitable of all, except for perhaps even higher cost credit such as payday loans. So I guess by the standard of responsibility to the bottom line, this industry is doing great.

On the other hand, if you define responsibility as promoting fiscal health among families, educating on judicious use of credit, ensuring that borrowers do not go beyond their means, then it is hard to imagine how the financial services industry could be bigger deadbeats.

From studies from the Office of the Comptroller of Currency, some of the settlements that have been reached with Providian Financial Corporation, Sears & Roebuck, American Capital Corporation, a subsidiary of GE, the Department of Justice brought an antitrust suit against Visa and Mastercard. We have example after example after example of abuses by this industry but not one word in this piece of legislation that calls for any accountability.

In case my colleagues miss the blatant hypocrisy of what is going on here, the big banks and credit card companies are pushing to rig the system so you cannot file for bankruptcy unless you perform credit counseling, at the same time that they are jeopardizing the health of the credit counseling industry by pumping credit cards, by themselves abusing the system, and hardly making it easier for people, only making it more difficult.

To make it simple for my colleagues, this debate is fundamentally a referendum on Congress's priorities. You simply need to ask yourself again: Whose side am I on?

Are you on the side of working families who need a financially fresh start because they are overburdened with debt? Fifty percent of bankruptcies are because of major medical bills. Are you for preserving this critical safety net for the middle class? Will you stand with the civil rights community and the religious community and the women's community and consumer groups and labor unions who fight for ordinary Americans who oppose this bill or will you stand with the credit card companies and the big banks and the auto lenders who desperately want this bill to pad their profits?

I hope there is a clear choice for Senators.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

First of all, in response to the Senator from Minnesota, I was a little bit amused at the use of the words ''blatant hypocrisy.'' I don't question his use of those words at all. But the fact is that this bill passed with 83 Senators voting for it. It passed the Senate and went to conference. Three-fourths of the members of his caucus voted for this legislation. If there is blatant hypocrisy, it is very bipartisan hypocrisy.

Mr. WELLSTONE. Mr. President, will the Senator yield for a question?

Mr. GRASSLEY. I sure will, only for the purpose of a question.

Mr. WELLSTONE. My understanding is that the bill passed with the Schumer provision in it, and it also dealt with the homestead exemption. That is a different bill from the one we are considering right now. Am I not correct?

Mr. GRASSLEY. The Senator is correct, but his reference was in regard to the credit card industry—not the Schumer amendment and not the provision on homestead.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, second, the interest in this legislation and the reason this is such an important piece of legislation is that there is a lot of understanding at the grassroots of America that it is immoral and unethical for people with the ability and the means to repay some of their debt to go into bankruptcy court and be discharged of that debt.

It is particularly wrong when it hurts the very same low-income and middle-income people about whom the Senator from Minnesota talks. They have to pay $400 more per family per year for goods and services. They pay a higher fee or price because somebody else isn't paying their bills. That is not going to be absorbed by the business in most cases; it is going to be passed on to the consumer.

On the basis of ability to pay, particularly for the necessities of life of food and clothing and things of that nature, it is going to hurt the low-income people and middle-income people of America disproportionately because somebody else isn't paying their bills. There is an understanding at the grassroots of America that this just isn't right. That is why this legislation has such overwhelming support.

I refer to this chart because it has letters from my constituents. I bet the Senators from Minnesota and other States are getting letters from their constituents saying the same thing.

We have a letter from a constituent of mine in Des Moines who says:

> It is insane that such practice has been allowed to continue causing higher prices to consumers. Debtors should be required to pay their debts.

A constituent from Keokuk, IA:

> Bankruptcies are out of hand. It is time to make people responsible for their actions. Do we need to say this?

In other words, it is unconscionable to that constituent that we would have a situation with 1.4 million bankruptcies in America, with the number doubling in 5 or 6 years, at a time when we have the best economic growth in our Nation.

Another constituent:

> We need to make more people responsible for their savings while at the same time protecting those who fall on hard times. I realize this is a delicate balance. But the way it is now, there is very little change going this route.

This bill is a very delicate balance. That is why it passed with 83 votes. It also preserves what this constituent said in the letter. She understands that there are some people who go into debt through no fault of their own. And for the 100-year history of the bankruptcy code of the United States, we have recognized that certain people may be in hard times through no fault of their own and they are entitled to a fresh start. This allows that fresh start. But, at the same time for those who have the ability to repay, it sends a clear signal to not go into bankruptcy court because you are not going to get off scot-free anymore.

Another constituent from Fontanelle, IA, says:

> People need to be more responsible for their debts. As a small business owner, I have had to withstand several large bills people have left with me due to their poor management and bankruptcy.

That may be a small business person who, unlike a lot of corporations, cannot pass on this $400 per family in additional costs for goods and services because somebody else isn't paying their bills. This person may be so small that they have to absorb those costs unfairly and may be putting their own business in jeopardy.

Another constituent from Cedar Rapids:

> Bankruptcy reform will force the American people to become more responsible for their actions. Bankruptcy does not seem to carry any degree of shame. It is almost regarded as a right or entitlement.

If it has become a right or entitlement, the statistics of the last 6 or 7 years show an increase of about 700,000 to 1.4 million. It is an example maybe of some additional people in America seeing it as a way to manage their finances. It becomes a financial management tool for some.

Another constituent from Waverly, IA:

> Many don't think the business is who loses. We make it too easy now.

A constituent from Washington, IA:

> The present bankruptcy laws are a joke. One local man has declared bankruptcy at least four times at the expense of suppliers to him. He just laughs at it.

There is a person who quite obviously figured out the ease of using bankruptcy as a financial planning tool.

A Cedar Falls constituent:

> It is way too easy to avoid responsibility.

From Indiana, IA:

> If one assumes debt, they need to pay it off. We have got to take responsibility for our purchases.

That reminds me of the President in his speeches during his second term, and maybe even at the ending of his first term. He always talked about the importance of individual responsibility and individuals have to be responsible.

As we hopefully present this bill to the President of the United States today, I want to remind President Clinton of how often he talked about the necessity of individual responsibility. If he believes that—and I believe he does believe it—then signing this bill is very important to fulfill his own statement that government ought to promote individual responsibility.

A constituent from Harlan, IA:

> Too many people use bankruptcy as a way out. We need to make sure people are held accountable for all of their debts.

From Fort Madison:

> Personal responsibility is a must in our country. Sickness or loss of a job is one thing, but the majority of people just do not pay and spend their money elsewhere knowing they can unload the debt with the help of the courts.

That is a person who understands the basic principles of bankruptcy: No. 1, sickness, loss of a job, something beyond the control of an individual, there ought to be, and there has been for 100 years under a bankruptcy code, the right for a fresh start.

The other side of that is whether there is an ability to repay. People should pay what they can according to the ability to pay the debt. It also recognizes there are some people, again, who use this as a financial planning tool.

One of my constituents I quote is from Cedar Rapids:

> I think people taking bankruptcy should have to pay the money back. . . . They should have learned to work for and pay for what they get.

Maybe that statement is not quite as sympathetic to those people who are in bankruptcy through no fault of their own. I don't know for sure. But I am happy to tell that constituent the principle behind this bill, the principle behind the bankruptcy code of the last 100 years, that there is a social policy in this country that some people are in debt through no fault of their own and they are entitled to a fresh start. She thought there should never be a bankruptcy or nobody should be able to go to bankruptcy court.

That is the balance of this legislation. This is a balance that has been recognized by the vast majority of this body with those 83 votes we had for original passage. There are things about this legislation I don't like. There are some things that even the Senator from Minnesota said should be tightened up. I won't go into what those are, but I agree with him.

In legislation, particularly as this legislation is, with varying interests—some not wanting any and some wanting a lot more—compromise is the name of the game. There hasn't been a compromise of basic principle here. There may be a compromise of degree, and I am not going to give up just because this bill passes and it is not as much in the direction he wants or I happen to agree with him on a couple of points and perhaps I might move in that direction in the future.

But we have had 20 years without bankruptcy reform. We have gone from 300,000 bankruptcies filed per year in the early 1980s to 1.4 per million now, and we have had studies showing it will go up another 15 percent. These are in good times. What about bad times, if we have a recession in the future? There are indications of a Clinton recession coming on now with the indices turning down and confidence in the economy turning down and the manufacturing sector being in recession. Maybe we are starting in this administration with a recession. Then if we are at 1.4 million when times are good, how many hundred thousands more are we going to have when we do have bad times?

When we have bad economic times, high interest rates are not good for the economy. We had testimony from Secretary Summers that bankruptcies will drive up interest rates.

I appreciate very much my friend from Minnesota and his strong position against this bill, even though I disagree with it. Hopefully, in the very next couple of hours he will not be successful in what he has been so successful doing for the last year and a half, not wanting this bill to pass. He has been a tough competitor and one I enjoy competing against. But I think he is very much wrong as he approaches this bill. The evidence is the wide bipartisan support it has had not only in this body, but it passed originally by a veto-proof margin in the House of Representatives.

I yield the floor.

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Minnesota.

Mr. WELLSTONE. First of all, let me say I like my colleague from Iowa so much that I will let his comment about the Clinton recession pass and not respond to that.

I also want to make it clear that my use of the word ''hypocrisy'' of course was not aimed at any Senator and certainly not the Senator from Iowa, who I actually really love working with even though we don't agree on all policies.

I have to say one more time that there is a lot of hypocrisy in a piece of legislation that on the one hand goes after this percentage and on the other hand in conference committee knocks out an amendment, so that now we have millionaires in a position to be able to shield their money and go buy multimillion-dollar homes in other States.

If that is not hypocrisy, I don't know what is. If that doesn't tell you about how lopsided a piece of legislation this is, I don't know what does.

I also think it is more than just a little hypocritical to have a piece of legislation that in the main targets the most vulnerable citizens—I have made that point over and over again—with study after study saying that the highest percentage would be 12 percent, probably 3 percent of the people at most ''gaming'' this.

People who file for chapter 7 do so because they are in difficult circumstances. Major medical illness puts them under, a divorce, loss of job.

But at the same time that we are now going to make it virtually impossible for many families who find themselves in difficult economic circumstances to rebuild their lives, we don't have one word to say by way of demanding some accountability for these credit card companies that push this debt on to people, that send these cards to our kids, that do all the solicitation, that charge exorbitant interest rates, that are reckless in their lending policies. Not a word. Not a word.

Could it be these are the people with more clout in the Congress? I fear that is part of the problem.

I say to my colleague from Iowa and other Senators, it is simply not the case that most of the people who file for bankruptcy are gaming the system. Let me give a case study which goes to why this bill is so profoundly wrong. LTV is going to shut down. Miners up on the Iron Range are going to be without a job.

I know the way this bill works. It is an honest disagreement, but it is a wrong disagreement. If one of these families 2 months from now has a major illness—now they are going to have trouble paying their mortgage—do you know what this bill does? This bill doesn't figure their income in February, after they have been laid off. This bill figures their average income over the prior 6 months, during all the times they were gainfully employed.

That is not going to work for these miners, that is not going to work for these hard-pressed working families, and you had better believe I am going to be out here on the Senate floor raising Cain in behalf of these Minnesotans.

Finally, let me one more time, before my colleague from Vermont takes the floor, remind all Senators, but especially Democrats: This is the majority leader, I believe, who has made a mockery of the legislative process. We have taken a State Department embassy bill and gutted it. There is not a word left; there is only a number. Instead, you had a bankruptcy bill put in, completely unrelated—never mind rule XXVIII—without the deliberation, without the debate, without the ability offer an amendment. This is not the way we legislate. This is the Senate at its very worst.

There may be a different majority 2 years from now. We can do the same thing to the minority. Frankly, it should not be done by anyone. I certainly hope Democrats will vote against this. The minority leader yesterday said he is going to vote against this bill because, he said, it does not meet the standard of fairness. And it does not—not on substance and not on process, not on the basic standard of what the Senate should be about. I hope Senators will vote against this piece of legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, parliamentary inquiry: How much time is available to the Senator from Vermont?

The PRESIDING OFFICER. The Senator has 29 minutes.

Mr. LEAHY. I thank the Chair. I like to see him back. I wish we were not still in session, but I suspect the Presiding Officer probably had things he might have planned to be doing during this time, as did my distinguished friend from Iowa.

My distinguished friend from Iowa and I have been here for numerous lame duck sessions. After 26 years here, I have yet to see what good was ever accomplished in one of these lame duck sessions. I think the statement made by my distinguished friend from Minnesota just now emphasizes the kind of mischief that sometimes happens in lame duck sessions, when people want to leave, yet we have, as in this case, a bankruptcy bill that none of the Democrats had a chance, really, to do much about. It gets put in—what was it, I ask my friend from Minnesota, a bill on embassies?

Mr. WELLSTONE addressed the Chair.

Mr. LEAHY. I yield on my time.

Mr. WELLSTONE. My colleague is correct. That is right. Though there is not a word about that. There is nothing left except for the bill number.

Mr. LEAHY. This was not a case where there was a concern the embassies were all going bankrupt? The embassy in London or in Moscow or, heaven forbid, in Dublin, might be in bankruptcy court in the Southern District of New York? That is not the case?

Mr. WELLSTONE. I say to my colleague from Vermont that argument has not been made. So far, that argument has not been made.

Mr. LEAHY. I thank my friend from Minnesota. I appreciate his pointing this out. I just want students who might look at this afterward and wonder what bankruptcy has to do with embassies to go back and read what the distinguished Senator from Minnesota says, which is, of course, that it has absolutely nothing to do with embassies. It is a parliamentary trick to get a piece of special interest legislation through.

It is unfortunate this kind of trick had to be carried out because the Republican majority could have worked with the President, they could have worked with the Democrats, to pass bankruptcy legislation that is more balanced and more fair. We did this 2 or 3 years ago. I remember Senator GRASSLEY, Senator DURBIN, others, worked together and we passed a piece of bankruptcy legislation that was here in the Senate. It was strongly backed by both Democrats and Republicans. I think we passed it by 97 or 98 votes. There was only one vote against it. It was overwhelmingly passed. It shows what happens when Republicans and Democrats work together.

Mr. President, I am disappointed that the majority refuses to work with the President and us to pass bankruptcy legislation that is better balanced and more fair. Despite the President's repeated attempts to offer reasonable compromises for the last six months, the majority is continuing to push this unfair and unbalanced bill. It appears that the same mistakes that killed a chance for passage of the bipartisan balanced bankruptcy reform 2 years ago, in the last Congress, are being repeated in this Congress. We should work together to finish the work of the 106th Congress. Instead, there seems to be this effort to pass flawed legislation that virtually guarantees a Presidential veto.

I had hoped we would have acted on the administration's four letters on the resolution of key issues needed for the President to sign a fair and balanced bill, that we could have at least met to discuss them so we could have a bill the President could sign.

I am the ranking Democrat currently on the Senate Judiciary Committee. I was not a conferee of the conference report. Instead, the Republican leadership created a sham conference to create and file this flawed bankruptcy bill to make sure the Democrats would not have any say over it. It might be a nice exercise. It might look good in fundraising letters. But when you have a Democratic President, it is obvious we are spending hundreds of thousands of dollars of time, effort, and taxpayer money up here to pass something that is not going to be signed into law. It may help for the next fundraiser, but it does not help bringing about the kind of bankruptcy reform we actually need in this country.

The Senate had requested a conference in August 1999 on legislation to enhance security of U.S. missions and the security of personnel overseas and to authorize appropriations for the State Department, what the distinguished Senator from Minnesota was just talking about. That did not proceed.

On October 11, 2000, the House appointed conferees not from the committee with jurisdiction over any embassy security issues, but from the House Judiciary Committee. Then a few hours later, out of nowhere, the leadership filed a conference report that strikes every aspect of the underlying legislation on which the two Houses had gone to conference and put in this wholly unrelated matter with reference to a bankruptcy bill that had not even passed. It had only been introduced that day. There was no debate, nothing. It is like: Whoops, open the closet door, let the special interests out, slam it down, and please pass it.

We Americans are great at telling other countries how to run democracies. We each tell them how to run elections. I hope in the last couple of years those countries that get lectures from us about how to run their democracies have not been watching how matters have slipped before the U.S. Senate. Matters of great consequence are slipped before the U.S. Senate without any votes, with the hope they will slip through in the dark of night. I hope those countries, when we tell them how to run elections, are not watching—I don't know—Presidential elections or anything like that in our country.

I look at Canada. I come from the State of Vermont. I think of Canada as that giant to the north. I look at Canada. The whole country votes with paper ballots. Two hours later, they have them all hand counted with no mistakes and the country accepts the result. I hope we won't lecture them as we often do.

But I hope we will not tell people this is the way to pass legislation. I hope we will not tell countries how to do it based on this bill. It is an autocratic, behind-closed-doors, undemocratic process, and it makes a mockery of the legislative process.

This is unfortunate, since both Democrats and the administration have been trying to negotiate in good faith with the Republicans to achieve fair and balanced bankruptcy legislation. Everyone in this Chamber knows we have to have some bankruptcy reform legislation. But it cannot be one sided to any one special interest, it has to be balanced.

There was not even a meeting of the sham conference committee, as far as I can tell. And the House had passed—talk about a CYA; that means ''carefully you're allowed,''—but, in an effort to make sure nobody questions them about this sham process that has slipped through behind closed doors, the House passed a 398–1 vote to instruct conferees to insist on a public meeting of the conference with open debate. By God, we are for government in the sunshine, 398-to-1. Are we not virtuous people in the other body? And the press releases went out. Of course, 2 hours later, the sham conference report was filed, the one that was done behind closed doors, not done in the open. But everybody could say: Why, I voted to have that open, 398–1.

The bipartisan informal process that produced many improvements to the Senate-passed bill with respect to its bankruptcy provisions was for nought in the end. We worked in an informal bipartisan conference and made these improvements. We dropped the controversial nonrelevant amendments on the 3-year minimum wage increase, regressive tax cuts, mandatory minimum sentences for certain drug offenses, and private school vouchers.

We added a new provision to include a $6,000 floor in the means test to protect low-income debtors.

We added a new provision to take into account up to 10 percent of the debtor's administrative expenses in the means test calculations.

We added a new provision to allow for adjustments of up to 5 percent from the IRS standards for reasonable food and clothing expenses in the means test calculations to take into account the regional difference in costs.

We struck the provision that exempted creditors with small claims from sanctions against creditors who file abusive motions, and, thus, we made all creditors subject to these sanctions for coercive behavior.

We expanded the eligibility for the waiver of filing fees to debtors with income less than 150 percent of the poverty line.

All of these things we did with Democrats and Republicans working together, each side giving some things, each side adding things. We had a better bill. We even added a new temporary bankruptcy judgeship for the following courts: the District of Delaware, the Southern District of Georgia, the Eastern District of North Carolina, and the District of Puerto Rico.

Finally, we added privacy protections for the financial information of debtors to protect patient medical records in bankruptcy health care businesses, to destroy all debtors' tax returns after 3 years of the close of the case, to provide Congress with the authority to add appropriate privacy safeguards to protect electronic bankruptcy data, and to add safeguards for the collection of bankruptcy data.

That was a good bipartisan start with Republicans and Democrats working together. We could have a fair and balanced final bankruptcy reform bill. It was something people on all sides of the issue were applauding. They were saying: Finally, Republicans and Democrats are working together.

Do you know what happened? Some in the Republican majority found this was going on and said: We can't have it; we can't have that balance; it has to be one sided; it has to be our way or no way, and they stopped those meetings.

We actually resolved most of the issues between the two bills. There were two key issues outstanding. We could have brought it back for a vote. One was discharge of penalties for violence against family planning clinics, medical clinics, and the other was a problem with wealthy debtors who used overly broad homestead exemptions to shield assets from creditors by putting money into multimillion-dollar houses, declaring bankruptcy, and thumbing their nose at their creditors.

Everything I heard told me we could have reached bipartisan agreement on these matters, too. Now this backdoor conference report does not adequately address either of these two abuses currently in the bankruptcy system.

The Senate passed the Schumer amendment to prevent the discharge of penalties for violence against family planning clinics. This was not a partisan vote. It was 80–17. People said, no matter how you feel about abortion, no matter how you feel about medical matters or family planning, we are not going to condone violence against legitimate medical clinics.

Does the conference report reflect this? No. There is not a single provision to end abusive bankruptcy filings used to avoid the legal consequences of violence, vandalism, and harassment to deny access to legal health services. As a result, we could have all kinds of clinic violence. If you are sued for it, just declare bankruptcy and get away with it. That is wrong.

The administration made it crystal clear in four letters to congressional leaders that an end to this abuse of the current bankruptcy system was needed to gain the President's signature. Four times they said they were not going to allow people to firebomb clinics, harass people, assault people, and if they are sued, to simply say: We will declare bankruptcy. Four times.

The OMB Director Jack Lew wrote to Congressional leaders on May 12, 2000:

> The abuses of the bankruptcy system must be stemmed, including abuse by those who would use bankruptcy to avoid penalties for violence against family planning clinics.

The President wrote congressional leaders on June 9:

> I am deeply disturbed that some in Congress still object to a reasonable provision that would end demonstrated abuse of the bankruptcy system. We cannot tolerate abusive bankruptcy filings to avoid the legal consequences of violence, vandalism, and harassment used to deny access to legal health services. An effective approach, such as the one offered by Senator SCHUMER's amendment, should be included in the final legislation.

A few weeks later the President again wrote to congressional leaders to reiterate his position saying:

> I cannot support a bankruptcy bill that fails to require accountability and responsibility from those who use violence, vandalism, intimidation, and harassment to deny others access to legal health services. . . . The final legislation must include an effective approach to this problem, such as the one contained in the amendment by Senator SCHUMER, which passed the Senate by a vote of 80–17.

This is a no-brainer. We already debated it and voted on it 80–17. We have a hard time getting an 80–17 vote here to support the bean soup in the Senate cafeteria.

Gene Sperling, national economic adviser to the President, in his letter of September 22, made it clear that President Clinton would veto any bankruptcy reform legislation that did not end this abuse of bankruptcy law. He said:

> Our society should not tolerate those who develop a strategy to first threaten and intimidate doctors, health care professionals, or their patients and then turn to the bankruptcy courts to avoid legal liability for their actions. I reiterate that the President will not sign any legislation that does not contain effective means to ensure accountability and responsibility of perpetrators of clinic violence.

Mr. President, how much time is still available to the Senator from Vermont?

The PRESIDING OFFICER. Just under 13 minutes.

Mr. LEAHY. I thank the Chair.

We should not use the bankruptcy law to shield purveyors of violence. We should close this loophole.

Six defendants in the Nuremberg files web site case filed bankruptcy to avoid their debts under the law. This web site depicted murder weapons with dripping blood and advocated the killing of pro-choice physicians and public figures. Indeed, as some of these people were killed, their names were crossed out on the web site. Why should somebody who is sued for this kind of violence, purveying this kind of violence, be allowed to go to bankruptcy court and say, "See ya, I'm home free"?

Dr. Barnett Slepian, who was murdered 2 years ago in Buffalo on October 23, 1998, was on this heinous Internet site. After he was murdered, his name was crossed out.

If I can make a personal note, when Dr. Slepian was murdered in upstate New York because his name was on the Nuremberg files web site, within days they determined the chief suspect was a man from Vermont. In fact, there is now an arrest warrant out for him.

I mention that also not just because I am from Vermont, but when I checked the Internet file, I found that along with this man's name, my name was there. I was listed as one of the people who should be shot and killed. I take that a little bit personally, especially when the FBI are now looking for a man from my State who is suspected of shooting and killing one of the people whose name was on that list with mine. Dr. Slepian's name has been crossed out. Mine has been left on the list of those who should be shot and killed.

Frankly, I find it a little bit difficult to think, when these people are sued for this kind of thing, and judgments are rendered against them, that they can just go into bankruptcy court and say: See ya.

So nobody will think that there is any kind of conflict of interest, I am not part of any suit against them. I am not going to do that. But for those who have, they ought to at least get their settlement or other judgment, win or lose, in the courts. But we should not let anybody walk into our Federal bankruptcy court—because of a huge loophole that this Congress does not have the guts to close—and just walk home scot-free.

It is hypocrisy at the worst, when we voted 80–17 in this body to close the loophole, and when all but one Member of the other body voted to have an open conference on this, that both bodies ignored that. That is hypocrisy. It is wrong.

If anybody thinks they do not know the reason why some people in this country look at the Congress and ask what is going on, there is one of your reasons right there. Maybe we ought to look at some of the elections this year and say: Our people are saying they are fed up with this.

In fact, this suspect is still at large, and with a reward of $1 million for his arrest.

You tell me—anybody in this body—you tell me—anybody who is listening to this debate—that somehow it is fair to let people such as that escape because of a loophole that we do not have the guts to close in our bankruptcy law.

Clearly, the perpetrators of violence and illegal intimidation should not be able to abuse the bankruptcy laws to avoid responsibility for their actions. Bankruptcy should not be used to avoid the legal consequence of clinic violence, harassment, and intimidation.

If we do not want to do something against violence, apparently we do not want to do anything in bankruptcy to offend those who have multimillion-dollar estates in the right States.

In the Senate, we passed, by a vote of 76–22, an amendment to create a $100,000 nationwide cap on any homestead exemption. Again, we could say we are only concerned about the little people. We are concerned about people paying the debt. All people—we want everybody to pay their bills. Whether they are rich or poor, we want them to pay their bills. We are equal to everybody.

Of course, that would have eliminated one of the most flagrant abuses in bankruptcy laws—debtors moving to expensive homes in a handful of States with unlimited exemptions, declaring bankruptcy, and then keeping their millions of dollars in the homes that they have in those States.

Senator KOHL, along with Senator SESSIONS, put together an amendment that the Senate overwhelmingly adopted. I am beginning to see why everybody voted for it. Some must have gotten word that it would be gutted as soon as it got off the floor, gutted behind closed doors, where nobody votes and nobody's fingerprints are on them. Even to talk about: OK, you want to raise it to $100,000? Raise it to $500,000. Then all of a sudden we find it is gutted. It is going to build a lot of homes in Texas and Florida. It is an amazing coincidence those two States are going to have the advantage of not having that provision. If you want to declare bankruptcy, just put your millions of dollars in a house in Texas or Florida, and under this you are safe.

Again, the Administration made it crystal clear in four letters to congressional leaders that the President would not sign any bankruptcy reform bill that did not end the abuse of unlimited homestead exemptions. In fact, the Republican leadership reached an agreement with Democrats and the Administration to include a nationwide $500,000 cap on homestead exemptions in bankruptcy, but then the majority changed its mind. Why? I do not understand why the majority then reverted to a flawed homestead provision in this conference report.

As early as May 12, 2000, OMB Director Jack Lew made clear the Administration's position. Director Lew wrote to Congressional leaders: It is fundamentally unfair to ask low- and moderate-income debtors to devote future income to repay the debts that they can, while leaving loopholes that allow the wealthy to shield income and assets from their creditors. High or unlimited homestead exemptions allow people with expensive homes to avoid their responsibility to repay a significant portion of their debts.

On June 9, 2000, the President, himself, wrote to congressional leaders about the need to end abusive homestead exemptions in any final bankruptcy reform bill. President Clinton wrote: I am concerned, for example, that the final bill may not adequately address the problem of wealthy debtors who use overly broad homestead exemptions to shield assets from their creditors.

Again, a few weeks later on June 29th, the President reiterated his position by writing to congressional leaders: The proposed limitation on State homestead exemptions will address, for the first time, those who move their residence shortly before bankruptcy to take advantage of large State exemptions to shield assets from their creditors. But the proposal does not address a more fundamental concern: unlimited homestead exemptions that allow wealthy debtors in some States to continue to live in lavish homes. In light of how other provisions designed to stem abuse will affect moderate-income debtors, it is unfair to leave this loophole for the wealthy in place.

A few weeks ago, it appeared the majority was finally beginning to understand and accept the President's commonsense approach by agreeing to a federal cap on homestead exemptions. On September 22, Gene Sperling, National Economic Advisor to the President, wrote to Majority Leader LOTT: The President appreciates your significant movement on the homestead issue. We realize that the offer goes against strongly held views of some members of your caucus, and we are grateful for the effort. While we had proposed placing a cap of $250,000 on the size of state homestead exemptions, we could accept a homestead cap of $500,000, were we to reach agreement on other issues.

It does not take a rocket scientist to understand that the President would veto a bankruptcy conference report that did not adequately address the discharge of penalties for violence against family planning clinics and the problem of wealthy debtors who use overly broad homestead exemptions to shield assets from their creditors. Four times the Administration wrote to congressional leaders about the need to address these two areas of bankruptcy abuse. Four times.

But this conference report fails adequately to address either of these two abuses of the current bankruptcy system.

Unfortunately, the majority is repeating the same mistakes that killed bankruptcy reform in the last Congress. Instead of keeping on the track of bipartisan compromise that was headed toward enacting a fair and balanced bill, the majority veered off course on behalf of special interests. The result is an unfair and unbalanced bankruptcy conference report.

Fortunately, bankruptcy filings have been declining for the last couple of years. In 1999, the per capita personal bankruptcy rate dropped by more than 9 percent. In the 2000 fiscal year, the decline continued. According to the Administrative Office of the U.S. Courts, bankruptcy filings for fiscal year 2000 are down 6.8 percent for personal filings, down 6.6 percent for business filings and down 9.2 percent for chapter 7 filings. Over the last two years, Chapter 7 filings have dropped 15 percent and personal bankruptcy filings overall have declined by 12 percent.

In my home state of Vermont, the recent decline in personal bankruptcy filings is even more dramatic. In 1999 consumer bankruptcy filings in the District of Vermont dropped 11 percent compared to 1998 and fell an additional 20 percent so far this year as compared to last year that is approximately a one-third decrease over the last two years.

Clearly, the justification that we must pass this flawed measure now because of a bankruptcy crisis rings hollow given the latest bankruptcy filing facts across the nation. There is no need to rush a bad bill into law.

On June 9, 2000, President Clinton wrote to congressional leaders that: I have long made clear my support for legislation that would encourage responsibility and reduce abuses of the bankruptcy system on the part of debtors and creditors alike. We also must ensure that a reasonable fresh start is available for those who turn to bankruptcy as a last resort when facing divorce, unemployment, illness, and uninsured medical expenses. Bankruptcy reform legislation should strike the right balance.

Unfortunately, this conference report fails to strike that right balance. The President will and should veto it.

The administration has helped to make the economy a lot better. We can take a moment. Let us wait until next year and pass a good bill. Let us take care of those problems that are in there, but let's not allow the haters, the crime inciters, the murderers, and the firebombers to go free. For Pete's sake, let's not let somebody who has amassed millions of dollars of assets, and even more millions of debt, to say: I will go buy a house in Texas or Florida because then I can escape my creditors.

Mr. President, how much time does the Senator from Vermont have remaining?

The PRESIDING OFFICER. Four and one-half minutes.

Mr. President, I yield the floor and reserve the remainder of my time.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. We are waiting for the Senator from Alabama to come and speak. Before he gets here, I will take a moment, so I yield myself such time as I might consume.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. I am glad the Senator from Vermont pointed out the many compromises that were made to accommodate the President and to accommodate Democrats in the Senate. He did not say this, but there were also a lot of changes made to accommodate Republicans. But he pointed out that we have two issues on which we disagree. That is what the Senator from Vermont said. I do not think that Senators should vote against this bill over two issues which are not central to the concept of bankruptcy reform.

I was disappointed, however, in his comments on the process. He referred to a very unusual process. I confess that it was a very unusual process by which this bill was conferenced and got to the Senate floor. But I think I heard him say something about Democrats not being consulted. There was a 3–3 ratio on this conference. Normally there would not be a 3–3 ratio; there would probably be one more Republican than Democrat. But because of Senator Coverdell's death, it ended up on this conference there were three Republicans and three Democrats. So the point is, we would not be here today if it were not for help from Democrats, even in conference.

I only say that because the Senator from Vermont is a friend of mine. He is very strongly opposed to this legislation. But I thought I ought to point out the fact that there are those small, insignificant modifications of his comments that I thought I ought to make. Whether he would consider those clarifications or not, that is his judgment. But I want them on the record for my point of view.

I also address an issue raised by Senator LEAHY. Some have stated that the bankruptcy conference report should be opposed on the grounds that it does not contain a provision that would prevent abortion protesters from using bankruptcy as a way to get out of paying debt arising as a result of violence or intimidation at abortion clinics.

On this issue, I draw my Senator's attention—in other words, the attention of the Senator from Vermont—to a memo prepared by the nonpartisan Congressional Research Service.

This memo—which I will provide to any Senator who wants to see it, and I will include it in the RECORD—concludes that not one single abortion protester has ever used bankruptcy in this way. I repeat, according to the Congressional Research Service, a truly nonpartisan resource, no one has ever used bankruptcy to skip out on debts arising from violence or intimidation at an abortion clinic.

This issue, of course, is a red herring. It has been put forth by people who flat out oppose needed bankruptcy reform as a way of defeating this legislation. There is absolutely no merit to their argument.

I hope people will see it for what it is—an empty political ploy. I hope Senators will see through this political ploy and support the bankruptcy conference report.

I ask unanimous consent to print in the RECORD the memo from the Congressional Research Office.

There being no objection, the memo was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, October 26, 2000.

MEMORANDUM

To: Hon. Charles Grassley.
From: Robin Jeweler, Legislative Attorney, American Law Division.
Subject: Westlaw/LEXIS survey of bankruptcy cases under 11 U.S.C. §523.

This confirms our phone conversation of October 25, 2000. You requested a comprehensive online survey of reported decisions considering the dischargeability of liability incurred in connection with violence at reproductive health clinics by abortion protesters. Our search did not reveal any reported decisions where such liability was discharged under the U.S. Bankruptcy Code.

The only reported decision identified by the search is Buffalo Gyn Womenservices, Inc. v. Behn (In re Behn), 242 B.R. 229 (Bankr. W.D.N.Y. 1999). In this case, the bankruptcy court held that a debtor's previously incurred civil sanctions for violation of a temporary restraining order (TRO) creating a buffer zone outside the premises of an abortion service provider was nondischargeable under 11 U.S.C. §523(a)(6), which excepts claims for ''willful and malicious'' injury. The court surveyed the extant and somewhat discrepant standards for finding ''willful and malicious'' conduct articulated by three federal circuit courts of appeals. It granted the plaintiff's motion for summary judgment and denied the debtor/defendant's motion to retry the matter before the bankruptcy court. Specifically, the court held:

''[W]hen a court of the United States issues an injunction or other protective order telling a specific individual what actions will cross the line into injury to others, then damages resulting from an intentional violation of that order (as is proven either in the bankruptcy court or (so long as there was a full and fair opportunity to litigate the question of volition and violation) in the issuing court) are ipso facto the result of a 'willful and malicious injury.' ''—242 B.R. at 238.

