

BANKRUPTCY REFORM ACT OF 1998

MAY 18, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 3150]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

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

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

(a) SHORT TITLE.—This Act may be cited as the “Bankruptcy Reform Act of 1998”.

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

Sec. 1. Short title; table of contents.

## TITLE I—CONSUMER BANKRUPTCY PROVISIONS

## Subtitle A—Needs-Based Bankruptcy

Sec. 101. Needs-based bankruptcy.  
 Sec. 102. Adequate income shall be committed to a plan that pays unsecured creditors.  
 Sec. 103. Definition of inappropriate use.  
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## Subtitle B—Adequate Protections for Consumers

Sec. 111. Notice of alternatives.  
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 Sec. 122. Definition of household goods.  
 Sec. 123. Debtor retention of personal property security.  
 Sec. 124. Relief from stay when the debtor does not complete intended surrender of consumer debt collateral.  
 Sec. 125. Giving secured creditors fair treatment in chapter 13.  
 Sec. 126. Prompt relief from stay in individual cases.  
 Sec. 127. Stopping abusive conversions from chapter 13.  
 Sec. 128. Restraining abusive purchases on secured credit.  
 Sec. 129. Fair valuation of collateral.  
 Sec. 130. Protection of holders of claims secured by debtor's principal residence.  
 Sec. 131. Aircraft equipment and vessels.

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Sec. 141. Debts incurred to pay nondischargeable debts.  
 Sec. 142. Credit extensions on the eve of bankruptcy presumed nondischargeable.  
 Sec. 143. Fraudulent debts are nondischargeable in chapter 13 cases.  
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## Subtitle E—Adequate Protections for Lessors

Sec. 161. Giving debtors the ability to keep leased personal property by assumption.  
 Sec. 162. Adequate protection of lessors and purchase money secured creditors.  
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 Sec. 202. Sharing of compensation.  
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## TITLE I—CONSUMER BANKRUPTCY PROVISIONS

### Subtitle A—Needs-Based Bankruptcy

#### SEC. 101. NEEDS-BASED BANKRUPTCY.

Title 11, United States Code, is amended—

(1) in section 101 as follows:

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

“(10A) ‘current monthly total income’ means the average monthly income from all sources derived which the debtor, or in a joint case, the debtor and the debtor’s spouse, receive without regard to whether it is taxable income, in the six months preceding the date of determination, and includes any amount paid by anyone other than the debtor or, in a joint case, the debtor and the debtor’s spouse on a regular basis to the household expenses of the debtor or the debtor’s dependents and, in a joint case, the debtor’s spouse if not otherwise a dependent.”; and

(B) by inserting after paragraph (40) the following:

“(40A) ‘national median family income’ and ‘national median household income for 1 earner’ shall mean during any calendar year, the national median family income and the national median household income for 1 earner which the Bureau of the Census has reported as of January 1 of such calendar year for the most recent previous calendar year.”;

(2) in section 104(b)(1) by striking “109(e)” and inserting “subsections (b), (e), and (h) of section 109”;

(3) in section 109(b)—

(A) in paragraph (2) by striking “or” at the end;

(B) in paragraph (3) by striking the period and inserting “; or”; and

(C) by adding at the end the following:

“(4) an individual or, in a joint case, an individual and such individual’s spouse, who have income available to pay creditors as determined under subsection (h).”;

(4) by adding at the end of section 109 the following:

“(h)(1) An individual or, in a joint case, an individual and such individual’s spouse, have income available to pay creditors if the individual, or, in a joint case, the individual and the individual’s spouse combined, as of the date of the order for relief, have—

“(A) current monthly total income of not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, of not less than the national median household income for 1 earner, as of the date of the order for relief;

“(B) projected monthly net income greater than \$50; and

“(C) projected monthly net income sufficient to repay twenty percent or more of unsecured nonpriority claims during a five-year repayment plan.

“(2) Projected monthly net income shall be sufficient under paragraph (1)(C) if, when multiplied by 60 months, it equals or exceeds 20 percent of the total amount scheduled as payable to unsecured nonpriority creditors.

“(3) ‘Projected monthly net income’ means current monthly total income less—

“(A) the expense allowances under the applicable National Standards, Local Standards and Other Necessary Expenses allowance (excluding payments for debts) for the debtor, the debtor’s dependents, and, in a joint case, the debtor’s spouse if not otherwise a dependent, in the area in which the debtor resides as determined under the Internal Revenue Service financial analysis for expenses in effect as of the date of the order for relief;

“(B) the average monthly payment on account of secured creditors, which shall be calculated as the total of all amounts scheduled as contractually payable to secured creditors in each month of the 60 months following the date of the petition by the debtor, or, in a joint case, by the debtor and the debtor’s spouse combined, and dividing that total by 60 months; and

“(C) the average monthly payment on account of priority creditors, which shall be calculated as the total amount of debts entitled to priority, reasonably estimated by the debtor as of the date of the petition, and dividing that total by 60 months.

“(4) In the event that the debtor establishes extraordinary circumstances that require allowance for additional expenses or adjustment of current monthly income,

projected monthly net income for purposes of this section shall be the amount calculated under paragraph (3) less such additional expenses or income adjustment as such extraordinary circumstances require.

“(A) This paragraph shall not apply unless the debtor files with the petition—

“(i) a written statement that this paragraph applies in determining the debtor’s eligibility for relief under chapter 7 of this title;

“(ii) if adjustment of current monthly income is claimed, an explanation of what income has been lost in the 6 months preceding the date of determination and any replacement income that has been offered or secured, or is expected, and an itemization of such lost and replacement income;

“(iii) if allowance for additional expenses is claimed, a list itemizing each additional expense which exceeds the expenses allowances provided under paragraph (3)(A);

“(iv) a detailed description of the extraordinary circumstances that explain why each loss of income described under clause (ii) will not be replaced or each additional expense itemized under clause (iii) requires allowance; and

“(v) a sworn statement signed by the debtor and, if the debtor is represented by counsel, by the debtor’s attorney, that the information required under this paragraph is true and correct.

“(B) Until the trustee or any party in interest objects to the debtor’s statement that this paragraph applies and the court rejects or modifies the debtor’s statement, the projected monthly net income in the debtor’s statement shall be the projected monthly net income for the purposes of this section. If an objection is filed with the court within 60 days after the debtor has provided all the information required under subsections (a)(1) and (c)(1)(A) of section 521, the court, after notice and hearing, shall determine whether such extraordinary circumstances exist and shall establish the amount of the additional expense allowance, if any. The burden of proving such extraordinary circumstances shall be on the debtor.”;

(5) in section 704—

(A) by striking “and” at the end of paragraph (8);

(B) by striking the period at the end of paragraph (9) and inserting “; and”;

and

(C) by adding at the end the following:

“(10) with respect to an individual debtor, review all materials provided by the debtor under subsections (a)(1) and (c)(1) of section 521, investigate and verify the debtor’s projected monthly net income and within 30 days after such materials are so provided—

“(A) file a report with the court as to whether the debtor qualifies for relief under this chapter under section 109(b)(4); and

“(B) if the trustee determines that the debtor does not qualify for such relief, the trustee shall provide a copy of such report to the parties in interest.”;

(6) in section 1302(b)—

(A) in paragraph (4) by striking “and” at the end;

(B) in paragraph (5) by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

“(6) investigate and verify the debtor’s monthly net income and other information provided by the debtor pursuant to sections 521 and 1322, and pursuant to section 111, if applicable; and

“(7) file annual reports with the court, with copies to holders of claims under the plan, as to whether a modification of the amount paid creditors under the plan is appropriate because of changes in the debtor’s monthly net income.”.

**SEC. 102. ADEQUATE INCOME SHALL BE COMMITTED TO A PLAN THAT PAYS UNSECURED CREDITORS.**

Title 11, United States Code, is amended—

(1) in section 101 by inserting after paragraph (39) the following:

“(39A) ‘monthly net income’ means the amount determined by taking the current monthly total income of the debtor less—

“(A) the expense allowances under the applicable National Standards, Local Standards and Other Necessary Expenses allowance (excluding payments for debts) for the debtor, the debtor’s dependents, and, in a joint case, the debtor’s spouse if not otherwise a dependent, in the area in which the debtor resides as determined under the Internal Revenue Service financial analysis for expenses in effect as of the date it is being determined;

“(B) the average monthly payment on account of secured creditors, which shall be calculated as of the date of determination as the total of all amounts then remaining to be paid on account of secured claims pursuant to the plan less any of such amounts to be paid from sources other than the debtor’s income, divided by the total months remaining of the plan; and

“(C) the average monthly payment on account of priority creditors, which shall be calculated as the total of all amounts then remaining to be paid on account of priority claims pursuant to the plan less any of such amounts to be paid from sources other than the debtor’s income, divided by the total months remaining of the plan;”;

(2) in section 104(b)(1) by striking “and 523(a)(2)(C)” and inserting “523(a)(2)(C), and 1325(b)(1)”;

(3) by adding after section 110 the following:

**“§ 111. Adjustment to monthly net income**

“(a) Monthly net income for purposes of a plan under chapter 13 of this title shall be adjusted under this section when the debtor’s extraordinary circumstances require adjustment as determined herein. Under this section, monthly net income shall be determined by subtracting therefrom such loss of income or additional expenses as the debtor’s extraordinary circumstances require as determined under this section. This section shall not apply unless—

“(1) the debtor files with the court and, in a case in which a trustee has been appointed, with the trustee at the times required in subsection (b) a statement of extraordinary circumstances as follows—

“(A) a written statement that this section applies in determining the debtor’s monthly net income;

“(B) if applicable, an explanation of what income has been lost in the six months preceding the date of determination and any replacement income which has been secured or is expected, and an itemization of such lost and replacement income;

“(C) if applicable, a list itemizing each additional expense which exceeds the expense allowance provided in determining monthly net income under section 101(39A);

“(D) if applicable, a detailed description of the extraordinary circumstances which explains why each of the additional expenses itemized under paragraph (C) requires allowance; and

“(E) a sworn statement signed by the debtor and, if the debtor is represented by counsel, by the debtor’s attorney, of the amount of monthly net income that the debtor has pursuant to this subsection and that the information provided under this subsection is true and correct; and

“(2) until the trustee or any party in interest objects to the debtor’s request that this section be applied and the court rejects or modifies the debtor’s statement, the monthly net income in the debtor’s statement shall be the monthly net income for the purposes of the debtor’s plan. If an objection is filed with the court within the times provided in subsection (b), the court, after notice and hearing, shall determine whether such extraordinary circumstances asserted by the debtor exist and establish the amount of the loss of income and such additional expense allowance, if any. The burden of proving such extraordinary circumstances and the amount of the loss of income and the additional expense allowance, if any, shall be on the debtor. The court may award to the party that prevails with respect to such objection a reasonable attorney’s fee and costs incurred by the prevailing party in connection with such objection if the court finds that the position of the nonprevailing party was not substantially justified, but the court shall not award such fee or such costs if special circumstances make the award unjust.