The PRESIDING OFFICER (Mr. L. CHAFEE). The Senator from Utah.

Mr. HATCH. Mr. President, this consumer bankruptcy reform legislation is one of the most important legislative efforts to reform the bankruptcy laws in decades. I thank my distinguished friend and colleague from Iowa for his hard work on this, of course, the distinguished Senator from New Jersey, and so many others, Senator BIDEN from Delaware. There are many others as well.

This is important. Before talking about the substance of the legislation, I personally thank the majority leader who has worked hard and tirelessly to keep this legislation on track despite the many obstacles that it has faced—I have to say phony obstacles at that.

Thanks to the majority leaders's commitment to moving this legislation, we now find ourselves in a position to weed out many of the abuses in the bankruptcy system and also to enhance consumer protection.

I also acknowledge and thank the ranking member of the Senate Judiciary Committee, Senator LEAHY, who has worked with me and Senator GRASSLEY and others to reach agreement on many of the bill's provisions.

Most of all, I commend the original authors of the legislation, Senators GRASSLEY and TORRICELLI, chairman and ranking minority member of the Subcommittee on Administrative Oversight and the Courts, respectively, for their hard work in crafting this much needed legislation and for their unrelenting commitment to making the development and passage of this bill a bipartisan process.

As I have mentioned, my praise also goes to Senator SESSIONS and Senator BIDEN, who have shown unwavering dedication to accomplishing the important reforms in this bill, and to the many other Members of the Senate for their hard work and cooperation.

I was deeply troubled by a comment made on the floor yesterday by a colleague from the other side of the aisle to the effect that this bill was written by Republicans and is being forced upon Senate Democrats. Nothing could be further from the truth. I am compelled to set the record straight on that point. The entire development of this bill has taken place in a bipartisan manner. In fact, throughout the entire process of consideration of this bill, beginning as long ago as the drafting stage, numerous changes suggested by the minority have been made.

It is no secret that in the informal conference process, we worked together with Senate Democrats. And with rare exception, the provisions that are contained in the final conference product were agreed to and were done with the full bipartisan cooperation and support of the Senate negotiators. Furthermore, in an effort to reach a bipartisan agreement and address concerns of the White House, we took issues that were important to many of us on the Republican side off the table.

For example, I agreed to remove from consideration a provision I had sought which would have prevented criminal check kiters and counterfeiters from collecting attorney's fees in lawsuits that they bring against debt collectors—I might add, multiple lawsuits that really don't make sense. Many others in the majority also made concessions and a good faith effort to resolve differences and move forward with the long overdue comprehensive bankruptcy reform.

Here on the Senate floor, the assertion was made that not a single organization that advocates for kids supported this bill. I simply cannot allow that kind of misrepresentation to stand uncorrected. In fact, there is tremendous support for this legislation from child advocates.

Let me give some illustrations. A letter from Laura Kadwell, President of the National Child Support Enforcement Association, representing over 60,000 child support professionals across America:

I'm writing to urge you to support the Bankruptcy Reform Act of 2000. NCSEA is committed to ensuring that both parents fulfill their responsibilities to provide emotional and financial support to their children—including honoring legally-owed child support obligations. The pending legislation will forward this goal significantly.

In a letter from Howard Baldwin, President of the Western Interstate Child Support Enforcement Council, an organization comprised of child support professionals from the private and public sectors west of the Mississippi River:

I would like to express our membership's unqualified support.

The resolution of the California Family Support Council, consisting of approximately 2,500 persons employed by county and State agencies which administer the Federal child support program in California:

Now therefore be it resolved that the California Family Support Council * * * directs the president of the California Family Support Council to convey to the California congressional delegation and to the President its enthusiastic endorsement of the Bankruptcy Reform Bills.

How about a letter from Betty D. Montgomery, attorney general of the State of Ohio:

As the chief law enforcement officer for [Ohio], I stand committed to protecting our most vulnerable citizens [and this legislation] will further promote the objectives of our state and national child support enforcement program and further ensure that those families in need are protected.

A vote for this conference report will mean a vote to stop letting deadbeat parents use bankruptcy to avoid paying child support. It will mean a vote to stop paying lawyers ahead of children who rely on child support. I have worked with Senator TORRICELLI, the National Association of Attorney Generals, and the National Women's Law Center to improve current bankruptcy law with respect to child support and alimony. Currently bankruptcy law is simply not adequate. Frankly, I was outraged to learn of the many ways deadbeat parents were manipulating and abusing the current bankruptcy system in order to get out of paying their domestic support obligations. I am proud of the improvements we are making in this legislation over current law in terms of ensuring that parents meet their child support and other domestic support obligations in bankruptcy.

I have worked tirelessly, as others have—those I have mentioned—provision by provision, both last year and this year, to make this conference report one that dramatically improves the position of children and ex-spouses who are entitled to domestic support. No one who actually looks at what the conference report says can in good conscience say that this bill is not a tremendous improvement for children and families over current law.

This bill for women and children gives child support first priority status, up from seventh in line, meaning they will be paid ahead of the lawyers, if you can imagine that. It is about time. It makes staying current on child support a condition of discharge. It makes debt discharge in bankruptcy conditional upon full payment of past due child support and alimony. It makes domestic support obligations automatically nondischargeable without the cost of litigation. It prevents bankruptcy from holding up child custody, visitation and domestic violence cases. And it helps avoid administrative roadblocks to get kids the support they need.

It is a very important set of changes, without which we are going to be abusing children in the law.

That is not all. The conference report makes more improvements over current law for women and children. This chart shows that. It makes the payment of child support arrears a condition of plan confirmation. It provides better notice and more information for easier child support collection. It provides help in tracking down deadbeats. It allows for claims against a deadbeat parent's properties. It allows for the payment of child support with interest by those with means. And it facilitates wage withholding to collect child support from deadbeat parents. It does all of that.

I am also happy to say that the conference report prevents deadbeats from using the automatic stay in bankruptcy to avoid paying their support obligations. The bankruptcy reform stops deadbeat parents from abusing the automatic stay.

The conference report prevents deadbeats from using bankruptcy's automatic stay to avoiding child support with this legislation.

The automatic stay cannot be used to put a hold on the interception of a deadbeat parent's tax refund to pay support.

The automatic stay cannot be used to prevent the reporting of overdue support owed by deadbeat parents to any consumer reporting agency.

The automatic stay cannot be used to prevent the withholding, suspension, or restriction of driver's licenses, professional and occupational licenses, and recreational licenses when deadbeats default on domestic support obligations.

And suspending the driver's license of the deadbeat parent can be a very effective way of getting them to pay the child support they owe.

This is important stuff. It has taken lot of time to get this done. We will pass this bill. But if the administration doesn't accept this bill and it winds up vetoing it, it will be a tragedy.

These are just a few of the many improvements the conference report makes in this area as compared with current law.

I have had a long history of advocating for children and families in Congress and throughout my legal career. I support a conference report that puts child support first in line ahead of the lawyer's fees and that doesn't let debtors who owe child support turn their backs on children when they file for bankruptcy.

In another provision I authored, the conference report protects for the first time in bankruptcy education savings accounts set up by parents and grandparents for their children and grandchildren.

All things considered, it is pretty simple. A vote for this conference report is a vote for our Nation's kids.

Just look at the bankruptcy consumer provisions. A vote for this conference report is a vote for consumers. The legislation includes a whole host of new consumer protections that do not exist under current law, such as:

New disclosure by creditors and more judicial oversight of reaffirmation of agreements to protect people from being pressured into onerous agreements;

A debtors' bill of rights to prevent the bankruptcy mills from preying upon those who are uninformed of their rights;

New consumer protections under the Truth in Lending Act, such as required disclosure regarding minimum monthly payments and introductory rates for credit carts;

Penalties on creditors who refuse to negotiate reasonable payment schedules outside of bankruptcy;

Penalties on creditors who fail to properly credit plan payments in bankruptcy;

Credit counseling programs to help avoid the cycle of indebtedness;

Protection of educational savings accounts; and

Equal protection for retirement savings in bankruptcy.

You can't look at this bill and what it means to people in this country without realizing that this is a step forward.

A vote for this legislation is also a vote for families by preventing wealthy people from continuing to abuse the system at the expense of everyone else.

Under the current system, people with high incomes can run up massive debts and then use bankruptcy to get out of honoring them. All of us end up paying for the unscrupulous who abuse the system. In fact, it has been estimated that every American family pays $550 a year in a hidden taxes as a result of these abusers. This legislation helps eliminate this hidden tax by implementing a means test to make wealthy people who can repay their debts honor them.

Let me make one thing absolutely clear. The poor are not affected by the means test. In fact, the legislation provides a safe harbor for those who fall below the median income. So they are not subjected to the means test at all.

Again, only those above the median income are affected, and the means test could not deny anyone bankruptcy relief. It just requires those who have the means to repay their debts, based on their income, to do so. It is that simple.

A vote for the conference report also is a vote to stop allowing a few wealthy individuals to abuse the homestead exemption. The conference report tackles the problem of the homestead exemption. Although rare, that problem is offensive to those of us who work hard to make good on our debts.

The conference report reaches a compromise which targets the major abuse of bankruptcy by those who move to States with generous homestead exemptions purely in order to file bankruptcy and keep an expensive home. Although this reform provision does not go as far as some of us would like, without it we are back to business as usual with no improvement to current law at all.

A vote for this conference report is also a vote for families who work to save for retirement. I mentioned earlier that the conference report contains my provision to provide equal treatment for retirement savings plans in bankruptcy. For example, the retirement savings of teachers and church workers are clearly given the protection in bankruptcy as much as everyone else. They deserve nothing less.

A vote for the conference report is a vote for our country farmers and the men and women who work hard every day in the face of many challenges. Without this reform package, family farmers lose out on the special bankruptcy protections they need in chapter 12.

I urge my colleagues to think for a moment about the children, the consumers, families, and farmers who will end up getting hurt if comprehensive bankruptcy reform is not enacted this year. I urge my colleagues to support and cast a vote for them and to support this bankruptcy reform.

I also urge the President of the United States to sign this bankruptcy reform into law.

Mr. SESSIONS. Mr. President, I thank Senator HATCH for his leadership on this bankruptcy bill and for shepherding it through the Judiciary Committee.

I remember distinctly when we first began to discuss the problems of children, alimony and child support, the leadership and the firm position Senator HATCH took to guarantee that children and alimony payments would have an enhanced position in bankruptcy, much higher than it had ever been before. That was the goal of Senator HATCH, who has worked on this bill and previous bankruptcy bills and studied this.

I am looking at a letter from some professors who don't seem to get it. But the Senator has studied and sponsored the amendment that made some of the historic changes.

Is there any doubt in your mind, Senator, that the children will benefit from those child support payments, and women will have more protections for alimony payments under this bill that we are about to pass than if the bill does not pass?

Mr. HATCH. I thank the Senator for his very intelligent question. There is no question that this bill will make dramatic changes in bankruptcy laws to the benefit of children, parents, families, farmers—just name them—in large measure because of the work of the distinguished Senators, Mr. GRASSLEY, Mr. TORRICELLI, and others, including our ranking member Senator LEAHY, and especially the distinguished Senator from Alabama.

The distinguished Senator from Alabama has been here just long enough to show how effective he is and what a perfect job he has done on the Judiciary Committee. I personally compliment the Senator. He has played a significant and noble role in this bill, as have others, but, in particular, I consider him one of the best lawyers, one of the best legal practitioners in this whole body. I am very proud of the work the Senator and so many others have done on this bill, without which it would have been much tougher for me as chairman of the committee. This bill has made a true difference in the lives of the children of this country.

If we don't have this bill put on the law books of this country, families, children, farmers, consumers, and others are going to be drastically hurt. Yes, no bill is absolutely perfect, but we have too many people at cross-purposes. But we have worked every day this bill has been in existence with our colleagues on the other side. That is why we have a number of them who are willing to support this bill, not only willing but enthusiastically do so.

We couldn't have come this far without the work of the distinguished Senator from Alabama. I have great respect for the Senator and I am grateful he is on the floor today. I am grateful the Senator is one of the people who is helping to make the case for this bill. There are good people on both sides of the aisle, good people who understand these important matters, good people who know that children are a focal point of much of this bill.

I thank the Senator for his question.

The PRESIDING OFFICER. Who yields time to the Senator from Alabama?

Mr. HATCH. I yield such time as he shall need.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, we have had quoted on the floor a letter from a group of professors that expressed opposition to this bankruptcy bill. I think we owe it to those who quoted from it to treat the letter seriously and analyze item by item the complaints they have made and discuss it on the floor. I must say that after examining the letter carefully, I must take issue with the professors' conclusions. I intend to try to go over the points that they raise fairly and honestly, and to state the situation as I see it. In fact, I think it is quite plain. The professors are wrong and they are making misleading statements about it.

For example, the letter from the professors says:

> Women and children will have to compete with powerful creditors to collect their claims after bankruptcy.

The fact is, the bill makes currently exempt assets—that is, homestead, household effects, tools of the trade—those kinds of things that normally today cannot be made to be sold to pay alimony or child support—non-exempt. Thus, wives and mothers will not have to compete with anyone before, during, or after bankruptcy for these key assets. In fact, a mother, for child support, can take the home—the homestead notwithstanding—of a deadbeat dad and take other assets that he has that otherwise under current law would be exempt. It is a major step forward for the rights of children.

The letter from the professors further says:

> Credit card claims increasingly will be excepted from discharge and remain a legal obligation after bankruptcy.

The fact is, the bill makes only credit card debt incurred by fraud nondischargeable, just like taxes and child support are nondischargeable. Debtors who defraud creditors should not be able to discharge their debts in bankruptcy and not pay them. They only ought to be able to discharge the debts they lawfully incurred. That is the current law. That is the law today. You cannot discharge fraudulent debts. In addition, of course, credit card debt is at the end of the line if you have to pay anything. It is a non-secured debt. It is the last priority to be paid in the list of priorities.

This letter goes on to say:

> Large retailers will have an easier time obtaining reaffirmations of debt that legally could be discharged.

That is absolutely false. I was charged by Senator GRASSLEY to meet with Senator REID and the representatives from the White House to develop reaffirmation language that would strengthen protections for people who were asked to reaffirm debts.

Frankly, reaffirmations are not all that bad. Many times, people have every reason to want to reaffirm their debts and keep their washing machine, their TV, their furniture, their automobile they use to get to and from work. They want to keep it. They reaffirm their debt and they do not lose it.

So we worked out language to which the White House agreed. It strengthens the protections provided to those debtors. It was language agreed-upon in a bipartisan way.

The letter further says:

> Giving first priority to domestic support obligations—

Which is in the bill, giving them first priority of payment—

> does not address the problem, and that 95 percent of bankruptcy cases make no distributions to any creditors because there are no assets to distribute.

First, the money is going to the bankruptcy court and to lawyers. In our rule, children would be above the courts and the lawyers. "Granting women and children a first priority permits them to stand first in line to collect nothing," the professors say. But the fact is, the means test will place above-median-income-deadbeat-dads into Chapter 13 if they can repay some of their debt—median income for a family of four, by the way, is about $45,000. So, to reiterate, deadbeat dads who are above median income, will be forced into chapter 13 (instead of being able to file Chapter 7) if they can afford to pay back some of the debts they owe—maybe it is 20 percent, maybe it is 30 percent—but they will be put into chapter 13 to pay that. And for 5 years the judge can order them to pay on those debts what percentage he or she believes the debtor is financially able to pay and maintain a decent standard of living.

But what is first? What is first paid by that deadbeat dad? His alimony and child support. He would be under court-monitored supervision and direction to pay the first fruits of his income directly in the form of child support and alimony. In effect, you have a bankruptcy judge helping ensure, for 5 years, the full payment of child support and alimony. I believe that is going to be a historic step forward. In fact, this will place children and women in a higher level than they have ever been before.

The letter further says:

> Under current law, child support and alimony share a protected post-bankruptcy position with only two other recurrent collectors of debt—taxes and student loans. The bill would allow credit card debt and other consumer credit to share that position, thus elbowing aside women trying to collect on their own behalf.

That is not true. I can understand why some of our Senators are concerned about the bill after they read this letter. It has a bunch of professors' names on it. They think it is true—but it is not true. The fact is, the bill allows only consumer debt that was incurred by fraud to be nondischargeable, which is fundamentally the law today. Even so, only alimony and child support claimants will be able to levee on any of these assets. No one else can levee or get ahead of a parent or a child to claim these exempt assets. Thus, mothers will not have to compete with the IRS, the student loan companies, credit card companies, or anyone else, to attach exempt assets after bankruptcy.

Further, I believe the bill will provide more assets for distribution to women and children than before, during, and after bankruptcy. Before bankruptcy, debtors will receive credit counseling information which will help keep fathers on a budget, teach them how to maintain a budget, and out of bankruptcy and paying their alimony and child support in the first place. During bankruptcy, deadbeat dads will be required to pay all past due alimony and child support and to undergo court supervision for up to 5 years under chapter 13, as they pay their No. 1 priority, child support claims.

After bankruptcy it is much more likely that a father who has undergone credit counseling, who has been subjected to 5 years of court supervision of his finances, and where alimony and child support were the first things he was required to pay and where he knows that he cannot shield his exempt assets from alimony and child support, will be up to date on all his payments if he has gone through that process—much more so than today.

I see Chairman GRASSLEY is here. I had a number of matters, but I know he would like to wrap up at this time.

Mr. GRASSLEY. No, I do not want to wrap up. I would like to have permission to interrupt the Senator, and for him not to lose the right to the floor. I would like to say something for 30 seconds on the bill, if I could.

There has been a report since early today about the White House, or personnel at the White House, calling Democrats who have always supported this bill to vote against it. I am not sure I know exactly why the White House is calling and saying that, but I presume it is because they would like to have fewer folks than the two-thirds we had on the cloture to override a veto, if the President would veto this bill. I don't know that the President would veto it. I know there are a lot of people at the White House who would like to have him veto it.

I say to those Democrats who have voted and supported this legislation so much over the last 3 years, particularly on that 83–14 vote by which it passed, I hope they will not respond to that kind of pressure from the White House. I hope they know CHUCK GRASSLEY well enough to know that if I had voted for a bill in the Reagan administration or the Bush administration, three or four times, and a President Reagan or his staff, or a President Bush or his staff, called me up and asked me to change my mind just to protect the President, if I would do it—I would not do it. I hope they would not do it.

I return the floor to the Senator from Alabama.

Mr. SESSIONS. I thank the chairman.

Mr. President, what is the time situation? Are we still set for a vote?

The PRESIDING OFFICER. We are set for a vote at 3:45. The Senator has 1½ minutes remaining.

Mr. SESSIONS. Mr. President, I have at least six or seven more items that I could refer to from the professors' letter that I believe are based on complaints about an early version of the bill, matters that are not even in the bill today, and other items that are completely distorted in how it affects the poor people in America today.

Let me simply say this: We need bankruptcy reform. We have shown a doubling of bankruptcy filings in the last decade.

It is time for us to move this bill forward to create a body of law that is less subject to abuse than current law, to close many of the loopholes or at least partially close them.

The fact we have not been able to do everything is not a basis to object, in my view. The perfect is the enemy of the good. This is a good bill. I would like to see all the homestead exemptions removed, at least as we agreed earlier. Senator GRASSLEY supported that. The House would not agree. We got half the problems of homestead eliminated in this bill.

If we do not pass the bill, we will have the current law which has a host of problems and none of them fixed.

That is where we are. We have a good piece of legislation. Chairman GRASSLEY has done a magnificent job of listening to everybody and working out an agreement that is acceptable. Chairman HATCH has likewise been tough in trying to complete this bill. I believe we have a good piece of legislation, and I hope the vote will be overwhelming again today.

Mr. HATCH. As chairman of the Senate Judiciary Committee, I have a question for the chairman of the Subcommittee and principal author of H.R. 2415. Because we were forced to proceed in an unconventional procedural manner with respect to this legislation, can you provide any guidance for courts and practitioners on this legislation?

Mr. GRASSLEY. Certainly. The following is what H.R. 2415 does:

H.R. 2415

BACKGROUND AND NEED FOR THE LEGISLATION

The bankruptcy system is currently in a state of crisis. In recent years, America has witnessed a dramatic explosion in the number of bankruptcy filings. According to statistics from the Administrative Office of the United States Courts, bankruptcies have exploded from 331,000 in 1980 to just under 1.4 million in 1999. It is a matter of serious concern to Congress that the explosion in bankruptcy comes at a time of unprecedented prosperity, with low unemployment and high wages. Unemployment is at an all-time low. Consumer confidence has been high and the

Dow Jones Industrial Average at one point rose above the 10,000 mark. Thus, the high rate of bankruptcy filings cannot reasonably be attributed to a slow economy.

This state of crisis has a significant negative impact on the American economy. According to the Department of Justice, creditors lose 3.22 billion dollars annually as a result of Chapter 7 bankruptcies filed by individuals who could repay their debts. Obviously, the existence of multi-billion dollar losses attributable to high levels of bankruptcy filings is a clarion call for Congress to reform our bankruptcies laws to require bankrupts who could repay some portion of their debts to do so.

Given the strong performance of the economy, many feel that the recent explosion in personal bankruptcy filings is at least partly attributable to the decreased moral stigma associated with declaring bankruptcy. See Testimony of Professor Todd Zywicki, Joint Hearing of the Subcommittee on Administrative Oversight and the Courts and the Subcommittee on Commercial and Administrative Law, March 11, 1999; Testimony of Tahira Hira, Subcommittee on Administrative Oversight and the Courts Hearing, ''S. 1301, The Consumer Bankruptcy Reform Act: Seeking Fair and Practical Solutions to the Consumer Bankruptcy Crisis'' (March 11, 1998); Testimony of Kenneth R. Crone, Subcommittee on Administrative Oversight and the Courts Hearing, ''The Increase in Personal Bankruptcy and the Crisis in Consumer Credit,'' (April 11, 1997); Lee Flint, ''Bankruptcy Policy: Toward a Moral Justification for Financial Rehabilitation of Consumer Debt,'' 48 Wash. & Lee L. Rev. 515 (1991); David Gross and Nicholas Souleses, ''Explaining the Increase in Bankruptcy and Delinquency: Stigma Versus Risk-Competition'' (Preliminary, 1998); F.H. Buckley and Margaret F. Brinig, ''The Bankruptcy Puzzle,'' 27 J. Legal Stud. (1998).

In the view of many in Congress, a decreased moral stigma associated with bankruptcy means that filing for bankruptcy is no longer viewed as a last resort reserved for financially troubled Americans who have no other option but to seek debt forgiveness. As Americans become accustomed to high levels of consumer bankruptcy, it is only natural that declaring bankruptcy has lost much of the shame previously associated with it. Individuals who would have struggled to meet their financial obligations in the past are filing bankruptcy today in record numbers. See Judge Edith H. Jones and Todd J. Zywicki, ''It's Time for Means Testing,'' 1999 B.Y.U. L. Rev. 177. For example, recent studies suggest that almost half of filers learned about their option to file for bankruptcy from friends or family. See, e.g., Vern McKinley, ''Ballooning Bankruptcies: Issuing Blame for the Explosive Growth,'' Regulation, Fall 1997, at 38. At the same time, there have been strong expressions of concern from the Federal Trade Commission that attorney advertising is leading consumers to file bankruptcy without being fully informed.

It is the strong view of the Congress that the Bankruptcy Code's generous, no-questions-asked policy of providing complete debt forgiveness under Chapter 7 without serious consideration of a bankrupt's ability to repay is deeply flawed and encourages a lack of personal responsibility.

Both H.R. 833 and its Senate counterpart S. 625 proposed amendments to section 707(b) of the Bankruptcy Code to require bankruptcy judges to dismiss a Chapter 7 case, or convert a Chapter 7 case to another chapter if a bankrupt has a demonstrable capacity to repay his or her debts. HR 2415 maintains the section 707(b) structure. In general, the agreement embodied in HR 2415 used S. 625 as the base for the means test. Like S. 625, a presumption arises that a Chapter 7 bankrupt should be dismissed from bankruptcy or converted to another chapter if, after taking into account secured debts and priority debts as well as living expenses, the bankrupt can repay over 5 years the lesser of 25 percent or more of his or her general nonpriority unsecured debts (but at least $6,000), or $10,000. This test requires those with greater debts to pay proportionately more than those with smaller debts. For example, the cases of debtors whose unsecured, nonpriority debts are over $100,000 will be dismissed under the means test (absent ''special circumstances'' discussed later) if their projected ability to pay over 5 years is over $10,000, even though that is considerably less than 25% of their debt. Conversely, the cases of debtors whose debts in that category are less than $36,000 will only be dismissed under the means test if their projected ability to repay over 5 years is over $6,000, permitting debtors in this category to remain in chapter 7 even though they have the ability to repay a percentage of their unsecured, nonpriority debts considerably greater than 25%. The debtor can rebut this presumption only by demonstrating ''special circumstances'' that would clearly demonstrate that the bankrupt in fact does not have a meaningful ability to repay his or her debts. It is not intended that the ''special circumstances'' category will be interpreted broadly to allow bankrupts to avoid repayment of financial obligations for reasons unrelated to finances, income or expenses. Therefore, the presumption of abuse may only be rebutted, first on a demonstration that the increases in spending or decreases in income arise directly from ''special circumstances'' and are justified by those circumstances, second, that they are reasonable and necessary, and, third, that there is no reasonable alternative to the expense or income adjustment. For example, if a loss of income occurred because a debtor voluntarily elected to waive a bequest or otherwise reduce income, there would be a reasonable alternative to the reduction because the debtor could have not elected, even though there may have been good reasons to do so. Moreover, the kind of ''special circumstances'' Congress intended would not be present to justify the adjustment, nor would it be reasonable and necessary. Therefore, the additional adjustment to income would not be allowed. Proof that the debtor permitted the reduction in an attempt to avoid payment of creditors or other inappropriate intent is not necessary, and a significant burden is on the debtor to justify the adjustment.

On the other hand, if the debtor was a well paid medical doctor who prior to bankruptcy changed from a demanding private practice requiring 80 hours a week to a significantly less well-paid research staff position with regular nine to five hours in order to have more time to assist in the care of a seriously disabled child, there would clearly be ''special circumstances'' which justified the adjustment, the income reduction would be reasonable and necessary, and the special relationship of parent and child would clearly lead to the conclusion that there was no reasonable alternative to the adjustment.

GENERAL OVERVIEW OF THE CURRENT CONSUMER BANKRUPTCY SYSTEM

Under current law, individuals considering bankruptcy often proceed under Chapter 7, where the bankrupt will surrender all assets which do not qualify for an exemption to a bankruptcy trustee. The bankruptcy trustee then sells the bankrupt's property and distributes the proceeds to the creditors. Any deficiency which remains after the sale of these assets is simply erased (or ''discharged''), and the bankrupt cannot be required to repay debts which have been erased during bankruptcy. Chapter 7, often referred to as ''straight bankruptcy,'' is the oldest and most commonly used type of bankruptcy proceeding.

Individuals may also declare bankruptcy under Chapter 13 of the Bankruptcy Code. Chapter 13 provides for the development of a repayment plan that allows a debtor to repay some portion of his or her debts. At the end of the repayment period, the unpaid portion of debt is erased, and a debtor cannot be required to repay the unpaid portion of the discharged debt. Unlike Chapter 7, the purpose of Chapter 13 is to rehabilitate financially-troubled consumers by using future earnings to repay debts in exchange for a discharge of the unpaid portions of those debts. Two other chapters are also available to individual debtors, but are only rarely used by consumers. Chapter 11, usually used by those with significant assets, permits a debtor to negotiate a plan of reorganization of the debtor's financial affairs with creditors, and in some instances force that plan or unwilling creditors. A discharge is available when the plan is confirmed. Chapter 12 is available for family farmers.

EARLIER REFORM EFFORTS TO REDUCE CONSUMER BANKRUPTCY ABUSE

The idea of requiring bankrupts to repay their debts when they have the ability to do so is not new. This topic has been the subject of many proposed amendments, from the early 1930s to the current Congress. S. 625 is merely an extension of this longstanding effort to ensure that bankruptcy is reserved for those truly in need of debt forgiveness. See Oversight Hearing on Personal Bankruptcy, Committee on the Judiciary, Subcommittee on Monopolies and Commercial Law, 97th Cong. 2nd Sess., (1982).

The general structure of the present federal Bankruptcy Code is the result of the Bankruptcy Reform Act of 1978, Pub. L. 95–598. The 1978 Act was the first major overhaul and attempt to update comprehensively the bankruptcy law since passage of the Chandler Act in 1938. 52 Stat. 840 (1938). Prior to the Chandler Act, individuals in serious financial trouble usually had no choice but to file for ''straight bankruptcy'' under Chapter VII, a proceeding similar to present Chapter 7 under the Bankruptcy Code. However, the Chandler Act provided small debtors a new, alternative procedure, the Chapter XIII Wage Earner's Plan, which allowed an individual to retain nonexempt assets by proposing a plan to pay his or her existing debts from future income, after which the wage earner would receive a discharge of any unpaid balances of his debts. See generally, Dvoret, ''Federal Legislation, Bankruptcy Under the Chandler Act: Background,'' 27 Geo. L.J. 194 (1938).

The debate over Chapter XIII occurred years earlier in joint hearings before the House and Senate Judiciary Committees in 1932, during the Seventy-Second Congress. By the time it was enacted in 1938, Chapter XIII codified informal practices which had developed without explicit statutory authorization. In the mid 1930's in Birmingham, Alabama a former special referee in bankruptcy, Valentine Nesbitt, first developed a ''repayment option'' which was the model for Chapter XIII. See Weinstein, The Bankruptcy Law of 1938 (1938).

In 1932, Congress conducted hearings on S. 3866. Section 75 of this bill would have established a repayment plan for wage earners. Section 75 provided a method for an indebted wage earner to come into court without being labeled ''a bankrupt,'' and get the benefit of a court injunction to fend off creditors while the wage earner arranged to repay his pre-bankruptcy debts in installments. Section 75, with certain modifications, eventually became Chapter XIII, enacted in 1938 as part of the Chandler Act.

Since the 1938 amendments, there have been several proposals to limit bankruptcy relief to those who lack genuine repayment capacity. In the 1960s, Congress considered several such proposals. See H.R. 12784, 88th Cong., 2d Sess. (1964); H.R. 292, 89th Cong., 1st Sess. (1965); S. 613, 89th Cong., 1st Sess. (1965); H.R. 1057 & H.R. 5771, 90th Cong., 1st Sess. (1967). Under these proposals, an individual debtor seeking relief under the liquidation provisions of the bankruptcy laws would be denied relief if the court concluded that he or she could pay substantial amounts of debt out of future earnings under a Chapter XIII plan.

Importantly, one of these proposals, S. 613, was introduced by Senator Albert Gore, Sr., the father of the current Vice President. When he introduced S. 613, Senator Gore indicated that Chapter 7 resembled a special interest tax loophole, which the wealthy could use to avoid paying their fair share. Senator Gore, Sr. also commented on the moral consequences of a lax bankruptcy system:

''I realize that we cannot legislate morals, but we, as responsible legislators, must bear the responsibility of writing laws which discourage immorality and encourage morality; which encourage honesty and discourage deadbeating; which make the path of the social malingerer and shirker sufficiently unpleasant to persuade him at least to investigate the way of the honest man.''—Cong. Rec. 905, January 19, 1965.

Given the current bankruptcy crisis, Senator Gore's words from over 30 years ago seem prescient.

Following the 1978 amendments, in the early 1980s, Senator Dole introduced S. 2000 during in the 97th Congress. In the House of Representatives, Congressman Evans introduced H.R. 4786, which eventually garnered 269 co-sponsors. Congress did not pass either proposal in the 97th Congress, so these measure were reintroduced in the 98th Congress as H.R. 1169 and S. 445. As a result of these efforts, Congress created Section 707(b) of the Bankruptcy Code in 1984 to allow judges to dismiss Chapter 7 cases if granting relief would constitute a ''substantial abuse'' of the Bankruptcy Code. Pub. Law 105–165. The focus of the effort was to require bankrupts who had the ability to pay a significant percentage of their debts ''without difficulty'' to proceed under Chapter 13 instead of Chapter 7. However, the term ''substantial abuse'' was not defined and creditors and trustees were expressly forbidden from presenting evidence to a judge that granting relief in a particular case would result in a ''substantial abuse.''

Despite Congress' intent that section 707(b) would control inappropriate use of chapter 7 by those with ability to pay, that section has not been effective. Although many factors are at work, much of the reason for this ineffectiveness has been the ingrained point of view that ''honest'' debtors have a ''right'' to a chapter 7 discharge even when they have ability to pay. To illustrate, the Fourth Circuit has taken a ''totality of the circumstances'' approach to determining whether there is substantial abuse. *In re Green*, 934 F.2d 568 (4th Cir. 1991)(a ''totality of circumstances'' test is appropriate when deciding section 707(b) cases in which ability to repay can be outweighed by other factors, like the debtor's good faith or honesty). Some bankruptcy judges have taken the totality of the circumstances approach suggested by *In re Green* as a justification for either ignoring ability to pay completely, or doing so in effect. See *In re Adams*, 209 B.R. 874 (Bankr. M.D. Tenn. 1997)(Paine, J.) (honest debtor with ability to repay cannot be dismissed from chapter 7); *In re Braley*, 103 B.R. 758 (Bankr. E.D. Va. 1989)(Bonney, J.). Other Circuit Courts have disagreed and insisted that debtors with ability to pay must do so. *In re Kelley*, 841 F.2d 908 (9th Cir. 1988); *In re Walton*, 866 F. 2d 981 (8th Cir. 1989); *United States Trustee* v. *Harris*, 960 F.2d 74 (8th Cir. 1992); *In re Koch*, 109 F. 3d 1285 (8th Cir. 1997); *In re Lamanna*, 153 F. 3d 1 (1st Cir. 1998). A few bankruptcy courts have followed the direction of these Circuit Courts, *In re Shelley*, 231 B.R. 317 (Bankr. D. Neb. 1999)(Minahan, Jr. J.); *In re Cox*, 2000 Bankr. Lexis 571 (Bankr. N.D. Fla., May 16, 2000).

It was this evidence which led Congress to conclude that the complete overhaul of section 707(b) was necessary, with clear, non-discretionary requirements imposed on the bankruptcy court to reject the notion that debtors were entitled to a discharge as a matter of right without regard to their ability to pay and to assure that in practice those with ability to pay would not be entitled to chapter 7 relief. In the 105th Congress, the House passed HR 3150 and the Senate passed S. 1301, two bills which would have inserted means-testing in section 707(b). A Conference Committee reconciled the two bills and produced a Conference Report (H. Rep. 105–794) which passed the House at the end of the 105th Congress but was never voted on in the Senate. Senate Report 105–253 provides the legislative history of S. 1301. House Report 105–540 provides the legislative History of HR 3150.

THE CURRENT LEGISLATION

HR 2415 is the culmination of these efforts and is intended to both remove unequivocally the bankruptcy court's discretion with regard to whether a debtor with ability to pay should be dismissed from chapter 7, and to restrict as much as possible reliance upon judicial discretion to determine the debtor's ability to pay. Limited judicial discretion remains to deal with the hardship case, but that discretion is not to be abused by lax enforcement of the standards in HR 2415.

Section 102 of HR 2415 provides that a Chapter 7 case will be presumed to be an ''abuse'' of Chapter 7 if the debtor has the ability to repay, in a 5–year repayment plan, 25% of the debtor's nonpriority unsecured claims (but not less than $6,000), or $10,000, whichever is less. For purposes of determining the debtor's repayment ability, section 102 provides that the debtor's monthly expenses shall be applicable monthly expenses under standards issued by the Internal Revenue Service (''IRS'') for the area in which the debtor resides. The IRS standards applicable under section 102 are the IRS ''National Standards,'' ''Local Standards,'' and certain categories of ''Other Necessary Expenses'' which are specifically listed in the Standards. These Internal Revenue Service standards are currently used to determine appropriate living expenses for taxpayers who are required to repay delinquent taxes. These standards have been developed by the Treasury Department to assist the Department in the collection of taxes and, of course, can be revised from time to time, as needed. These expense categories allow expenses for housing, food, transportation, and, for purposes of the means test, certain specified ''other necessary expenses.''

In order to provide flexibility in appropriate cases of hardship, Section 102 also provides that in some cases where the presumption applies the debtor may be able to demonstrate ''special circumstances'' that ''justify'' additional expenses or an adjustment to the debtor's income for which there is no reasonable alternative. In addition, the debtor must demonstrate that the adjustments are reasonable and necessary and there is no reasonable alternative to the expense or income adjustment. If the debtor can make this showing, the presumption is rebutted. It is not intended that the ''special circumstances'' test will allow the presumption of abuse to be rebutted by relying on factors other than ability to pay.

The presumption of abuse arises due to a financial calculation assessing a Chapter 7 debtor's ability to pay. Thus, the presumption of abuse under Section 707(b) may only be rebutted if the debtor shows changes to expenses or changes to income not otherwise accounted for in the means test and that meet all of the requirements of the ''special circumstances'' test. Other factors are not relevant.

In applying the ''special circumstances'' test, it is important to note that a debtor who requests a ''special circumstances'' adjustment is requesting preferential treatment when compared to other consumers, and it is those other consumers who, by paying their debts, must assume the cost of the debts discharged by the debtors seeking the preferential treatment. It also is important to note that, because of the protections established for debtors whose income falls below the median income level, the preferential treatment provided under the ''special circumstances'' standard primarily benefits higher income individuals.

As indicated earlier, in order to ensure fairness with respect to the consumers who must pay the cost when others discharge debts in bankruptcy, it is essential that the ''special circumstances'' test establish a significant, meaningful threshold which a debtor must satisfy in order to receive the preferential treatment. The House/Senate agreement incorporated in HR 2415 is premised upon the belief that the relief sought by a debtor who files for bankruptcy is financial in nature and the debtor's right to obtain preferential relief under the ''special circumstances'' provision should be assessed based on financial considerations only. Thus, the agreement is not intended to allow debtors to continue expenses unless they clearly demonstrate that they meet the ''special circumstances'' test for such adjustments.

Under this bankruptcy reform package, the Office of United States Trustee or bankruptcy administrator is required to file a motion to dismiss or convert a Chapter 7 case if the bankrupt's current monthly income equals or exceeds the state median income and the presumption of abuse applies. If the Office of United States Trustee or bankruptcy administrator determines after investigation that such a motion is not warranted because the presumption of abuse can be rebutted, then it must file an explanatory statement with the bankruptcy court detailing why a motion to dismiss or convert is not appropriate. If private trustees or creditors disagree, they can commence a motion under 707(b).

Importantly, creditors are now explicitly given the power to bring 707(b) motions before the bankruptcy court, although creditors' and private trustees' motions are restricted to cases in which the debtor's current monthly income exceeds the applicable state median income. Moreover, HR 2415 gives Chapter 7 trustees important new financial incentives for ferreting out bankrupts who have repayment capacity and provides for appropriate penalties for bankruptcy attorneys who recklessly steer individuals with repayment capacity to Chapter 7 bankruptcy, or file schedules which misstate income, expenses or assets. HR 2415 also contains penalties for creditors who file inappropriate motions under section 707(b). Thus, contrary to the assertions of some, there are real and meaningful reasons why creditors will not improperly use their right to file 707(b) motions.

The new section 707(b) also provides that in addition to the means test, Chapter 7 debtors' cases may be dismissed if the filing is not in good faith or the ''totality of the circumstances'' indicate that granting relief under Chapter 7 would constitute abuse. No inference should be drawn, however that by referencing the ''totality of the circumstances'' Congress intended to approve the result in *In re Green*, 934 F.2d 568 (4th Cir. 1991) or similar cases. Such cases are rejected by the means test reforms and the change in the standard from ''substantial abuse'' to ''abuse'' in HR 2415. However, situations in which courts dismiss debtors from Chapter 7 today clearly continue to be grounds for dismissal under HR 2415, including such cases as *In re Lamanna*, 153 F. 3d 1 (1st Cir. 1998). In addition, since the standard for dismissal is revised to require ''abuse'' rather than ''substantial abuse'', the courts are clearly given additional discretion to control abusive use of chapter 7 when that is appropriate.

Congress thus intends that the new section 707(b) provide a tightly-focused mechanism for identifying bankrupts who have repayment capacity and sorting them out of Chapter 7, as well as dealing with other forms of abuse. At the same time, the new section 707(b) means test contains procedural safeguards which ensure that any special financial circumstances of a debtor will be appropriately considered before he or she is dismissed from bankruptcy or converted to another chapter.

ENHANCED CONSUMER PROTECTIONS AND CREDIT CARD DISCLOSURES

Importantly, HR 2415 retains Title XIX of the Senate bill. This title amends the Truth in Lending Act (''TILA'') to require significant new minimum payment disclosures in connection with open-end credit plans. Among other things, HR 2415 requires credit card companies, on the front of each monthly statement, to provide:

—a statement that making only minimum payments will increase the interest costs and the time it takes to repay the account balance;

—an example showing the length of time it would take to repay a specified amount if making minimum payments only; and

—a toll-free telephone number which cardholders could call to receive additional repayment information.

HR 2415 requires the Federal Reserve Board to promulgate a table that would set forth information for use by credit card issuers in responding to cardholders who make inquiries through the toll-free telephone number. Finally, the Federal Reserve Board is authorized to study the types of information available to consumers regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default, including information related to minimum payments. The study would include consideration of the extent to which the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

HR 2415 also amends TILA to require certain applications or solicitations for credit cards that include an introductory rate of less than one year, and all promotional materials accompanying such an application or solicitation, to include the following relating to introductory rates:

—use the term ''introductory'' in immediate proximity to each listing of the introductory rate; and

—disclose when the introductory period will end and the annual percentage rate that will apply at the end of the introductory period.

In addition, HR 2415 requires a clear and conspicuous disclosure, in a prominent manner on or with an application or solicitation, of the rate, if any, that will apply if the introductory rate is revoked, and a general description of the circumstances or events that would result in such a rate.

HR 2415 also requires a credit card issuer to clearly and conspicuously provide disclosures regarding the key features of the credit plan, such as interest rate and basic fees, with Internet-based credit card applications and solicitations. These disclosures must be readily accessible to consumers in close proximity to the solicitations and these disclosures must be updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account. HR 2415 also provides that, if a lender imposes a late fee for failing to make payment by the payment due date, the lender must state on each periodic statement the payment due date (or, if the card issuer contractually establishes a different date, the earliest date on which a late fee may be imposed). The lender also must state the amount of the fee that will be assessed if payment is received after that date.

Importantly, HR 2415 amends TILA to provide that an open-end creditor cannot terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account.

New disclosures are now required in connection with consumer credit plans secured by the consumer's principal dwelling in which the extension of credit may exceed the fair market value of the dwelling. Under the amendment, a creditor must disclose at the time the creditor distributes an application to the consumer for such a plan that interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for federal income tax purposes.

The Congress also directs that the Federal Reserve Board study the existing protections limiting consumer liability for unauthorized use of debit cards. In addition, the Board is directed to study the impact that extensions of credit to college students have on the rate of bankruptcy cases filed.

In addition to these new credit card disclosures, HR 2415 contains several important reforms which will protect individuals and help them better understand their rights and remedies. Reaffirmations occur when a debtor agrees to pay a debt which would otherwise be wiped away in bankruptcy. Section 524 of the Bankruptcy Code sets the conditions which must be met before such agreements will be considered legally binding. The bankruptcy reform package retains the Senate-passed amendments related to the reaffirmation agreements, with slight changes affecting only credit union debt.

HR 2415 also requires the Attorney General to designate prosecutors and investigators to enforce current criminal statutes designed to protect debtors in bankruptcy court from deceptive or coercive collection practices as well as enforcing those same statutes against debtors in appropriate cases. By committing substantial new resources to fighting abusive creditor and debtor practices and bankruptcy fraud, it is intended that the Department of Justice step up enforcement of these under-used statutes.

The bankruptcy reform package contains a provision which penalizes creditors who refuse to negotiate reasonable repayment schedules outside of bankruptcy. Under this provision, the amount that a creditor may collect in bankruptcy can be reduced if an approved credit counseling agency approved under the credit counseling provision of HR 2415 for the judicial district in which the debtor's case is pending makes a reasonable offer of repayment at least 60 days prior to declaring bankruptcy and the creditor unreasonably rejects this offer. During Senate consideration of S. 625, the Department of Justice indicated support for promoting alternative dispute resolution in this way but then suggested that the provision be ''clarified'' in such a way that it will not apply to governmental creditors. See Letter to The Honorable Orrin G. Hatch, Chairman, Committee on the Judiciary, April 9, 1999. Thus, if the Congress were to accept the suggestions of the Department of Justice, non-governmental creditors would be subject to a tougher standard than currently contained in the bankruptcy reform package, but the Internal Revenue Service would be free to avoid alternative dispute resolution. Given its history in dealing with taxpayers, it was considered inappropriate to create such a special exemption for the Internal Revenue Service.

REDUCING ABUSIVE USES OF THE BANKRUPTCY CODE

As the National Bankruptcy Review Commission correctly noted, many of the worst abuses of the bankruptcy system involve individuals who repeatedly file for bankruptcy with the sole intention of using the automatic stay (i.e., a court injunction which arises whenever a bankruptcy case is filed). National Bankruptcy Rev. Comm. Rep., ''Bankruptcy the Next Twenty Years,'' October 20, 1997 vol. 1, at 262. Accordingly, HR 2415 contains restrictions on repeat filers and on multiple owners who serially file. It is expected that these changes will dramatically reduce the number of inappropriate bankruptcy filings.

HR 2415 also requires random audits of bankruptcy petitions to verify the accuracy of information contained in bankruptcy petitions, and makes debtor attorney's responsible to diligently inquire into the accuracy of the information provided on the schedules. Many Members of Congress are concerned that there is little incentive for individuals to list all of their assets or fully and accurately disclose their financial affairs, including their income and living expenses, when they file for bankruptcy. Of course, such laxity fosters an environment in which the overall financial condition of the bankrupt is likely to be inaccurate, with the result that creditors may receive less than they could when a bankrupt's financial affairs are accurately disclosed. Accordingly, the random audit procedures will restore some integrity to the system, since material misstatements are required to be reported to the appropriate authorities.

ENHANCED PROTECTIONS FOR CHILD SUPPORT

Balanced bankruptcy reform must protect the status of child support. According to some estimates, more than one-third of bankruptcies involve spousal and child support orders. And in about half of those cases, women were creditors trying to collect court-ordered support from their former husbands. These support orders are a lifeline for thousands of families struggling to maintain self-sufficiency.

HR 2415 contains all of the child support provisions of the Senate-passed version of bankruptcy reform (S. 625), including provisions closing various serious loopholes which allowed those who owed child support, alimony and in some instances other marital dissolution obligations to use the bankruptcy laws to delay and sometimes defeat payment of those obligations. HR 2415 also contains a new provision which requires bankruptcy trustees to notify child support creditors of their right to use state child support enforcement agencies to collect outstanding amounts due. In addition, HR 2415 permits general creditors to disclose the last known billing address of a debtor who owes child support or alimony to child support claimants. Taken together, these changes place child support and alimony claimants in a far better position under HR 2415 than under current law.

BUSINESS PROVISIONS

HR 2415 contains the small business reform measures from the Senate passed version of HR 833. Although business bankruptcy filings are low at this time, several changes to Chapter 11 are warranted. HR 2415 contains provisions intended to speed up Chapter 11 for small business debtors, enact recommendations of the United Nations Commission on Internal Trade Law regarding transnational bankruptcy and clarify the treatment of tax claims in bankruptcy.

Importantly, HR 2415 provides new deadlines on tenants under non-residential leases to decide whether to reject or assume leases under section 365 of the Bankruptcy Code. Under current law, once a tenant under a non-residential real property lease has filed for Chapter 11 relief, it has 60 days to decide whether to accept or reject its lease, with extensions for cause. Unfortunately, bankruptcy judges have allowed the exception for cause to swallow the rule. Today, bankruptcy judges routinely extend the time within which retail debtors must assume or reject the lease for years, including until confirmation of the plan. Moreover, while these tenant-debtors are supposed to pay their rent while the proceedings continue, they do not always do so and bankruptcy judges have not always compelled them to do so.

Thus, landlords are often left with significant uncertainty since they may have no clear indication as to whether a tenant will continue in a lease and the tenant may not be current on post-petition rents. It is hoped that the provisions contained in the current bankruptcy reform agreement will mitigate the unfairness confronting landlords of non-residential leases. The House bill provided that an unexpired lease of nonresidential property will be deemed rejected if the trustee has not assumed or rejected it by the earlier of the date of confirmation of a plan or a date that is no more than 120 days after the date of the order for relief, with an additional 120 days if granted by the court for cause. The court, under the House bill, could then grant an extension beyond 240 days after the date of the order for relief ''only upon prior written consent of the lessor.'' The Senate bill provided that such a lease would be deemed rejected if the trustee has not acted by the earlier of the date of confirmation of a plan or the date which is 120 days after the date of the order for relief. No additional extension is permitted except ''upon motion of the lessor.'' Both bills, then, were quite similar, especially in denying bankruptcy judges discretion in extending the deadline for assuming or rejecting a lease after an absolute period following the order for relief—240 days in the former and 120 days in the latter. Both the Departments of Justice and the Interior favored a 120 day deadline, with no discretion in the bankruptcy judge.

HR 2415 provides that an unexpired nonresidential real property lease is deemed rejected if the trustee has not acted by the earlier of the date of confirmation of a plan or the date which is 120 days after the date of the order for relief. The court may extend the 120 day period for an additional 90 days, prior to the expiration of the 120 day period, upon motion of either the trustee or the lessor for cause, for a total of 210 days after the date of the order for relief. If the court has granted such 90 day extension, the court may grant a subsequent extension only upon prior written consent of the lessor. This can be in the form of (1) a motion of the lessor or (2) a motion of the trustee, provided that the trustee has a prior written consent of the lessor. Importantly, HR 2415 clearly retains both bills' denial of bankruptcy judges' discretion in extending this date: in no circumstance may the time to assume or reject unexpired nonresidential real property leases extend beyond the earlier of (1) the time of confirmation or (2) 210 days from the time of entry of the order for relief, without the prior written consent of the lessor—either in the form of a lessor's motion, or in the form of a prior written consent to a trustee's motion, to extend the time. Moreover, a lessor's written consent to one extension beyond the 210 period does not constitute such consent for a subsequent extension: each such extension beyond 210 days requires the separate written consent of the lessor.

Finally, HR 2415 adds language to Section 365 (f)(1) of the Bankruptcy Code for the purpose of assuring that section 365(f) does not override any part of Section 365(b). HR 2415 provides that section 365(f) is not only subject to Section 365(c), but also to Section 365(b), which is to be given full effect. Contrary legal interpretations in case law are overturned.

SECTION BY SECTION EXPLANATION

TITLE I—NEEDS BASED BANKRUPTCY

Sections 101–103: Dismissal for Abuse and the Means Test

These three sections expand present 707(b) of the Bankruptcy Code to require a court to dismiss a chapter 7 petition filed by an individual debtor whose debts are primarily consumer debts (or with the debtor's consent, convert to another bankruptcy chapter) if the debtor's case meets certain standards. Present law already requires that an individual debtor's case be dismissed if it is a ''substantial abuse'' and the debtor's debts are primarily consumer debts, but also creates a presumption against dismissal and prevents anyone other than the court or the United States Trustee from raising the issue. There has been concern that present 707(b) is not effective to prevent inappropriate use of chapter 7, and in particular debtors who have ability to repay their debts from using chapter 7 to obtain a discharge without repaying creditors what they can afford, needlessly costing consumers who pay their bills in higher credit prices.

These sections reorganize present section 707(b) to change the standard for dismissal from ''substantial abuse'' to ''abuse'' in order to provide strengthened controls against abusive use of chapter 7. They also replace the presumption against dismissal from chapter 7 with a presumption of dismissal if the debtor has ability to pay as determined by a new means test. The changes are intended to broaden rather than limit controls on improper use of chapter 7.

The means test.—Section 102 establishes a means test enforced by required dismissal from chapter 7. To apply the means test, the debtor must complete revised schedules of income and expense similar to those now required, but revised to show net income determined in a particular way and a calculation of how much the debtor can afford to pay under the new means test. The means test should for the most part be self-enforcing. It should be infrequent that a debtor will fill out the schedule of income and expenses which show that the debtor has ability to pay, and still file in chapter 7. Forms should be developed for these revised schedules which are clear and understandable, and promote accurate and efficient administration of the means test. The schedules should be filed with the debtor's petition. It is intended that the anti-fraud provisions of the bankruptcy and other laws be applied vigorously by the bankruptcy courts and others whenever fraudulent completion of the schedules is apparent.

The means test initially focuses upon the debtor's net income determined according to standards set forth in these sections. The debtor's current monthly income is first determined by averaging the debtor's monthly income for the prior six months and excluding social security or certain war reparations income. Next, the debtor's monthly expenses are determined. These include monthly expenses as specified under the National Standards and Local Standards issued by the Internal Revenue Service for the area in which the debtor resides, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses under those same standards. The categories specified as Other Necessary Expenses means only those categories of expense specifically listed in the Internal Revenue Service Manual at 5323.423(1), (3) and (4).

It is not intended that additional expenses will be deductible except as otherwise specified in section 707(b). For example, an additional allowance is available if demonstrated to be reasonable and necessary up to 5% of the monthly allowances for food and clothing categories as specified by the National Standards. Moreover, actual monthly expense allowances are specified for certain reasonably necessary family violence expenses and for reasonable and necessary continued expenses of supporting an elderly, chronically ill or disabled family member. The debtor's monthly expenses for priority debts and secured debts (including the averaged cost of curing arrearages with respect to secured debts as permitted in chapter 13) are also deductible. They are determined based on the average of those expenses over a 60 month period.

Also allowed are deductions for actual average monthly expenses that are entitled to administrative expense priority under the

Bankruptcy Code, but never more than 10% of projected plan payments, as determined under a schedule to be issued from time to time as necessary by the Executive Office of United States Trustees. This schedule is to be based on the standing chapter 13 trustee's fee as allowed from time to time in each district and should not include other amounts. Other fee schedules may be provided for cases when a debtor qualifies for chapter 12 or would have to use chapter 11 because excluded from chapter 13. In applying the 10% cap, only projected plan payments which are reasonable and necessary should be considered. Generally, plan payments to pay secured debt should be excluded from projected plan payments when calculating administrative expenses, unless there is a compelling reason for concluding that payment of the secured debt would be included in the debtor's plan. Although the administrative expenses may be otherwise entitled to priority, it is intended that they be accounted for under this specific administrative expense provision and not also allowed under the provision for priority expenses.

Actual expenses for private elementary or secondary private school tuition not exceeding $1,500 per child per year are also deductible.

Once the monthly expense allowances are determined, they are then subtracted from current total monthly income to obtain the debtor's net monthly income. Net income is then multiplied by 60. If the result is greater than the lesser of a threshold amount of (1) $10,000 or (2) 25% of the nonpriority unsecured claims in the debtor's case but not less than $6,000, there is a presumption that the debtor's case must be dismissed from chapter 7.

This presumption may be rebutted if there are special circumstances that justify adjustments to income or expenses for which there is no reasonable alternative. To claim such additional expense or income adjustment, the debtor must itemize, explain and document why the expense or income adjustment is reasonable and necessary in addition to meeting the special circumstances test and demonstrates there is no reasonable alternative to the expenses or income adjustment. If it is determined that special circumstances as described do exist, the debtor may recalculate income and expenses based on the adjustments and apply the threshold to the resulting net income. The presumption can only be rebutted by demonstrating that an expense or income adjustment appropriate under the special circumstances test causes the debtor's net income to be below the applicable threshold amount.

An important additional feature of the means test is the ''safe harbor.'' If the debtor's current monthly income is less than the appropriate state median income as determined by current statistical information supplied by the Bureau of the Census, then only the judge, United States trustee, bankruptcy administrator, or trustee may bring a motion under section 707(b). The safe harbor provides further limits motions against debtors whose current monthly income is less than the appropriate state median income as determined by current statistical information supplied by the Bureau of the Census, in that for such debtors, neither the judge, the United States Trustee, the bankruptcy administrator, a private trustee nor a party in interest can bring a motion to dismiss under the presumed abuse provisions of the means test. It is expected that the Bureau of the Census will promptly make available state median income information by family size for households of 1–4 members based upon information it collects. For these purposes, a family or household consists of the debtor and the debtor's dependents, and in a joint case, the debtor's spouse. The median income for families larger than 4 persons is determined by taking the monthly median income for a family of 4 and adding $525 to that figure for each additional family member.

Under subsection (e) of section 102 of HR 2415, creditors are permitted to report information concerning a debtor's failure to satisfy the means test or other abuse to the United States Trustee, bankruptcy administrator, case trustee or judge assigned the case, and participate with them in the preparation and presentation of a motion to dismiss, as in *Kornfield* v. *Schwartz*, 164 F. 3d 778 (2d Cir. 1999). Contacts with the judge, however, cannot be ex parte.

The bill provides that the Internal Revenue Service standards relied upon for the means test will be studied by the Executive Office of United States Trustees, with a report to the respective Judiciary Committees of both Houses of Congress within 2 years of the effective date.

Disposable income test.—This section also amends section 1325(b)(2) to define disposable income for cases of debtors with current monthly income over median income, using the same basic concepts, to the extent they are applicable, that are used in applying the means test. It is intended that there be a uniform, nationwide standard to determine disposable income used in chapter 13 cases, based upon means test calculations.

Present law requires that in a chapter 13 plan, all of the debtor's disposable income be used to pay creditors under the plan, but does not define the term. This section both requires (1) that all of the debtor's disposable income be applied to pay unsecured creditors, and (2) that for debtors whose current monthly income is in excess of the applicable median income level, their disposable income be determined using basic means test concepts which define current monthly income (section 101(10A)), and allowable expenses (section 707(b)(2)(A)(ii), (iii) and (B)).

To determine disposable income for those over the applicable median income level, first, current monthly income as defined in HR 2415 is determined. From that amount, amounts reasonably necessary to be expended for the maintenance and support of the debtor or a dependent of the debtor are deducted. The deductions for the expenses of providing support and maintenance are to be determined in accordance with the standards of section 707(b)(2)(A) and (B). Thus, the debtor is allowed the amounts permitted for food and housing under National Standards and Local Standards issued by the Internal Revenue Service. Actual expenses for other amounts in categories specified as Other Necessary Expenses are also allowed, just as when applying the means test. Expenses for secured debts which are paid outside of the plan should be accounted for as required under 707(b)(2)(A)(iii), and payments for secured debt paid under the plan should be what is provided in the plan as long as it is not more than the amount permitted under that same provision. Priority debt payments under the plan are not reasonably necessary to be expended and should not be included in the calculation, since under this provision, disposable income is determined for the purposes of setting the amount which must be paid to both nonpriority and priority unsecured creditors. The means test only determines the projected amount available to pay nonpriority unsecured creditors.

The provision also provides for the adjustment of the determination of disposable income if the debtor has obligations to pay child support, foster care payments or disability payments for a dependent child, and for certain continuing charitable contributions as allowed under present law. As with the means test, adjustments are also permitted to income or expenses based on the ''special circumstances'' provisions of the means test.

Once net monthly income is determined, it is then multiplied by the applicable commitment period to determine the total amount which the plan must apply over its duration to pay unsecured creditors. If the plan does not apply all of disposable income to pay unsecured creditors, the plan is not confirmable.

Administration of the means test.—Several important additional provisions assist in the efficient administration of the means test. Enforcement of the means test is in the first instance the responsibility of the United States trustee or bankruptcy administrator for the district in which the chapter 7 case is pending. The United States trustee or bankruptcy administrator will be involved in determining whether debtors have accurately disclosed their income and expenses, and in preliminarily reviewing debtor's claims that ''special circumstances'' exist which justify adjustments to otherwise allowed monthly income and expense amounts. Case trustees, judges and creditors are also entitled to investigate means test issues and raise them by motions to dismiss, or by bringing them to the attention of others involved in the enforcement process.

When the debtor's chapter 7 petition is first filed, the court is to review the debtor's income and expense schedule and determine whether this is a case in which the presumption in favor of dismissal applies. That will be determinable on the face of the schedules, since debtors are required to do the necessary calculations of the means test threshold. If the presumptions arises, the court is to notify creditors within ten days after the case is filed that this is a presumption case.

Next, the United States trustee or bankruptcy administrator is required to review the debtor's filing to evaluate whether there should be a motion to dismiss filed. The United Sates Trustee or bankruptcy administrator is to file with the court a statement whether the debtor's case would or would not be presumed to be an abuse under the means test of section 707(b) not later than 10 days after the date of the first meeting of creditors. Moreover, if the debtor's current monthly income is over the median income level and the debtor's net income is more than the means test threshold, the trustee or administrator must also either file with the court a motion to dismiss, or a statement why no motion is being filed. However, if the debtor's gross income is between 100% and 150% of median income, and the debtor's net income determined in a special short-hand calculation based on core expenses is under the threshold, the trustee is relieved of any obligation to file a motion to dismiss. This ''mini screen'' does not change the substantive requirements of the means test. Its application is limited and is intended only to permit the United States trustee or bankruptcy administrator to use a short-hand method of calculating the debtor's income available to pay creditors. If the short-hand calculation of net income indicates that the debtor does not meet ability to pay criteria, further administration of the means test is not required. Otherwise, the full means test calculation will be made to determine whether dismissal or conversion is appropriate. In other cases, a similar calculation can be made since the short-hand method of calculation is one stage of the full means test calculation.

To ensure that debtors and creditors and their respective counsel do not abuse the process, they are specifically subjected to the standards of Bankruptcy Rule 9011 with respect to the claims and defenses debtors and creditors and their counsel assert in section 707(b) motions. Certain small businesses with less than 25 employees are exempted from this requirement. In addition, the accuracy of the schedules the debtor must file with the petition, and particularly the statements of assets, debts and income, expenses and means test calculations, is enforced by a requirement that debtor's counsel have no knowledge that the schedules are incorrect after appropriate inquiry. An attorney's inquiry is expected to be more than a cursory acceptance of the debtor's word and must be sufficient to verify or disprove any knowledge, information or belief which would lead a diligent attorney to doubt the accuracy of the schedules.

Dismissal for abuse.—Dismissal under 707(b) is also authorized when there is ''abuse''. It is intended that by changing the standard for dismissal from ''substantial abuse'' to ''abuse'', stronger controls will be available to the courts, the United States trustee or bankruptcy administrator, private trustees and creditors to limit the abusive use of chapter 7 based on a wide range of circumstances. The ''bad faith'' and ''totality of the circumstances'' of the debtor's situation is adopted as an appropriate standard. It is intended that all forms of inappropriate and abusive debtor use of chapter 7 will be covered by this standard, whether because of the debtor's conduct or the debtor's ability to pay. If a debtor's case would be dismissed today for ''substantial abuse'' as in *In re Lamanna*, 153 F. 3d 1 (1st Cir. 1998), it is intended that the case should be subject to dismissal under H.R. 2415. Cases which have decided that a debtor's ability to pay should not be considered when determining abuse, or can be outweighed if the debtor is otherwise acting in good faith, are intended to be overruled. In dealing with ability to pay cases which are abusive, the presumption of abuse and the safe harbor protecting debtors from application of the presumption will not be relevant.

In addition, the standard of abusive conduct is specifically intended to include consideration of whether a chapter 7 filing is being used without justification to secure rejection of a personal service contract.

Section 104. Notice of alternatives

This provision amends Bankruptcy Code section 342(b) to expand on the contents of the notice which an individual debtor whose debts are primarily consumer debts must receive before filing a bankruptcy petition. The content and form of the notice is to be prescribed by the United States trustee or bankruptcy administrator for the district in which the petition is filed, and must contain a description of chapters 7, 11, 12 and 13, review the benefits and costs of each chapter, the services that are available from a nonprofit credit counseling agency, and a disclosure of the debtor's responsibilities in completing a petition with respect to the accuracy of the schedules and other information provided. It is intended that this notice will be in an easily understood form, designed to assist debtors in better understanding the alternatives for debt adjustment offered by the Bankruptcy Code, the debtor's responsibilities in seeking such relief, and as uniform as possible throughout the country.

Section 105. Debtor Financial Management Training Test Program

The Executive Office of United States Trustees is directed to develop financial management training curricula and materials to educate individual debtors in personal financial management. The materials are to be developed after consultation with experts. The materials are to be tested in 6 judicial districts over 18 months. At the end of the test, a report on the results is to be provided to the Speaker of the House and the President pro tem of the Senate.

Section 106. Credit counseling

Credit counseling is an alternative to filing bankruptcy for some debtors. It is intended that debtors be fully informed before they file bankruptcy about this less drastic alternative to bankruptcy in all instances, but particularly when they have only received information about their alternatives from petition preparers or attorneys.

This provision establishes the requirement that before individual debtors file for bankruptcy, they must be made aware that credit counseling services are available. Debtors are not required to actually undergo credit counseling, but they must be made aware that such alternatives to bankruptcy do exist. The case of a debtor must be dismissed if it is filed without meeting that requirement unless the debtor can demonstrate exigent circumstances which temporarily excuse satisfying the requirement. It is expected that when courts do not enforce this requirement sua sponte, the United States trustee or bankruptcy administrator will bring the matter to the court's attention by appropriate motion, but any trustee or other party in interest could do so.

Concern has been expressed that the bankruptcy relief debtors obtain under present law stops at the discharge, failing to educate debtors about basic budget management so they can avoid financial difficulties in the future. Under this section, individual debtors will be required to attend a course of instruction in personal financial management approved by the United States trustee or bankruptcy administrator for the district in which the petition is filed. It is intended that the United States trustees and bankruptcy administrators will strongly promote the development of effective courses, both through the formal approval process and informally. If the debtor fails to attend a required course, the debtor will not be able to obtain a discharge in either chapter 7 or 13. Provisions similar to those applicable to credit counseling allow the United States trustee or bankruptcy administrator to excuse all filers in a district from the requirement if the trustee or administrator finds that there are not enough providers of the courses in the district. Congress intends that this exemption will not be lightly imposed, and that the trustee or administrator will use every reasonable effort to see that there are adequate credit counseling and courses of instruction available.

Credit counseling agencies and courses of instruction concerning financial management included in the program must be approved by the United States trustee or bankruptcy administrator for the district. This section sets standards which the United States trustee or bankruptcy administrator must apply in deciding whether to approve a particular agency or course. Prior to approval, the qualifications of the agency or course are to be carefully reviewed by the United States trustee or bankruptcy administrator. It is intended that they will require applicants to provide adequate information about qualifications and programs for this purpose. Agencies and courses will be initially approved only for a probationary period of no more than 6 months. After that, their qualifications and performance will be reviewed each year by the United States Trustee or bankruptcy administrator. Review of the United States trustee or bankruptcy administrator's decision to renew approval for the first full year term after the probationary period and every 2 years thereafter is available in the United States district court at the request of any party in interest. In addition, at any time the district court sitting as a bankruptcy court can review and disapprove an agency or course of instruction.

Section 107. Schedule of reasonable and necessary expenses

This provision directs the Director of the Executive Office of United States Trustees to issue schedules of reasonable and necessary administrative expenses for each judicial district not later than 180 days after enactment. It is intended that the administrative expenses for these purposes include only the chapter 13 trustee's fee as allowed in the district from time to time, and that the schedules will be revised as necessary to reflect changes in that fee. Since the trustee's fee is determined as a percentage of payments made to creditors, the Director may determine that the appropriate way to state the schedule is by providing percentage amounts and a method for determining projected plan payments. These will generally just be unsecured debts unless there is a compelling reason to conclude otherwise.

TITLE II—ENHANCED CONSUMER PROTECTIONS

Section 201. Promotion of alternate dispute resolution

This section permits the court, on motion of the debtor and after a hearing, to reduce a claim based in whole on unsecured consumer debts by not more than 20% if (1) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment system proposed by an approved credit counseling agency acting on behalf of the debtor; (2) the debtor's offer was made at least 60 days before the filing of the bankruptcy petition and provided for payment of at least 60% of the debt over the repayment period of the loan, or a reasonable extension thereof; and (3) no part of the debt under the alternative repayment schedule is nondischargeable. An approved credit counseling agency means one approved under the credit counseling provisions of this Act.

This section applies only to claims which are based on debts which are wholly unsecured consumer debts. The provision is also carefully drafted so as only to require creditors to negotiate, when reasonable, alternative repayment systems so long as they are reasonable. It does not require creditors to accept any alternative repayment proposal, although it is expected that negotiations could result in reasonable alternative plans being adopted. Furthermore, the debtor's proposal must provide for at least 60% repayment to the creditor. The debtor's proposal should not be considered reasonable if it is unlikely the debtor will be able to make the repayments as proposed.

Section 202. Effect of discharge

A creditor's willful failure to credit plan payments in the manner required by the plan is a violation of the post-discharge injunction under section 524(a)(2) if the creditor's acts to collect and failure to credit payments in the manner required by the plan causes material injury to the debtor. However, if a plan has been dismissed, is in default, or the creditor has not received payments required under the plan, the failure to credit the payments is not a violation of the injunction.