“(b) For the purposes of chapter 13 of this title, the statement of extraordinary circumstances shall be filed with the court and served on the trustee on or before 45 days before each anniversary of the confirmation of the plan in order to be applicable during the next year of the plan. Any objection thereto shall be filed 30 days after the statement is filed with the trustee. Whenever a statement is timely filed with the trustee, the trustee shall give notice to creditors that such statement has been filed and the amount of monthly net income stated therein within 15 days of receipt of the statement.”;

(4) in section 1322(a)—

(A) by striking “and” at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting “; and”;

(C) by adding at the end the following:

“(4) state, under penalties of perjury, the amount of monthly net income, which may be as adjusted under section 111, if applicable, of this title and the amount of monthly net income which will be paid per month to unsecured nonpriority creditors under the plan.”; and

(5) by amending section 1325(b)(1)(B) to read as follows:

“(B) the plan provides—

“(i) that payments to unsecured nonpriority creditors who are not insiders shall equal or exceed \$50 in each month of the plan;

“(ii) that during the applicable commitment period beginning on the date that the first payment is due under the plan, the total amount of monthly net income received by the debtor shall be paid to unsecured nonpriority creditors under the plan less only payments pursuant to section 1326(b); the ‘applicable commitment period’ shall be not less than 5 years if the debtor’s total current monthly income is not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, is not less than the national median household income for 1 earner, as of the date of confirmation of the plan and shall be not less than 3 years if the debtor’s total current monthly income is less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, is less than the national median household income for 1 earner, as of the date of confirmation of the plan;

“(iii) that the amount payable to each class of unsecured nonpriority claims under the plan shall be increased or decreased during the plan proportionately to the extent the debtor’s monthly net income during the plan increases or decreases as reasonably determined by the trustee, subject to section 111 of this title, no less frequently than as of each anniversary of the confirmation of the plan based on monthly net income as of 45 days before such anniversary; and

“(iv) nothing in subparagraph (i) or (ii) shall prevent the payment of obligations described in section 507(a)(7) at the times provided for in the plan, and the plan shall specify how payments to other creditors under subparagraph (ii) will be accordingly adjusted.”; and

(6) by striking section 1325(b)(2).

**SEC. 103. DEFINITION OF INAPPROPRIATE USE.**

Section 707(b) of title 11, United States Code, is amended to read as follows:

“(b)(1) After notice and a hearing, the court—

“(A) on its own motion or on the motion of the United States trustee or any party in interest, shall dismiss a case filed by an individual debtor under this chapter; or

“(B) with the debtor’s consent, convert the case to a case under chapter 13 of this title;

if the court finds that the granting of relief would be an inappropriate use of the provisions of this chapter.

“(2) The court shall determine that inappropriate use of the provisions of this chapter exists if—

“(A) the debtor is excluded from this chapter pursuant to section 109 of this title; or

“(B) the totality of the circumstances of the debtor’s financial situation demonstrates such inappropriate use.

“(3) In the case of a motion filed by a party in interest other than the trustee or United States trustee under paragraph (1) that is denied by the court, the court shall award against the moving party a reasonable attorney’s fee and costs that the debtor incurred in opposing the motion if the court finds that the position of the moving party was not substantially justified, but the court shall not award such fee and costs if special circumstances would make the award unjust.

“(4)(A) If a trustee appointed under this title or the United States Trustee files a motion under this subsection and the case is subsequently dismissed or converted to another chapter, the court shall award to such party in interest a reasonable attorney’s fee and costs incurred in connection with such motion, payable by the debtor, unless the court finds that awarding such fee and costs would impose an unreasonable hardship on the debtor, considering the debtor’s conduct.

“(B) The signature of the debtor’s attorney on any petition, pleading, motion, or other paper filed with the court in the case of the debtor shall constitute a certificate that the attorney has—

- “(i) performed a reasonable investigation into the circumstances that gave rise to the petition and its schedules and statement of financial affairs or the pleading, as applicable; and
- “(ii) determined that the petition and its schedules and statement of financial affairs or the pleading, as applicable, including the choice of this chapter—
  - “(I) is well grounded in fact; and
  - “(II) is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law and does not constitute an inappropriate use of the provisions of this chapter.
- “(C) If the court finds that the attorney for the debtor signed a paper in violation of subparagraph (B), at a minimum, the court shall order—
  - “(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and
  - “(ii) the payment of the civil penalty to the trustee or the United States Trustee.”.

**SEC. 104. DEBTOR PARTICIPATION IN CREDIT COUNSELING PROGRAM.**

(a) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, as amended by section 102, is amended by adding at the end the following:

“(i)(1) Subject to paragraph (2) and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 90-day period preceding the date of filing of the petition, made a good-faith attempt to create a debt repayment plan outside the judicial system for bankruptcy law (commonly referred to as the ‘bankruptcy system’), through a credit counseling program offered through credit counseling services described in section 342(b)(2) that has been approved by—

“(A) the United States trustee; or

“(B) the bankruptcy administrator for the district in which the petition is filed.

“(2) The United States trustee or bankruptcy administrator may not approve a program for inclusion on the list under paragraph (1) unless the counseling service offering the program offers the program without charge, or at an appropriately reduced charge, if payment of the regular charge would impose a hardship on the debtor or the debtor’s dependents.

“(3) The United States trustee or bankruptcy administrator shall designate any geographical areas in the United States trustee region or judicial district, as the case may be, as to which the United States trustee or bankruptcy administrator has determined that credit counseling services needed to comply with this subsection are not available or are too geographically remote for debtors residing within the designated geographical areas. The clerk of the bankruptcy court for each judicial district shall maintain a list of the designated areas within the district.

“(4) The clerk shall exclude a particular counseling service from the list maintained under section 342(b)(2) of this title if the United States trustee or bankruptcy administrator orders that the counseling service not be included in the list.

“(5) The court may waive the requirement specified in paragraph (1) if—

“(A) no credit counseling services are available as designated under paragraphs (2) and (3);

“(B) the providers of credit counseling services available in the district are unable or unwilling to provide such services to the debtor in a timely manner; or

“(C) foreclosure, garnishment, attachment, eviction, levy of execution, or similar claim enforcement procedure that would have deprived the individual of property had commenced before the debtor could complete a good-faith attempt to create such a repayment plan.

“(6) A debtor who is subject to the exemption under paragraph (5)(C) shall be required to make a good-faith attempt to create a debt repayment plan outside the judicial system in the manner prescribed in paragraph (1) during the 30-day period beginning on the date of filing of the petition of that debtor.

“(7) A debtor shall be exempted from the bad faith presumption for repeat filing under section 362(c) of title 11 if the case is dismissed due to the creation of a debt repayment plan.

“(8) Only the United States trustee may make a motion for dismissal on the ground that the debtor did not comply with this subsection.”.

(b) DEBTOR’S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 406 and 407, is amended by adding at the end the following:

“(g)(1) In addition to the requirements under subsection (a), an individual debtor shall file with the court—

“(A) a certificate from the credit counseling services that provided the debtor services under section 109(i), or a verified statement as to why such attempt

was not required under section 109(i) or other substantial evidence of a good-faith attempt to create a debt repayment plan outside the bankruptcy system in the manner prescribed in section 109(i); and

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

“(2) Only the United States trustee may make a motion for dismissal on the ground that the debtor did not comply with this subsection.”.

## Subtitle B—Adequate Protections for Consumers

### SEC. 111. NOTICE OF ALTERNATIVES.

(a) Section 342(b) of title 11, United States Code, is amended to read as follows:  
“(b)(1) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the individual shall be given or obtain (as required to be certified under section 521(a)(1)(B)(viii)) a written notice that is prescribed by the United States trustee for the district in which the petition is filed pursuant to section 586 of title 28 and that contains the following:

“(A) A brief description of chapters 7, 11, 12 and 13 of this title and the general purpose, benefits, and costs of proceeding under each of such chapters.

“(B) A brief description of services that may be available to the individual from an independent nonprofit debt counselling service.

“(C) The name, address, and telephone number of each nonprofit debt counselling service (if any)—

“(i) with an office located in the district in which the petition is filed; or  
“(ii) that offers toll-free telephone communication to debtors in such district.

“(2) Any such nonprofit debt counselling service that registers with the clerk of the bankruptcy court on or before December 10 of the preceding year shall be included in such list unless the chief bankruptcy judge of the district, after notice to the debt counselling service and the United States trustee and opportunity for a hearing, for good cause, orders that such debt counselling service shall not be so listed.

“(3) The clerk shall make such notice available to individuals whose debts are primarily consumer debts.”.

(b) Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (5) by striking “and” at the end;

(2) in paragraph (6) by striking the period at the end and inserting “; and”;

and

(3) by adding at the end the following:

“(7) on or before January 1 of each calendar year, and also within 30 days of any change in the nonprofit debt counselling services registered with the bankruptcy court, prescribe and make available on request the notice described in section 342(b)(1) of title 11 for each district included in the region.”.

### SEC. 112. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

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

(b) TEST—(1) The Director shall select 3 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

(2) For a 1-year period beginning not later than 60 days after the date of the enactment of this Act, such curriculum and materials shall be made available by the Director, directly or indirectly, on request to individual debtors in cases filed in such 1-year period under chapter 7 or 13 of title 11 of the United States Code.

(3) The bankruptcy courts in each of such districts may require individual debtors in such cases to undergo such financial management training as a condition to receiving a discharge in such case.