This provision also clarifies that it is not a violation of the post-discharge injunction for a creditor that holds a claim secured in whole or in part by real property that is the debtor's principal residence to take actions in the ordinary course of business to seek or obtain periodic payments associated with a valid security interest in lieu of a mortgage foreclosure or other enforcement proceeding not barred by the injunction. Congress intends this provision to clarify the law in this area so as to provide a safe harbor for mortgage lending, but the existence of this clarifying provision is not intended to suggest that similar action taken by creditors whose debt is not secured or is secured by other types of property would be a violation of the post-discharge injunction.

Section 203. Discouraging abuse of reaffirmation practices

This provision amends section 524(c)(2) of the Code to provide a clearly understandable disclosure form to explain the debtor's rights and obligations in the reaffirmation process. It is intended that a single nationwide form as set out in the statute will be used for all reaffirmations in all bankruptcy courts, and that it will be the only disclosure required in the reaffirmation process. It is expected that the nationwide form will assist those who teach budgeting and financial management in secondary schools, provide credit counseling, or assist those in financial difficulty in educating consumers about the benefits and disadvantages of reaffirmations so that debtors who do reaffirm will be better informed about what they are doing. The provision is also intended to create a nationwide method of processing reaffirmations so that companies who must administer reaffirmations in several areas are freed from special requirements in particular localities.

The statutory form, in addition to clearly explaining to debtors what they are doing when they reaffirm, also provides a form which may be used as the reaffirmation agreement and a form for the debtor's attorney's certification when the debtor is represented. Debtors must also fill out a Part D in which they state their ability to pay the amount being reaffirmed based upon their income and expenses, including other reaffirmed debts. If debtors cannot complete the form showing they have ability to pay the reaffirmed amount, there is a presumption of undue hardship for a period of 60 days, and the reaffirmation must be submitted for review by the court even when the debtor's attorney certifies that the reaffirmation is in the debtor's best interest. Since income and expenses for these purposes are those the debtor will have post-discharge, the standards of income and expense under section 102 of HR 2415 are not relevant. The debtor's actual post-discharge income and expenses as the debtor determines them will control.

Credit unions are permitted to change the form to reflect that the debtor may fill out a simpler Part D when a credit union member is reaffirming a debt. The credit union member only needs to indicate that will pay the reaffirmed obligation, and there is no presumption of undue hardship or requirement of review by the judge.

Creditors and debtors must make good faith efforts to comply with the requirements imposed by this section. However, there is no intention that errors in completing or using the disclosure forms or complying with the procedural requirements of this section will be construed as a violation when those errors occur in good faith. Under present law, violations of the reaffirmation requirements are enforceable only as violations of the post-discharge injunction. Enforcement of the injunction is an equitable proceeding in which the equities are weighed, courts take into account the good faith of the creditor. Under this section, creditors may accept payments from debtors before and after the filing of a reaffirmation agreement, and may accept and retain payments under a reaffirmation agreement which the creditor believes in good faith to be effective, even though subsequently it is determined that the reaffirmation agreement is not in fact effective. For example, if the creditor and debtor agree that the debtor is responsible to file the reaffirmation agreement, and the debtor does not do so, the creditor should be able to accept and retain payments from the debtor unless it knew the debtor had not in fact filed the agreement with the court. Likewise, if a debtor indicates that he or she has ability to pay in Part D, a creditor can rely upon that statement. Moreover, the requirements of subsection (c)(2) and those added by this section are satisfied if the disclosures required under those provisions are given in good faith. For the purposes of this section, ''good faith'' is to be broadly construed as honesty in fact under the circumstances. The narrow standard of good faith under the Truth in Lending Act is not intended.

The requirements of present law are continued that debtors who do not have counsel who will certify that a reaffirmation is in the debtor's best interest must have the reaffirmation approved by the court before it can be effective. Otherwise, a reaffirmation is effective upon filing the completed and signed statutory form and reaffirmation agreement with the court.

The provision also directs that United States attorneys in each district will designate a specific person within their offices to address violations of criminal law relating to bankruptcy crimes when they involve abusive reaffirmations or materially fraudulent statements on schedules.

Subtitle B—Priority Child Support

Bankruptcy law has long recognized the legal and moral importance of the payment of obligations incurred by a debtor for the support of his or her spouse and children. As such, it has striven to avoid having bankruptcy become a haven for those who would avoid such obligations or an inadvertent impediment for those who wish to comply with those obligations. However, the treatment of domestic support in bankruptcy had developed somewhat haphazardly over time as new issues and concerns have been raised and addressed piecemeal. Moreover, the Code had lagged behind in dealing with the changing legal status of payments made to governmental entities for such obligations, specifically whether such payments were to be paid directly to support the child or family of the debtor, or were to be retained by the government because the parent or child was receiving public assistance.

Under current nonbankruptcy law the status of a support obligation may change rapidly as the recipient moves on or off government assistance even though the underlying responsibility to support the child or family is unaltered. Thus, there is little reason for payments of domestic support obligations to governmental entities not to be treated equally with payments of such obligations directly to a parent or child, or for a debtor to have a lesser duty to satisfy those debts.

Prior to HR 2415 the principle of favored treatment for all domestic support obligations had only been partially recognized in the Code, and there were a number of areas in which bankruptcy filings impacted domestic matters which were not dealt with at all.

Accordingly, Congress undertook a comprehensive review of all aspects of the treatment of domestic support obligations under the Code to determine how to create a coherent and consistent structure to deal with such obligations in bankruptcy.

The following basic principles were employed in the support amendments contained in these provisions:

1. Bankruptcy should interfere as little as possible with the establishment and collection of on-going obligations for support, as allowed in State family law courts.

2. The Bankruptcy Code should provide a broad and comprehensive definition of support, which should then receive favored treatment in the bankruptcy process.

3. The bankruptcy process should insure the continued payment of on-going support and support arrearages with minimal need for participation in the process by support creditors.

4. The bankruptcy process should be structured to allow a debtor to liquidate nondischargeable debt to the greatest extent possible within the context of a bankruptcy case and emerge from the process with the freshest start feasible.

There were a number of areas under former law where these goals were not met. Support and debts in the nature of support were not treated uniformly in the Bankruptcy Code or by bankruptcy courts. Conspicuously, debts owed to the government and based upon the payment of government funds for the maintenance and support of the children or family of the debtor were not given the advantages which the Code affords to debts payable directly to the family of the debtor. Specifically, support debts assigned or owed to the government on the petition date have not been entitled to any priority under section 507(a), have not been protected from loss of their secured status under section 522(f)(1)(A), and have been recoverable by the trustee as a preference under section 547(c)(7)(A). Conversely, support debts which were not assigned on the petition date were entitled to superior treatment as provided in sections 507(a)(7), 522(f)(1)(A), and 547(c)(7)(A).

Because support debts which are assigned to a governmental entity when a petition is filed may become unassigned during the course of a Chapter 12 or 13 bankruptcy plan, and vice versa, the disparate treatment of these debts in the Bankruptcy Code makes little sense. A family which is in need of support after assistance terminates certainly should not lose the advantages the Code gives unassigned support simply because the support was assigned on the petition date. The contrary was also true. Governmental entities under former law received the advantages given to the creditor of unassigned support when the support became assigned during bankruptcy. An overriding purpose of Subtitle B is to eliminate substantially such distinctions in the treatment of support obligations.

In addition to the disparate treatment of support debts found in the Code, the courts also drew distinctions with respect to the dischargeability of support debts owed to the government and support debts owed to the parent or child of the debtor. These distinctions were often arcane and technical. To illustrate, if the debts were owed to the government and based upon the payment of public assistance, the dischargeability of such debts turned on the irrelevant circumstance of when the aid was paid. As a result, judgment debts for support based upon the payment of public assistance prior to the date a petition for on-going support was entered could be discharged while an arrearage accrued under an on-going order could not, even when the support debts were based on identical criteria. And contributing to a lack of uniformity, the decisional law was not consistent. Moreover, many debts which were incurred by a debtor based upon the responsibility of a governmental entity to provide for the support and maintenance of a child, but which debts were never owed to the child or family of the debtor directly, could be discharged. In particular the following were found to be dischargeable: debts incurred for the costs of maintenance of a child in a juvenile detention facility; debts incurred to support a child who was made a ward of the state; debts for support which had not been reduced to a judgment at the time the bankruptcy petition was filed; and debts for child support and maintenance resulting from the placement of the debtor's children in shelter care facilities. In all of these situations debtors have the same legal, equitable, and moral obligations to provide for the support of their children, but under the peculiarities of former law they could transfer that burden to the taxpayers. The domestic support enforcement provisions of HR 2415 is designed to insure compliance with those obligations, during and after bankruptcy.

Section 211. Definition of domestic support obligation

To ensure that all debts relating to the support of a debtor's spouse, former spouse, family or child are given a similar treatment in bankruptcy, section 211 of HR 2415 provides a sweeping definition for the concept of a ''domestic support obligation.'' This definition is intended to clarify the following:

1. The domestic support obligation includes interest on that obligation as provided under applicable nonbankruptcy law. Thus, if a State provides for prejudgment or postjudgment interest on support, such interest is included in the definition of a domestic support obligation.

2. To be nondischargeable support, the obligation must be owed to or recoverable by a ''spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative'' or the debt must be owed to a governmental unit. As distinguished from former law as interpreted by the courts, the debt no longer need be owed to the person or entity filing the claim. It need only be recoverable by such entity. This definition is meant to preserve present statutory or decisional law affecting the dischargeability of debts in the nature of support owed to attorneys or other persons or entities providing assistance to the creditor spouse and children in a domestic proceeding. Nor is there any remaining requirement that the debt be assigned to a government or recoverable under Title IV–D of the Social Security Act for the debt to be excepted from discharge. The debt need only be owed to or recoverable by a governmental unit. Likewise, the debt does not become dischargeable simply because the support was ordered to be paid to the government or a nonparent. Support ordered to be paid to a legal guardian or responsible relative is also not dischargeable.

3. As under the former law, to be excepted from discharge the debt must be ''in the nature of support.'' Unlike the former law, however, a debt based upon assistance provided by a governmental unit for the benefit of a spouse, former spouse or child of the debtor, is now specifically included as a debt in the nature of support. This classification applies whether or not the debt incurred by the debtor is specifically designated as support and whether or not the spouse, former spouse or child has a separate legal right to establish a support obligation.

4. Under former law the support debt had to made ''in connection with a separation agreement, divorce decree, or other order of a court of record.'' Therefore, it was arguable that if the debt had not been reduced to an agreement, decree or order on the date a petition for relief was filed, it was not excepted from discharge. The new definition of a domestic support obligation specifies to the contrary that the debt may be established ''or subject to establishment before or after an order for relief'' to qualify as a nondischargeable debt.

5. Finally the definition of a domestic support obligation continues to exclude support which has been assigned to a nongovernmental entity, unless the assignment is merely made for the purpose of collecting the debt. This definition codifies existing case law.

Having created this definition of a ''domestic support obligation,'' HR 2415 uses it in twenty specific places. In so doing, HR 2415 generally treats support related debts similarly, no matter how the debt arose or to whom the debt is owed.

Section. 212. Priorities for claims for domestic support obligations

All domestic support obligation debts are given a first priority. Within that priority two categories of support debts are established. Support debts owed directly to support recipients, as of the date of the bankruptcy petition, are paid prior to debts owed or assigned to the government. Therefore all claims filed as priority 1(A) must be paid prior to claims filed as priority 1(B).

When, however, such claims are filed by a governmental unit and that unit receives payments on the claim, the subsequent application and distribution of moneys are governed not by the claim as it existed on the petition date, but by nonbankruptcy law applicable to such governmental units. Thus, receipt of money claimed as a priority 1(A) debt may be distributed by the government to reimburse itself for the payment of public assistance if the creditor assigns that debt to the government postpetition. Likewise, debts which are assigned to the government prepetition and claimed as priority 1(B) debts will be distributed directly to the support obligee if the debt is no longer assigned as of the date the government received the funds.

Other changes in distribution may also occur. If the trustee pays a governmental entity on a claim in one month, and the debtor owes but has not paid a support order accruing in that month, the governmental unit may credit the payment to the current month's obligation, not to the claim. The governmental unit may also credit any payment received on the claim against newly accrued postpetition judgment interest, rather than against the principal portion of the claim. The purpose of these rules relating to governmental support claims is to allow the distribution of money received as support in the same manner it would be distributed if the debtor had not filed a bankruptcy petition.

Section 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations

Section 213 sets up four check points to ensure that debtors are complying with their domestic support obligations when they have filed a bankruptcy case under Chapters 11, 12, and 13.

1. A case can be converted or dismissed at any time if the debtor does not remain current in the payment of an on-going support obligation. Under former law the Code did not explicitly require such payments or mandate an early termination of a plan when a debtor was not in compliance with an on-going support order, although some courts used their discretion to dismiss such cases for ''cause.'' HR 2415 allows the court to convert or dismiss a Chapter 12 or 13 plan for failure of the debtor to pay postpetition on-going support.

2. To be confirmed a plan must provide for payment of all past due priority claims for domestic support obligations. The Code does, however, provide two exceptions. It allows a creditor the option of accepting less than full payment under the plan. It also allows a debtor to ''cram down'' a less than full payment plan for priority support debts which are assigned to a governmental entity, so long as the plan provides for payment of all disposable income of the debtor for the maximum five year period allowed for a plan in Chapters 12 and 13. However, since these debts will not be discharged in any event, the debtor will be given a substantial incentive to propose and complete such a plan.

3. A plan under Chapters 11, 12, and 13 may not be confirmed unless the debtor has remained current in the payment of all support first becoming due postpetition. Nor can a debtor in a Chapter 12 or 13 case obtain a discharge unless all support becoming due postpetition has been paid. These provisions are designed to be self-executing, at least to the extent they do not require affirmative action on the part of a support creditor to implement them. Payment of domestic support obligation arrears, in order to receive a discharge, is required only to the extent ''provided for by the plan.'' Thus, agreements made at the time of confirmation to accept less than full payment or the use of ''cram down'' rights possessed by the debtor may allow the debtor to receive a discharge without full payment of all prepetition domestic support obligations. Of course, completion of such a plan would not discharge any remaining domestic support obligations, but would allow the debtor to be relieved from other debts covered by the general discharge under the relevant chapter.

4. HR 2415 allows, but does not require, the debtor to include in a plan the payment of postpetition interest on a nondischargeable debt if the debtor is able to do so after paying other debts. This provision is a departure from former law which did not allow a claim for interest, unless the claim was secured, even though interest continued to accrue on nondischargeable debts. As a result, even if the debtor provided for full payment of the prepetition support debt, this debtor would be left at the end of the plan with a remaining debt for interest. Accordingly, while a debtor will often not have sufficient income to make postpetition interest payments, the debtor may wish, if feasible, to make such payments in order to obtain a fresh start at the completion of the plan.

Section 214. Exceptions to automatic stay in domestic support obligation proceedings

HR 2415 also adds additional exceptions to the automatic stay. Under section 362(a) various activities of creditors are stayed once a bankruptcy petition has been filed. Under former law there were exceptions to the automatic stay which permitted the establishment of paternity, and the establishment or modification of a support order but they did not deal with a number of other domestic issues. In addition, under former law the automatic stay did not apply to the collection of support so long as it was collected from property which was not property of the bankruptcy estate. Since property of the estate included debtor's income in Chapter 12 and 13 cases, at least until confirmation of the plan, a support creditor had no way of obtaining either on-going support or prepetition support arrearages, unless the obligor/debtor paid these debts voluntarily or the creditor obtained relief from the stay. These amendments deal with both issues. They include the following:

1. The existing exceptions are amended to refer to the new definition of a domestic support obligation. Additional language is added to clarify that certain other family-related matters such as custody, divorce, and domestic violence proceedings may continue to be pursued without obtaining relief from the automatic stay except to the extent a divorce proceeding seeks to deal with the division of estate property. Property division issues in a divorce are not intended to impinge on the exclusive jurisdiction of the bankruptcy court over estate assets.

2. Section 362(b)(2)(C) is added to provide for the withholding of income from property of the debtor or from property of the estate for the payment of a domestic support obligation. In this provision Congress has divested the bankruptcy court of exclusive jurisdiction over the bankruptcy estate to the extent a debtor's wages are estate property. Under prior law such withholding would have been allowed only if it were determined that the debtor's income was no longer property of the estate. This section specifically allows the use of estate property to pay support through the wage withholding process without any bankruptcy imposed limitation. The purpose of this provision is to allow income withholding to be implemented or to continue after a Chapter 11, 12 or 13 petition is filed, just as it would if a Chapter 7 petition were filed. The income withholding provisions were enacted to allow compliance with procedures mandated in the Child Support Enforcement Program, Social Security Act, Title IV–D. Income withholding applies to the collection of on-going support and support arrearages. It may be implemented by court order or through an administrative process.

3. Use of other support enforcement techniques are also excepted from the reach of the automatic stay. Under the amendment, the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses under state law as provided in the Social Security Act is not stayed. Likewise, the automatic stay does not bar the reporting of overdue support to a consumer reporting agency as required by the Social Security Act. Also excepted from the automatic stay is the interception of tax refunds as required by the Social Security Act. Thus, refunds which are payable to the debtor by the State taxing authorities or the IRS, and even refunds which the debtor intends to include or includes in his or her bankruptcy estate, may be seized to satisfy support obligations as required or allowed under State and federal law without requiring relief from the automatic stay. Finally, under the enforcement of medical support obligations as mandated by the Social Security Act is not stayed.

Section. 215. Nondischargeability of certain debts for alimony, maintenance, and support

This section makes all domestic support obligations non-dischargeable. The most significant effect of this change is that all debts owed to a governmental entity which are derived from payments by the government to meet needs of the debtor's family for support and maintenance are excepted from discharge. This change will nullify the holdings cited in footnotes 2, 4, 5, 6, and 7. By amending 523(a)(5) and (15), all ''domestic support obligations'' as broadly defined in new section 101(14A) of the Bankruptcy Code are excepted from discharge.

Section 215 also makes nondischargeable all non-support debts incurred in connection with a divorce or separation. Previously such debts may have been determined to be nondischargeable only if the support creditor brought a timely proceeding to determine the dischargeability of the debt and proved not only that the debtor had the ability to pay the debt but that discharging the debt would result in a benefit to the creditor which outweighed the detriment to the debtor. This provision gives debts resulting from the division of property the same protection from discharge as support debts.

Section. 216. Continued liability of property

Section 522(c)(1) of the Code, as amended by this section, incorporates the new definition of a domestic support obligation into the existing provision which subjects otherwise exempt assets to debts for nondischargeable taxes and support obligations. This section expands this principle to preempt state law and specifically provides that under federal law such exempt property must be made available to satisfy a domestic support obligation, notwithstanding state law to the contrary. The purpose of this provision is to nullify the Fifth Circuit en banc holding in Matter of Davis, 170 F.3d 475 (5th Cir. 1999), and to reinstate the holding of the original Fifth Circuit panel.

Section 522(f)(1) allows a debtor to avoid judicial liens on exempt property, but contains an exception for liens which secured unassigned child support. This section extends this exception to domestic support obligations. Therefore, any judicial lien placed on the debtor's property which secures a support related obligation, whether assigned or not, may not be avoided even though the lien impairs the exemption to which the debtor would otherwise have been entitled.

Section 217. Protection of domestic support claims against preferential transfer motions

Section 547(c)(7) previously barred the trustee from recovering, as a preferential transfer, bona fide payments of an unassigned support obligations. This section extends this exception to all domestic support obligations.

Section 218. Disposable income defined

This section adds language to the disposable income test under chapters 12 and 13. The language added to chapter 13 simply repeats language already added by section 102 of this Act.

Section 219. Collection of child support

This section improves the information available to child support and alimony claimants when the person who owes support or alimony files for bankruptcy. In those cases, the chapter 7, 11, 12 or 13 trustee is to provide both the support claimant and the State child support collection agency with information about the filing, and inform the claimant about the availability of free or low cost collection services through the State agency. Additionally, when the debtor is discharged, the trustee is to notify the claimant and the State agency of the fact of the discharge and certain information about the location of the debtor. If a debt has been determined to be nondischargeable or is reaffirmed, the trustee is also to notify the claimant and the State agency of the name of the creditor affected. Creditors whose names are the subject of a notification are required, when asked, to provide the last known address of the debtor.

Section 220. Nondischargeability of certain educational benefits and loans

This provision makes certain student loans offered by non-governmental creditors nondischargeable.

Section 221. Amendment to discourage abusive bankruptcy filings

This provision inserts strong new regulation of bankruptcy petition preparers. It is intended that this regulation be strongly enforced.

Section 222. Sense of Congress

The sense of Congress is expressed that States should develop courses on personal finances for use in primary and secondary education. Consumer credit has become widely available in our economy. Congress considers it to be of the greatest importance that educational programs like those sponsored and promoted by the Jump Start Coalition of governmental and private entities be encouraged. By educating children when they are young in the basics of personal financial management, inappropriate use of consumer credit can be reduced, and better ability of average citizens to manage financial crises can be promoted.

Section 223. Additional amendments

This section provides a new 10th priority under section 507 of the Bankruptcy Code for claims based on driving while intoxicated under influence of drugs.

Section 224. Protection of retirement savings

This provision broadens the exemptions for retirement savings available under present law to cover all forms of pensions and savings plans allowed to be exempt from current income taxation under the Internal Revenue Code. It provides protection from creditors' claims for tax-favored retirement plans or arrangements which are not already protected from creditors' claims under current law. The section carries no implication that the protection from the bankruptcy estate afforded to plans by virtue of section 541 of the Bankruptcy Code as applied in the Shumate decision, and the line of cases following that decision, or by any provision of the Bankruptcy Code or other state or federal law that protect plan assets from creditors, is in anyway reduced. This amendment to the Bankruptcy Code is in accordance with longstanding Congressional policy of conserving and preserving plan assets for use as retirement security for participants in their retirement years. As such, it is intended to be in addition to the protections provided by current law and is not in any way intended to supplant or supercede protections which exist in current law.

Section 224 covers plans that have received determination letters from the Internal Revenue Service as well as plans, such as public plans, that have not received such letters but are intended to be operated in accordance with ERISA and or Internal Revenue Code, as applicable. It also covers plan assets in transit such as when they are directly transferred by a plan administrator to a plan sponsored by another employer or to an Individual Retirement Account. The same protection is provided when the plan assets are distributed directly to an employee upon termination of employment and within 60 days of the distribution of the employee transfers the distributed amount in another qualified retirement plan or into an Individual Retirement Account.

In addition, the Section provides that if there is an outstanding pension plan loan to a participant at the time of bankruptcy filing such loan is not to be discharged or a stay issued on any withholdings from the wages of the debtor that are being used to make level repayments of the loan. A stay of the withholding would result in a default and under the ERISA rules cause the amount of the unpaid balance to become taxable income. The ensuing tax liability would take precedence over unsecured creditors' claims. A plan loan is actually a special nontaxable distribution which the participant is expected to return to the plan.

Under the asset limitation provision of this section, the maximum amount exempt for bankruptcy purposes in an IRA or Roth/IRA, other than a simplified employee pension under section 408(k) of the Internal Revenue Code or a simple retirement account under 408(p) of the Internal Revenue Code, is limited to $1,000,000, excluding rollover contributions under 402(c), 402(e)(6), 403(a)(4), and 403(a)(5) of the Internal Revenue Code, as well as earnings thereon. The $1,000,000 maximum amount is subject to adjustment under section 104 of the Code. In addition, the $1,000,000 maximum amount is subject to increase if the interests of justice so require.

Section 225. Protection of Education Savings

Section 225 protects certain educational savings in the event of bankruptcy. Qualified State Tuition Programs represent a joint effort by the federal government and the states to encourage saving for post-secondary education. Congress has expressed a clear interest in encouraging the post-secondary education of children by permitting individuals to save exclusively to cover the expenses of higher education through Qualified State Tuition Programs on a tax-favored basis. However, Congressional interest in promoting saving for post-secondary education would be frustrated if accounts in Qualified State Tuition Programs are pulled into the bankruptcy estate of the debtor because of certain rights of the donor.

Therefore, with certain exceptions, section 225 excludes from a debtor's bankruptcy estate funds and earnings on such funds contributed to an account established pursuant to a qualified state tuition program under Section 529 of the Internal Revenue Code of 1986, as amended (''IRC''). The funds in these accounts may be used for qualified higher education expenses (including tuition, fees, books, supplies and room and board) of a designated beneficiary of the debtor and cannot be transferred to any person other than a qualified family member without adverse federal tax and other consequences. Section 225 would only permit exclusion from the bankruptcy estate funds in qualified state tuition programs for a restricted group of designated beneficiaries, limited to children and grandchildren (including step-children and step-grandchildren). The provision recognizes that adopted and foster children fall into this category and that ''step-grandchild'' is intended to include both the stepchild of the debtor's child as well as the child of the debtor's stepchild.

This provision makes clear that, subject to certain requirements, contributions to these accounts are not to be pulled into the debtor's estate for bankruptcy purposes. All contributions and earnings thereon are thus protected except: (1) contributions made to a program less than 365 days before the date of filing the bankruptcy petition; or (2) contributions in excess of $5000 made to a program less than 720 days before filing the bankruptcy petition.

Section 225 includes similar provisions extending protection to funds placed in education individual retirement accounts, as defined in Section 530 of the Internal Revenue Code.

Sections 226–229. Debtor's bill of rights

These four sections, derived from federal law regulating credit repair agencies, provide for new disclosures and restrictions on practices with which bankruptcy petition preparers, attorneys and anyone else who meets the definition of a debt relief agency must comply. Congress was concerned that debtors who file bankruptcy be better informed about the nature and scope of bankruptcy, the different remedies that are available, and the significance of the step they are taking, so that they can both better evaluate it, better understand what is going to happen, and better protect themselves. It is also the intent that debtors be better able to negotiate with their attorneys about fees and services provided. For example, provisions require that debtors be clearly informed about what services an attorney will provide the debtor and for what fee.

Bankruptcy petition preparers must comply with these provisions as well as those imposed under the Code and section 221 of HR 2415.

Section 226. Definitions

This section defines various terms, including who is an ''assisted person'', what is ''bankruptcy assistance'', and who is a ''debt relief agency''. It is intended that these provisions be broadly interpreted since they define the scope of the protections which debtors receive under the related provisions. Authors, publishers, distributors or sellers of works subject to copyright protection when acting solely as such an author, publisher, distributor or seller are excluded from the definition. Thus an attorney who writes a book on how to file bankruptcy is not a debt relief agency when promoting or selling the copyrighted book. But when that same attorney represents debtors filing petitions, the attorney is a debt relief agency because no longer acting in the capacity of an author, even if he gives his clients a copy of the book.

Section 227. Restrictions on Debt Relief Agencies

This section creates a new section 526 of the Code which proscribes certain practices by debt relief agencies and provides for enforcement of violations of this section and new Code sections 527 and 528.

Enforcement is provided for any violations of new Code section 526, 527 or 528. Intentional or negligent failures to comply with any requirements of the three sections permit the debtor to obtain restitution of any fees or charges made by the agency, as well as actual damages and reasonable attorneys fees. The same damages are available for intentional or negligent disregard of the material requirements of the Bankruptcy Code or Rules. Any contract for bankruptcy assistance that does not comply with the material requirements imposed is void, except that the assisted person can enforce it. State attorney generals are also empowered to enforce the provisions of these sections, and the United States District Court are granted concurrent jurisdiction of any such enforcement proceeding. The court, the United States Trustee or the debtor may also seek injunctive relief or civil penalties against intentional violators or those with a clear and consistent pattern or practice of violation of any of these sections.

The section also provides that its requirements in new sections 527 and 528 do not excuse any person from complying with State laws unless the State law is inconsistent with those sections. Also specifically preserved from preemption are any practice of law requirements under State or federal law if they conflict with the requirements of sections 526, 527 or 528 added to the Code. It is not expected that any of these new sections will impose upon debt relief agencies requirements that would force them to violate applicable unauthorized practice of law restrictions. For example, providing the disclosures under section 527 should not be the practice of law, since the content of the disclosure is set by federal law and does not involve giving a debtor advice. For similar reasons, the additional information debt relief agencies are required by section 527(c) with respect to valuation of assets, completion of the list of creditors and exempt property should not involve giving legal advice. However, in the event applicable unauthorized practice rules proscribe non-lawyers from providing such information, the provision states that it is only required to the extent permitted by nonbankruptcy law.

Section 228. Disclosures

This section creates new Bankruptcy Code section 527 which requires a debt relief agency to deliver to an assisted person required disclosures either described or set forth in the section. Within 3 business days after the agency first offers to provide bankruptcy assistance in a written, face to face, telephone, internet or similar solicitation or contact, the agency must provide, the agency must provide a clear and conspicuous written notice which states that the information the assisted person provides in the bankruptcy proceeding must be complete, accurate and truthful, assets and liabilities must be completely and accurately disclosed and assets must be valued and income and expenses stated after reasonable inquiry, and that information provided may be audited. Before the commencement of the case, the agency must provide the debtor with the notice required under section 342(b)(1) (as amended by this Act) and an additional disclosure set forth in the section which explains the bankruptcy process and relief and what the debtor can expect. The agency must also instruct the debtor in how to value assets, how to complete the list of creditors, and how to determine exempt property. Record keeping requirements are imposed upon the agency to keep copies of the notices required under this section for a period of 2 years after delivery. It is expected that the Bankruptcy Rules will provide model forms of disclosure and specify further the time and manner in which these disclosures will be made.

Section 229. Requirements for debt relief agencies.

This section creates a new section 528 of the Code that regulates agencies' contracting and advertising. The agency is required to execute a written contract with the assisted person within 5 business days (but before the petition is filed) of providing any bankruptcy assistance, and provide the person with an executed copy. If the agency does not execute a contract within that period of time, it must terminate its relationship with the assisted person.

The agency must also disclose in any advertisement that the services or benefits are with respect to bankruptcy relief. Congress is specifically concerned that debtors understand the services they are being offered involve bankruptcy. This section is intended to prevent agencies from describing their services ambiguously so as to obscure that the assisted person will be obtaining bankruptcy relief. A standard form of disclosure that the services are with respect to bankruptcy relief is set forth in the section.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

Section 301. Reinforcement of the fresh start

Present law makes nondischargeable any fee or charge imposed by a court for filing a case, motion, complaint or appeal or related costs or expenses. This section restricts the provision so that it applies only to matters filed by a prisoner.

Section 302. Discouraging bad faith repeat filings

This section is intended to strongly limit the practice of using bankruptcy filings and the automatic stay that arises under section 362 to abuse the bankruptcy process. Debtors who file bankruptcy only once in a one year period will not be affected. However, upon a second filing within one year, the automatic stay will terminate with respect to the debtor or the debtor's property on the 30th day after the second filing. The debtor can seek to have the automatic stay continued by filing a motion and demonstrating that the second filing is in good faith, but there is a presumption that under certain circumstances the second filing is not in good faith.

Upon the third or an additional filing within a one year period, the automatic stay does not go into effect at all. On motion made within 30 days of the third filing, the court may order the stay to take effect as to some or all creditors. The party in interest must demonstrate that the third filing is in good faith, and there is a presumption that under certain circumstances the third filing is not in good faith.

Clear and convincing evidence must be presented in order to rebut the presumptions which arise both with respect to the second and third or later filings.

Conduct covered by this section may also provide an appropriate ground to dismiss a chapter 7 under section 707(b) as revised by HR 2415.

Section 303. Curbing abusive filings

This provision authorizes in rem orders to prevent abusive use of bankruptcy filings. The bankruptcy court is authorized to order that the automatic stay be lifted as to a secured creditor with respect to the current and all subsequent cases to which the automatic stay would otherwise apply if the court finds that the filing of a bankruptcy was either part of a scheme to delay, hinder, and defraud creditors by means of transferring all or part of an interest in real property without the secured creditor's consent or court approval, or involved multiple bankruptcy filings affecting real property.

Once such an order is issued, it can be recorded by anyone in the real property records affecting the real property involved, and recording agencies must accept for recording and record and index any such order so that it will be notice to third parties. Such a recorded order is notice to third parties for 2 years after recording. The court can reimpose the automatic stay in a subsequent case after appropriate notice and hearing if good cause or changed circumstances are shown.

In addition, the automatic stay does not apply at all to prevent acts to enforce security interests in real property if the debtor is ineligible for bankruptcy under section 109(g) or the filing violates a court order in a previous case baring the debtor from refiling.

Section 304. Debtor retention of personal property security

This provision is intended to prevent ''ride through'' in the situations to which it applies. A ''ride through'' is the debtor's retention of collateral and maintenance of current payment obligations over the creditor's objection without reaffirming. This section and section 305, taken together, are intended to reverse the results of such cases as *Capital Communications Fed. Credit Union* v. *Boodrow,* 126 F. 3d 43 (2d Cir. 1997) *cert denied,* 522 U.S. 1117 (1998).

Under this provision, an individual debtor is not permitted to retain possession of personal property subject to a security interest securing the purchase price of that personal property unless the debtor enters into a reaffirmation agreement which becomes effective under section 524(c) of the Code, or redeems the property under section 722 of the Code. The debtor is given 45 days after the first meeting a creditors to take one of those two steps or to relinquish possession of the personal property to the creditor. If the debtor fails to complete one of the steps within the prescribed period, the automatic stay is terminated with respect to the property whether it is property of the estate or not, and the creditor may take whatever action as to the property as is permitted by applicable nonbankruptcy law. Although the automatic stay ends upon the expiration of the 45 day period, a creditor is free to allow a debtor to retain possession of collateral and accept continued payments by not taking any actions to collect, since this provision is for the creditor's benefit.

However, the trustee can bring a motion before the end of the 45 day period asserting that the property is of consequential value or benefit to the estate. If the court finds that the retention of the property will benefit creditors significantly, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver the property to the trustee, the court may extend application of the stay for a further reasonable time to permit the trustee to obtain the benefit for the estate.

The section also amends section 722 to make it absolutely clear that the full, complete and immediate cash payment of the redemption amount to the creditor is necessary for there to be a redemption. Installment redemptions are not permitted.

Section 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral

Like the previous section, this section is also intended to prevent ''ride through'' with respect to any property the section covers. Any personal property of the estate or of the debtor securing a claim or subject to an unexpired lease is covered by the section, and in certain instances creditors will be protected by both this section and the previous section, in which case the provisions can be applied cumulatively.

The section provides that the automatic stay terminates if the debtor fails to timely (1) file a statement of intention covering the property indicating that the debtor will either redeem the property under section 722 of the Code, reaffirm the debt it secures under section 524(c) of the Code, or assume an unexpired lease under section 365(p) of the Code (as amended by HR 2415), or (2) take the action specified in the statement of intention (unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms). Although the automatic stay ends upon the expiration of the period for taking action, a creditor is free to allow a debtor to retain possession of collateral and accept continued payments by not taking any actions to collect, since this provision is for the creditor's benefit.