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

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

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

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

**SEC. 113. DEFINITIONS.**

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

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

“(3A) ‘assisted person’ means any person whose debts consist primarily of consumer debts and whose non-exempt assets are less than \$150,000;”;

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

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

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

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

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

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

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

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

**SEC. 114. DISCLOSURES.**

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

**“§ 526. Disclosures**

“(a) A debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide the following notices to the assisted person:

“(1) the written notice required under section 342(b)(1) of this title; and

“(2) to the extent not covered in the written notice described in paragraph (1) of this section and no later than three business days after the first date on which a debt relief counselling agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons of the following—

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

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

“(C) current monthly total income, projected monthly net income and, in a chapter 13 case, monthly net income must be stated after reasonable inquiry; and

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

“(b) A debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices re-

quired under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

“IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER

“If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

“The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

“Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a “trustee” and by creditors.

“If you select a chapter 7 proceeding, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so.

“If you select a chapter 13 proceeding in which you repay your creditors what you can afford over three to seven years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.’

“If you select another type of proceeding under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what needs to be done from someone familiar with that type of proceeding.

“Your bankruptcy proceeding may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can represent you in litigation.’

“(c) Except to the extent the debt relief counselling agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which may be provided orally or in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

“(1) how to value assets at replacement value, determine current monthly total income, projected monthly income and, in a chapter 13 case, net monthly income, and related calculations;

“(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and

“(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506 of this title.

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

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

“526. Disclosures.”.

#### SEC. 115. DEBTOR'S BILL OF RIGHTS.

(a) DEBTOR'S BILL OF RIGHTS.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 114, is amended by adding at the end the following:

##### “§ 527. Debtor's bill of rights

“(a) A debt relief counselling agency shall—

“(1) no later than three business days after the first date on which a debt relief counselling agency provides any bankruptcy assistance services to an assisted person, execute a written contract with the assisted person specifying clearly and conspicuously the services the agency will provide the assisted person and the basis on which fees or charges will be made for such services and the terms of payment, and give the assisted person a copy of the fully executed and completed contract in a form the person can keep;

“(2) disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages or otherwise) that the services or benefits are with respect to proceedings under this title, clearly and conspicuously using the following statement: ‘We are a debt relief counselling agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.’ or a substantially similar statement. An advertisement shall be of bankruptcy assistance services if it describes or offers bankruptcy assistance with a chapter 13 plan, regardless of whether chapter 13 is specifically mentioned, including such statements as ‘federally supervised repayment plan’ or ‘Federal debt restructuring help’ or other similar statements which would lead a reasonable consumer to believe that help with debts was being offered when in fact in most cases the help available is bankruptcy assistance with a chapter 13 plan; and

“(3) if an advertisement directed to the general public indicates that the debt relief counselling agency provides assistance with respect to credit defaults, mortgage foreclosures, lease eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt, disclose conspicuously in that advertisement that the assistance is with respect to or may involve proceedings under this title, using the following statement: ‘We are a debt relief counselling agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.’ or a substantially similar statement.

“(b) A debt relief counselling agency shall not—

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

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

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

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

(b) CONFORMING AMENDMENT.—The table of section for chapter 5 of title 11, United States Code, as amended by section 114, is amended by inserting after the item relating to section 526, the following:

“527. Debtor’s bill of rights.”.

**SEC. 116. ENFORCEMENT.**

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, as amended by sections 114 and 115, is amended by adding at the end the following:

**“§ 528. Debt relief counselling agency enforcement**

“(a) ASSISTED PERSON WAIVERS INVALID.—Any waiver by any assisted person of any protection or right provided by or under section 526 or 527 of this title shall be void and may not be enforced by any Federal or State court or any other person.

“(b) NONCOMPLIANCE.—

“(1) Any contract between a debt relief counselling agency and an assisted person for bankruptcy assistance which does not comply with the requirements of section 526 or 527 of this title shall be treated as void and may not be enforced by any Federal or State court or by any other person.

“(2) Any debt relief counselling agency which has been found, after notice and hearing, to have—

“(A) failed to comply with any provision of section 526 or 527 with respect to a bankruptcy case or related proceeding of an assisted person;

“(B) provided bankruptcy assistance to an assisted person in a case or related proceeding which is dismissed or converted in lieu of dismissal under section 707 of this title or because of a failure to file bankruptcy papers, including papers specified in section 521 of this title; or

“(C) negligently or intentionally disregarded the requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such debt relief counselling agency shall be liable to the assisted person in the amount of any fees and charges in connection with providing bankruptcy assistance to such person which the debt relief counselling agency has already been paid on account of that proceeding and if the case has not been closed, the court may in addition require the debt relief counselling agency to continue to provide bankruptcy assistance services in the pending case to the assisted person without further fee or charge or upon such other terms as the court may order.

“(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating section 526 or 527 of this title, the State—

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

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

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

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

“(c) RELATION TO STATE LAW.—This section and sections 526 and 527 shall not annul, alter, affect or exempt any person subject to those sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency.”.

(b) CONFORMING AMENDMENT.—The table of section for chapter 5 of title 11, United States Code, as amended by sections 114 and 115, is amended by inserting after the item relating to section 527, the following:

“528. Debt relief counselling agency enforcement.”.

**SEC. 117. SENSE OF THE CONGRESS.**

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

**SEC. 118. CHARITABLE CONTRIBUTIONS.**

(a) DEFINITIONS.—Section 548(d) of title 11, United States Code, is amended by adding at the end the following:

“(3) In this section, the term ‘charitable contribution’ means a charitable contribution as defined in section 170(c) of the Internal Revenue Code of 1986, if such contribution—

“(A) is made by a natural person; and

“(B) consists of—

“(i) a financial instrument (as defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or

“(ii) cash.

“(4) In this section, the term ‘qualified religious or charitable entity or organization’ means—

“(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

“(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.”.

(b) TREATMENT OF PREPETITION QUALIFIED CHARITABLE CONTRIBUTIONS.

(1) IN GENERAL.—Section 548(a) of title 11, United States Code, is amended—

(A) by inserting “(1)” after “(a)”;

(B) by striking “(1) made” and inserting “(A) made”;

(C) by striking “(2)(A)” and inserting “(B)(i)”;

(D) by striking “(B)(i)” and inserting “(ii)(I)”;

(E) by striking “(ii) was” and inserting “(II) was”;

- (F) by striking “(iii)” and inserting “(III)”; and  
 (G) by adding at the end the following:
- “(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—
- “(A) the amount of such contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or
- “(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.”.
- (2) TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR TO CERTAIN CREDITORS AND PURCHASERS.—Section 544(b) of title 11, United States Code, is amended—
- (A) by striking “(b) The trustee” and inserting “(b)(1) Except as provided in paragraph (2), the trustee”; and
- (B) by adding at the end the following:
- “(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as defined in section 548(d)(3) of this title) that is not covered under section 548(a)(1)(B) of this title by reason of section 548(a)(2) of this title. Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.”.
- (3) CONFORMING AMENDMENTS.—Section 546 of title 11, United States Code, is amended—
- (A) in subsection (e)—
- (i) by striking “548(a)(2)” and inserting “548(a)(1)(B)”; and
- (ii) by striking “548(a)(1)” and inserting “548(a)(1)(A)”; and
- (B) in subsection (f)—
- (i) by striking “548(a)(2)” and inserting “548(a)(1)(B)”; and
- (ii) by striking “548(a)(1)” and inserting “548(a)(1)(A)”; and
- (C) in the first subsection (g)—
- (i) by striking “section 548(a)(1)” and inserting “section 548(a)(1)(A)”; and
- (ii) by striking “548(a)(2)” and inserting “548(a)(1)(B)”.
- (c) TREATMENT OF POST-PETITION CHARITABLE CONTRIBUTIONS UNDER CHAPTER 7.—Section 707 of title 11, United States Code, is amended by adding at the end the following:
- “(c) In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of ‘charitable contribution’ under section 548(d)(3)) to any qualified religious or charitable entity or organization (as defined in section 548(d)(4)).”.
- (d) TREATMENT OF POST-PETITION CHARITABLE CONTRIBUTIONS UNDER CHAPTER 13.—Section 111 of title 11, United States Code, as added by section 102, is amended by adding at the end the following:
- “(c) For purposes of subsection (a), charitable contributions (that meet the definition of ‘charitable contribution’ under section 548(d)(3)) to any qualified religious or charitable entity or organization (defined in section 548(d)(4)), but not to exceed 15 percent of the debtor’s gross income for the year in which such contributions are made, shall be considered to be additional expenses of the debtor required by extraordinary circumstances.”.
- (e) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section is intended to limit the applicability of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2002bb et seq.).
- SEC. 119. REINFORCE THE FRESH START.**
- (a) RESTORATION OF AN EFFECTIVE DISCHARGE.—Section 523(a)(17) of title 11, United States Code, is amended—
- (1) by striking “by a court” and inserting “on a prisoner by any court”,
- (2) by striking “section 1915(b) or (f)” and inserting “subsection (b) or (f)(2) of section 1915”, and
- (3) by inserting “(or a similar non-Federal law)” after “title 28” each place it appears.
- (b) PROTECTION OF RETIREMENT FUNDS IN BANKRUPTCY.—Section 522 of title 11, United States Code, is amended—
- (1) in subsection (b)(2)—
- (A) in subparagraph (A) by striking “and” at the end;

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

(C) by adding at the end the following:

“(C) retirement funds to the extent exempt from taxation under section 401, 403, 408, 414, 457, or 501(a) of the Internal Revenue Code of 1986.”; and

(2) in subsection (d) by adding at the end the following:

“(12) Retirement funds to the extent exempt from taxation under 401, 403, 408, 414, 457, or 501(a) of the Internal Revenue Code of 1986.”.

(c) EFFECTIVE PROTECTION FOR UTILITY SERVICE IN THE WAKE OF DEREGULATION.—Section 366 of title 11, United States Code, is amended by adding at the end the following:

“(c) For the purposes of this section, the term ‘utility’ includes any provider of gas, electric, telephone, telecommunication, cable television, satellite communication, water, or sewer service, whether or not such service is a regulated monopoly.”.