However, as with the previous section, the trustee can bring a motion before the end of the period set by section 521(a)(2) asserting that the property is of consequential value or benefit to the estate, and on similar findings, the court may extend application of the stay for a further reasonable time to permit the trustee to obtain the benefit for the estate.

In addition, this section validates certain clauses which have the effect of placing the debtor in default by reason of the occurrence, pendency or existence of a proceeding under this title, or the insolvency of the debtor.

Section 306. Giving secured creditors fair treatment in chapter 13

This provision changes the relationship of secured creditors and debtors in certain situations arising in chapter 13 proceedings.

First, in order for a debtor's plan to be confirmed, it must provide that a creditor's lien will continue until the earlier of payment of the underlying debt under nonbankruptcy law or the grant of discharge under section 1328. Nothing in this provision is intended to alter other requirements for confirmation. Thus if a secured debt will not be fully paid before the end of the plan, this provision does not authorize a plan to provide that the lien terminate upon discharge.

Moreover, the plan must provide that if the case is dismissed or converted without completion of the plan, the creditor will retains the lien to the full extent permitted by nonbankruptcy law. It is intended that any benefits debtors obtain under a plan as against their secured creditors will be lost unless the debtor fully completes the plan. In the event a debtor's case is discharged under the hardship discharge provisions without completion of the plan, the creditor's lien nonetheless survives unaffected by the bankruptcy to the extent permitted by nonbankruptcy law.

Second, the extent to which claims secured by purchase money security interests in personal property are subject to cramdown to fair market value is limited. It is intended that cramdown not apply to any collateral described in this provision during the periods of time specified, and that the amount of the claim which must be paid under the plan be the full amount of the claim allowed under section 502 without application of section 506. Thus, if the debt was incurred within 5 years prior to filing and the collateral consists of a motor vehicle acquired for the personal use of the debtor, the value of the collateral cannot be reduced to the current fair market value and therefore the amount the plan must pay under section 1325(5)(B)(ii) over the duration of the plan must be the amount of the allowed claim under section

502 rather than the allowed secured claim under section 506. A similar result applies for any other personal property if the debt was incurred during the one year period preceding the filing.

Third, terms used in section 1322(b)(2) which limits cramdown of certain real estate mortgages are defined to make clear that a debt secured by real estate which is the debtor's principal residence includes any 1 to 4 family structure, including incidental property, without regard to whether the structure is attached to real estate, and includes condominium or cooperative units and mobile or manufactures homes or trailers. Incidental property includes any property commonly conveyed with a principal residence in the area where it is located.

This provision is intended to reject those cases which have allowed cramdown of real estate mortgages on the grounds that the security property is not a ''principal residence'' or covers property which is not real estate, simply because the property included multi-family housing, or the mortgage encumbered incidental property, or covered less traditional forms of housing such as condominiums, coops or mobile homes or trailers.

Section 307. Domiciliary requirements for exemptions

This provision limits the state exemptions which debtors can enjoy in bankruptcy when they have moved into a state within two years of filing. If a debtor has lived for 2 or more years in a State immediately prior to filing, the debtor can use the exemptions allowed by the state where the debtor resides under section 522 of the Code. If the debtor has lived in a state for less than 2 years at the time of filing, then the debtor must use the State exemptions of the State where the debtor lived 2 years prior to filing if the debtor lived there all of the 180 days which precede that 2 year period. If the debtor lived in more than one State during that 180 day period, the State exemptions of the State where the debtor lived the longest during that period will control.

If a debtor has to use a particular State's exemptions, the law of that State also determines whether the debtor can elect to use the federal exemptions available under section 522(d) of the Code.

Section 308. Residency requirement

Any home equity acquired within the 7 years prior to filing is not exempt if: (1) such equity was attributable to property that the debtor disposed of with the intent to hinder, delay, or defraud a creditor; and (2) such property was not an exempt asset. For example, if a debtor disposes of cash, a non-exempt asset, by exchanging that cash for a residence with the intention of delaying the payment of a creditor, such residence would not be exempt from the bankruptcy estate. It is the intent of Congress that it should be easier to prove intent to hinder or delay than to prove intent to defraud.

Section 309. Protecting secured creditors in chapter 13 cases

This provision adjusts the relationship of debtors to lessors and secured creditors in bankruptcy proceedings.

First, it amends section 348(f) to assure that when a debtor converts a case from chapter 13 to chapter 7, the debtor does not retain any benefits of the chapter 13 case with respect to any secured creditor, unless the full amount of the secured creditor's claim determined under nonbankruptcy law has been paid in full, and unless a prebankruptcy default has been fully cured prior to conversion. If a debtor converts from chapter 13 to another chapter and then converts to chapter 7, the courts should impose similar limitations.

Second, provision is made to allow a debtor and creditor to arrange for the debtor to assume a personal property lease rejected or not timely assumed by a trustee. On the other hand, in a chapter 11 or 13 proceeding, if the plan does not provide for assumption of the lease, the lease is deemed rejected as of the conclusion of the hearing on confirmation and the automatic stay automatically terminates.

Third, in a chapter 13 proceeding, a debtor's plan must provide that the debtor will make monthly payments if there are to be periodic payments to a personal property secured creditor or personal property lessor receiving distributions under the plan, and those payments must at least be in an amount sufficient to provide adequate protection. This provision, however, is not intended to lessen any of the other protections of secured creditors or lessors provided in the Bankruptcy Code.

In addition, debtors are required to continue to make payments to creditors holding claims secured by personal property and to personal property lessors from 30 days after the order for relief. These payments are to be made directly to the creditor or lessor, and the amount of plan payments which the debtor must make can be reduced by the amount paid to the creditors or lessors. The debtor must provide an accounting of these payments to the chapter 13 trustee.

Section 310. Luxury goods

This section provides that certain debts are presumed to be nondischargeable under section 523(a)(2)(A) of the Bankruptcy Code. Under section 523(a)(2)(A), a debt is nondischargeable when it is incurred, among other things, by fraud. For example, fraud can occur when a cardholder misrepresents his or her intentions by using a credit card when the objective facts show that the cardholder did not or could not intend to repay. This bill provides that if a debtor incurs debts to a single creditor aggregating for purchases on a credit card of more than $250 for luxury goods or services within 90 days of filing for bankruptcy, such debt is presumed to be nondischargeable. This provision recognizes that debtors may use open end credit to purchase goods and services necessary for the support of the debtor shortly before bankruptcy, while identifying presumptively abusive behavior which warrants making the debt nondischargeable such as purchasing a significant amounts of items or services not necessary for the support of the debtor (i.e. luxury goods and services).

A related provision is included with regard to cash advances. Cash advances under open-end credit plans aggregating more than $750 within 70 days of filing for bankruptcy are presumed to be nondischargeable. This language is carefully drafted to require the aggregation of all cash advances within 70 days of filing, even if they involve more than one creditor. Furthermore, there is no requirement to demonstrate that the cash advances were for ''luxury goods'' since such a requirement would be virtually impossible to fulfill given the difficulty of accounting for cash. The behavior itself is sufficient indicia of abuse.

Section 311. Automatic stay

This section provides that the automatic stay under section 362 will not apply in several situations in which residential tenants file for bankruptcy. First, the automatic stay will not bar the continuation of an eviction action pending when the debtor files for relief. Second, eviction proceedings commenced after filing are not barred by the automatic stay if the lease has terminated before or after filing of bankruptcy. Third, the automatic stay also will not bar eviction proceedings based on endangement to property or person or the use of illegal drugs, or to any transfer that is not avoidable under sections 544 or 549 of the Code.

Section 312. Extension of period between bankruptcy discharges

The period of time which must elapse between bankruptcies is increased by this provision. When a chapter 7 proceeding is involved, the period is increased from six to eight years. Furthermore, a chapter 13 discharge cannot be granted if the debtor received a discharge under any chapter of title 11 within 5 years of the order for relief in the chapter 13 case.

Section 313. Definition of household goods

Section 522(f) of title 11 permits a debtor to void a non-purchase money security interest in certain categories of goods if the property subject to the security interest is otherwise exempt in the debtor's case. One of the categories is ''household goods''. This section is intended to clarify what this term means so that there can be a nationwide, uniform standard for what can be included in this category, and so that debtors and creditors alike can know whether a loan is truly secured or unsecured. It is expected that the additional clarity will assist debtors in obtaining the lowest price available for this type of secured credit.

Section 314. Debt incurred to pay nondischargeable debts

If a claim arises from payment of a tax to a governmental unit other than the United States and the tax that was paid would be nondischargeable under section 524(a)(1), then the debt incurred to pay the tax is also nondischargeable.

Section 315. Notice to creditors

This section changes the requirements for providing notice to creditors and also changes what information they must provide in the schedules or otherwise as part of a bankruptcy filing.

Notice.—This section is intended to ensure that creditors receive actual, meaningful, and timely notice of bankruptcy filings.

In order to ensure proper processing by a creditor, debtors will need to include the account number in any required notice to a creditor with respect to any debt owed to such creditor. Furthermore, any notice required to be given by the debtor to the creditor must be done so at an address specified by the creditor. Creditors will be required to include the account number and appropriate address in the last two communications supplied to the debtor within the 90–day period prior to filing for bankruptcy. However, if any legal requirement impedes the creditor's ability to communicate with the debtor at any point during the 90–day period prior to filing, the creditor's burden will be satisfied if the appropriate information was included on its last two communications with the debtor. For purposes of this section, the creditor's communications with the debtor are those which deal specifically with an individual debt. ''Communications'' do not include promotional material or other communications that do not pertain specifically to a debtor's debt to the creditor.

Language in the Bankruptcy Code which states that failure to include the specified information in a notice does not invalidate the legal effect of such notice is deleted.

Furthermore, if a creditor in an individual chapter 7 or 13 case has specified an address for notice by filing a statement to that effect with the court, the court and the debtor are required to use such an address starting five days after receiving the address. A creditor may file a notice address with the court to be used generally by the court, parties in interest and the debtor to provide notice to the creditor in all cases under chapters 7 and 13. In the event a creditor has provided different notice addresses by more than one of the permitted methods, a debtor may use any one of them, except that a notice address filed in a particular case shall control.

Notices which are not sent to the appropriate address as specified by the creditor are not effective until the notice is 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 the designated entity. Sanctions for violation of the automatic stay under section 362 of the Code or for the failure to comply with the turnover provisions in sections 542 and 543 of the Code may not be imposed if a creditor has not received proper notice.

Tax Return Information.—The section also requires debtors to provide certain tax return information. By no later than 7 days before the date first set for the first meeting of creditors, a debtor must provide the trustee, without any prior request, the debtor's tax return or transcript, or the case will be dismissed unless the debtor can show that the failure to file a return is due to circumstances beyond the control of the debtor. Such circumstances would include that the debtor did not file a return for the period required, but not that the debtor could not find the return unless the debtor in addition showed that a significant, diligent and timely effort had been made to obtain at least the transcript of the return from the Internal Revenue Service and it was not forthcoming. A transcript is a computer generated line by line statement of debtor supplied information with respect to a tax return which the Internal Revenue Service will provide any tax return filer on request.

Once such information is provided the trustee, creditors in chapter 7 and 13 cases can obtain it by request to the trustee or through the procedure set forth for creditors to obtain copies of the petition and schedules from the court. It is intended that the trustee and the court will make arrangements for the tax return information the debtor provides to be made available to the court to satisfy creditor requests. Creditors can also request the tax return directly, in which case the debtor must provide it directly to the creditor or the case will be dismissed, subject to limitations already discussed.

Debtors are also required to provide tax returns with respect to the period after filing, or with respect to pre-filing periods if they are filed with the taxing authorities after bankruptcy filing. The Director of the Administrative Office of United States Courts is to develop procedures for safeguarding privacy of these returns, and to make a report to Congress no later and one and one half years after enactment on the effectiveness of these procedures.

Other information. Debtors are required to provide certain other information, including ongoing income and expense information, in certain circumstances.

Section 316. Dismissal for failure to timely file schedules or provide required information

The Fed. R. Bankr. Pro. already provide that schedules must be filed within 10 days of filing unless an extension is granted, and many bankruptcy courts have already established a general practice of dismissing cases when debtors fail to provide all required information within 15 days of filing, unless good cause for additional time is shown. Nothing in this provision is intended to interfere with such requirements. However, if an individual debtor after such extensions as the court may grant, has not filed all of the information required by section 521(a)(1) within 45 days of filing a petition, the case is automatically dismissed. On request of the debtor made before 45 days after filing, the court may grant up to 45 days additional time for the debtor to file schedules. Once the time period provided under this section elapses, the court must enter an order of dismissal within 5 days of request.

Section 317. Adequate time to prepare for hearing on confirmation of the plan

A hearing on confirmation of a chapter 13 plan must be held between 20 and 45 days after the first meeting of creditors. If a plan cannot be confirmed within that period, the court should take appropriate action to dismiss or convert the case.

Section 318. Chapter 13 plans to have a 5-year duration in certain cases

If a debtor's current monthly income is more than the monthly median income, the debtor's plan must be no shorter than 5 years, unless the debtor proposes and confirms a plan which provides for payment in full of all creditors within a shorter period. The same rules apply to modifications.

Section 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure

It is the sense of Congress that Rule 9011 should be applied to the schedules and other documents filed with the court.

Section 320. Prompt relief from stay in individual cases

Relief from stay proceedings must be finally decided within 60 days after relief is requested, unless the parties agree to the contrary, or the court for good cause finds it is necessary to do so, but then only for a specified period of time. Otherwise, the stay automatically expires as to the requesting creditor.

Section 321. Chapter 11 cases filed by individuals

This section changes some chapter 11 provisions to bring the chapter more closely into conformance with chapter 13 when the debtor is an individual.

First, the property of the estate is expanded from present law to include all property and earnings acquired between the time of filing and the closing, dismissal or conversion of the case. Such property is placed under the supervision of the court and is protected by the automatic stay. Second, what may be included in a plan is expanded to permit the debtor to subject future earnings and income to the plan. Third, the individual debtor's plan must provide either that it will pay each claim in full or that at least the debtor's disposable income over the first 5 years of the plan is paid to unsecured creditors. Fourth, in an individual case, the discharge is not granted until completion of payments under the plan. Provision is made for a hardship discharge. Fifth, modifications of a plan are subject to the same requirements as an original plan.

Section 322. Limitation

The state law homestead exemption is limited to a maximum of $100,000 for the home equity acquired within the 2 years prior to filing. Amounts acquired within the 2-year period that exceed $100,000, are not exempt from the bankruptcy estate. Amounts of home equity acquired prior to the 2-year period are not subject to the $100,000 cap, but are subject to the relevant state law homestead exemption. For this purpose, equity acquired in a principal residence prior to the 2–year period and rolled over into another principal residence after the 2-year period is not subject to the $100,000 cap, but is subject to the relevant state law homestead exemption. This rollover provision does not apply to the sale of a principal residence in one state and the purchase of another principal residence in another state.

Section 323. Excluding employee benefit plan participant contributions and other property from the estate

Amounts which have been withheld from wages of employees for payment as contributions to retirement plans or health insurance plans, or received from employees for payment over to such plans are not property of the estate. It is not intended that this provision will affect money which has been paid over and received by the respective plans for the purposes the withholding or contributions have been made.

Section 324. Exclusive jurisdiction in matters involving bankruptcy professionals

This section gives the district court exclusive jurisdiction of any property of the debtor as of the commencement of the case, of property of the estate, and of all claims that involve construction of section 327 (on employment of professional persons) or disclosure rules under that section.

Section 325. United States Trustee Program filing fee increase

This section changes the filing fees for chapter 7 and 13 cases, and changes the sharing percentages with respect to such fees.

Section 326. Sharing of compensation

Section 504 of the Bankruptcy Code restricts the extent to which those being paid compensation or reimbusement in a bankruptcy case may share such compensation or reimbursement. This section creates an exception from those rules to permit bona fide public service attorney referral programs operating in accordance with non-Federal law regulating attorney referral services to share such compensation or reimbursement.

Section 327. Fair valuation of collateral

This section is intended to make clear that when value is determined under title 11, it shall be determined based solely upon what it would cost the debtor to purchase a replacement considering the age and condition of the property, without deductions for other costs or expenses of any kind. In personal, family or household transactions, replacement value is based upon what a retail merchant would charge for the property, considering age and condition at the time value is determined.

Section 328. Defaults based on nonmonetary obligations

The requirements of section 365 are altered so that certain defaults relating to nonmonetary obligations of the debtor under an unexpired lease of real property need not be cured. Furthermore, such defaults are excepted from the ordinary rules applying to impaired classes. Technical changes are also made to remove certain provisions relating to

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

Section 401. Adequate protection for investors

This section creates a definition for a ''securities self-regulatory organization'' and then provides an exception to the automatic stay for investigations, orders, or delisting activities by such an organization involving the debtor.

Section 402. Meetings of creditors and equity security holders

This section gives the court the authority, for cause, not to convene a meeting of creditors if there is a prepackaged plan of reorganization. This would save time and expenses in those instances where the court determines there would be little or no meaningful benefit to be derived from a creditors meeting.

Section 403. Protection of refinance of security interest

This provision alters the preference provisions of section 547 of the Bankruptcy Code with respect to when a transfer is made for the purposes of that section. A transfer is deemed made at the time it takes effect if it is perfected within 30 days after it takes effect between the parties. Present law provides only a 10 day period.

Section 404. Executory contracts and unexpired leases

HR 2415 cures some abuses in the Bankruptcy Code regarding executory contracts and unexpired leases. HR 2415 amends Section 365(d)(4) of the Bankruptcy Code. It imposes a firm, bright line deadline on a retail debtor's decision to assume or reject a lease, absent the lessor's consent. It permits a bankruptcy trustee to assume or reject a lease on a date which is the earlier of the date of confirmation of a plan or the date which is 120 days after the date of the order for relief. A further extension of time may be granted, within the 120 day period, for an additional 90 days, for cause, upon motion of the trustee or lessor. Any subsequent extension can only be granted by the judge upon the prior written consent of the lessor: either by the lessor's motion for an extension, or by a motion of the trustee, provided that the trustee has the prior written approval of the lessor. This provision is designed to remove the bankruptcy judges' discretion to grant extensions of the time for the retail debtor to decide whether to assume or reject a lease after a maximum possible period of 210 days from the time of entry of the order of relief. Beyond that maximum period, there is no authority in the judge to grant further time unless the lessor has agreed in writing to the extension.

HR 2415 also amends Section 365(f)(1) of the Bankruptcy Code to make sure that all of the provisions of Section 365(b) are adhered to and that Section 365(f) does not override Section 365(b). Congress made clear, in Section 365(b)(1), that the trustee may not assume an executory contract or unexpired lease of the debtor, unless the trustee makes adequate assurance of future performance under the contract or lease. In Section 365(b)(3), Congress provided that for purposes of the Bankruptcy Code, ''adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance . . . that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision. . . .''

Regrettably, some bankruptcy judges have not followed this Congressional mandate. Under another provision of the Code, Section 365(f), a number of bankruptcy judges have allowed the assignment of a lease even though terms of the lease are not being followed.

For example, if a shopping center's lease with an educational retailer requires that the premises shall be used solely for the purpose of conducting the retail sale of educational items, as the lease provided in the *Simon Property Group* v. *Learningsmith* case, then the lessor has a right to maintain this mix of retail uses in his shopping centers, even if the retailer files for bankruptcy.

Instead, in the *Learningsmith* case, the judge allowed the assignment of the lease to a candle retailer because it offered more money than an educational store to buy the lease, in contravention of Section 365(b)(3) of the Code. As a result, the lessor lost control over the nature of its very business, operating a particular mix of retail stores. If other retailers file for bankruptcy in that shopping center, the same result can occur. The bill remedies this problem by amending Section 365(f)(1) to make clear it operates subject to all provisions of Section 365(b). The legal holding in the *Learningsmith* case, and other cases like it which do not enforce Section 365(b), particularly 365(b)(3), are overturned.

Thus, this section adds language to Section 365(f)(1) for the purpose of assuring that Section 365(f) does not override any part of Section 365(b). The section provides that in addition to being subject to Section 365(c), Section 365(f) is also subject to section 365(b) which is to be given its full effect.

Section 405. Creditors and equity security holders committees

This section is intended to permit small business interests to obtain representation on creditors' committees even though no small business would otherwise be selected under the standards for selecting members of creditors' committees in the present Bankruptcy Code. Bankruptcy judges are given discretion to increase the size of a creditor's committee to place a small business concern on the committee as a fully voting member if the court determines that the small business creditor holds claims the aggregate amount of which is disproportionately large in comparison to the annual gross revenue of that creditor. Congress intends that this standard be liberally applied in favor of a small business concern. For example, a claim that was more than 5% of the net profit after taxes and debt service of the small business concern would be disproportionately large, since if the claim is not paid, it would cause a 5% reduction in profitability, often the difference between success and failure for a small business.

Section 406. Amendment to section 546 of title 11, United States Code

Section 407. Amendment to section 330(a) of title 11, United States Code

Section 408. Postpetition disclosure and solicitation

This provision permits post-petition solicitation of a prepackaged plan of reorganization if both the pre-petition solicitation and the post-petition solicitation comply with applicable nonbankruptcy law. However, the provision only applies when the holder of a claim or interest solicited post-petition has been solicited pre-petition, thus avoiding different standards being applicable to pre- and post-petition solicitations. Time is crucial in a prepackaged plan of reorganization in order to minimize the adverse effects of bankruptcy on the debtor's business and financial affairs. When it applies, this section permits avoidance of the time and expense of going through the disclosure statement process normally applicable to post-petition solicitations.

Section 409. Preferences

The ordinary course of business defense to preference recovery is liberalized. As under current law, the debt must be incurred in the ordinary course. The payment, however, under the new provision must only be in the ordinary course or according to ordinary business terms.

A new preference exception is also added in business cases. Aggregate transfers of less than $5,000 are exempted from preference recovery.

Section 410. Venue of certain proceedings

Section 411. Period for filing plan under chapter 11

This new provision is designed to deal with the time and expense of reorganization cases by providing the debtor's exclusive period to file a plan of reorganization may not be extended beyond 18 months after the order for relief in the case. No change is made to current law that permits, for cause, either the reduction or the extension of the debtor's initial 120-day exclusivity period, except that the period may not be extended beyond the new 18 month maximum.

The new provision also provides that, if the debtor files a plan of reorganization within its applicable exclusivity period, parties in interest may file a reorganization plan if the debtor's plan is not accepted by each impaired class before 180 days after the order for relief, as such date may be extended for cause up to a maximum of 20 months from the order for relief in the case.

The new time periods are maximum periods that may not be extended by the court. They are not, however, minimums. Debtors will still have to show ''cause'' to extend the initial 120-day and 180-day periods in section 1121 and any extensions granted by the court. The establishment of the new so-called ''exclusivity wall'' is not intended to change the standards under section 1104 for conversion or dismissal.

Section 412. Fees arising from certain ownership interests

Section 413. Creditor representation at first meeting of creditors

This section permits either a creditor owed a consumer debt or any representative of that creditor to appear at and participate in the meeting of creditors in a case under chapter 7 or 13 even if the creditor or representative is not admitted to practice before the court or before the local federal or state court, notwithstanding any federal or state rule of practice or statutory provision barring unauthorized practice of law. It is intended that this provision will permit non-attorneys to appear at and participate in the meeting of creditors and any related negotiations entered into before or after the meeting to facilitate more efficient and economical participation by creditors in chapter 7 and 13 bankruptcy proceedings.

Section 414. Definition of disinterested person

This provision deletes the per se exclusion of investment bankers and attorneys for investment bankers from being a disinterested person. Whether an investment banking firm or an attorney for an investment banker is disinterested will depend on an ad hoc application of the definition.

Section 415. Factors for compensation of professional persons

This section permits consideration in setting compensation of whether the professional is board certified or otherwise has demonstrated skill.

Section 416. Appointment of elected trustee

This section provides for procedures when a trustee is elected, and for handling disputes over election of trustees.

Section 417. Utility service

Section 366 of the Code is amended to permit a utility to refuse to provide service to a debtor under certain circumstances unless adequate assurance payments are received.

Section 418. Bankruptcy fees

This provision permits a court to waive filing fees if it finds that a debtor is unable to pay the fees in installments and that the debtor's income is under 150 percent of the official poverty line. The court is expected to examine carefully the debtor's projected future income over the period during which installment payments must be made before concluding that the debtor is truly unable to pay in installments. The mere fact that the debtor is experiencing debt difficulty is not, in and of itself, determinative of whether a debtor can pay in installments. ''Filing fees'' cover any fee which must be paid in order to file a petition and commence a bankruptcy case under title 11, but not fees for motions or adversary complaints.

Section 419. More complete information regarding assets of the estate

This section directs the Advisory Committee on Bankruptcy Rules of the Judicial Conference to propose for adoption amended rules and forms directing chapter 11 debtors to provide information on the value, operations and profitability of any closely held corporation in which the debtor has a substantial or controlling interest. This direction is intended to result in changes to the Bankruptcy Rules and Forms so that parties in interest will be able to obtain, on the schedules or otherwise on other disclosures provided by the debtor full and complete information about the value of such an interest in a closely held corporation.

Subtitle B—Small Business Bankruptcy Provisions

These provisions effect reforms in chapter 11 cases. They further two primary goals. First, they are designed to reduce cost and delay in chapter 11 cases. Second, they are designed to ensure that the extraordinary protections provided chapter 11 debtors are used to further the public interest, by limiting those protections to cases in which there is both a likelihood of successful reorganization and in which the debtor fully complies with the applicable statutes and rules.

These sections achieve these goals through the following means:

First, the fast-track plan confirmation rules for small business cases that were adopted by Congress in 1994 have been strengthened. Second, the bill simplifies the process of drafting a plan and disclosure statement to make it easier for the small business debtor to comply with the fast-track requirements. Third, the debtor is required to provide additional information about post-filing operations, and the Advisory Committee on Bankruptcy Rules is directed to promulgate forms that will simplify such reporting. Fourth, the United States trustee is directed to oversee the debtor in small business cases. Fifth, the bankruptcy courts are directed to use case-management conferences and scheduling orders to reduce cost and delay. Sixth, it is made easier to appoint an independent trustee or examiner and to convert or dismiss a chapter 11 case in which the debtor is not playing by the rules or there is little likelihood of a successful reorganization. Seventh, the bill protects creditors against repeat filings after a prior chapter 11 case has failed.

Section 431. Flexible rules for disclosure statement and plan

Under current law, the debtor generally files a drafted-from-scratch plan and disclosure statement, even if the debts and assets involved are small. This practice is expensive, and imposes an undue burden on the debtor. Section 1125 of the Bankruptcy Code is amended to streamline the plan confirmation process in several ways for small business debtors. First, it encourages the use of standard-form plans and disclosure statements. Second, it directs the court to weigh the cost of providing additional information against the benefit of such information in determining whether a disclosure statement provides adequate information. Third, it provides that a separate disclosure statement is not necessary if the court determines that the plan provides adequate information. Fourth, it permits the court to consider at a single hearing both the adequacy of the disclosure statement and confirmation of the plan.

Section 432. Definition of small business debtor

Sections 101(51C) and (51D) of the Bankruptcy Code are amended in two significant respects. First, the debt limit used to define a small business debtor is increased from $2.0 million to $3.0 million. Second, a debtor with debts within the limit is treated as a small business debtor whether or not it elects to be treated as a small business debtor. All of the provisions applicable to small business debtors are now mandatory. There are two exclusions from the definition: (1) cases in which the debtor is primarily engaged in passive real estate investments; and (2) cases in which the court has certified that there is an active and representative committee of unsecured creditors.

Section 433. Standard form disclosure statement and plan

Section 433 directs the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States to propose standard forms for plans and disclosure statements in small business cases. Under section 1125 as amended, the debtor may use either a form approved by the court in which the case is pending or a form approved by the Rules Committee. The intent of these provisions is to encourage experimentation in the use of standard forms. Use of an approved form does not by itself satisfy the disclosure requirements. The court must determine that the form provides information that is adequate in light of the facts of the case.

Sections 434 and 435. Reporting requirements

New section 308 of the Bankruptcy Code imposes new reporting requirements on small business debtors, and section 435 of the bill calls for the Advisory Committee on Bankruptcy Rules to promulgate uniform national reporting forms. These provisions have three chief aims: (1) to assist small business debtors in understanding and improving their businesses through the process of preparing the reports; (2) to provide the persons interested in a case with information about that case; and (3) to provide a data base for further evaluation of the efficacy of chapter 11 for small businesses. The standard imposed on the Rules Committee in promulgating uniform national forms is to effect a practical balance between: (a) the needs of interested parties for information; (b) ease and lack of expense in preparation; and (c) ''the interest of all parties that the required reports help the small business debtor to understand its financial condition and plan its future.''

Section 436. Duties of trustee or debtor in possession in small business cases

New section 1116 of the Bankruptcy Code imposes six types of clear, new duties on small business debtors. The debtor must: (1) promptly file with the court the best available financial information about the debtor's business through its most recent financial statements or federal income tax return; (2) attend through its responsible individual and counsel meetings scheduled by the court or the United States trustee; (3) timely file the schedules and statements of affairs (with a strict limit on extensions) and financial and other reports required by law; (4) maintain insurance necessary to protect the public and the estate; (5) timely pay all administrative expense tax claims; and (6) allow the United States trustee at reasonable times after reasonable notice to inspect the debtor's business premises and books and records. These provisions are designed to assist the debtor, the courts, and the United States trustee in effectuating expeditious administration of small business cases. They are based on recommendations of the National Bankruptcy Review Commission's small business proposal.

Section 437. Plan filing deadline

Section 1121 of the Bankruptcy Code is amended to require a small business debtor to file a plan within 300 days after the petition date. This deadline is based on the assumption that the typical small business debtor can reasonably file a plan and disclosure statement within 300 days. Any request for extension of this deadline is an appropriate occasion to require the debtor to justify the continuation of the broad injunctive relief the debtor received automatically upon the filing of the petition. The amendment does this by requiring the debtor to show that it is more likely than not that the debtor will confirm a plan within a reasonable time if the extension is granted.

Section 438. Plan confirmation deadline

This section provides that a plan shall be confirmed by 175 days after the order for relief, unless such time is extended under section 1121(e)(3) of the Code. If a plan is not confirmed within the period and the period is not extended, it is expected that the case will be dismissed or converted, as appropriate.

Section 439. Duties of the United States trustee

In small business cases, there is rarely an active, functioning creditor's committee. As a result, the debtor in possession is generally not subject to the creditor supervision contemplated when chapter 11 was first enacted. To fill this void and to provide adequate supervision of the debtor, section 586 of the Judicial Code is amended to enlarge the duties of the United States Trustee in small business cases. One of these duties is to conduct an initial debtor interview promptly after the order for relief and before the official creditors' meeting under section 341 of the Bankruptcy Code. At this meeting, the United States Trustee should investigate the debtor's viability, ascertain what the debtor's business plan is, and explain the debtor's reporting and other compliance obligations. In addition, new section 1116 of the Bankruptcy Code authorizes the United States Trustee to visit the business premises of the debtor and ascertain the status of the books and records and timeliness of filing of tax returns.

The amendments to section 586 of the Judicial Code also require the United States Trustee in cases where there are grounds for conversion or dismissal under section 1112 of the Bankruptcy Code to ''apply promptly to the court for relief.'' This duty applies in all chapter 11 cases, not only small business cases.

Section 440. Scheduling conferences

Section 105(d) of the Bankruptcy Code is amended to provide that bankruptcy judges are now required to hold status conferences and enter scheduling orders in chapter 11 cases whenever that would ''further the expeditious and economical resolution of the case.'' The change reflects a determination that bankruptcy judges should assume responsibility for reducing cost and delay in the chapter 11 cases before them, and that active case management by the trial judge is a proven means of cost and delay reduction.

Section 441. Serial filers

This section creates a new section 362(k) of the Bankruptcy Code that provides that the filing of a chapter 11 petition does not create an automatic stay if the debtor: (1) is a debtor in another pending chapter 11 case; (2) was a debtor in a chapter 11 case dismissed within the previous two years; (3) confirmed a plan in a chapter 11 case within the previous two years; or (4) succeeded to the assets of an entity that was a chapter 11 debtor within the previous two years. A debtor affected by this provision is not precluded from filing a chapter 11 petition, and is not precluded from seeking protection from creditor action. The protections of section 362(a) do not go into effect, however, unless and until the debtor makes the required showing regarding the likelihood of confirming a plan and the reasons a second chapter 11 case is necessary. The logic of this provision is that in each of the four identified circumstances there is sufficient likelihood of abuse to require the debtor to make some showing before receiving injunctive relief. The exception to the automatic stay does not apply to an involuntary petition that is not filed in collusion with the debtor or its insiders.

Section 442. Expanded grounds for dismissal, conversion, or appointment of a trustee or examiner

Section 1112 of the Bankruptcy Code is amended to expand the circumstances in which the bankruptcy court may dismiss a chapter 11 case, convert the case to another chapter, or appoint a chapter 11 trustee or examiner. The most salient characteristic of chapter 11 is its most problematic—the debtor is protected against all creditor action automatically upon filing, while remaining in control of all its assets. Any non-debtor seeking comparable injunctive relief must show a likelihood of prevailing on the merits of the dispute and that the equities weigh in favor of equitable relief. Under current law, a chapter 11 debtor gets what is perhaps the broadest injunction available under American law, without making any showing whatsoever. Some courts impose a heavy burden on any party who, by moving for dismissal of the chapter 11 case or appointment of a trustee, seeks to deprive the debtor of that relief.

The amendment to section 1112 is intended to effect a significant change in the burden of proof governing motions to dismiss, convert, or appoint a chapter 11 trustee or examiner. First, the amendment creates an expanded definition of ''cause'' for such relief. Each type of cause listed represents a warning sign that the chapter 11 case is not proceeding properly (e.g., that assets of the estate are being diminished, that the debtor is not complying with applicable statutes or rules, or that the debtor is not moving promptly toward confirmation of a plan of reorganization). Second, the amendment creates a new shifting burden of proof. If a creditor establishes one or more of the specified warning signs, the burden shifts to the debtor to show: (1) that the debtor is likely to confirm a plan promptly; and (2) if the basis for relief is the debtor's failure to comply with an applicable statute or rule, that there is a reasonable justification for the lack of compliance, and that the lack of compliance will be cured within a reasonable time fixed by the court. If the debtor fails to meet its burden of proof, the court must convert, dismiss, or appoint a chapter 11 trustee or examiner, whichever is in the best interest of creditors and the estate. In substance, the amended section 1112 adopts a position midway between current chapter 11 law and traditional injunction practice. The debtor still receives the protection of the automatic stay upon filing, but the debtor will now be required to prove up its entitlement to that injunction in a wide variety of circumstances.

The bankruptcy court should determine whether there is a reasonable possibility that the debtor will confirm a plan within a reasonable time in much the same manner the court would determine whether a party seeking a preliminary injunction is likely to prevail upon the merits. The determination is a preliminary one regarding the likelihood of prevailing in the future, not a final determination on the merits. The hearing may often be a summary one. The court need not conduct a miniature confirmation hearing. The debtor should be required to prove a likelihood that its business is financially viable enough to pass the feasibility requirements of section 1129(a)(11), and that it will be able to pay in full those claims (i.e., secured and priority claims) that must be paid in full in order to confirm a plan.

If the debtor shows that it is likely to make a distribution to general unsecured creditors and that those creditors have no realistic alternative to debtor's plan, the debtor need not submit additional evidence that general unsecured creditors will vote to accept the plan in order to establish a prima facie case. The moving party or any other creditor may rebut debtor's evidence. The debtor does not satisfy its burden of proof when unsecured creditors holding claims sufficient to block acceptance by that class state their intent to vote against the plan and the debtor cannot show a likelihood that it will be able to confirm a plan notwithstanding such rejection.

Attention from the debtor and the court to the economic viability of the debtor's business is appropriate in all cases except liquidating chapter 11 cases. A debtor with a business that is not viable should not be allowed to remain a debtor in possession under chapter 11, unless it is avowedly using chapter 11 to confirm a liquidating plan promptly. Because the likely-to-confirm-a-plan standard turns on issues of business feasibility as much as on issues of law, the parties should be permitted to introduce evidence from accounting and other professionals concerning the viability of the debtor's business. The likely-to-confirm-a-plan standard should be applied in the same manner when it arises in a motion to extend the deadlines provided for in the amendments to section 1121.

All of the provisions of the amended section 1112 apply to all chapter 11 cases. This is so even though some of the listed examples of ''cause'' for dismissal, conversion, or appointment of a trustee or examiner resemble duties that under new sections 308 and 1116 apply only to small business debtors.

Section 443. Study of operation of title 11, United States Code, with respect to small businesses

Requires the Adminstrator of the Small Business Administration, in conjunction with the Attorney General and the Director of the Executive Office of United States Trustees and Director of the Administrative Office of United States Courts to conduct a study of small business bankruptcies and report to Congress how Federal bankruptcy laws may be made more effective with regard to such businesses.

Section 444. Payment of interest

This provision continues present law under section 362(d)(3) which provides that the court shall grant relief from stay to a real estate secured creditor holding security in a single asset real estate debtor unless not later than 90 days after the order for relief the debtor has either filed a plan of reorganization that has a reasonable possibility of being confirmed or commences making interest payments. This provision permits the debtor to make those interest payments from rents or other income the debtor holds, and requires that the interest be at the nondefault interest rate under the contract with the creditor.

Section 445. Priority for administrative expenses

This section amends section 503 of the Bankruptcy Code to provide that certain amounts owed with respect to nonresidential real property leases become administrative expenses.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

Section 501. Petition and proceedings related to petition

This section amends section 921(d) of the Code to clarify that the special rules with respect to commencement of a case of an unincorporated tax or special assessment district in that section control over the general rules on commencement of voluntary cases under section 301 of the Code. As a conforming change, section 301 is amended to divide it into two subsections, subsection (a), which provides that a voluntary case is commenced by the filing of a petition, and subsection (b), which provides that the commencement of a case is also the order for relief. Section 301 as amended will continue to govern the voluntary cases which it now covers, except those covered by section 921(d).

Section 502. Applicability of other sections to chapter 9

Section 901(a) of the Code, which lists the sections of title 11 which apply to chapter 9 cases, is amended to include sections 555, 556, 559, 560, 561, and 562. These sections provide an exception to the stay of proceedings to allow the liquidation of various types of securities contracts. The amendment is necessary to avoid a stay violation or other complications when certain executory contracts, municipal bonds, for instance, come due and must be redeemed.

TITLE VI—BANKRUPTCY DATA

Section 601. Improved bankruptcy statistics

It has been obvious for some time that despite the scope and frequency of bankruptcy relief, organized statistics with respect to what occurs during and as a result of the bankruptcy case are not available. It is strongly felt that there should be a concerted effort by the federal government to collect, maintain and disseminate broad information about the bankruptcy system and how it operates. Such information should include how much debt is discharged in different types of bankruptcy cases, as well as other information relative to assessing how well the bankruptcy system is serving both debtors in need and the wider group of citizens who pay in higher credit prices for the discharged debt.

This section creates a standardized and centralized method for collecting relevant bankruptcy statistics for cases involving primarily consumer debts filed under chapters 7, 11, and 13. The statistics will be collected by the clerk in each district. The Director of the Administrative Office of the United States Courts will compile the statistics, producing a centralized data source. The Director will make the statistics available to the public. Furthermore, by October 31, 2002, the Director will make annual reports to Congress which include the statistics as well as an analysis of the information.

The Director's compilation of statistics will be comprehensive. The requirements of the compilation, as outlined in the new section 159(c), are self-explanatory. It is intended that the information required under Section 159(c)(3)(H) should also include the cases involving sanctions imposed on debtor's counsel under Section 707(b) of the Bankruptcy Code.

Section 602. Uniform rules for the collection of bankruptcy data

This provision complements Section 601 by requiring 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. The information that should be contained in these reports is self-explanatory. The reports must also 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 603. 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 in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants. However, the Attorney General is given discretion to develop alternative auditing standards not later than two years after the date of enactment of H.R. 2415. Should the Attorney General develop alternative auditing standards, such standards are expected to have integrity and reliability comparable to generally accepted auditing standards. It is intended that the Attorney General in developing auditing standards, and any others who set procedures or practices to be used in the audits or supervise them, will in doing so consult with those units in the Department of Justice which enforce against bankruptcy fraud and bankruptcy crimes, including the bankruptcy fraud task force in the Attorney General's office and bankruptcy fraud and crime units in the United States Attorneys' offices.

The audits are to be performed on randomly selected cases and should include at least 1 out of every 250 cases in each Federal judicial district. Audits are required 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. The aggregate results of the audits is to be made public and is required to include the percentage of cases, by district, in which a material misstatement of income, expenditures or assets is reported.

A report of each audit must be filed with the court and transmitted to the United States trustee. Each report must clearly and conspicuously specify any material misstatement of income, expenditures or assets. In any case where a material misstatement of income, expenditures or assets has been reported, the clerk of the bankruptcy court must give all creditors in the case notice of the misstatement(s). Where appropriate, the matter could be referred to the U.S. Attorney for possible criminal prosecution.

Furthermore, the Bankruptcy Code is amended to make it a duty of the debtor to supply certain information to an auditor. This section also adds, as grounds for revocation of a chapter 7 debtor's discharge, a chapter 7 debtor's failure to satisfactorily explain a material misstatement discovered as the result of an audit and the failure to make available all necessary documents or property belonging to the debtor that are requested in connection with such audit.

Section 604. Sense of Congress regarding 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 related 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. Those privacy concerns and safeguards should be developed keeping in mind that the data covered is already of public record.

It is also the sense of Congress 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 VII—BANKRUPTCY TAX PROVISIONS

Section 701. Treatment of certain tax liens

The conference agreement follows the House bill. Section 701 makes several amendments to section 724 of the Bankruptcy Code to provide greater protection for holders of ad valorem tax liens on real or personal property of the estate. Many school boards obtain liens on real property to ensure collection of unpaid ad valorem taxes. Often, governments are unable to collect despite the presence of a lien because, under current law, these liens may be subordinated to certain claims against and expenses of the bankruptcy estate. The conference agreement would seek to protect the holders of these tax liens from, among other things, erosions of their claims' status by expenses incurred under chapter 11 of the Bankruptcy Code.

Under the conference agreement, subordination of ad valorem tax liens is still possible under section 724(b). However, the purposes are limited to paying for chapter 7 administrative expenses and priority claims for postpetition ''wages, salaries, and commissions'' and claims for ''contributions to an employee benefit plan.'' Thus, subordination for the purpose of paying chapter 11 administrative expenses is not permitted. Also, section 701 requires the chapter 7 trustee to utilize all other estate assets before the trustee could resort to section 724 of the code to subordinate liens on personal and real property of the estate.

In addition, the conference agreement prevents a bankruptcy court from determining the amount or legality of ad valorem tax obligations if the applicable period for contesting or redetermining the amount of the claim under nonbankruptcy law has expired. This 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 702. Treatment of fuel tax claims

The conference agreement follows the Senate bill. The agreement simplifies the filing of claims by states against truckers for unpaid fuel taxes by modifying section 501 of the Bankruptcy Code. Rather than requiring all states to file a claim for unpaid fuel taxes (as is the case under current law), the designated ''base jurisdiction'' under the International Fuel Tax Agreement would file a claim on behalf of all states. This claim would be treated as a single claim.

Section 703. Notice of request for a determination of taxes

The conference agreement follows the Senate bill. Under current law, debtors may request that the government determine administrative tax liabilities under section 505(b) of the Bankruptcy Code in order to receive a discharge of those liabilities. There are no requirements as to the content or form of such notice to the government.

The conference agreement requires that each bankruptcy court clerk maintain a listing under which government entities may designate their addresses for service of debtor requests. If a governmental entity does not designate an address and provide that address to the bankruptcy court clerk, any request made under section 505(b) of the Bankruptcy Code may be served at the address of the appropriate taxing authority of that governmental unit. The conference agreement also provides that governmental entities may describe where further information concerning additional requirements for filing such requests may be found.

Section 704. Rate of interest on tax claims

The conference agreement follows the Senate bill with a modification and a technical correction. Under current law, there is no uniform rate of interest for payment of tax claims. Bankruptcy courts have used varying standards to determine the applicable rate. The conference agreement adds section 511 to the Bankruptcy Code to simplify the interest rate calculation. The agreement provides that for all tax claims (federal, state, and local), including administrative expense taxes, the interest rate shall be determined in accordance with applicable non-bankruptcy law and as of the calendar month in which the plan is confirmed.

The conference agreement modifies the Senate bill to clarify that the applicable non-bankruptcy law interest rate would apply to administrative expense taxes, as well as to all other tax claims.

Section 705. Priority of tax claims

The conference agreement follows the Senate bill with a modification and a technical correction. Under current law, in section 507(a)(8) of the Bankruptcy Code, tax claims are entitled to a priority if they arise within certain time periods. In the case of income taxes, a priority arises, among other times, if the tax return was due within 3 years of the filing of the bankruptcy petition or if the assessment of the tax was made within 240 days of the filing of the petition. The 240-day period is tolled during the time that an offer in compromise is pending (plus 30 days). Though the statute is silent, most courts have also held that the 3-year and 240-day time periods are tolled during the pendency of a previous bankruptcy case.

The conference agreement codifies the rule tolling priority periods during a previous bankruptcy and adds an additional 90 days. The agreement also includes tolling provisions to adjust for the collection due process rights provided by the IRS Restructuring and Reform Act of 1998. During any period in which the government is prohibited from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken against the debtor, the priority is tolled, plus 90 days. Also, during any time in which there was a stay of proceedings in a prior bankruptcy case or collection of an income tax was precluded by a confirmed bankruptcy plan, the priority is tolled, plus 90 days. The conference agreement modifies the Senate bill to apply the priority tolling periods to non-income taxes as well.

Section 706. Priority property taxes incurred

The conference agreement follows the Senate bill, replacing the word ''assessed'' with ''incurred'' in the case of real property taxes. Under current law, many provisions of the Bankruptcy Code are keyed to the word ''assessed.'' While this word has an accepted meaning in the federal system, it is not used in many state and local statutes and has created some confusion. Replacing the word ''assessed'' with ''incurred'' in the case of real property taxes in section 507(a)(8)(B) of the Bankruptcy Code eliminates this problem.

Section 707. No discharge of fraudulent taxes in chapter 13

The conference agreement follows the Senate bill. Under current law, a debtor's ability to discharge his tax debts varies depending on whether the debtor is in chapter 7 (liquidation) or chapter 13 (income earner plans of repayment). Chapter 7 contains a much narrower discharge. Under chapter 7, taxes from a return due within 3 years of the petition date, taxes assessed within 240 days, or taxes related to an unfiled return or false return are not dischargeable. Chapter 13, on the other hand, permits what is known as a ''superdischarge,'' which allows courts to discharge these same tax debts.

The conference agreement repeals the superdischarge for fraudulent and non-filed taxes by amending section 1328(a)(2) of the Bankruptcy Code. Fraudulent and non-filer claims would not receive any special treatment. The conference agreement also repeals the superdischarge for a tax required to be collected or withheld and for which the debtor is liable in whatever capacity, such as an employee's share of federal payroll and trust fund taxes. However, the conference agreement leaves the superdischarge in place for other tax claims. Thus, consistent with the IRS Restructuring and Reform Act of 1998, taxpayers who have complied with a reorganization plan—which includes paying taxes—would continue to receive the superdischarge.

Section 708. No discharge of fraudulent taxes in chapter 11

The conference agreement follows the Senate bill with a modification. Under current law, the confirmation of a plan of reorganization under chapter 11 discharges the debtor from all liability. The conference agreement would except, in the case of corporations, fraudulent taxes, willfully evaded taxes, and debts for money or property obtained in a false or fraudulent manner from the broad chapter 11 discharge. Congress believes the Bankruptcy Code should not encourage fraud by allowing the discharge of debts incurred through fraud or false representation simply because those debts were incurred in a corporate setting.

The conference agreement amends the discharge provisions of chapter 11 (Bankruptcy Code section 1141(d)) to prevent the discharge of tax or customs duty tax claims resulting from a corporate debtor's fraudulent tax returns. It also prevents the discharge of any unpaid tax obligations that resulted from a corporate chapter 11 debtor's willful evasion of applicable tax laws. Further, the conference agreement modifies the Senate bill to prevent the discharge of any debt for money, property, services, or credit, obtained by a corporate debtor in a false or fraudulent manner (applying section 523(a)(2) of the Bankruptcy Code to corporate debtors).

Section 709. Stay of tax proceedings limited to pre-petition taxes

The conference agreement modifies the Senate and House bills. Under current law, filing a petition for relief under the Bankruptcy Code triggers an automatic stay which precludes the commencement or continuation of a case in U.S. tax court. This rule was arguably extended in *Halpern* v. *Commissioner*, 96 T.C. 895 (1991), in which the tax court ruled that it did not have jurisdiction to hear a case involving a post-petition year. The conferees believe that *Halpern* went too far.

In order to address this issue, the conference agreement specifies that the automatic stay is limited to an individual debtor's prepetition taxes (taxes incurred before entering bankruptcy). Thus, the automatic stay would not apply to cases involving an individual debtor's postpetition taxes. The agreement allows the bankruptcy court to determine whether the stay will apply to the postpetition tax liabilities of a corporate debtor.

Section 710. Periodic payment of taxes in chapter 11 cases

The conference agreement follows the Senate bill with a modification. Section 710 of the conference agreement limits the discretion of the debtor and the trustee regarding treatment of pre-petition tax claims in chapter 11 cases. Under current law, non-tax claims are paid out over several years in equal installments. Tax claims must be paid out over six years from the date of assessment and typically include interest-only payments in the early years and a balloon payment at the end.

The conference agreement modifies section 1129(a)(9) of the Bankruptcy Code by reducing the maximum period of tax payments from six years from the date of assessment to five years from the entry of the order for relief and by specifying that payment should be made in ''regular installment payments.''

The conference agreement modifies the Senate bill to delete language regarding the interest rate applicable to installment payments in chapter 11 cases.

Section 711. Avoidance of statutory liens prohibited

The conference agreement follows the Senate bill. Under the Bankruptcy Code, trustees may act to keep assets in the bankruptcy estate even though a statutory lien exists against the asset. The Internal Revenue Code gives special protection to certain purchasers of securities and motor vehicles notwithstanding the existence of a filed tax lien. The conference agreement amends section 545(2) of the Bankruptcy Code to prevent trustees from using the tax code provision to displace an otherwise valid lien. In other words, trustees could not keep securities or motor vehicles in the bankruptcy estate if they were subject to a lien under the tax code provisions.

The conference agreement prevents the avoidance of unperfected liens against a bona fide purchaser, if the purchaser qualifies as such under section 6323 of the Internal Revenue Code or a similar provision of either state or local law.

Section 712. Payment of taxes in the conduct of business

The conference agreement follows the Senate bill. Bankruptcy laws and statutes-at-large generally require trustees and receivers to pay business taxes in the ordinary course. Other kinds of administrative expenses can be paid only upon motion after a court order. Some bankruptcy courts have not permitted debtors to pay post-petition tax liabilities (those accruing after filing a bankruptcy petition) prior to the approval of a plan for the bankruptcy estate. The conference agreement amends section 960 of title 28 of the U.S. Code to provide clear authority to pay taxes in the ordinary course of business. The agreement also amends section 503(b) of the Bankruptcy Code to require payment of ad valorem taxes as an allowed administrative expense tax and eliminates any requirement to file a request for payment of any administrative expense taxes.

Section 713. Tardily filed priority tax claims

The conference agreement follows the Senate bill. Under current law, in chapter 7 of the Bankruptcy Code, tax claims timely filed are entitled to their full statutory priority. Late-filed tax claims lose their full statutory priority, but are entitled to distribution as unsecured claims provided they are filed before the trustee commences distribution of the estate. The problem is that a claim filed just before distribution can significantly delay the process of distribution due to certifying the validity of the claim and determining its proper priority.

The conference agreement modifies section 726(a)(1) of the Bankruptcy Code to require a tax claim to be filed either before the trustee commences distribution or 10 days following the mailing to creditors of the summary of the trustee's final report, whichever is earlier, in order for the claim to be entitled to distribution as an unsecured claim.

Section 714. Income tax returns prepared by tax authorities

The conference agreement follows the Senate bill. In general, taxpayers cannot be discharged from taxes unless a return was filed. Courts have struggled with what constitutes filing a return. The tax code authorizes the Secretary of Treasury to file a return on behalf of a taxpayer if either (1) the taxpayer provides information sufficient to complete a return, or (2) the Secretary can obtain sufficient information through testimony or otherwise to complete a return.

The conference agreement modifies section 523(a) of the Bankruptcy Code to provide that a return filed on behalf of a taxpayer who has provided information sufficient to complete a return constitutes filing a return (and the debt can be discharged) but that a return filed on behalf of a taxpayer based on information the Secretary obtains through testimony or otherwise does not constitute filing a return (and the debt cannot be discharged).

Section 715. Discharge of the estate's liability for unpaid taxes

The conference agreement follows the Senate bill. Under the Bankruptcy Code, a debtor may request a prompt audit to determine post-petition tax liabilities. If the government does not make a determination or request extension of time to audit, then the debtor's determination of taxes will be final. Several court cases have held that while this protects the debtor and the trustee, it does not necessarily protect the estate.

The conference agreement modifies section 505(b) of the Bankruptcy Code to clarify that the estate is also protected if the government does not request an audit of the debtor's tax returns. Therefore, if the government does not make a determination of the debtor's post-petition tax liabilities or request extension of time to audit, then the estate's liability for unpaid taxes will be discharged.

Section 716. Requirement to file tax returns to confirm chapter 13 plans

The conference agreement follows the Senate bill with a modification. Under current law, a debtor may be entitled to the benefits of chapter 13 (reorganization) even if he is delinquent in his tax returns. Without access to tax return information, creditors cannot obtain full information about the debtor's status. Most districts have established procedures requiring the filing of returns prior to the initial meeting of creditors.

The conference agreement amends section 1325(a) of the Bankruptcy Code (and adds section 1308 to the Code) to require a debtor to be current on the filing of tax returns for the four years prior to the filing of a petition in order to have a chapter 13 plan confirmed. If the returns have not been filed by the date on which the meeting of creditors is first scheduled, the trustee may hold open that meeting for a reasonable period of time to allow the debtor to file any unfiled returns. The additional period of time may not extend beyond 120 days after the date of the meeting of the creditors or beyond the date on which the return is due under the last automatic extension of time for filing. However, the debtor may also obtain an extension of time to file from the court if the debtor demonstrates by a preponderance of the evidence that the failure to file was attributable to circumstances beyond the debtor's control.

Section 717. Standards for tax disclosure

The conference agreement follows the Senate bill. Under current law, before a chapter 11 (business bankruptcy) plan may be submitted to creditors and stockholders for a vote, the proponent of the plan must file a disclosure statement in which holders of claims and interests are given ''adequate information'' on which they can make a decision as to whether or not to vote in favor of the plan. A chapter 11 plan's tax consequences represent an important aspect of that plan.

The conference agreement amends section 1125(a) of the Bankruptcy Code to require that a chapter 11 disclosure statement discuss the potential material Federal tax consequences of the plan to the debtor and to holders of claims and interests in the case.

Section 718. Setoff of tax refunds

The conference agreement follows the Senate bill. Under current law, a petition for bankruptcy triggers an automatic stay of the setoff of any debt owing to the debtor that arose before the commencement of the case against any debt owed by the debtor. This automatic stay precludes setoff of a pre-petition tax refund against a pre-petition tax obligation unless the bankruptcy court has approved the setoff. Because the interest and penalties which may continue to accrue are often nondischargeable, the inability to promptly apply income tax refunds against tax claims can cause individual debtors undue hardship.

The conference agreement amends section 362(b) of the Bankruptcy Code to allow the setoff to occur unless setoff would not be permitted under applicable tax law because of a pending action to determine the amount or legality of the tax liability. In that circumstance, the governmental authority may hold the refund pending resolution of the action.

Section 719. Special provisions related to the treatment of State and local taxes

The conference agreement follows the Senate bill, conforming state and local income tax administrative issues to the Internal Revenue Code. For example, under federal law, a bankruptcy petitioner filing on March 5 has two tax years—January 1 to March 4, and March 5 to December 31. However, under the Bankruptcy Code, state and local tax years are divided differently—January 1 to March 5, and March 6 to December 31. Section 719 of the conference agreement requires the states to follow the federal convention.

The conference agreement conforms state and local tax administration to the Internal Revenue Code in the following areas: division of tax liabilities and responsibilities between the estate and the debtor, tax consequences with respect to partnerships and transfers of property, and the taxable period of a debtor. The conference agreement does not conform state and local tax rates to federal tax rates.

Section 720. Dismissal for failure to timely file tax returns

The conference agreement follows the Senate bill. Under existing law, there is no definitive rule concerning whether a bankruptcy court should dismiss a bankruptcy case if the debtor fails to file tax returns after entering bankruptcy. The conferees believe that it is good policy to require that these returns be filed.

Thus, the conference agreement amends section 521 of the Bankruptcy Code to allow a taxing authority to request that the court dismiss or convert a bankruptcy case if the debtor fails to file a post-petition tax return or obtain an extension on such a return. The conference agreement provides that the debtor would have 90 days from the time of the request to file the return or to obtain an extension, or the court would be required to dismiss or convert the case.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

This Title adds a new chapter to the Bankruptcy Code (the ''Code'') for transactional 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 the debtor's assets.

Section 801. Amendment to add Chapter 15 to title 11, United States Code

Each of the sections of new chapter 15 is discussed in order.

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.

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 to stay or dismiss the United States case under the chapter and limit the United States' role to ancillary case under this chapter. If the full case is not dismissed, it will be subject to the provisions of this chapter governing cooperation, communication and coordination with foreign courts and representatives. In any case, an order granting recognition is required as a prerequisite to use the 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)). 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 test 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.

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 or 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 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. Foreign representatives of foreign proceedings which are excluded from the scope of chapter 15 may seek relief from courts other than the bankruptcy court since the limitations of section 1509(b) (2) and (3) would not apply to them.

The reference to section 109(b) interpolates into chapter 15 the entities governed by specialized insolvency regimes under United States law which are currently excluded from liquidation proceedings under title 11. Section 1501 contains an exception to the section 109(b) exclusions so that foreign proceedings of foreign insurance companies are eligible for recognition and relief under chapter 15 as they had been under section 304. However, section 1501(d) has the effect of leaving to State regulation any deposit, escrow, trust fund or the like posted by a foreign insurer under State law.

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 replace 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.

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, assets insolvency jurisdiction over property outside its territorial limits under appropriate circumstances. Thus a limiting phrase is useful where the Model Law and this chapter intend to refer only to property within the territory of the enacting state. In addition, a definition of ''recognition'' supplements the Model Law definitions and merely simplifies drafting of various other sections of chapter 15.

Two key definitions of ''foreign proceeding'' and ''foreign representative,'' are found in sections 101(23) and (24), which have been amended consistent with Model Law article 2.

The definitions ''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.

In order to be recognized as a foreign non-main proceeding, the debtor must at least have an establishment in that foreign country.

Section 1503. International obligations of the United States

This section is taken exactly from the Model Law with only minor adaptations of terminology.

Although this sections makes an international obligation prevail over chapter 15, the courts will attempt to read the Model Law and the international obligation so as not to conflict, especially if the international obligation addresses a subject matter less directly related than the Model Law to a case before the court.

Section 1504. Commencement of ancillary case

Article 4 of the Model Law is designed for designation of the competent court which will exercise jurisdiction under the Model Law. In United States law, section 1334(a) of title 28 gives exclusive jurisdiction to the district courts in a ''case'' under this title.

Therefore, since the competent court has been determined in title 28, this section instead provides that a petition for recognition commences a ''case'', an approach that also invokes a number of other useful procedural provisions.

In addition, a new subsection (P) to section 157 of title 28 makes cases under this chapter part of the core jurisdiction of bankruptcy courts when referred to them by the district court that will rule on the petition is determined pursuant to a revised 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 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.

Section 1505. Authorization to act in a foreign country

The language in this section varies from the wording of articles 5 of the Model Law as necessary to comport with United States law and terminology. The slight alteration to the language in the last sentence is meant to emphasize that the identification of the trustee or other entity entitled to act is under United States law, while the scope of actions that may be taken by the trustee or other entity under foreign law is limited by the foreign law.

The related amendment to section 586(a)(3) of title 28 makes acting pursuant to authorization under this section an additional power of a trustee or debtor in possession.

While the Model Law automatically authorizes an administrator to act abroad, this section requires all trustees and debtors to obtain court approval before acting abroad. That requirement is a change from the language of the Model Law, but one that is purely internal to United States law.

Its main purpose is to ensure that the court has knowledge and control of possibly expensive activities, but it will have the collateral benefit or 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.

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 exemption to the most fundamental policies of the United States.

Section 1507. Additional assistance

Subsection (1) follows the language of Model law article 7.

Subsection (2) makes the authority for additional relief (beyond that permitted under sections 1519–1521, below) subject to the conditions for relief heretofore specified in United States law under section 304, which is repealed. This section is intended to permit the further development of international cooperation begun under section 304, but is not to be the basis for denying of limiting relief otherwise available under this chapter. The additional assistance is made conditional upon the court's consideration of the factors set forth in the current subsection 304(c) in a context of a reasonable balancing of interests following current case law. The references to ''estate'' in section 304 have been changed to refer to the debtor's property, because many foreign systems do not create an estate in insolvency proceedings or the sort recognized under this chapter. Although the case law, construing section 304 makes it clear that comity is the central consideration, its physical placement as one of six factors in subsection 304 is misleading, since those factors are essentially elements of the grounds for granting comity. 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.

Section 1508. Interpretation

This provision 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 terminology which accords with that of the bankruptcy laws of the United States.

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 UNITRAL. CLOUT receives reports from national reporters all over the world concerning court decisions interpreting treaties, model laws, and other text promulgated by UNCITRAL. Not only are these sources persuasive, but they 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. 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 non-bankruptcy court (subsection (b)(3) and (c)). Subsections (b)(2), (b)(3) and (c) make it clear that chapter 15 is intended to be the exclusive door to ancillary assistance to foreign proceedings. The goal is to concentrate control of these questions in one court. That goal is important in a federal system like that of the United States with many different courts, state and federal, that may have pending actions involving the debtor or the debtor's property. This section, therefore, completes for the United States the work of article 4 of the Model Law (''competent court'') as well as article 9.

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.

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 (c) makes activities in the United States by a foreign representative subject to applicable United States law, just as 28 U.S.C. section 959 does for a domestic trustee in bankruptcy.

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 and coordination among them.

Article 11 does not distinguish between voluntary and involuntary proceedings, but seems to have implicitly assumed an involuntary proceeding.

Subsection 1(a)(2) goes farther and permits a voluntary filing, with its much simpler requirements, if the foreign proceeding that has been recognized is a main proceeding.

Section 1512. Participation of a foreign representative in a case under this title

This section follows article 12 of the Model Law with a sight alternation to adjust to United States procedural terminology. 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.

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.

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 required alternation to fit into the Bankruptcy Code.

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.

The Model Law allows for an exception to the policy of nondiscrimination as to foreign revenue and other public law claims. Such claims (such as tax and social security claims) have been denied enforcement in the United States traditionally, inside and outside of bankruptcy. The Code is silent on this point, so the rule is purely a matter of traditional case law. It also allows the Department of the Treasury to negotiate reciprocal arrangements with out 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.

As ''foreign creditor'' is not defined term, foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure (''Rules'') should be amended to conform to the requirements of this section, including a special form for initial notice to such creditors. In particular, the Rules must provide 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. 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. 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.

Subsection (d) replaces the reference to ''a reasonable time period'' in Mode Law article 14(3)(a). It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time periods and bar dates so that foreign creditors have a reasonable time within which to receive notice or take an action.

Section 1515. Application for recognition of a foreign proceeding

This section follows article 15 of the Model Law with minor changes.

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 20002 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.

Section 1516. Presumptions concerning recognition

This section follows article 16 of the Model Law with minor changes.

Although section 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.

''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.

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 not serious controversy.

Section 1517. Order granting recognition

This section closely follows article 17 of the Model Law, with a few exceptions.

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 sections 101(23) and (24), are all that must be fulfilled to attain recognition.

Reciprocity was specifically suggested as a requirement for recognition on more than one occasion in the negotiations that resulted in the Model Law. It was rejected by overwhelming consensus each time. The United States was one of the leading countries opposing the inclusion of a reciprocity requirement. In this regard, the Model Law conforms to section 304, which has no such requirement.

The drafters of the Model Law understood that only a main proceeding or a non-main proceeding meeting the standards of section 1502 (that is, one brought where the debtor has an establishment) were entitled to recognition under this section. The Model Law has been slightly modified to make this point clear by referring to the section 1502 definition of main and non-main proceedings, as well as to the general definition of a foreign proceeding in section 101(23). Naturally, a petition under section 1515 must show that 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 section 1519 and 1521. Subsection (4) states the grounds for modifying or terminating recognition. On the other hand, the effects of recognition (found in section 1520 and including an automatic stay) are subject to modification under section 362(d), made applicable by section 15320(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.

The reference to section 350 refers to the routine closing of a case that has been completed and will invoke requirements including a final report from the foreign representative in such form as the Rules may provide or a court may order.

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.

Judges in several jurisdictions, including the United States, have reported a need for a requirement of complete and candid reports to the court of all proceedings, worldwide, involving the debtor. This section will ensure that such information is provided to the court on a timely basis. Any failure to comply with this section will be subject to the sanctions available to the court for violations of the statue. 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 may be granted upon petition for recognition of a foreign proceeding

This section generally follows article 19 of the Model Law.

The bankruptcy court will have jurisdiction to grant emergency relief under Rule 7065 pending a hearing on the petition for recognition. This section does not expand or reduce the scope of section 105 as determined by cases under section 105 nor does it modify the sweep of sections 555 to 560. Subsection (d) precludes injunctive relief against police and regulatory action under section 1519, leaving section 105 as the only avenue to such relief. Subsection (e) makes clear that this section contemplates injunctive relief and that such relief is subject to specific rules and a body of jurisprudence. Subsection (f) was added to complement amendments to the Code provisions dealing with financial contracts.

Section 1520. Effects of recognition of a foreign main proceeding

In general, this chapter sets forth all the relief that is available as a matter of right based upon recognition hereunder, although additional assistance may be provided under section 1507 and this chapter have no effect on any relief currently available under section 105.

The stay created by article 20 of the Model law is imported to chapter 15 from existing provisions of the Code. Subsection (a)(1) combines subsections 1(a) and (b) of article 20 of the Model Law, because section 362 imposes the restrictions required by those two subsections and additional restrictions as well.

Subsections (a)(2) and (4) apply the 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 restrains the Model Law provisions would impose.

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 361 and 362, subsection (a) makes applicable the United States exceptions and limitation to the restraints imposed on creditors, debtors, and other in a case under this title, as stated in article 20(2) of the Model Law. It also introduces the concept of adequate protection provided in sections 362 and 363.

These exceptions and limitations include these set forth in section 362(b), (c) and (d). As one result, the court has the power to terminate the stay pursuant to section 362(d), for cause, including a failure of adequate protection.

Subsection (a)(2), by its reference to section 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 section 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 his 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 not 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 subchapter IV and V on cooperation and coordination of proceedings and to section 305 providing for stay or dismissal.

Section 108 of the Bankruptcy Code provides the tolling protection intended by Model Law article 2(3), so no exception is necessary as to claims that might be extinguished under United States law.

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.

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(a)(2).

The word ''adequately'' in the Model Law, articles 21(2) and 22(1), has been changed to ''sufficiently'' in section 1521(b) and 1522(a) to avoid confusion with a very specialized legal term in United States bankruptcy, ''adequate protection.''

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. Subsections (d), (e) and (f)j are identical to those same subsections of section 1519.

This section does not expand or reduce the scope of relief currently available in ancillary cases under sections 105 and 304 nor does it modify the sweep of section 555 through 560.

Section 1522. Protection of creditors and other interested persons

This section follows article 22 of the Model Law with changes for United States usage and references to relevant Code sections.

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 response to a showing that the conditions necessary to recognition did not actually exist or have ceased to exist, see section 1517. Concerning the change of ''adequately'' in the Model Law to ''sufficiently'' in this section, see section 1521 Subsection (d) is new and simply makes clear that an examiner appointed in a case under chapter 15 shall be subject to certain duties and bonding requirements based on those imposed on trustees and examiners under other chapters of this title.

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.

It confers standing on a recognized foreign representative to assert an avoidance action but only in a pending case under another chapter of this title. The Model Law is not clear about whether it would grant standing in a recognized foreign proceeding if not full case were pending. This limitation reflects concerns raised by the United States delegation during the UNCITRAL debates that a single grant of standing to bring avoidance actions neglects to address very difficult choice of law and forum issues. This limited grant of standing in section 1523 does not create or establish any legal right of avoidance nor does it create or imply any legal rules with respect to the choice of applicable law as to the avoidance of any transfer or obligation.

The courts will determine the nature and extent of any such action and what national law may be applied to such action.

Section 1524. Intervention by a foreign representative

The wording is the same as the Model Law, except for a few clarifying words.

This section gives the foreign representative whose foreign proceeding has been recognized the right to intervene in United States cases, state or federal, where the debtor is a party. Recognition begin 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 is almost exactly that of the Model Law.