**SEC. 119A. CHAPTER 11 DISCHARGE OF DEBTS ARISING FROM TOBACCO-RELATED DEBTS.**

Section 1141(d) of title 11, United States Code, is amended by adding at the end the following:

“(5) The confirmation of a plan does not discharge a debtor that is a corporation from any debt arising from a judicial, administrative, or other action or proceeding that is—

“(A) related to the consumption or consumer purchase of a tobacco product; and

“(B) based in whole or in part on false pretenses, a false representation, or actual fraud.”.

## **Subtitle C—Adequate Protections for Secured Creditors**

**SEC. 121. DISCOURAGING BAD FAITH REPEAT FILINGS.**

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

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

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

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

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

“(A) as to all creditors if—

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

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

“(iii) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under any of chapters 7, 11, or 13 of this title, or any other reason to conclude that the later case will be concluded, if a case under chap-

ter 7 of this title, with a discharge, and if a chapter 11 or 13 case, a confirmed plan which will be fully performed;

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

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

“(A) as to all creditors if—

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

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

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

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

“(5)(A) If a request is made for relief from the stay under subsection (a) with respect to real or personal property of any kind, and such request is granted in whole or in part, the court may order in addition that the relief so granted shall be in rem either for a definite period not less than 1 year or indefinitely. After the issuance of such an order, the stay under subsection (a) shall not apply to any property subject to such an in rem order in any case of the debtor under this title. If such an order so provides, such stay shall also not apply in any pending or later-filed case of any entity under this title that claims or has an interest in the subject property other than those entities identified in the court’s order.

“(B) The court shall cause any order entered pursuant to this paragraph with respect to real property to be recorded in the applicable real property records, which recording shall constitute notice to all parties having or claiming an interest in such real property for purpose of this section.

“(6) For the purposes of this section, a case is pending from the time of the order for relief until the case is closed.”.

**SEC. 122. DEFINITION OF HOUSEHOLD GOODS.**

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

“(27A) ‘household goods’ has the meaning given such term in the Trade Regulation Rule on Credit Practices promulgated by the Federal Trade Commission (16 C.F.R. 444.1(i)), as in effect on the effective date of this paragraph;”.

**SEC. 123. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.**

Title 11, United States Code, is amended—

(1) in section 521—

(A) in paragraph (4) by striking “and” at the end;

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

and

(C) by adding at the end the following:

“(6) in an individual case under chapter 7 of this title, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor takes 1 of the following actions within 30 days after the first meeting of creditors under section 341(a)—

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

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

“If the debtor fails to so act within the 30-day period, the personal property affected shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.”; and

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

**SEC. 124. RELIEF FROM STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.**

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

(1) in section 362—

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

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

“(h) In an individual case pursuant to chapter 7, 11, or 13 the stay provided by subsection (a) is terminated with respect to property of the estate securing in whole or in part a claim, or subject to an unexpired lease, if the debtor fails within the applicable time set by section 521(a)(2) of this title—

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

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

unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.”;

(2) in section 521, as amended by sections 104, 406, and 407—

(A) in paragraph (2) by striking “consumer”;

(B) in paragraph (2)(B)—

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

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

(C) in paragraph (2)(C) by inserting “except as provided in section 362(h)” before the semicolon; and

(D) by adding at the end the following:

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

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

**SEC. 125. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.**

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

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

**SEC. 126. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.**

Section 362(e) of title 11, United States Code, is amended by inserting at the end the following:

“Notwithstanding the foregoing, in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate 60 days after a request under subsection (d) of this section, unless—

“(1) a final decision is rendered by the court within such 60-day period; or

“(2) such 60-day period is extended either by agreement of all parties in interest or by the court for a specific time which the court finds is required by compelling circumstances.”.

**SEC. 127. STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.**

Section 348(f)(1) of title 11, United States Code, is amended—

(1) by striking in subparagraph (B) “in the converted case, with allowed secured claims” and inserting in lieu thereof “only in a case converted to chapter 11 or 12 but not in one converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12”; and

(2) in subparagraph (A) by striking “and” at the end;

(3) in subparagraph (B) by striking the period and inserting “; and”; and

(4) by adding at the end the following:

“(C) with respect to cases converted from chapter 13, the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of that claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter of this title. Unless a prebankruptcy default has been fully cured pursuant to the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.”.

**SEC. 128. RESTRAINING ABUSIVE PURCHASES ON SECURED CREDIT.**

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

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

“(1) subsection (a) shall not apply to an allowed claim to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor within 180 days of the filing of the petition, except for the purpose of applying paragraph (3) of this subsection;

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

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

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

**SEC. 129. FAIR VALUATION OF COLLATERAL.**

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

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

**SEC. 130. PROTECTION OF HOLDERS OF CLAIMS SECURED BY DEBTOR'S PRINCIPAL RESIDENCE.**

Title 11, United States Code, is amended—

(1) in section 101 by inserting after paragraph (13) the following:

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

“(13B) ‘incidental property’ means property incidental to such residence including, without limitation, property commonly conveyed with a principal residence where the real estate is located, window treatments, carpets, appliances and equipment located in the residence, and easements, appurtenances, fixtures, rents, royalties, mineral rights, oil and gas rights, escrow funds and insurance proceeds;”;

(2) in section 362(b)—

(A) in paragraph (17) by striking “or” at the end thereof;

(B) in paragraph (18) by striking the period at the end and inserting “; or”; and

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

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

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

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

**SEC. 131. AIRCRAFT EQUIPMENT AND VESSELS.**

Section 1110(a)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking “that become due on or after the date of the order”;

(2) in subparagraph (B)—

(A) in clause (i) by striking “and” at the end; and

(B) in clause (ii)—

(i) by inserting “and within such 60-day period” after “order”; and

(ii) in subclause (II) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(iii) that occurs after the date of the order and such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract.”.

## **Subtitle D—Adequate Protections for Unsecured Creditors**

**SEC. 141. DEBTS INCURRED TO PAY NONDISCHARGEABLE DEBTS.**

(a) **PRIORITY OF CLAIMS FOR DEBTS INCURRED TO PAY NONDISCHARGEABLE DEBTS.**—Section 507(a) of title 11, United States Code, is amended by adding at the end the following:

“(10) Tenth, remaining allowed unsecured claims for debts that are non-dischargeable under section 523(a)(19), but which shall be payable under this paragraph in the higher order of priority (if any) as the respective claims paid by incurring such debts.”.

(b) **NONDISCHARGEABILITY OF DEBTS INCURRED TO PAY NONDISCHARGEABLE DEBTS.**—Section 523(a) of title 11, United States Code, is amended—

- (1) in paragraph (17) by striking “or” at the end;
- (2) in paragraph (18) by striking the period and inserting “; or”; and
- (3) by adding at the end the following:

“(19) incurred to pay a debt that is nondischargeable under any other paragraph of this subsection.”.

**SEC. 142. CREDIT EXTENSIONS ON THE EVE OF BANKRUPTCY PRESUMED NONDISCHARGEABLE.**

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

“(C) for purposes of subparagraph (A), consumer debts owed to a single creditor incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable, except that such presumption shall not apply to consumer debts owed to a single creditor which are incurred for necessities and aggregate \$250 or less.”.

**SEC. 143. FRAUDULENT DEBTS ARE NONDISCHARGEABLE IN CHAPTER 13 CASES.**

Section 1328(a)(2) of title 11, United States Code, is amended—

- (1) by inserting “(2), (3)(B), (4),” after “paragraph”; and
- (2) by inserting “(6),” after “(5)”.

**SEC. 144. APPLYING THE CODEBTOR STAY ONLY WHEN IT PROTECTS THE DEBTOR.**

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

- (1) by inserting “(1)” after “(b)”; and
- (2) by adding at the end the following:

“(2) When the debtor did not receive the consideration for the claim held by a creditor, the stay provided by subsection (a) does not apply to such creditor, notwithstanding subsection (c), to the extent the creditor proceeds against the individual which received such consideration or against property not in the possession of the debtor which secures such claim, but this subsection shall not apply if the debtor is primarily obligated to pay the creditor in whole or in part with respect to the claim under a legally binding separation agreement, or divorce or dissolution decree, with respect to such individual or the person who has possession of such property.

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

**SEC. 145. CREDIT EXTENSIONS WITHOUT A REASONABLE EXPECTATION OF REPAYMENT MADE NONDISCHARGEABLE.**

Section 523(a)(2) of title 11, United States Code, is amended—

- (1) in subparagraph (A) by striking “or actual fraud,” and inserting “actual fraud, or use of a credit or charge card or other device to access a credit line without a reasonable expectation or ability to repay unless access to such credit, credit or charge card or other device to access the credit line was extended without an application therefor and reasonable evaluation of the debtor’s ability to repay,” and
- (2) in subparagraph (B)(iv) by striking “with intent to deceive” and inserting “without taking reasonable steps to ensure the accuracy of the statement”.

**SEC. 146. DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.**

(a) **NONDISCHARGEABILITY.**—Title 11, United States Code, is amended—

(1) in section 523(a)(18)—

(A) by inserting “(including interest)” after “law”; and

(B) in subparagraph (A) by striking “and” at the end and inserting “or”; and

(2) in section 1328(a)(2) by striking “or (9)” and inserting “(9), or (18)”.

(b) **AUTOMATIC STAY.**—Section 362(b) of title 11, United States Code, as amended by section 130, is amended—

- (1) in paragraph (19) by striking “or” at the end;
- (2) in paragraph (19) by striking the period at the end and inserting a semicolon; and
- (3) by adding at the end the following:

“(20) under subsection (a) with respect to the withholding of income pursuant to an order as specified in section 466(b) of the Social Security Act; or

“(21) under subsection (a) with respect to the withholding, suspension, or restriction of drivers’ licenses, professional and occupational licenses, and recreational licenses pursuant to State law as specified in section 466(a)(15) of the Social Security Act or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act.”.

(c) CONTINUED LIABILITY OF PROPERTY.—Section 522(c) of title 11, United States Code, is amended by striking “section 523(a)(1) or 523(a)(5)” and inserting “paragraph (1), (5), or (18) of section 523(a)”.

(d) PRIORITY OF CLAIMS.—Section 507(a) of title 11, United States Code, as amended by section 141, is amended—

(1) in paragraph (10) by striking “(10) Tenth” and inserting “(11) Eleventh”;

(2) in paragraph (9) by striking “(9) Ninth” and inserting “(10) Tenth”;

(3) in paragraph (8) by striking “(8) Eighth ” and inserting “(9) Ninth”; and

(4) by inserting after paragraph (7) the following:

“(8) Eighth, allowed unsecured claims for debts that are nondischargeable under section 523(a)(18).”.

(e) CONFIRMATION OF PLANS.—Title 11 of the United States Code is amended—

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

“(14) If the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed.”;

(2) in section 1225(a)—

(A) in paragraph (5) by striking “and” at the end;

(B) in paragraph (6) by striking the period at the end and inserting “; and”;

(C) by adding at the end the following:

“(7) the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed.”; and

(3) in section 1325(a)—

(A) in paragraph (5) by striking “and” at the end;

(B) in paragraph (6) by striking the period at the end and inserting “; and”;

(C) by adding at the end the following:

“(7) if the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed.”.

(f) DISCHARGE.—Title 11 United States Code is amended—

(1) in section 1228(a) by inserting “and only after a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, certifies that all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed have been paid,” after “this title,”; and

(2) in section 1328(a) by inserting “and only after a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, certifies that all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed have been paid,” after “plan,” the 1st place it appears.

(g) CONFORMING AMENDMENTS.—Section 456(b) of the Social Security Act (42 U.S.C. 656(b)) is amended—

(1) by inserting “, including interest,” after “Code”;

(2) by striking “and” and inserting “or”; and

(3) by striking “released by a discharge” and inserting “dischargeable”.

**SEC. 147. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.**

Section 523(a)(5) of title 11, United States Code, is amended to read as follows:

“(5) to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of such spouse or child, or to a spouse, former spouse, or child of the debtor, to the extent such debt is the result of a property settlement agreement, a hold harmless agreement, or any other type of debt that is not

in the nature of alimony, maintenance, or support in connection with or incurred by the debtor in the course of a separation agreement, divorce decree, any modifications thereof, or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, but not to the extent that such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or such debt that has been assigned to the Federal government, or to a State or political subdivision of such State, or the creditor's attorney);”.

**SEC. 148. OTHER EXCEPTIONS TO DISCHARGE.**

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

- (1) by striking subsection (a)(15), as added by section 304(e)(1) of Public Law 103-394;
- (2) in subsection (a)(7) by inserting “(including property or funds required to be disgorged)” after “penalty”; and
- (3) in subsection (c)(1) by striking “(6), or (15)” and inserting “or (6)”.

**SEC. 149. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.**

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

- (1) by striking “dwelling” the 1st place it appears;
- (2) by striking “ownership or” and inserting “ownership,”;
- (3) by striking “housing” the 1st place it appears; and
- (4) by striking “but only” and all that follows through “such period,” and inserting “or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,”.

(b) EXECUTORY CONTRACTS.—Section 365 of title 11, United States Code, as amended by section 161, is amended by adding at the end the following:

“(q) A debt of a kind described in section 523(a)(16) of this title shall not be considered to be a debt arising from an executory contract.”

**SEC. 150. PROTECTION OF CHILD SUPPORT AND ALIMONY.**

(a) AMENDMENT.—Title 11 of the United States Code, as amended by section 116, is amended by inserting after section 528 the following:

**“§ 529. Protection of child support and alimony payments after the discharge**

“Notwithstanding the provisions of the constitution or law of any State providing a different priority, any debts of the individual who has received a discharge under this title to a spouse, former spouse, or child for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

“(1) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

“(2) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support, shall have priority in payment and collection over a creditor's claim which is not discharged in the individual's case pursuant to paragraph (2), (4), or (14) of section 523(a) of this title, but such priority shall not affect the priority of any consensual lien, mortgage, or security interest securing such creditor's claim.”.

(b) CONFORMING AMENDMENT.—The table of sections of chapter 5 of title 11, United States Code, as amended by section 116, is amended by inserting after the item relating to section 528 the following:

“529. Protection of child support and alimony.”.

**SEC. 151. ADEQUATE PROTECTION FOR INVESTORS.**

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

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

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by sections 130 and 146, is amended—

- (1) in paragraph (20) by striking “or” at the end;
- (2) in paragraph (21) by striking the period at the end and inserting “; or”;
- and
- (3) by adding at the end the following:
  - “(22) under subsection (a) of this section, of the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization’s regulatory power; of the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization’s regulatory power; or of any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements.”.

## **Subtitle E—Adequate Protections for Lessors**

### **SEC. 161. GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.**

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

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

“(2) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the lessor. If within 30 days of such notice the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate. The stay under section 362 of this title and the injunction under section 524(a)(2) of this title shall not be violated by notification of the debtor and negotiation of cure under this subsection.

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

### **SEC. 162. ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.**

Title 11, United States Code, is amended by adding after section 1307 the following:

#### **“§ 1307A. Adequate protection in chapter 13 cases**

“(a)(1) On or before 30 days after the filing of a case under this chapter, the debtor shall make cash payments in the amount described below to any lessor of personal property and to any creditor holding a claim secured by personal property to the extent such claim is attributable to the purchase of such property by the debtor. The debtor or the plan shall continue such payments until the earlier of—

“(A) the time at which the creditor begins to receive actual payments under the plan; or

“(B) the debtor relinquishes possession of such property to the lessor or creditor, or to any third party acting under claim of right, as applicable.

“(2) Such cash payments shall be in the amount of any weekly, biweekly, monthly or other periodic payment scheduled as payable under the contract between the debtor and creditor; shall be paid at the times at which such payments are scheduled to be made; and shall not include any arrearages, penalties, or default or delinquency charges. Such payments shall be deemed to be adequate protection payments under section 362 of this title.

“(b) The court may, after notice and hearing, change the amount and timing of the adequate protection payment under subsection (a), but in no event shall it be payable less frequently than monthly or in an amount less than the reasonable depreciation of such property month to month.

“(c) Notwithstanding section 1326(b) of this title, if a confirmed plan provides for payments to a creditor or lessor described in subsection (a) and provides that payments to such creditor or lessor under the plan will be deferred until payment of

amounts described in section 1326(b) of this title, the payments required hereunder shall nonetheless be continued in addition to plan payments until actual payments to the creditor begin under the plan.

“(d) Notwithstanding sections 362, 542, and 543 of this title, a lessor or creditor described in subsection (a) may retain possession of property described in subsection (a) which was obtained rightfully prior to the date of filing of the petition until the first such adequate protection payment is received by the lessor or creditor. Such retention of possession and any acts reasonably related thereto shall not violate the stay imposed under section 362(a) of this title, nor any obligations imposed under section 542 or 543 of this title.

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

**SEC. 163. ADEQUATE PROTECTION FOR LESSORS.**

Section 362(b)(10) of title 11, United States Code, is amended by striking “non-residential”.

## **Subtitle F—Bankruptcy Relief Less Frequently Available for Repeat Filers**

**SEC. 171. EXTEND PERIOD BETWEEN BANKRUPTCY DISCHARGES.**

Title 11, United States Code, is amended—

(1) in section 727(a)(8) by striking “six” and inserting “10”; and

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

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

## **Subtitle G—Exemptions**

**SEC. 181. EXEMPTIONS.**

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

(1) by striking “180” and inserting “365”; and

(2) by striking “, or for a longer portion of such 180-day period than in any other place”.

**SEC. 182. LIMITATION.**

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

(1) in subsection (b)(2)(A) by inserting “subject to subsection (n),” before “any property”; and

(2) by adding at the end the following:

“(n)(1) Except as provided in paragraph (2), as a result of electing under subsection (b)(2)(A) to exempt property under State or local law, a debtor may not exempt any interest to the extent that such interest exceeds \$100,000 in value, in the aggregate, in—

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

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

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

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

## TITLE II—BUSINESS BANKRUPTCY PROVISIONS

### Subtitle A—General Provisions

#### SEC. 201. LIMITATION RELATING TO THE USE OF FEE EXAMINERS.

Section 330 of title 11, United States Code, is amended by adding at the end the following:

“(e) The court may not appoint any person to examine any request for compensation or reimbursement payable under this section.”.

#### SEC. 202. SHARING OF COMPENSATION.

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

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

#### SEC. 203. CHAPTER 12 MADE PERMANENT LAW.

Section 302(f) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (11 U.S.C. 1201 note) is repealed.

#### SEC. 204. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

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

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

#### SEC. 205. CREDITORS' AND EQUITY SECURITY HOLDERS' COMMITTEES.

Section 1102(b) of title 11, United States Code, is amended by adding at the end the following:

“(3) The court on its own motion or on request of a party in interest, and after notice and a hearing, may order a change in membership of a committee appointed under subsection (a) if necessary to ensure adequate representation of creditors or of equity security holders.”.

#### SEC. 206. POSTPETITION DISCLOSURE AND SOLICITATION.

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

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

#### SEC. 207. PREFERENCES.

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

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

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

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

“(B) made according to ordinary business terms;”;

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

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

(4) by adding at the end the following:

“(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$5000.”.

#### SEC. 208. VENUE OF CERTAIN PROCEEDINGS.

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

**SEC. 209. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

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

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

(2) by adding at the end the following:

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

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

**SEC. 210. PERIOD FOR FILING PLAN UNDER CHAPTER 12.**

(a) EXTENSION OF PERIOD.—Section 1221 of title 11, United States Code, is amended by inserting “to any period not later than 150 days after the order for relief” after “period”.

(b) RELIEF FROM THE STAY.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2) by striking “or” at the end;

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

(3) by adding at the end the following:

“(4) with respect to a stay of an act against property under subsection (a) of a debtor in a case under chapter 12, by a creditor whose claim is secured by an interest in such property, unless the debtor has filed a plan in accordance with section 1221.”.

(c) SPECIAL TREATMENT OF SECURED CLAIMS.—(1) Chapter 12 of title 11, United States Code, is amended by inserting after section 1231 the following:

**“§ 1232. Special treatment of secured claims**

“(a)(1) A claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse, unless—

“(A) subject to paragraph (2), the holder of such claim elects to apply subsection (b); or

“(B) such holder does not have such recourse, and such property is sold under section 363 of this title or is to be sold under the plan.

“(2) A holder of a claim may not elect to apply subsection (b) if—

“(A) such claim is of inconsequential value; or

“(B) the holder of a claim has recourse against the debtor on account of such claim, and such property is sold under section 363 of this title or is to be sold under the plan.