The right or courts to communicate with other courts in worldwide insolvency cases is of central importance. This section authorizes courts to do so. This right must be exercised, however, with due regard to the rights of the parties. Guidelines for such communications are left to the Rules.

Section 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

This section follows the Model Law almost exactly.

The language in Model Law article 26 concerning the trustee's function was eliminated as unnecessary because 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. 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.

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.

In a full bankruptcy case, the United States bankruptcy court generally has jurisdiction over assets outside the United States. Here that jurisdiction is limited where those assets are controlled by another recognized proceeding, if it is a main proceeding.

The court may use section 305 of this title to dismiss, stay, or limit a case as necessary to promote cooperation and coordination in a cross-border case. In addition, although the jurisdictional limitation applies only to United States bankruptcy cases commenced after recognition of a foreign proceeding, the court has ample authority under the next section and section 305 to exercise its discretion to dismiss, stay, or limit a United States case filed after a petition for recognition of a foreign main proceeding has been filed but before it has been approved, if recognition is ultimately granted.

Section 1529. Coordination of a case under title 11 and a foreign proceeding

This section follows the Model Law almost exactly, but subsection (4) adds a reference to section 305 to make it clear the 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. 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 follows exactly article 30 of the Model Law.

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.

Where an insolvency proceeding has begin 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 debtors 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.

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).

Section 802. Other amendments to titles 11 and 28, United States Code

Other sections of title 11 have been amended to apply relevant provisions in those sections to chapter 15 and to specify which portions of chapter 15 apply in cases under other chapters of title 11.

The key definitions of foreign proceeding and foreign representative do not appear in chapter 15, but rather replace the prior definitions of those terms in section 101(23) and 101(24). The new definitions are nearly identical to those contained in the Model Law but add to the phrase ''under a law relating to insolvency'' the words ''or debt adjustment.'' This addition emphasizes that the scope of the Model Law and chapter 15 is not limited to proceedings involving only debtors which are technically insolvent, but broadly includes all proceedings involving debtors in severe financial distress, so long as those proceedings also meet the other criteria of section 101(24).

The amendment to section 157(b)(2) of title 28 provides that proceedings under chapter 15 will be core proceedings while other amendments to title 28 provide that the United States Trustee's standing extend to cases under chapter 15 and that the United States Trustee's duties include acting in chapter 15 cases.

Although the United States will continue to assert worldwide jurisdiction over property of a domestic or foreign debtor in a full bankruptcy case under chapters 7 and 13 of this title, subject to deference to foreign proceedings under chapter 15 and section 305, the situations 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.

Amendments to section 109 permit recognition of foreign proceedings involving foreign insurance companies and involving foreign banks which do not have a branch or agency in the United States (as defined in 12 U.S.C. section 3103). While a foreign bank not subject to United States regulation will be eligible for chapter 15 as a consequence of the amendment to section 109, section 303 prohibits the commencement of a full involuntary case against such a foreign bank unless the bank is a debtor in a foreign proceeding.

While section 304 is repealed and replace by chapter 15, access to the jurisprudence which developed under section 304 is preserved in the context of new section 1507. On deciding whether to grant the Additional Assistance contemplated by section 1507, the Court must consider the same factors that had been imposed by former section 304.

The venue provisions for cases ancillary to foreign proceedings have been amended to provide a hierarchy of choices beginning with principal place of business in the United States, if any. If there is no principal place of business in the United States, but there is litigation against a debtor, then the district in which the litigation is pending would be the appropriate venue. In any other case, venue must be determined with reference to the interests of justice and the convenience of the parties.

TITLE IX—FINANCIAL CONTRACT PROVISIONS

This title addresses recently prominent forms of financial investments which require special treatment in the insovlency context. It amends the Federal Deposit Insurance Act to provide treatment financial contracts, commodities contracts, securities contracts, forward contracts, repurchase agreements and swaps. It also amends the Bankruptcy Code to provide appropriate treatment for those types of financial investments. The Securities Investor Protection Act is amended as well to create an exception from the stay under that Act for certain financial investment instruments. Finally, the Bankruptcy Code is amended to deal with certain specialized aspects of asset securitization.

TITLE X—PROTECTION OF FAMILY FARMERS

Section 1001. Permanent reenactment of chapter 12

Under subsection 1001(a) chapter 12 (Adjustment of Debts of a Family Farmer with Regular Annual Income) is reenacted effective October 1, 1999. No time limit or termination date is established for chapter 12 under this provision. Subsection 1001(b) repeals subsection 302(f) of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, which set a now outdated termination date of October 1, 1998 for chapter 12.

Section 1002. Debt limit increase

This section amends section 104(b) of title 11, United States Code, providing for annual or biannual adjustments of the debt limit for family farmers beginning with the adjustment to be made on April 1, 2001.

Section 1003. Certain claims owed to governmental units

Subsection 1003(a) provides for payment in full of all claims entitled to section 507 priority unless the claim is owed to a governmental unit arising from the sale, exchange, or other disposition of any farm asset used in the debtor's farming operation. In that case, the claim is treated as an unsecured claim and the underlying debt is treated the same if the debtor receives a discharge or the holder of a particular claim agrees to a different treatment of that claim. Subsection 1003(b) amends section 1231(d) of chapter 11, providing that any governmental unit'' may provide a determination regarding the tax effects of a proposed plan under chapter 12.

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

This title amends the Bankruptcy Code to deal with the problems presented when a health care business, such as a hospital or nursing home, files for bankruptcy under chapters 7, 9 or 11.

Section 1101. Definitions

Section 1101 defines the terms ''health care business,'' ''patients,'' and ''patient records,'' which are added to definitions section of the Bankruptcy Code (11 U.S.C. '101).

Section 1102. Disposal of patient records

Section 1102 adds a new section 351 in subchapter III of Chapter 3 of title 11 dealing with the protection and disposal of patient records in a health care business bankruptcy situation.

The Trustee is required to follow certain procedures with respect to general and specific notice to patients and insurance companies regarding patient records, as well as the transfer and disposal of such records. These procedures are intended to protect the privacy and confidentiality of an individual's medical records when they are in the custody of a health care business that has filed for bankruptcy relief.

Section 1103. Administrative expenses claim for costs of closing a health care business

Section 1103 amends section 503(b) of title 11, making the actual, necessary costs and expenses of closing a health care business, including the cost or expense of disposing of patient records and transferring patients to another health care facility, an allowable administrative expense.

Section 1104. Appointment of ombudsman to act as patient advocate

Section 1104 (a) adds a new section 332 in subchapter II of chapter 3 of title 11, providing that the court appoint an ombudsman to act as an advocate for patients of health care facilities that have filed for bankruptcy. The ombudsman will monitor the quality of patient care and report to the court every 60 days regarding the quality of that care. If the ombudsman determines that patient care is declining significantly or is otherwise materially compromised, he/she is to immediately notify the court by motion or written report, with notice to appropriate parties in interest. The ombudsman is to treat any information obtained regarding patients as confidential information. The ombudsman may not review confidential patient records, without the prior approval of the court and under restrictions protecting their confidentiality. Section 1104(b) provides for compensation of an ombudsman under section 330(a)(1) of title 11.

Section 1105. Debtor in possession; duty of trustee to transfer patients

Section 1105 amends section 704(a) of title 11, stating that the trustee is to use all reasonable and best efforts to transfer patients from a health care facility being closed to another nearby and comparable health care facility, which maintains a reasonable quality of care.

Section 1106. Exclusion from program participation not subject to automatic stay

This section permits the Secretary of Health and Human Services to exclude the debtor from participation in the medicare program or other Federal healthcare program without violating the automatic stay.

TITLE XII—TECHNICAL AMENDMENTS

Section 1201. Definitions

This section makes technical corrections to the definitions of the Bankruptcy Code, alters the definitions for ''single asset real estate'' and ''transfer'', and renumbers the definitions.

Sections 1202—1212. Miscellaneous technical corrections

These provisions make technical changes to the Bankruptcy Code provisions on adjustment of dollar amounts, extensions of time, dismissal, bankruptcy petition preparers, compensation of professionals, conversion, administrative expenses, discharge, discriminatory treatment, and property of the estate provisions.

Section 1213. Preferences

This provision overrules *Levit* v. *Ingersoll Rand Financial Corp.* (*In re V.N. Deprizio Const. Co.*), 874 F.2d 1186 (7th Cir. 1989). If a transfer is avoided because it was made during the period 90 days–1 year before bankruptcy to a non-insider creditor for the benefit of an insider, the transfer is avoided only with respect to the insider. It is not avoided with respect to the non-insider creditor, and neither the transferred property nor its value may be recovered from the non-insider creditor.

Sections 1214–1217. Miscellaneous technical corrections

These sections make technical changes to the Bankruptcy Code provisions on postpetition transactions, property of the estate, municipal bankruptcy and railroad line abandonments.

Section 1219. Discharge under chapter 12

Section 1219 amends section 1228 (which deals with discharge under chapter 12) of the Bankruptcy Code to correct erroneous references.

Section 1220. Bankruptcy cases and proceedings

Section 1220 of the of the Act amends section 1334(d) of title 28 of the United States Code to correct erroneous references.

Section 1221. 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 by making a correct reference to title 11 of the United States Code.

Section 1222. Transfers made by nonprofit charitable corporations

Section 1222 amends section 363(d) of the Bankruptcy Code to restrict the right of a trustee to use, sell, or lease property owned by a nonprofit corporation or trust. First, the use, sale or lease must be in accordance with applicable nonbankruptcy law and must not be inconsistent with any relief granted under certain specified provisions of section 362 of the Bankruptcy Code concerning the applicability of the automatic stay. Second, the section imposes similar restrictions with regard to chapter 11 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 section 501(c)(3) of the Internal Revenue Code) may be transferred to an entity that is not such a corporation, but only under the same conditions that would apply if the debtor was not in bankruptcy. The amendments made by this section apply to cases pending on the date of enactment of this Act. A limited exception pertains with respect to confirmation of a chapter 11 plan.

Section 1223. Protection of valid purchase money security interests

Section 1223 amends section 547(c)(3)(B) of the Bankruptcy Code extending the applicable perfection period for a security interest in property acquired by the debtor from 20 days to 30 days after the debtor receives possession of the property.

Section 1224. Extensions

Section 302(d)(3) of the Bankruptcy, Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986 is amended by striking out all references to ''or October 1, 2002, whichever occurs first'' and ''October 1, 2003, or'' and ''whichever occurs first''. These changes permanently extend the bankruptcy administrator program in Alabama and North Carolina.

Section 1225. Bankruptcy judgeships

This section may be cited as the ''Bankruptcy Judgeship Act of 2000.'' It authorizes the appointment of additional temporary bankruptcy judgeships in the districts that follow:

(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 district of Delaware.

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

(E) One additional bankruptcy judgeship for the southern district of Georgia.

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

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

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

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

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

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

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

(M) One additional bankruptcy judgeship for the eastern district of North Carolina.

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

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

(P) One additional bankruptcy judgeship for the district of Puerto Rico.

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

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

The section provides that judgeship vacancies in the above districts resulting from death, retirement, resignation, or removal of a bankruptcy judge which occur 5 years or more after the appointment date shall not be filled.

The section also adds that temporary bankruptcy judgeships 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 the Bankruptcy Judgeship Act pf 1992 are extended until the first vacancy resulting from the death, retirement, resignation, or removal occurs:

(A) 8 years or more after November 8, 1993, in the northern district of Alabama.

(B) 10 years or more after October 28, 1993, in the district of Delaware.

(C) 8 years or more after August 29, 1994, in the district of Puerto Rico.

(D) 8 years or more after June 27, 1994, in the district of South Carolina.

(E) 8 years or more after November 23, 1993, in the district of Tennessee.

The section also amends section 152(a)(1) of title 28 of the United States Code. It adds that each judge shall be appointed by the U.S. Court of Appeals for the circuit in which such a district is located.

Section 1226. Compensating trustees

This section amends section 326 (Limitation on Compensation of Trustee) with a new subsection (e) providing that, in a case where a trustee in a chapter 7 case makes a motion to dismiss or convert under section 707(b) and such motion is granted, the court shall allow ''reasonable compensation'' under section 330(a) of title 11 for the services and expenses of the trustee and the trustee's counsel. The compensation covers the reasonable costs of preparing and presenting the section 707(b) motion and any related appeals. This section also adds a new subsection (f) to section 326 providing that, subject to the limits established in subsection 326(a), the court shall consider the ''results achieved'' when determining a trustee's compensation. Finally, this section amends subsection 1326(b) dealing with payments under a chapter 13 plan. Specifically, a new paragraph (3) is added to subsection 1326(b) establishing a formula limiting the amount a debtor must pay under a plan to compensate a chapter 7 trustee or trustee's attorney who has been awarded fees in a chapter 7 case, when that compensation is allowed under section 326(e).

Section 1227. Amendment to section 362 of title 11, U.S. Code

Amends section 362(b)(18) to exempt from the automatic stay a special tax or special assessment on real property (whether or not ad valorem), imposed by a governmental unit, if such special tax or assessment comes due after the filing of the bankruptcy petition.

Section 1228. Judicial education

Provides that the Director of the Federal Judicial Center, in consultation with the Director of the Executive Office of U.S. Trustees, shall develop materials and conduct such training as may be useful to the courts in implementing this Act, focusing in particular on the section 707(b) means test and reaffirmation.

Section 1229. Reclamation

Subsection (a) of this section amends section 546(c) of title 11, to allow a seller of goods to reclaim those goods under certain circumstances and establishing the procedures and time limits for doing so. This provision was amended in 1994 so as to expand the ability of sellers of goods to reclaim such goods from a trustee by extending the reclamation demand period from 10 days to 20 days. The amendment made by this Act extends this period to 45 days, subject to certain limitations and requirements. Under existing law and this amendment, the rights and powers of the trustee under sections 544(a), 545, 547 and 549 are subject to the right of a seller of goods that has sold goods to the debtor in the ordinary course of the seller's business.

Specifically, under the new subsection 546(c)(1), the seller's rights to reclaim goods which an insolvent debtor received not later than 45 days after the commencement of the case is not subject to certain of the trustee's avoiding powers. However, the seller may not reclaim the goods unless the seller makes a reclamation demand in writing: (A) not later than 45 days of the date of receipt of such goods by the debtor; or (B) not later than 20 days after the date of commencement of the case, if the 45–day period expires after commencement of the case. Subsection 546(c)(2) states that a failure to provide notice in a manner required under paragraph (1), does not preclude a seller from making a claim under section 503(b)(8).

As amended, subsection 546(c) contains certain exceptions to the seller's reclamation rights. First, such rights do not apply to claims with respect to grain or fish covered in subsection 546(d). Second, another exception is provided for priority claims of a governmental unit under subsection 507(c) with respect to an erroneous refund or tax credit. Finally, reclamation claims are also made subject to the prior rights of holders of security interests in such goods or the proceeds of the sale of such goods.

Subsection (b) of this section, amends section 503(b) of title 11 to add a new paragraph (8) which provides for an administrative expense allowance for the value of goods received by the debtor not later than 20 days after filing, if the goods were sold to the debtor in the ordinary course of the debtor's business.

Section 1230. Providing requested tax documents to the court

Section 315 of HR 2415 amends section 521 of the Bankruptcy Code to insert a new subsection which requires the debtor to provide certain tax documents. In addition, under Rule 2004 discovery, a debtor can be required to disclose tax returns and other tax information in appropriate cases. If a debtor fails to do so, this provision provides sanctions.

Subsection (a) withholds a discharge in a chapter 7 case where the debtor has failed to provide requested tax documents to the court. Similarly, subsection (b) provides that the court shall not confirm a reorganization plan under chapter 11 or chapter 13 unless and until requested tax documents have been filed with the court. For these purposes, failure to provide a tax return to the trustee is considered a refusal to provide it to the court. Subsection (c) provides that the bankruptcy court must retain all documents submitted in support of an individual's bankruptcy claim under chapter 7, 11 or 13 for a period of not more than 3 years after the conclusion of the case. In the event of a pending audit or enforcement action, the court may extend the time for retention of the documents beyond the 3 year minimum.

Section 1231. Encouraging creditworthiness

Subsection (a) expresses that it is the sense of Congress that: (1) some lenders may offer credit to consumers, without taking all the steps necessary to ensure that consumers have the capacity to repay the resulting debts; and (2) the availability of credit may be a factor contributing to consumer insolvency. Subsection (b) authorizes the Federal Reserve Board to conduct a study of credit industry practices with respect to soliciting and extending credit. Subsection (c) provides that, not later than 12 months after the date of enactment of this Act, the Board shall make public a report on the findings of its study of the credit industry. The Board may then issue regulations that would require additional disclosures to consumers and take any other action, consistent with its statutory authority, to encourage responsible lending practices and greater personal responsibility on the part of consumers.

Section 1232. Property no longer subject to redemption

This section amends section 541(b) of the Bankruptcy Code to clarify that pawned, tangible personal property (other than securities or written or printed evidence of indebtedness or title) cannot be treated as property of the bankruptcy estate once the statutory redemption period has run and the pawned goods have not been redeemed. Thus, pawned personal property is not part of a debtor's bankruptcy estate, after the time under the contract for redeeming the property has expired. This codifies what most courts have held, and will relieve the courts from the burden of having to repeatedly rule on whether pawn transactions are subject to the automatic stay.

Section 1233. Trustees

This section amends 28 U.S.C. 586(d) to allow private trustees, appointed to a panel under subsection 586(a)(1) or appointed under subsection 586(b), to obtain judicial review when they are terminated or cease to be assigned cases. Judicial review shall be available in the United States district court for the district for which the panel to which the trustee was appointed under subsection 586(a)(1) serves, or the district where a trustee appointed under subsection 586(a) resides. The trustee must first exhaust all administrative remedies which, if the trustee elects, shall include a hearing on the record. The final agency decision will be upheld unless it is found unreasonable and without cause based upon the administrative record before the agency. This section also amends 28 U.S.C. 586(e) to allow an individual appointed under subsection 586(b) to seek judicial review of a final agency decision to deny a claim for actual, necessary expenses. Before seeking judicial review, the individual must exhaust all available administrative remedies and the final agency decision will be upheld unless it is unreasonable and without cause based on the administrative record.

Section 1234. Bankruptcy forms

This section amends 28 U.S.C. 2075 (Bankruptcy rules) by adding at the end a requirement that a form be prescribed for the statement required under section 707(b)(2)(C) of title 11 concerning the debtor's current monthly income and the calculations that determine whether a presumption of abuse arises under section 707(b)(2)(A)(i). The form may provide general rules on the content of the statement.

Section 1235. Expedited appeals of bankruptcy cases to courts of appeals

Subsection (a) of this section strikes the existing language contained in subsection 158(d) of title 28, United States Code, and replaces it with language establishing an expedited appeals process for judgments, decisions, orders, or decrees issued by bankruptcy judges. Specifically, it provides that where an appeal of a judgment, decision, order, or decree of a bankruptcy judge is filed with the district court, that judgment, decision, order, or decree shall be deemed to be a judgment, decision, order, or decree of (''entered by'') the district court 31 days after the appeal is filed with the district court. This result will occur unless, not later than 30 days after such an appeal is filed with the district court, the district court: (1) files its own decision on the appeal; (2) enters an order extending the 30–day period for cause upon a motion of a party or on its own motion; or (3) all parties to the appeal file a written consent that the district court may retain the appeal. An appeal is to be considered filed with the district court on the date the notice of appeal is filed, or on the date a party makes an election under 28 U.S.C. 158(c)(1)(B).

This section also adds a new subsection (e) to 28 U.S.C. 158, providing that the courts of appeals have jurisdiction over appeals from all final judgments, decisions, orders, and decrees of district courts under subsection 158(a) and of bankruptcy appellate panels under subsection 158(b). In addition, the courts of appeals are granted jurisdiction over appeals from all judgments, decisions, orders, and decrees of the district courts entered under the new subsection 158(d), to the extent such judgment, decision, order, and decree would be reviewable by the district court under subsection 158(a). An appeal from a district court or a bankruptcy appellate panel shall be taken in the same manner as civil appeals are generally taken to the courts of appeals from the district courts as provided in Rule 4 of the Federal Rules of Appellate Procedure. The court of appeals, in its discretion, may exercise jurisdiction over an appeal from an interlocutory judgment, decision, order, or decree to the extent provided in paragraph (3) of subsection (e).

Subsection (b) of section 1237 of this Act, merely makes conforming changes substituting ''section 158(e)'' for ''section 158(d)'' in three sections of the Code.

Section 1236. Exemptions

This section corrects a cross reference.

TITLE XIII—METHAMPHETAMINE AND OTHER CONTROLLED SUBSTANCES

This title increases the controls on the manufacture and sale of certain illegal drugs.

TITLE XIV—CONSUMER CREDIT DISCLOSURE

Section 1401. Enhanced disclosures under an open-ended credit plan

This section would amend section 127(b) of the Truth in Lending Act (''TILA'') to require new minimum payment disclosures on monthly billing statements sent to cardholders. Under this section, the front page of each monthly billing statement must include a new minimum payment disclosure. The contents of the disclosure will vary depending upon the level of minimum payments required under the applicable credit plan and whether the creditor is subject to enforcement by the Federal Trade Commission (''FTC''). It is intended that the Federal Reserve Board (''FRB'') will implement the new disclosures in a manner that will enable creditors to preprint the disclosures on the billing statements they send to cardholders.

Disclosures by federally regulated financial institutions. Financial institutions that are subject to enforcement under TILA by a federal agency other than the FTC must provide a minimum payment warning that will vary depending upon whether the institution's credit plan typically requires a minimum payment that is 4% or less, or more than 4%, of the outstanding balance. If the institution's credit plan requires minimum payments that are 4% or less of the outstanding balance, the institution will include the following on the front of the monthly billing statement.

''Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number ______.'':

If the financial institution requires a minimum payment of more than 4% of the outstanding balance, the institution would make the same minimum payment disclosure with a different repayment example. Specifically, in such cases, the institution would indicate that ''[m]aking a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full.'' However, such an institution may elect to use the example applicable to plans requiring minimum payments of 4% or less if it chooses to do so.

Federally regulated financial institutions also would be required to include in the disclosure a toll-free telephone number that the institution's open-end credit accountholders may use to obtain information to be published by the FRB estimating how long it could take to repay a similar outstanding balance. The toll-free telephone number may be operated individually by the institution, jointly with other creditors, or by a third party. The toll-free number may connect accountholders to an automated device that enables accountholders to obtain information through use of a touch-tone telephone or similar device, so long as accountholders without a touch-tone telephone or similar device are provided an opportunity to speak to an individual. The FRB is charged with developing charts or tables showing how long it could take to repay various balances, assuming the limited number of repayment assumptions specified in the bill. It is intended that the FRB, in preparing the charts or tables, will use the same methodology as that used in calculating the 88-month and 24-month repayment periods set forth in the disclosures in new paragraphs (11) (A), (B) and (C) of TILA section 127(b). The FRB charts or tables would be used for responding to accountholders who call the toll-free telephone number.

A special rule is established for depository institutions with total assets not exceeding $250 million. Under this special rule, such depository institutions are not required to comply with the toll-free number provision described above. Instead, such depository institutions are required to furnish a toll-free number which the FRB shall establish and maintain itself, or have established and maintained by a third party, for a period not to exceed 24 months following the effective date of this Act. Once the FRB (or third party) no longer maintains the toll-free telephone number, depository institutions with total assets not exceeding $250 million shall continue to be required to furnish a toll-free telephone number under this Act.

Disclosures for creditors subject to FTC enforcement under TILA. Creditors subject to FTC enforcement under TILA would be required to include the same minimum payment disclosure as financial institutions who require minimum payments in excess of 4% of the outstanding balance. However, instead of including a toll-free telephone number operated by the creditor (or third party), those subject to FTC enforcement under TILA would include a toll-free telephone number through which accountholders could contact the FTC for an estimate of the time it would take to repay the accountholder's outstanding balance. In responding to accountholder calls made to the toll-free number, the FTC will use the same repayment charts or tables developed by the FRB.

Additional flexibility. In order to provide added flexibility in making the new disclosures, new paragraph (11)(D) allows a creditor to use its own repayment example rather than those specified in subparagraphs (A), (B) or (C) provided that the creditor's example is based on an interest rate greater than 17%.

Exemptions from new disclosure requirements. The new section 127(b)(11) does not apply to charge card accounts provided that the primary purpose of such accounts is to require payment of charges in full each month.

Disclosures for creditors providing actual number of months to repay balance. Under new section 127(b)(11)(J), a creditor is not subject to new sections 127(b) (11)(A) or (B) if the creditor maintains a toll-free number which provides open-end credit accountholders with the actual number of months that it will take to repay the accountholder's outstanding balance. In order to qualify for the exemption in subparagraph (J), the creditor would simply include the following statement on each billing statement as provided in new subparagraph (K) (as included in section 1234 of this Act):

''Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: ______.''

The toll-free number may be operated individually by the institution, jointly with other creditors or by a third party. It is intended that the toll-free number may connect accountholders to an automated device that enables them to obtain information through the use of a touch-tone telephone or similar device, so long as accountholders without a touch-tone telephone or similar device are provided the opportunity to speak with an individual.

FRB study. In addition, the FRB has the authority to conduct a study, if it chooses to do so, to determine the types of information available to potential borrowers regarding factors of notifying potential borrowers for credit, repayment requirements, and the consequences of default.

Effective date. New section 127(b)(11) of TILA and any regulations promulgated by the FRB to implement section 127(b)(11) will not take effect until the later of: (A) 18 months after the date of enactment of this Act; or (B) 12 months after the publication of final regulations by the FRB.

Section 1402. Enhanced disclosure for credit extension secured by a dwelling

This section adds a new disclosure that must be made by creditors who make either open-end or closed-end loans to consumers if those loans are secured by the consumer's principal dwelling. This section provides that, in connection with credit applications and credit advertisements for such loans, the creditor must disclose to the consumer that if the loan exceeds the fair market value of the dwelling, the interest on the portion of the credit that exceeds the fair market value is not tax deductible for federal income tax purposes and that the consumer may want to consult a tax advisor for further information regarding the deductibility of interest and charges. This section and any regulations issued by the FRB to implement this section will not take effect until the later of: (A) 12 months after the date of enactment of the Act; or (B) 12 months after publication of the final regulations by the FRB.

Section 1403. Disclosure related to ''introductory rates''

This section mandates new disclosures regarding introductory rates on open-end credit card accounts if those rates will be in effect for less than 1 year (''temporary rates''). This section provides that an application or solicitation to open a credit card account which is described in section 127(c)(1) of TILA must comply with the following requirements if the account offers a temporary rate:

1. Each time the temporary rate appears in the written materials, the term ''introductory'' must appear clearly and conspicuously in immediate proximity to the rate itself.

2. If the rate that will apply after the temporary rate expires will be a fixed rate, the creditor must disclose the time period in which the introductory period will expire and the annual percentage rate that will apply after the end of the introductory period. This disclosure must be made clearly and conspicuously in a prominent location closely proximate to the first listing of the temporary rate. This disclosure does not apply to any listing of a temporary rate on an envelope or other enclosure in which an application or solicitation is mailed.

3. If the annual percentage rate that will apply after the expiration of the temporary rate will be a variable rate, the creditor must disclose the time period in which the introductory period will expire and an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation. Like the fixed-rate disclosure, this disclosure must be made clearly and conspicuously in a prominent location closely proximate to the first listing of the temporary rate. This disclosure does not apply to any listing of a temporary rate on an envelope or other enclosure in which an application or solicitation is mailed.

4. If the temporary rate can be revoked for reasons other than the expiration of the introductory period, the creditor must clearly and conspicuously disclose on or with the application or solicitation a general description of the circumstances that may result in the revocation of the temporary rate and either the fixed rate that would apply upon the revocation of the temporary rate, or in the

case of a variable rate program, the rate that was in effect within 60 days before the date of mailing the application or solicitation.

Effective date. This section and any regulations promulgated by the FRB to implement this section will not take effect until the later of: (A) 12 months after the date of enactment of this Act; or (B) 12 months after the publication of final regulations by the FRB.

Section. 1404. Internet-based credit card solicitations

This section requires that the existing TILA credit card application and solicitation disclosures must be made in connection with a solicitation to open a credit card account via the Internet. It also requires that the new introductory rate disclosures required under section 1603 of this Act must be made in connection with Internet solicitations, as applicable. All disclosures required under this section must be made in a clear and conspicuous manner. The disclosures must be readily accessible to consumers in close proximity to the solicitation to open a credit card account, and updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account. It is intended that the disclosures can be made by allowing a consumer to use a ''link'' or similar method to view the disclosures. This section and any regulations promulgated by the FRB to implement this section will not take effect until the later of: (A) 12 months after the date of enactment of this Act; or (B) 12 months after the publication of final regulations by the FRB.

Section 1405. disclosures related to late payment deadlines and penalties

This section requires that each monthly billing statement sent to credit cardholders and other open-end credit borrowers must include a new disclosure if a late payment fee will be imposed on the borrower for failing to make the minimum payment by the payment due date. In such cases, the monthly billing statement must clearly and conspicuously state the date that the payment is due or, if the card issuer contractually establishes a different date, the earliest date on which (or time period in which) a late payment fee may be charged and the amount of the late payment fee to be imposed if payment is made after that date (or time period). This section and any regulations promulgated by the FRB to implement this section will not take effect until the later of: (A) 12 months after the date of enactment of this Act; or (B) 12 months after the publication of final regulations by the FRB.

Section 1406. Prohibition on certain actions for failure to incur finance changes

This section prohibits a creditor under an open-end consumer credit plan from terminating an account of a consumer prior to its expiration date (e.g., expiration of the card in the case of a credit card account) solely because the consumer has not incurred finance charges on the account. This provision makes it clear, however, that the creditor may terminate the account if it is inactive for three or more consecutive months. New section 127(h) of TILA and any regulations promulgated by the FRB to implement new section 127(h) will not take effect until the later of: (a) 12 months after the date of enactment of this Act; or (b) 12 months after the publication of final regulations by the FRB.

Section 1407. Dual use debit card

This section permits the FRB to conduct a study of existing consumer protections, including voluntary industry rules, that limit the liability for consumers when a consumer's ATM card or debit card is used to access the consumer's asset account without the consumer's authorization.

Section. 1408. Study of bankruptcy impact of credit extended to dependent students

This section directs the FRB to conduct a study regarding the impact that the extension of credit to certain students has on the rate of bankruptcy. Specifically, the study must examine the bankruptcy impact of extending credit to consumers who are claimed as a dependent by their parents or others for federal tax purposes and who are enrolled within 1 year of successfully completing all required secondary education requirements on a full-time basis in post-secondary educational institutions. The results of the study must be reported to Congress within 1 year after the date of enactment of the Act.

Section 1409. Clarification of clear and conspicuous

This section directs the Board, in consultation with other federal banking agencies, the National Credit Union Administration and the FTC, to promulgate regulations, including examples of model disclosures, to provide guidance regarding the meaning of ''clear and conspicuous'' as used in sections 127(b)(11)(A), (B) and (C) and 127(c)(6)(A)(ii) and (iii) of TILA as added by this Act.

TITLE XV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Section 1501. Effective date; application of amendments.

The amendments made by the Act take effect 180 days after the date of enactment, except as provided elsewhere in the Act. These amendments apply only with respect to cases commenced after the effective date.

Mr. HATCH. Thank you. We are in agreement on what this legislation does.

Mr. DODD. Mr. President, I rise today to speak about the Bankruptcy Reform Conference Report that is being considered by the Senate. Let me start by noting that there is strong opposition to this bill—in its current form—by consumer advocacy groups such as the National Women's Law Center, the Association for children for Enforcement of Support, and the Consumer Federation of America.

This conference report is an illustration of what happens when a sound idea is submitted to an unsound process. The idea of reforming the Bankruptcy Code to stop obvious abuses was an idea that had broad support. It was a bipartisan issue. Regrettably, however, this modest and sensible idea—the idea that we should close the loopholes that a small number of people were using to game the system—has been warped into legislation that goes far beyond its original purposes.

The process that created this conference report was highly partisan and highly unusual. Its provisions were drafted by one party meeting in secret, with no formal input from members of the Democratic Party. Indeed, no formal conference was ever held. Instead, at the last minute the majority found a stalled Department of State authorization bill that was being managed by Senators who were sympathetic to their version of the bankruptcy bill and they performed a legislative bait and switch. They deleted every word from the Department of State bill and then inserted every word of their bankruptcy bill.

Now the Senate is being asked to vote on a so-called Department of State authorization bill that contains not a word about the Department of State. The Department of State bill is nothing but an empty vessel into which a so-called ''compromise'' bankruptcy bill has been poured. But we have to be careful here—the word ''compromise'' doesn't mean what it used to mean, what it normally means in the legislative process. This isn't a compromise between the two Houses of Congress. This isn't a compromise between the two parties. This compromise bill is the result of negotiations among like-minded men and women of the same political party. This is a majority-only bill. There has been no meaningful compromise at all.

Aside from the procedural problems with how this bill has been handled, I have deep and serious concerns about the substance of this legislation.

This legislation will unintentionally injure honest hard-working Americans who have fallen on hard times through no fault of their own. The reason that we have a Bankruptcy Code is because life sometimes deals people a bad hand and we believe that it's important to give people a fresh start—an opportunity to overcome the financial misfortunes that have struck them. This principle is so fundamental that the Constitution expressly lists the establishment of uniform bankruptcy laws as a congressional responsibility. It seems that the Framers understood that society is better off if we find an orderly way to allow people to pay off their debts to the degree possible, and then get back on their feet as productive citizens. Regrettably, that principle seems to suffer at the hands of this conference report.

Evidence suggests that the vast majority of people who file for bankruptcy do so because some financial crisis beyond their control has plunged them into debt that they cannot avoid. People file for bankruptcy because they've lost their jobs or because a child needs medical care that is not covered by insurance.

The evidence shows that abusive filings are the exception, not the rule. The median income of the average American family filing for a chapter 7 bankruptcy is just above $20,000 per year, according to the General Accounting Office. The majority of people who file for bankruptcy are single women who are heads of households, elderly people trying to cope with medical costs, again people who have lost their jobs, or families whose finances have been complicated by divorce.

For the most part, we are talking about working people or elderly people on fixed incomes, who through no fault of their own have fallen on hard times and need the protection of bankruptcy to help put their lives back together. It is also worth noting that last year, the per capita personal bankruptcy rate dropped by more than 9 percent, and again this year the bankruptcy rate has dropped.

The impact that this legislation would have on single-parent households is particularly disturbing to me. Single parents have one of the hardest jobs in America. Most work all day, cook meals, keep house, help their children with homework, and schedule doctors' appointments, parent-teacher meetings, and extracurricular activities. Life isn't easy for working single parents and often the financial assistance they receive in the form of alimony or child support is critical to keeping their families from falling into poverty. I believe that the conference report before the Senate would frustrate the efforts of single-parent families to collect support payments.