“(b) If such an election is made to apply this subsection, then notwithstanding section 506(a) of this title, such claim is a secured claim to the extent such claim is allowed.”.

(2) The table of sections of chapter 12 of title 11, United States Code, is amended by inserting after the item relating to section 1231 the following:

“1232. Special treatment of secured claims.”.

**SEC. 211. CASES ANCILLARY TO FOREIGN PROCEEDINGS INVOLVING FOREIGN INSURANCE COMPANIES THAT ARE ENGAGED IN THE BUSINESS OF INSURANCE OR REINSURANCE IN THE UNITED STATES.**

Section 304 of title 11, United States Code, is amended—

(1) in subsection (b) by striking “provisions of subsection (c)” and inserting “subsections (c) and (d)”; and

(2) by adding at the end the following:

“(d) The court may not grant to a foreign representative of the estate of an insurance company that is not organized under the law of a State and that is engaged in the business of insurance, or reinsurance, in the United States relief under subsection (b) with respect to property that is—

“(1) a deposit required by a State law relating to insurance or reinsurance;

“(2) a multibeneficiary trust required by a State law relating to insurance or reinsurance to protect holders of insurance policies issued in the United States or to protect holders or claimants against such policies; or

“(3) a multibeneficiary trust authorized by a State law relating to insurance or reinsurance to allow a person engaged in the business of insurance in the United States—

“(A) to cede reinsurance to such an insurance company; and

“(B) to treat so ceded reinsurance as an asset, or deduction from liability, in financial statements of such person.”.

**SEC. 212. REJECTION OF EXECUTORY CONTRACTS AFFECTING INTELLECTUAL PROPERTY RIGHTS TO RECORDINGS OF ARTISTIC PERFORMANCE.**

Section 365(n) of title 11, United States Code, is amended at the end the following:

“(5) The rejection by the trustee of an executory contract affecting the intellectual property rights to recordings of artistic performance shall not in any way diminish or impair any applicable nonbankruptcy law rights to enforce noncompetition provision or provisions regarding the rendering of exclusive services as a performing artist that may be contained in such contracts, except that such enforcement shall be subject to the nondebtor party providing to the debtor notice of an offer to perform the contract under all of its original terms. The rights to enforce such noncompetition or exclusivity provision shall not be treated as claims that can be discharged under this title.”

**SEC. 213. UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY.**

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

“(4) In a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee before the earlier of (A) 120 days after the date of the order for relief, or (B) the entry of an order confirming a plan, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor but in no event shall such time period exceed 120 days. Notwithstanding the immediately preceding sentence, and provided no plan has been confirmed, upon debtor’s motion, and after notice and a hearing, the court may within such 120-day period extend the 120-day period by a period not to exceed 150 days, contingent upon written consent of the affected lessor or with the approval of the court, and provided trustee has timely performed all post-petition lease obligations, but in no circumstance shall such period extend beyond the earlier of (i) 270 days from the date of the order for relief or (ii) the entry of an order approving a disclosure statement, without the consent of the lessor.”

**SEC. 214. DEFINITION OF DISINTERESTED PERSON.**

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

“(14) ‘disinterested person’ means a person that—

- “(A) is not a creditor, an equity security holder, or an insider;
- “(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
- “(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;”

## Subtitle B—Specific Provisions

### CHAPTER 1—SMALL BUSINESS BANKRUPTCY

**SEC. 231. DEFINITIONS.**

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

“(51C) ‘small business case’ means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

“(51D) ‘small business debtor’ means—

“(A) a person (including affiliates of such person that are also debtors under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than \$5,000,000 (excluding debts owed to 1 or more affiliates or insiders); or

“(B) a debtor of the kind described in paragraph (51B) but without regard to the amount of such debtor’s debts;

except that if a group of affiliated debtors has aggregate noncontingent liquidated secured and unsecured debts greater than \$5,000,000 (excluding debt owed to 1 or more affiliates or insiders), then no member of such group is a small business debtor;”

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

**SEC. 232. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.**

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

“(f) Notwithstanding subsection (b), in a small business case—

“(1) in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;

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

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

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

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

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

**SEC. 233. STANDARD FORM DISCLOSURE STATEMENTS AND PLANS.**

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

(1) the reasonable needs of the courts, the United States trustee or bankruptcy administrator, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

**SEC. 234. UNIFORM NATIONAL REPORTING REQUIREMENTS.**

(a) REPORTING REQUIRED.—(1) Title 11 of the United States Code is amended by inserting after section 307 the following:

**“§ 308. Debtor reporting requirements**

“A small business debtor shall file periodic financial and other reports containing information including—

“(1) the debtor’s profitability, that is, approximately how much money the debtor has been earning or losing during current and recent fiscal periods;

“(2) reasonable approximations of the debtor’s projected cash receipts and cash disbursements over a reasonable period;

“(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

“(4) whether the debtor is—

“(A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

“(B) timely filing tax returns and paying taxes and other administrative claims when due, and, if not, what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

“(5) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.”

(2) The table of sections of chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

“308. Debtor reporting requirements.”

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed pursuant to section 2075, title 28, United States Code to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

**SEC. 235. UNIFORM REPORTING RULES AND FORMS.**

After consultation with the Director of the Executive for United States Trustees and with the Judicial Conference of the United States, the Attorney General of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to comply with section 308 of title 11, United States Code, as added by section 234 of this Act to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee or bankruptcy administrator, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors in cases under such title.

**SEC. 236. DUTIES IN SMALL BUSINESS CASES.**

(a) **DUTIES IN CHAPTER 11 CASES.**—Title 11 of the United States Code is amended by inserting after section 1114 the following:

**“§ 1115. Duties of trustee or debtor in possession in small business cases**

“In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

“(1) append to the voluntary petition or, in an involuntary case, file within 3 days after the date of the order for relief—

“(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

“(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

“(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 of this title;

“(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

“(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

“(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

“(6)(A) timely file tax returns;

“(B) subject to section 363(c)(2), timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

“(C) subject to section 363(c)(2), establish 1 or more separate deposit accounts not later than 10 business days after the date of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units; and

“(7) allow the United States trustee or bankruptcy administrator, or its designated representative, to inspect the debtor’s business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.”.

(b) **TECHNICAL AMENDMENT.**—The table of sections of chapter 11, United States Code, is amended by inserting after the item relating to section 1114 the following:

“1115. Duties of trustee or debtor in possession in small business cases.”.

**SEC. 237. PLAN FILING AND CONFIRMATION DEADLINES.**

Section 1121(e) of title 11, United States Code, is amended to read as follows:

“(e) In a small business case—

“(1) only the debtor may file a plan until after 90 days after the date of the order for relief, unless shortened on request of a party in interest made during the 90-day period, or unless extended as provided by this subsection, after notice and hearing the court, for cause, orders otherwise;

“(2) the plan, and any necessary disclosure statement, shall be filed not later than 90 days after the date of the order for relief; and

“(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) of this title, within which the plan shall be confirmed may be extended only if—

“(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable time;

“(B) a new deadline is imposed at the time the extension is granted; and

“(C) the order extending time is signed before the existing deadline has expired.”.

**SEC. 238. PLAN CONFIRMATION DEADLINE.**

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

“(e) In a small business case, the plan shall be confirmed not later than 150 days after the date of the order for relief unless such 150-day period is extended as provided in section 1121(e)(3) of this title.”.

**SEC. 239. PROHIBITION AGAINST EXTENSION OF TIME.**

Section 105(d) of title 11, United States Code, is amended—

- (1) in paragraph (2)(B)(vi) by striking the period at the end and inserting “; and”; and
- (2) by adding at the end the following:
  - “(3) in a small business case, not extend the time periods specified in sections 1121(e) and 1129(e) of this title except as provided in section 1121(e)(3) of this title.”.

**SEC. 240. DUTIES OF THE UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR.**

(a) DUTIES OF THE UNITED STATES TRUSTEE.—Section 586(a) of title 28, United States Code, as amended by section 111, is amended—

- (1) in paragraph (3)—
  - (A) in subparagraph (G) by striking “and” at the end;
  - (B) by redesignating subparagraph (H) as subparagraph (I); and
  - (C) by inserting after subparagraph (G) the following:
    - “(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases;”,
  - (2) in paragraph (6) by striking “and” at the end,
  - (3) in paragraph (7) by striking the period at the end and inserting “; and”, and
  - (4) by inserting after paragraph (7) the following:
    - “(8) in each of such small business cases—
      - “(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11 at which time the United States trustee shall begin to investigate the debtor’s viability, inquire about the debtor’s business plan, explain the debtor’s obligations to file monthly operating reports and other required reports, attempt to develop an agreed scheduling order, and inform the debtor of other obligations;
      - “(B) when determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor’s books and records and verify that the debtor has filed its tax returns;
      - “(C) review and monitor diligently the debtor’s activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and
      - “(D) in cases where the United States trustee finds material grounds for any relief under section 1112 of title 11 move the court promptly for relief.”.

(b) DUTIES OF THE BANKRUPTCY ADMINISTRATOR.—In a small business case (as defined in section 101 of title 11 of the United States Code), the bankruptcy administrator shall perform the duties specified in section 586(a)(6) of title 28 of the United States Code.

**SEC. 241. SCHEDULING CONFERENCES.**

Section 105(d) of title 11, United States Code, is amended—

- (1) in the matter preceding paragraph (1) by striking “, may”;
- (2) by amending paragraph (1) to read as follows:
  - “(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and”; and
  - (3) in paragraph (2) by striking “unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure,” and inserting “may”.

**SEC. 242. SERIAL FILER PROVISIONS.**

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

- (1) in subsection (i) as so redesignated by section 124—
  - (A) by striking “An” and inserting “(1) Except as provided in paragraph (2), an”; and
  - (B) by adding at the end the following:
    - “(2) If such violation is based on an action taken by an entity in the good-faith belief that subsection (h) applies to the debtor, then recovery under paragraph (1) against such entity shall be limited to actual damages.”; and

(2) by inserting after subsection (i), as redesignated by section 124, the following:

“(o) The filing of a petition under chapter 11 of this title operates as a stay of the acts described in subsection (a) only in an involuntary case involving no collusion by the debtor with creditors and in which the debtor—

“(1) is a debtor in a small business case pending at the time the petition is filed;

“(2) was a debtor in a small business case which was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

“(3) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

“(4) is an entity that has succeeded to substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C) unless the debtor proves, by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and that it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable time.”.

**SEC. 243. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.**

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112(b) of title 11, United States Code, is amended to read as follows:

“(b)(1) Except as provided in paragraph (2), in subsection (c), and in section 1104(a)(3) of this title, on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 of this title or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, if the movant establishes cause.

“(2) The relief provided in paragraph (1) shall not be granted if the debtor or another party in interest objects and establishes, by a preponderance of the evidence that—

“(A) it is more likely than not that a plan will be confirmed within a time as fixed by this title or by order of the court entered pursuant to section 1121(e)(3), or within a reasonable time if no time has been fixed; and

“(B) if the reason is an act or omission of the debtor that—

“(i) there exists a reasonable justification for the act or omission; and

“(ii) the act or omission will be cured within a reasonable time fixed by the court not to exceed 30 days after the court decides the motion, unless the movant expressly consents to a continuance for a specific period of time, or compelling circumstances beyond the control of the debtor justify an extension.

“(3) For purposes of this subsection, cause includes—

“(A) substantial or continuing loss to or diminution of the estate;

“(B) gross mismanagement of the estate;

“(C) failure to maintain appropriate insurance;

“(D) unauthorized use of cash collateral harmful to 1 or more creditors;

“(E) failure to comply with an order of the court;

“(F) failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

“(G) failure to attend the meeting of creditors convened under section 341(a) of this title or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure;

“(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee;

“(I) failure timely to pay taxes due after the date of the order for relief or to file tax returns due after the order for relief;

“(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

“(K) failure to pay any fees or charges required under chapter 123 of title 28;

“(L) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or of a modified plan under section 1129 of this title;

“(M) inability to effectuate substantial consummation of a confirmed plan;

“(N) material default by the debtor with respect to a confirmed plan; and

“(O) termination of a plan by reason of the occurrence of a condition specified in the plan.

“(4) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.”

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 1104(a) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking “or” at the end;

(2) in paragraph (2) by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(3) if grounds exist to convert or dismiss the case under section 1112 of this title, but the court determines that the appointment of a trustee is in the best interests of creditors and the estate.”

## CHAPTER 2—SINGLE ASSET REAL ESTATE

### SEC. 251. SINGLE ASSET REAL ESTATE DEFINED.

Section 101(51B) of title 11, United States Code, is amended to read as follows:

“(51B) ‘single asset real estate’ means undeveloped real property or other real property constituting a single property or project, other than residential real property with fewer than 4 residential units, on which is located a single development or project which property or project generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor, or by a commonly controlled group of entities all of which are concurrently debtors in a case under chapter 11 of this title, other than the business of operating the real property and activities incidental thereto;”

### SEC. 252. PAYMENT OF INTEREST.

Section 362(d)(3) of title 11, United States Code, is amended—

(1) by inserting “or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later” after “90-day period); and

(2) by amending subparagraph (B) to read as follows:

“(B) the debtor has commenced monthly payments (which payments may, in the debtor’s sole discretion, notwithstanding section 363(c)(2) of this title, be made from rents or other income generated before or after the commencement of the case by or from the property) to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at the then-applicable nondefault contract rate of interest on the value of the creditor’s interest in the real estate; or”

## TITLE III—MUNICIPAL BANKRUPTCY PROVISIONS

### SEC. 301. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting “notwithstanding section 301(b)” before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting “(a)” before “A voluntary”; and

(2) by amending the last sentence to read as follows:

“(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.”

## TITLE IV—BANKRUPTCY ADMINISTRATION

### Subtitle A—General Provisions

#### SEC. 401. ADEQUATE PREPARATION TIME FOR CREDITORS BEFORE THE MEETING OF CREDITORS IN INDIVIDUAL CASES.

Section 341(a) of title 11, United States Code, is amended by inserting after the first sentence the following: “If the debtor is an individual in a voluntary case under chapter 7, 11, or 13, the meeting of creditors shall not be convened earlier than 60

days (or later than 90 days) after the date of the order for relief, unless the court, after notice and hearing, determines unusual circumstances justify an earlier meeting.”.

**SEC. 402. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.**

Section 341(c) of title 11, United States Code, is amended by inserting after the first sentence the following: “Notwithstanding any local court rule, provision of a State constitution, any other State or Federal nonbankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or its representatives (which representatives may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13 either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.”.

**SEC. 403. FILING PROOFS OF CLAIM.**

Section 501 of title 11, United States Code, is amended by adding at the end the following:

“(e) In a case under chapter 7 or 13, a proof of claim or interest is deemed filed under this section for any claim or interest that appears in the schedules filed under section 521(a)(1) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.”.

**SEC. 404. AUDIT PROCEDURES.**

(a) AMENDMENT.—Section 586 of title 28, United States Code, as amended by sections 111 and 240, is amended—

(1) by amending subsection (a)(6) to read as follows:

“(6) make such reports as the Attorney General directs, including the results of audits performed under subsection (f);”;

(2) by inserting at the end the following:

“(f)(1) The Attorney General shall establish procedures for the auditing of the accuracy and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322, and, if applicable, section 111, of title 11 in individual cases filed under chapter 7 or 13 of such title. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants. Such procedures shall—

“(A) establish a method of selecting appropriate qualified persons to contract with the United States trustee to perform such audits;

“(B) establish a method of randomly selecting cases to be audited according to generally accepted audit standards, provided that no less than 1 out of every 100 cases in each Federal judicial district shall be selected for audit;

“(C) require audits for schedules of income and expenses which reflect higher than average variances from the statistical norm of the district in which the schedules were filed;

“(D) establish procedures for reporting the results of such audits and any material misstatement of income, expenditures or assets of a debtor to the Attorney General, the United States Attorney and the court, as appropriate, and for providing public information no less than annually on the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported; and

“(E) establish procedures for fully funding such audits.

“(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1) of this subsection.

“(3) According to procedures established under paragraph (1), upon request of a duly appointed auditor, the debtor shall cause the accounts, papers, documents, financial records, files and all other papers, things or property belonging to the debtor as the auditor requests and which are reasonably necessary to facilitate an audit to be made available for inspection and copying.

“(4) The report of each such audit shall be filed with the court, the Attorney General, and the United States Attorney, as required under procedures established by the Attorney General under paragraph (1). If a material misstatement of income or expenditures or of assets is reported, a statement specifying such misstatement shall be filed with the court and the United States trustee shall give notice thereof to the creditors in the case and, in an appropriate case, in the opinion of the United States trustee, requires investigation with respect to possible criminal violations, the United States Attorney for the district.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 18 months after the date of the enactment of this Act.

**SEC. 405. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7 AND 13 CASES.**

Section 342 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) by striking “, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice”; and

(B) by adding the following at the end:

“If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor which is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include such account number in any notice to the creditor required to be given under this title. If the creditor has specified to the debtor an address at which the creditor wishes to receive correspondence regarding the debtor’s account, any notice to the creditor required to be given by the debtor under this title shall be given at such address. For the purposes of this section, ‘notice’ shall include, but shall not be limited to, any correspondence from the debtor to the creditor after the commencement of the case, any statement of the debtor’s intention under section 521(a)(2) of this title, notice of the commencement of any proceeding in the case to which the creditor is a party, and any notice of the hearing under section 1324.”;

(2) by adding at the end the following:

“(d) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. Five days after receipt of such notice, if the court or the debtor is required to give the creditor notice, such notice shall be given at that address.

“(e) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (d) with respect to a particular case.

“(f) Notice given to a creditor other than as provided in this section shall not be effective notice until it has been brought to the attention of the creditor. If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to such department or person, notice will not be brought to the attention of the creditor until received by such person or department. No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.”.

**SEC. 406. DEBTOR TO PROVIDE TAX RETURNS AND OTHER INFORMATION.**

Section 521 of title 11, United States Code, is amended—

(1) by inserting “(a)” before “The”;

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

“(1) file—

“(A) a list of creditors, and

“(B) unless the court orders otherwise—

“(i) a schedule of assets and liabilities;

“(ii) a schedule of current income and current expenditures;

“(iii) a statement of the debtor’s financial affairs;

“(iv) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition;

“(v) a statement of the amount of projected monthly net income, itemized to show how calculated;

“(vi) if applicable, any statement under paragraphs (3) and (4) of section 109(h);

“(vii) a statement disclosing any reasonably anticipated increase in income or expenditures over the next 12 months; and

“(viii) a certificate, if applicable—

“(I) of an attorney whose name is on the petition as the attorney for the debtor, or of any bankruptcy petition preparer who signed

the petition pursuant to section 110(b)(1) of this title, indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b)(1) of this title; or

“(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition of the debtor, that such notice was obtained and read by the debtor;”; and

(3) by adding at the end the following:

“(b) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor notice that the creditor requests the petition, schedules, and statement of financial affairs filed by the debtor in the case. At any time, a creditor in a case under chapter 13 of this title may file with the court and serve on the debtor notice that the creditor requests the plan filed by the debtor in the case. Within 10 days of the first such request in a case under this subsection for the petition, schedules, and statement of financial affairs and the first such request for the plan under this subsection, the debtor shall serve on that creditor a conformed copy of the requested documents or plan and any amendments thereto as of that date, and shall thereafter promptly serve on that creditor at the time filed with the court—

“(1) any requested document or plan which is not filed with the court at the time requested; and

“(2) any amendment to any requested document or plan.

“(c)(1) An individual debtor in a case under chapter 7 or 13 shall provide to the United States trustee—

“(A) copies of all Federal tax returns (including any schedules and attachments) filed by the debtor for the 3 most recent tax years preceding the order for relief;

“(B) at the time the debtor files them with the Commissioner of Internal Revenue, all Federal tax returns (including any schedules and attachments) for the debtor’s tax years ending while such case is pending; and

“(C) at the time the debtor files them with the Commissioner of Internal Revenue, all amendments to the tax returns (including schedules and attachments) described in subparagraphs (A) and (B).

“(2)(A) The United States trustee shall make such Federal tax returns (including schedules, attachments, and amendments) available to any party in interest for inspection and copying not later than 10 days after receiving a request by such party.