I understand that the proponents of this bill believe that they have treated single-parent families fairly. But what I am worried about is the unintended—but perfectly foreseeable—consequences of allowing more debts to survive bankruptcy.

For more than 100 years, the Bankruptcy Code has given women and children an absolute preference over all others who have claims on a debtor's estate. Under the well-established rule, if a divorced person files for bankruptcy, the court doesn't require that person's ex-spouse or children to compete with creditors for the funds needed to pay child support and alimony. Instead, alimony and child support are taken out of the debtor's monthly income first and if there is anything left over, it is made available to commercial creditors. If there is nothing left over, then the commercial or consumer debts are discharged and the debtor's only remaining obligation is to the ex-spouse and children.

This conference report would change the rules. For the first time, it would make credit card and other consumer debts essentially nondischargable. So, while a divorced spouse would still be obliged to pay alimony and child support, his or her other unsecured debts would remain intact.

Proponents of this bill say this does no harm to divorced spouses and their children because ex-spouses are still at the front of the collections line. But there is a huge practical difference between being first in line and being the only one in line. Under current law, nonsupport debts are often discharged and debtors can focus entirely on meeting their obligations to their children and ex-spouses. If this conference report becomes law, that will change—debtors will not be able to focus on their children, they will—as a matter of law—have to divert limited financial resources to pay back consumer creditors.

I believe that this change will inevitably lead to conflicts between commercial creditors and single parents who are owed support and alimony payments. Sure, they will be first in line, but single parents will be competing with large creditors. Creditors, I might add, who are well-represented by teams of lawyers.

I believe that it is a mistake to make single parents compete with teams of lawyers for the money they need to feed and clothe and educate their children.

I understand the perspective that says that all debts should be paid—but when debtors simply cannot pay all of their debts, then I believe that our laws should protect the interests of children and families first. Under this legislation, a child support payment could very well be reduced in order to satisfy an unsecured commercial creditor. In my view, that change would place the well-being of a child at a disadvantage and elevate the status of the unsecured creditor.

Low-income children and families will be put at a practical disadvantage by this bill and will ultimately suffer greater economic deprivation because they cannot afford to compete with sophisticated creditors.

Mr. President, Congress should reform the Bankruptcy Code, but we need to do so in a responsible and effective and fair way. In my opinion, this conference report—even though it was well-intentioned—has not answered this call.

Mr. BIDEN. Mr. President, today we reach a point that has been far too long in coming: a vote on final passage of bankruptcy reform. Just two days ago, the Senate voted overwhelmingly—67 to 31—to end debate on this legislation.

I expect the same strong endorsement in today's vote.

For reasons that we are all aware of, it has been a prolonged and complicated process that has brought us to this point today. In one of our very first votes this year, the Senate passed bankruptcy reform legislation by the overwhelming margin of 83 to 14. Similar legislation passed the House last year, 313 to 108. I personally believe that we should not have waited for legislation that passed both Houses by overwhelming margins, many months ago, to finally reach the floor of the Senate in the last hours of this session.

For vast, bipartisan majorities of both houses, the idea that we need to restore some balance to our bankruptcy code is not controversial.

The legislation before us today does indeed tighten current law. It assures that those who have the ability to pay—but only those with the ability to pay—will have to complete at least a partial repayment plan. This fundamental change will affect probably fewer than 10 percent of the people who file for bankruptcy, and only those who have the demonstrated ability to pay.

I would bet, that most of our constituents would be surprised to find that is not the case today. Today's code makes no clear distinction between those who have the income to pay some of their debts and those whose only recourse is to sell off whatever assets they have to pay their creditors. The bill before us corrects that basic flaw.

I am convinced that flaw has a lot to do with the fact that bankruptcy filings have been at record levels in recent years, in spite of the strongest economy we have ever enjoyed. And—contrary to some of the assertions we have heard recently, those filings are not going down. After a leveling off, following interest rate reductions a couple of years ago that made credit easier, the latest statistics show a revival in the record wave of bankruptcy filings in recent months. The problem has not gone away—and the growing evidence of a slowing economy means we should expect even more filings in the coming months.

The fact is, Mr. President, that we have before us legislation that is the result of weeks of debate and amendment here on the Senate floor last year. Although we could not convene a formal conference, further bipartisan discussions continued this summer, including the direct participation of the White House. I ask my colleagues to consider how closely the legislation before us today matches the letter and the spirit of the bill that had such overwhelming support earlier this year.

I also strongly urge the President to reconsider his threat to veto this legislation, that contains many provisions that are the product of direct negotiations with his White House. I know that important voices in his administration continue to support bankruptcy reform, and I hope that he will heed their advice.

We still have a strong safe harbor, to protect families below the median income, along with adjustments for additional expenses that will assure that only those with real ability to pay will be steered from Chapter Seven to Chapter 13. Senate language, that gives judges the discretion to determine whether there are special circumstances that justify those expenses, prevailed over stricter House language.

Beyond that, the Senate-passed safe harbor provision has actually been strengthened, with additional protection for those between 100 and 150 percent of the national median income, who are largely exempted from the means test.

Compared to current law, this legislation provides increased protections against creditors who try to abuse the reaffirmation process. This bill also imposes new requirements on credit card companies to explain to their customers the implications of making minimum payments on their bills every month.

And a feature of this legislation that I think deserves much more emphasis is its historic improvement in the treatment of family support payments—child support and alimony. Compared to current law, there are numerous specific new protections for those who depend on those payments.

The improvements are so important that they have the endorsement of the National Child Support Enforcement Association, the National District Attorneys Association, and the National Association of Attorneys General.

These are the people who are actually in the businesses of making sure that family support payments are made. One passage from a letter sent to members of the Senate Judiciary Committee deserves repeating here, Mr. President. Referring to the very real advantages which this legislation would provide to the women and children who depend on those support payments, they say that, and I quote ''defeat of this legislation based on vague and unarticulated fears'' would be ''throwing out the baby with the bathwater.''

I think this last line from the letter deserves special stress: ''No one who has a genuine interest in the collection of support should permit such inexplicit and speculative fears to supplant the specific and considerable advantages which this reform legislation provides to those in need of support.''

Mr. President, I can think of no stronger rebuttal to the arguments we have heard recently about the supposed effects of this legislation on the women and children who depend on alimony and child support.

Finally, Mr. President, I want to briefly address two issues that have been raised by the President, and by opponents of this legislation. I honestly believe that compared to the many substantial victories for Senate positions, those two issues fall far short of justifying a change in the overwhelming support bankruptcy reform has received in the last two sessions of Congress.

First, there is the issue of the homestead cap. One of the most egregious examples of abuse under current law is the ability of wealthy individuals, on the eve of filing for bankruptcy, to shelter income from legitimate creditors by buying an expensive house in one of the handful of states that have an unlimited homestead exemption in bankruptcy.

It is one of the most egregious abuses, Mr. President, but it is actually pretty rare, involving only a very few of the millions of bankruptcies that have been filed in recent years. Nevertheless, it is an abuse that should be eliminated. Senator KOHL and Senator SESSIONS have been the leaders in the Senate on this. They are the reason why the Senate included a strong provision—a ''hard cap'' of $100,000 on the value of a home that could be exempt from creditors in bankruptcy.

That provision is not in the bill before us today, Mr. President, but the worst abuse—the last-minute move to shelter assets from creditors—has been eliminated. To be eligible for any state's homestead exemption, a bankruptcy filer must have lived in that state for the last two years before filing. If you buy a home within two years of filing, your exemption is capped at $100,000. That is a huge improvement over current law.

So I say to my colleagues: if you want to eliminate the worse abuse of the homestead exemption, then you will vote for the conference report before us today.

That brings us to the last of the major issues—one that we have come to call the Schumer Amendment, because of the energy and dedication of my friend and colleague from New York.

We all know of the confrontations—sometimes peaceful, sometimes tragically violent—that have occurred in recent years between pro-life and pro-choice groups over access to family planning clinics. Because of the threat to the Constitutional rights of the people who run those clinics and their patrons, Congress passed, and President Clinton signed, the Free Access to Clinic Entrances Act in 1993. That law makes it a crime—punishable by fines as well as imprisonment—to block access to family planning clinics.

Some of those who have been arrested and prosecuted under that law have brazenly announced that they plan to file for bankruptcy, to escape the consequences of their crimes—specifically, to avoid paying damages. Some of these individuals have in fact filed for bankruptcy.

But in no case—in no case that I am aware of, Mr. President, or that the Congressional Research Service has been able to find—has any individual escaped a single dollar's liability by filing for bankruptcy. Not a dollar, not a dime, not a penny. It hasn't happened, and it won't happen. The reason is simple: current bankruptcy already states that such settlements—for ''willful and malicious'' conduct—are not dischargeable in bankruptcy.

If that were not enough, current case law supports a very strong reading of that provision of current law. When one clinic demonstrator—who violated a restraining order—attempted to have the settlement against her wiped out in bankruptcy, her claim was rejected out of hand. The violation of a restraining order setting physical limits around a clinic has been ruled to be ''wilful and malicious'' under the current code. The penalties she was assessed were not dischargeable.

Mr. President, the Congressional Research Service, as of October 26, conducted an exhaustive, authoritative search which, and I quote: ''did not reveal any reported decisions where such liability was discharged under the U.S. Bankruptcy Code.''

So the current bankruptcy statute—and the most recent case law on this point—all say that the Schumer Amendment is not needed. That is to take nothing away from the hard work and dedication of my friend and colleague on the Judiciary Committee, or to minimize the frustration and outrage many Americans feel at the announced attempts to abuse the bankruptcy code. It is simply to say that the women who use and who operate family planning clinics are not without recourse, and not without the full protection of the law, under the current bankruptcy code.

I repeat, Mr. President: no one has escaped liability under the Fair Access to Clinics Entrances Act through an abuse of the bankruptcy code. No one.

So, Mr. President, we will vote today on a conference report that has a strong Senate stamp on it, that contains important victories for Senate positions, victories that make the bill in some ways fairer and more balanced than the version that passed here in January by an overwhelming vote.

While the homestead provision is not what I hoped it would be, I will vote for closing the worst aspects of the homestead loophole in the current code. I will not let the best be the enemy of the good.

And I will vote for this conference report confident that family planning clinics, and the women who need and use them, will continue to enjoy the full protection available under current law.

I urge my colleagues to join me.

Mrs. FEINSTEIN. Mr. President, I support bankruptcy reform, and I voted in favor of the Senate bankruptcy bill, this past February. Simply put, people who can afford to repay their debts, should repay their debts.

However, I cannot support the version of bankruptcy legislation outlined in the Conference Report to H.R. 2415. The Conference Report has dropped key provisions from the Senate-passed bankruptcy bill, and has failed to protect consumers against irresponsible creditor practices. Thus, I intend to vote ''No''.

Let me recount my concerns.

First, the Conference Report lets wealthy individuals continue to purchase multimillion dollar homes that are shielded from creditors' bankruptcy claims. The Senate bill curbed this abuse, voting 76–22 to approve the Kohl amendment placing a $100,000 nationwide cap on homestead exemptions. The Conference Report replaced the Kohl amendment with a two-year ownership or residency requirement that wealthy debtors can easily sidestep. Debtors should not be able to avoid their obligations by funneling money into extravagant estates. The Conference Report lets this egregious practice continue.

Second, I am proud to be an original cosponsor of Senator Schumer's amendment to prevent anti-abortion extremists from using bankruptcy laws to avoid paying civil judgements against them. The Senate passed the Schumer amendment by an overwhelming 80–17 vote. It protects a woman's right to choose and the ongoing effectiveness of the Freedom of Access to Clinic Entrances, FACE, Act. The FACE Act has led to successful criminal and civil judgements against groups that use intimidation and outright violence to prevent people from obtaining or providing reproductive health services. I am deeply disappointed that the Conference Report has omitted this important provision.

Third, I had hoped that the Conference Report would work to improve the limited consumer credit card protections in the Senate bill. Unfortunately, the Conference Report has gone the other way—consumer protections have been deleted. For example, the Senate passed an amendment by Senator BYRD that would have required any credit card solicitation on the Internet to be accompanied by information from the Federal Trade Commission, FTC, that gives consumers advice about selecting and using credit cards. The Conference Report dropped this provision.

Additionally, the Conference Report deleted an amendment by Senator LEVIN that would have made it clear that consumers do not owe interest for on-time credit card payments. Presently, many credit card solicitations advise consumers that interest is not charged on payments made within a grace period (such as 25 days). However, in the fine print, these agreements state that if the entire debt is not paid back, the cardholder is liable for interest on the full amount charged. Say $995 is paid off of a $1,000 credit debt, most people reasonably assume that they owe interest on just the unpaid $5. Not so. The credit card company will charge consumers interest retroactively on the full $1,000. This important amendment would have brought interest charges in line with consumer expectations.

When analyzing legislation, it is often telling to review the opinions of those groups with no financial stake in the outcome. Overwhelmingly, the nonpartisan experts on bankruptcy—the judges, trustees, and academics—have expressed serious concerns or opposition to this bankruptcy bill. These organizations include the National Bankruptcy Conference, NBC, the National Conference of Bankruptcy Judges, NCBJ, the National Association of Chapter 13 Trustees, NACTT, the National Association of Bankruptcy Trustees, NABT, and law professors from many of our nation's law schools. On October 30, 2000, for example, 91 law professors wrote to me that the "bill is deeply flawed," and will not achieve balanced reform. The professors state that ". . . the problems with the bankruptcy bill have not been resolved, particularly those provisions that adversely affect woman and children."

Congress should also take note that, after soaring to record levels in the mid-1990s, bankruptcy filings declined in recent years. In 1998, bankruptcy filings totaled 1,442,549. In 1999, bankruptcy filings totaled 1,319,540 cases, a decline of almost 10 percent from the previous year.

A final note, Mr. President. When the 107th Congress convenes, the Senate will be evenly divided for the first time in over a century. If we are to govern, to conduct the nation's business, we have to be able to work across party lines. The bankruptcy Conference Report we are considering this afternoon is a case study of how not to govern. There was no conference; this report emerged as the product of negotiations held exclusively between House and Senate Republicans. Maybe if they had consulted with the minority, they could have fashioned a bill the minority could support. But they didn't. They deliberately excluded us. The result is a Conference Report the President has vowed to veto.

Bankruptcy reform requires a balanced bill that is fair to both debtors and creditors. This bill doesn't measure up. I intend to vote no on passage of the Conference Report to H.R. 2415. I hope that Congress will revisit bankruptcy reform in the 107th Congress, and work in a bipartisan way to address known abuses in our bankruptcy laws.

Mr. KERRY. Mr. President, I strongly believe that reform of our bankruptcy laws is necessary. During the 105th and 106th Congress, I supported legislation to reform bankruptcy laws and end the abuse of the system. However, I am unable to support the conference report of the Bankruptcy Reform Bill because I believe it is unfair and unbalanced, was completed without appropriate consideration by the Minority party, and is unfair to many working families and single mothers. Sponsors of bankruptcy reform have justified the legislation by arguing that the bill is necessary because we are in the midst of a "bankruptcy crisis." I am among those who believe that, too often, bankruptcy is used as an economic tool to avoid responsibility for unsound decisions and reckless spending. There has been a decline in the stigma of filing for bankruptcy, and appropriate changes are necessary to ensure that bankruptcy is no longer considered a lifestyle choice. However, I must point out that the current numbers show that the bankruptcy rate is lower than it was when the bill was first introduced. Indeed, if the bankruptcy reform act had been enacted into law, the sponsors would undoubtedly now be taking credit for this turnaround in the bankruptcy numbers. However, the current decline came about without Congressional intervention, demonstrating that to some degree, free-market forces work to correct any over-use of the bankruptcy system. The reason is that lenders and credit card companies, in an effort to maximize their profits, can and do respond to an unexpected increase in personal bankruptcies by curtailing new lending to consumers who are credit risks. However, there are still those who will game the system, and we should narrowly craft legislation to address such abuse. Unfortunately, this bill fails to take a balanced approach to bankruptcy reform. I had hoped that through a legitimate legislative process we would arrive at a compromise that would have ended the abuses but still provided our most vulnerable citizens with adequate protections. This bill does just the opposite: It harms those who most need bankruptcy protection and protects those who don't. For instance, the bill's safe harbor will not benefit individuals in most need of help. Because the safe harbor is based on the combined income of the debtor and the debtor's spouse, many single mothers who are separated from their husbands and who are not receiving child support will not be able to take advantage of the safe harbor provision. In other words, a single mother who is being deprived of needed support from a well-off spouse is further harmed by this bill, which will deem the full income of that spouse available to pay debts for the safe harbor determination. Moreover, the bill jeopardizes the post-bankruptcy collection of child support. By creating many new types of nondischargeable debts in favor of credit card companies, the bill would place banks in direct competition with single parents trying to collect child support after bankruptcy. In addition, the bill gives creditors new levers to coerce reaffirmations, in which debtors must agree to pay back debts that otherwise would have been discharged, so that those debts also will compete with child support obligations. Finally, the claim of the bill's sponsors that it "puts child support first" is an example of the worst kind of Washington cynicism. Although the bill moves child support claims from seventh to first priority in Chapter 7 cases, the provision is virtually meaningless because almost no Chapter 7 cases involve any distribution of assets to creditors. Few debtors have any assets to distribute to priority unsecured creditors after secured creditors receive the value of their collateral. Therefore, this change would affect fewer than 1 percent of cases. On the other hand, the conference report protects wealthy debtors by allowing them to use overly broad homestead exemptions to shield assets from their creditors. The homestead exemption has been used by wealthy individuals to shelter millions of dollars in expensive homes to avoid repaying their creditors. The Conference Report would delete the Senate amendment that provided a firm homestead cap of $100,000 and instead allow wealthy debtors to retain expensive homes while filing for bankruptcy, so long as the debtor owned the property for two years before the bankruptcy filing. Because wealthier debtors would have no difficulty tying up their creditors for a relatively short period of time, the two-year residency requirement would have no real effect on debtors moving to states with unlimited homestead amounts to take advantage of this loophole. The bill changes nothing, as long as the well-counseled debtor makes his homestead purchase at least 24 months before filing. But, the 24-month rule unfairly differentiates between consumers who are sophisticated enough to plan in advance for homestead protection and which are not.

The whole point of bankruptcy reform is to create accountability for both creditors and debtors. The first part of that equation is missing entirely in H.R. 2415. At the same time, the bill fails in any way to impose any restrictions on these industries with regard to the way they provide credit to those who can least afford to incur a great deal of debt. The bill does not require important specific disclosures on monthly credit card statements that would show the time it will take to pay a balance and the cost of the credit if only minimum payments are made. This type of disclosure was included in the legislation passed by the Senate in 1998 and should be part of any reform bill. The conference report also excludes Senate-passed amendments that would have provided credit information in electronic credit card applications over the Internet and protections against finance charges being imposed on credit card payments made within the creditor-provided grace period. It also does nothing to discourage lenders from further increasing the debt of consumers who are already overburdened with debt.

I am also very disappointed that the conference report does not include an amendment offered by Senator COLLINS and myself, which was included in the Senate bill, that would make Chapter 12 of the Bankruptcy Code, which now applies to family farmers, applicable for fishermen. I believe that this provision would have made bankruptcy a more effective tool to help fishermen reorganize effectively and allow them to keep fishing while they do so.

Finally, this bill is the result of a conference process that was a sham. In October, the House appointed conferees for the Bankruptcy Reform Act and without holding a conference meeting, the Majority filed a conference report striking international security legislation and replacing it with a reference to a bankruptcy reform bill introduced earlier that same day. This makes a mockery of the legislative process and demeans the United States Senate. I am hopeful that during the 107th Congress, we can develop bipartisan legislation that would encourage responsibility and reduce abuses of the bankruptcy system.

Mrs. MURRAY. Mr. President, I come to the floor today to express my disappointment with the Bankruptcy Conference Report. I reluctantly will be voting no on the final conference agreement because it fails the fairness test and because it fails to protect the most vulnerable families facing dire financial times.

I have supported bankruptcy reform in the past. I continue to support fair and balanced reforms to prohibit the misuse of the bankruptcy code and to prohibit individuals from using the code as a shield against honoring their financial commitments. We need reform because we all pay for the abuses. Working families struggling with the cost of credit deserve reform. Families trying to save to purchase their first home cannot afford the added burden forced on them due to abuse of our bankruptcy laws.

Unfortunately, the final product presented to the Senate is unacceptable. In an attempt to prevent a fair and open debate, this conference report has bypassed the normal legislative process, and Senators have been denied the opportunity to improve the legislation. Clearly this conference report has been driven by special interests and not the interests of working families. It does not ensure that mothers and children who depend on child support and alimony payments won't lose out to big special interests. It does not require any responsible actions by credit card companies in educating or informing consumers to the cost of debt.

This conference report is vastly different from the bill that passed the Senate in March. I supported that bill. The conference report before us, however, will make it impossible for families to seek bankruptcy protection when they are hit with overwhelming financial problems often caused by events beyond their control. In many cases, families are forced into bankruptcy due to unexpected medical bills caused by a disabling accident or condition. Many women are forced into bankruptcy due to the break up of their family and their inability to collect court ordered child support. These families should not be turned away simply because credit card companies made reckless decisions in issuing credit to individuals unable to manage debt or unaware of the costs of managing debt.

This conference report also eliminates the Schumer Clinic Violence Amendment that I cosponsored and that I believe must be part of any reform bill. We cannot allow those who use violence or the threat of violence to shield themselves from financial responsibilities by running to bankruptcy court. Without the Schumer amendment, the Bankruptcy Code will continue to be subject to exploitation by perpetrators of violence against women. Protecting access to reproductive health clinics and providers is not an abortion issue, but a women's health and safety issue.

Violent anti-choice groups provide legal assistance to violent protesters on how to use the Code to protect their assets against possible financial liability. Their criminal debts are simply excused under the current Code. This conference report fails to close that loophole. The Schumer amendment was adopted on an 80 to 17 vote, but the final conference agreement simply dropped this bipartisan anti-violence amendment.

We know that this conference report will be vetoed and has little or no chance of becoming law. The decision to push this through in a partisan manner has jeopardized bankruptcy reform. As a result, working families will suffer. I am hopeful that with the new Congress and the need to work in a bipartisan manner we will see real bankruptcy reform in the next Congress. I will continue to work for reform that is balanced, fair and that protects women against violence and intimidation. I want reform, but not at the expense of women or children.

Mr. President, I hope all of my colleagues will honor the mandate we all received in the election. The American people did not give one party or one philosophy a mandate to govern. They want a bipartisan Congress that will put aside political bickering and special interest and work to solve the problems facing real people and real families.

Mr. LEVIN. Mr. President, earlier in the year, when the Bankruptcy Reform bill was before the Senate, I voted in favor of the bill. I said at the time that "over the course of debate, the Senate adopted more than 40 amendments, making this a more reasonable approach to bankruptcy reform." However, I also said that "should this legislation come back from conference . . . without the modest amendments we adopted in the Senate, I will consider opposing the bill at that time.''

The bill before us is one I cannot support. The negotiators who worked out the differences between the Senate and House passed versions of the bill, deleted or weakened many of the provisions that were key components of the Senate-passed bankruptcy reform bill. Both of the amendments that I sponsored were deleted from the final version of the bill. One of those amendments simply required a study to determine if credit card companies use residences or zip codes to determine credit worthiness. The other amendment I sponsored would have prohibited credit card companies from applying interest charges on the paid portion of a balance during a so-called grace period.

Another provision that was deleted was Senator SCHUMER's amendment, which passed by an enormous margin in the Senate. The Schumer Amendment would have ensured that perpetrators of clinic violence, who incurred debt as a result of unlawful acts, could not discharge that debt in bankruptcy proceedings.

I am also concerned that the Senate-passed proposal to curb debtor abuse by closing the homestead loophole was weakened in conference. The homestead loophole permits debtors in certain states to shield luxurious homes, while shedding thousands of dollars of debt in bankruptcy. The Senate passed an amendment to create a $100,000 nationwide cap on the homestead exemption, thus closing the loophole. The conference report still allows for such abuse of the system so long as the expensive home was purchased two years in advance of the bankruptcy filing. This provision allows sophisticated debtors with the resources to plan ahead for bankruptcy to game the system.

Furthermore, I am disappointed with the unusual legislative process the majority used to file this conference report. The bill before us today, H.R. 2415, was originally introduced as the American Embassy Security Act. Last August, when the Senate passed this legislation and requested a conference with the House, it dealt with State Department and international security matters. More than a year later, the House appointed conferees, stripped the international security provisions from the bill and replaced them with a version of a bankruptcy reform bill. That is the wrong way to legislate.

Mr. President, I believe that bankruptcy reform could have been resolved in a fair and bipartisan way. Unfortunately, it was not handled in this way and so I cannot lend my support to the bill.

Mr. ROBB. Mr. President, throughout my career I have been a staunch advocate for fiscal responsibility, believing that as a government we should make every effort to pay our own way and not leave our debts to our children. That same principle of fiscal responsibility compelled me to be an early cosponsor of the bankruptcy reform bill. I believe that, whenever possible, individuals should take personal responsibility for debts that they incur and pay what they owe.

Under our current bankruptcy system, debtors can be absolved of their debts even when they may have the ability to pay. I support bankruptcy reform because I believe that if an individual has the ability to repay their debts, they should have an obligation to do so. The conference report we're considering today adheres to that basic principle.

While I have supported bankruptcy reform throughout this Congress, however, I'm extremely disappointed with how we got to this point in the process. There has been a lot of talk about the need for bipartisanship recently, but there is little evidence of bipartisanship in the process used to develop this conference report. In fact, that process represents the exact opposite of bipartisanship. The minority was locked out of the deliberations completely.

In addition, I'm concerned that important provisions that I supported and which passed overwhelmingly in the Senate were dropped in conference, specifically the amendment involving violence against abortion clinics and the amendment involving the homestead exemption. I continue to support those provisions, but they were not in the bill I originally cosponsored. And while I had hoped that those provisions would be included in the final package, the absence of those provisions doesn't diminish the basic proposition contained in the underlying bill which caused me to lend my support to the measure in the first place.

Let me conclude by acknowledging the help and friendship of many of those who have called me or my office over the last few days urging me to change my position on this legislation. Many of the groups and individuals who oppose this bill are among those with whom I most often find common cause and have supported me strongly over the years. It is particularly painful for me not to be able to oblige them in this instance. But I made a decision in May of last year to cosponsor this legislation, and there have been no major substantive changes between then and now that would compel me to change my position. So while I regret having to say ''no'' to so many of my friends, I cannot in good conscience turn my back on a principle which is so fundamental to me—the principle of personal responsibility. As a result, I will maintain the position I have held since this bill was introduced and will vote for final passage.

Mr. HATCH. Mr. President, let me begin by saying that H.R. 2415 is one of the most important legislative efforts to reform the bankruptcy laws in decades.

I would like to express my thanks to the people who have worked on this legislation. First, I want to acknowledge the Majority Leader, who has worked diligently to keep this legislation on its course. Thanks to his commitment to moving this legislation, we are in a position to eliminate the abuses in the current bankruptcy system, while at the same time, enhance consumer protections.

I also want to acknowledge the Ranking Member of the Senate Judiciary Committee, Senator LEAHY, who has worked with me to reach agreement on many of the bill's provisions. In addition, I want to commend my colleagues, Senators GRASSLEY and TORRICELLI, the Chairman and ranking minority member of the Subcommittee on Administrative Oversight and the Courts, respectively, for their hard work in crafting this much needed legislation, and for their unrelenting commitment to making the development and passage of this bill a bipartisan process. My thanks also goes to Senator SESSIONS and Senator BIDEN, who have shown unwavering dedication to accomplishing the important reforms in this bill; and the many other members of the Senate for their hard work and cooperation.

The compelling need for this reform is highlighted by the large number of bankruptcy filings we have seen over the past several years, which are particularly troubling because they have occurred during a time of relative prosperity for our Nation. Mr. President, the bankruptcy system was intended to provide a ''fresh start'' for those who truly need it. During the process of developing this legislation, I have remained committed to preserving a bankruptcy system that will allow those individuals to emerge from severe financial hardship. At the same time, I believe that individuals should take personal responsibility for their debts and repay them if they are able to do so. I believe the complete elimination of debt should be reserved for those who truly cannot repay their debts, not for those who simply choose not to repay.

This bipartisan legislation, authored by Senators GRASSLEY and TORRICELLI, is carefully structured to achieve an appropriate balance between the rights and responsibilities of both debtors and creditors. If enacted, it will enable those truly in need of a fresh start to get one, and at the same time, reform current law to prevent the system from being abused at the expense of honest, hard-working Americans. Mr. President, again I would like to applaud the bipartisan efforts of my colleagues who have made this a broadly-supported bill that removes some of the abuses of the current bankruptcy system while enhancing consumer protections.

I am particularly proud of the great strides this legislation makes in improving current law. The legislation includes my provision to prevent deadbeat parents from using bankruptcy to avoid paying child support. It includes my provision to protect educational savings accounts that parents and grandparents set up for their children and grandchildren. And, it includes my provision that ensures that the retirement savings of teachers and church workers are given the same protection in bankruptcy as everyone else. It includes my provision that prevents violent criminals and drug traffickers from taking advantage of bankruptcy at the expense of their victims. Specifically, when these criminals voluntarily file for bankruptcy, my provision protects victims by allowing them to move for dismissal of the bankruptcy case. The legislation also includes my provision that is designed to curb fraud in bankruptcy filings by putting in place new procedures and providing new resources to enhance enforcement of bankruptcy fraud laws. My provision requires (1) that bankruptcy courts develop procedures for referring suspected fraud in bankruptcy schedules to the FBI and the U.S. Attorney's Office for investigation and prosecution and (2) that the Attorney General designate one Assistant U.S. Attorney and one FBI agent in each judicial district as having primary responsibility for investigating and prosecuting fraud in bankruptcy.

I would like to take a moment to acknowledge a few people who have worked very hard on this legislation. On my staff, I particularly would like to thank the Committee's Chief Counsel and Staff Director, Manus Cooney, the counsels who worked diligently on this measure, Makan Delrahim, Rene Augustine and Kyle Sampson, and staff assistant Katie Stahl. On Senator LEAHY's Committee staff, I want to recognize Minority Chief Counsel Bruce Cohen, along with counsel Ed Pagano. On the Administrative Oversight and the Courts Subcommittee, I would like to thank John McMickle and Kolan Davis, counsels to Senator GRASSLEY, and Jennifer Leach, counsel to Senator TORRICELLI, for their tireless efforts and input. My thanks also goes to Ed Haden and Sean Costello, counsels to Senator SESSIONS. I also would like to express my gratitude to Senate Legislative Counsel, and in particular I want to recognize Laura Ayoud of that office, whose hard work made this bill a better product. Without the dedication and efforts of these loyal public servants, the important reforms in this legislation would not have been possible. Thank you.

UNANIMOUS CONSENT AGREEMENT—H.J. RES. 127

Mr. GRASSLEY. Mr. President, I have been asked to propound this unanimous consent request which, I have been told, has been approved on both sides.

I ask unanimous consent that immediately following the vote on the passage of the bankruptcy legislation, the Senate proceed to the consideration of H.J. Res. 127, the continuing resolution. I further ask unanimous consent that the resolution be read a third time and that the Senate then proceed to a vote on passage of the resolution, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

BANKRUPTCY REFORM ACT OF 2000—CONFERENCE REPORT—Continued

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Minnesota has 2 minutes remaining.

Mr. WELLSTONE. Mr. President, responding to my friend from Iowa, the President has called Senators and for good reason: This is a piece of legislation that has very little balance.

I gave the example again of LTV workers in the iron range of Minnesota which is going to shut down in February. One month later, there could be an illness in a family, a medical bill, the worker no longer has a job and cannot pay the mortgage.

Under this piece of legislation, what would be the income that is calculated? Would it be the income of this family with the head of the household unemployed? No. Under this bill, in order to see whether this family could file under chapter 7, you would look over the past 6 months and average out the income all the months he or she was working. But they do not have a job.

Most of the people file for chapter 7 because of a major medical bill. It is 50 percent. Only about 3 percent game this system.

Now we have a piece of legislation that does not ask the credit card companies to be accountable, does not do anything about their egregious practices, targets the most vulnerable people, and has very little balance. This piece of legislation should be defeated. That is why the President is opposed to it. That is why labor, civil rights, women, children, consumer organizations, all oppose this piece of legislation. I say to my colleagues, it is too harsh. It is without balance. I know there is a powerful economic constituency behind it, but I hope you will vote against it.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I rise to congratulate all the Senators who have been working on this issue and, in particular, the chairman who is standing here, Senator GRASSLEY, and has been here many times.

Today, in an extended session, we will finally reform the bankruptcy laws of America. They are very important because credit in America, be it from banks, from individual lenders, wherever, is really the heartbeat of what makes us tick and permits us to give our citizens material means. Without credit, things do not work in America.

Every now and then, we have to fix the bankruptcy laws so they work in behalf of not only the debtors but the creditors of America. That is what we are doing here. I think it will pass overwhelmingly.

My thanks to those who have worked so hard on it. I cannot claim to be one of them.

Again, Senator CHUCK GRASSLEY has great persistence, and this is a tribute to him and a good start to his chairmanship of the Finance Committee.

I yield the floor.

Mr. GRASSLEY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The hour of 3:45 p.m. having arrived, the question is on agreeing to the conference report to accompany H.R. 2415. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. REID. I announce that the Senator from Louisiana (Ms. LANDRIEU) is necessarily absent.

The PRESIDING OFFICER (Mr. CRAPO). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 70, nays 28, as follows:

[Rollcall Vote No. 297 Leg.]

YEAS—70

Abraham	Dorgan	McCain
Allard	Enzi	McConnell
Ashcroft	Frist	Miller
Bayh	Gorton	Murkowski
Bennett	Graham	Nickles
Biden	Gramm	Robb
Bingaman	Grams	Roberts
Bond	Grassley	Roth
Breaux	Gregg	Santorum
Brownback	Hagel	Sessions
Bryan	Hatch	Shelby
Bunning	Helms	Smith (NH)
Burns	Hollings	Smith (OR)
Byrd	Hutchinson	Snowe
Campbell	Hutchison	Specter
Chafee, L.	Inhofe	Stevens
Cleland	Jeffords	Thomas
Cochran	Johnson	Thompson
Collins	Kerrey	Thurmond
Conrad	Kyl	Torricelli
Craig	Lincoln	Voinovich
Crapo	Lott	Warner
DeWine	Lugar	
Domenici	Mack	

NAYS—28

Akaka	Edwards	Kerry
Baucus	Feingold	Kohl
Boxer	Feinstein	Lautenberg
Daschle	Harkin	Leahy
Dodd	Inouye	Levin
Durbin	Kennedy	Lieberman