“(B) If the United States trustee does not comply with subparagraph (A), on the motion of such party, the court shall issue an order compelling the United States trustee to comply with subparagraph (A).

“(d) A debtor in a case under chapter 13 of this title shall file, from a time which is the later of 90 days after the close of the debtor’s tax year or 1 year after the order for relief unless a plan has then been confirmed, and thereafter on or before 45 days before each anniversary of the confirmation of the plan until the case is closed, a statement subject to the penalties of perjury by the debtor of the debtor’s income and expenditures in the preceding tax year and monthly net income, showing how calculated. Such statement shall disclose the amount and sources of income of the debtor, the identity of any persons responsible with the debtor for the support of any dependents of the debtor, and any persons who contributed and the amount contributed to the household in which the debtor resides. Such tax returns, amendments and statement of income and expenditures shall be available to the United States trustee, any bankruptcy administrator, any trustee and any party in interest for inspection and copying.”.

**SEC. 407. DISMISSAL FOR FAILURE TO FILE SCHEDULES TIMELY OR PROVIDE REQUIRED INFORMATION.**

Section 521 of title 11, United States Code, as amended by section 406, is amended by adding at the end the following:

“(e) Notwithstanding section 707(a) of this title, if an individual debtor in a voluntary case under chapter 7 or 13 fails to provide all of the information required under subsections (a)(1) and (c)(1)(A) within 45 days after the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the filing of the petition without the need for any order of court, but any party in interest may request the court to enter an order dismissing the case and the court shall, if so requested, enter an order of dismissal within 5 days of such request. Upon request of the debtor made within 45 days after the filing of the petition, the court may allow the debtor up to an additional 15 days to provide the information required under subsections (a)(1) and (c)(1)(A) if the court finds compelling justification for doing so.

“(f) If an individual debtor in a case under chapter 7 or 13 fails to perform any of the duties imposed by subsections (b), (c)(1)(B), (c)(1)(C), and (d), any party in interest may request that the court order the debtor to comply. Within 10 days of such request the court shall order that the debtor do so within a period of time set by the court no longer than 30 days. If the debtor does not comply with that order within the period of time set by the court, the court shall, on request of any party in interest certifying that the debtor has not so complied, enter an order dismissing the case within 5 days of such request.”.

**SEC. 408. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.**

Section 1324 of title 11, United States Code, is amended—

(1) by striking “After” and inserting the following:

“(a) Except as provided in subsection (b) and after”; and

(2) by adding at the end the following:

“(b) The hearing on confirmation of the plan may be held not earlier than 20 days, and not later than 45 days, after the meeting of creditors under section 341(a) of this title.”.

**SEC. 409. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.**

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

“(d) If the total current monthly income of the debtor and in a joint case, the debtor and the debtor’s spouse combined, is not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 5 years, unless the court, for cause, approves a longer period, but the court may not approve a period that exceeds 7 years. If the total current monthly income of the debtor or in a joint case, the debtor and the debtor’s spouse combined, is less than the highest national median family income reported for a family of equal or lesser size, or in the case of a household of 1 person less than the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.”;

(2) in section 1329—

(A) by striking in subsection (c) “three years” and inserting “the applicable commitment period under section 1325(b)(1)(B)(ii)” and by striking “five years” and inserting “maximum duration period”; and

(B) by inserting at the end of subsection (c) the following:

“The maximum duration period shall be 5 years if the total current monthly income of the debtor, and in a joint case, the debtor and the debtor’s spouse combined, is not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, as of the date of the modification and shall be 3 years if the total current monthly income is less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, less than the national median household income for 1 earner as of the date of the modification.”.

**SEC. 410. SENSE OF THE CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.**

It is the sense of the Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor’s attorney has made reasonable inquiry to verify that the information contained in such documents is well grounded in fact, and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

**SEC. 411. JURISDICTION OF COURTS OF APPEALS.**

(a) JURISDICTION.—Title 28 of the United States Code is amended—

(1) by striking section 158;

(2) by inserting after section 1292 the following:

**“§ 1293. Bankruptcy appeals**

“The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from the following:

“(1) Final orders and judgments of bankruptcy courts entered under—

“(A) section 157(b) of this title in core proceedings arising under title 11, or arising in or related to a case under title 11; or

“(B) section 157(c)(2) of this title in proceedings referred to such courts.

“(2) Final orders and judgments of district courts entered under section 157 of this title in—

“(A) core proceedings arising under title 11, or arising in or related to a case under title 11; or

“(B) proceedings that are not core proceedings, but that are otherwise related to a case under title 11.

“(3) Orders and judgments of bankruptcy courts or district courts entered under section 105 of title 11, or the refusal to enter an order or judgment under such section.

“(4) Orders of bankruptcy courts or district courts entered under section 1104(a) or 1121(d) of title 11, or the refusal to enter an order under such section.

“(5) An interlocutory order of a bankruptcy court or district court entered in a case under title 11, in a proceeding arising under title 11, or in a proceeding arising in or related to a case under title 11, if—

“(A) such court is of the opinion that—

“(i) such order involves a controlling question of law as to which there is substantial ground for difference of opinion; and

“(ii) an immediate appeal from such order may materially advance the ultimate termination of such case or such proceeding; or

“(B) the court of appeals that would have jurisdiction of an appeal of a final order entered in such case or such proceeding permits, in its discretion, appeal to be taken from such interlocutory order.”; and

(3) in—

(A) the table of sections for chapter 6 by striking the item relating to section 158; and

(B) the table of sections for chapter 83 by inserting after the item relating to section 1292 the following:

“1293. Bankruptcy appeals.”.

(b) CONFORMING AMENDMENTS.—(1) Section 305(c) of title 11, the United States Code, is amended by striking “158(d), 1291, or 1292” and inserting “1291, 1292, or 1293”.

(2) Title 28, United States Code, is amended—

(A) in subsections (b)(1) and (c)(2) of section 157 by striking “section 158” and inserting “section 1293”;

(B) in section 1334(d) by striking “158(d), 1291, or 1292” and inserting “1291, 1292, or 1293”; and

(C) in section 1452(b) by striking “158(d), 1291, or 1292” and inserting “1291, 1292, or 1293”.

#### SEC. 412. ESTABLISHMENT OF OFFICIAL FORMS.

The Judicial Conference of the United States shall establish official forms to facilitate compliance with the amendments made by sections 101 and 102.

#### SEC. 413. ELIMINATION OF CERTAIN FEES PAYABLE IN CHAPTER 11 BANKRUPTCY CASES.

(a) AMENDMENTS.—Section 1930(a)(6) of title 28, United States Code, is amended—

(1) in the 1st sentence by striking “until the case is converted or dismissed, whichever occurs first”, and

(2) in the 2d sentence—

(A) by striking “The” and inserting “Until the plan is confirmed or the case is converted (whichever occurs first) the”, and

(B) by striking “less than \$300,000;” and inserting “less than \$300,000.

Until the case is converted or dismissed (whichever occurs first and without regard to confirmation of the plan) the fee shall be”.

(b) DELAYED EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1999.

## Subtitle B—Data Provisions

#### SEC. 441. IMPROVED BANKRUPTCY STATISTICS.

(a) AMENDMENT.—Title 28, United States Code, is amended by adding after section 158 the following new section:

**“§ 159. Bankruptcy statistics**

“The Director of the Executive Office for United States Trustees shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Such statistics shall be in a form prescribed by the Administrative Office of the United States Courts. The Office shall compile such statistics, and make them public, and report annually to the Congress on the information collected, and on its analysis thereof, no later than October 31 of each year. Such compilation shall be itemized by chapter of title 11, shall be presented in the aggregate and for each district, and shall include the following:

“(1) Total assets and total liabilities of such debtors, and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by such debtors.

“(2) The current total monthly income, projected monthly net income, and average income and average expenses of such debtors as reported on the schedules and statements the debtor has filed under sections 111, 521, and 1322 of title 11.

“(3) The aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable.

“(4) The average time between the filing of the petition and the closing of the case.

“(5) The number of cases in the reporting period in which a reaffirmation was filed and the total number of reaffirmations filed in that period, and of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney, and of those the number of cases in which the reaffirmation was approved by the court.

“(6) With respect to cases filed under chapter 13 of title 11—

“(A) the number of cases in which a final order was entered determining the value of property securing a claim less than the claim, and the total number of such orders in the reporting period; and

“(B) the number of cases dismissed for failure to make payments under the plan.

“(7) The number of cases in which the debtor filed another case within the 6 years previous to the filing.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect 18 months after the date of the enactment of this Act.

**SEC. 442. BANKRUPTCY DATA.**

(a) **AMENDMENT.**—Title 28 of the United States Code is amended by inserting after section 589a the following:

**“§ 589b. Bankruptcy data**

“(a) **RULES.**—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

“(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

“(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

“(b) **REPORTS.**—All reports referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at 1 or more central filing locations, and by electronic access through the Internet or other appropriate media.

“(c) **REQUIRED INFORMATION.**—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

“(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; and

“(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports.

“(d) **FINAL REPORTS.**—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required

by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

- “(1) information about the length of time the case was pending;
- “(2) assets abandoned;
- “(3) assets exempted;
- “(4) receipts and disbursements of the estate;
- “(5) expenses of administration;
- “(6) claims asserted;
- “(7) claims allowed; and
- “(8) distributions to claimants and claims discharged without payment;

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

“(e) PERIODIC REPORTS.—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

- “(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;
- “(2) length of time the case has been pending;
- “(3) number of full-time employees as at the date of the order for relief and at end of each reporting period since the case was filed;
- “(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;
- “(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;
- “(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, in for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and
- “(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.”.

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 39 of title 28, United States Code, is amended by adding at the end the following:

“589b. Bankruptcy data.”.

**SEC. 443. SENSE OF THE CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.**

It is the sense of the Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11 of the United States Code), should be released in a usable electronic form in bulk to the public subject to such appropriate privacy concerns and safeguards as the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

## TITLE V—TAX PROVISIONS

**SEC. 501. TREATMENT OF CERTAIN LIENS.**

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting “(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)” after “under this title”;

(2) in subsection (b)(2), after “507(a)(1)”, insert “(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)”; and

(3) by adding at the end the following:

“(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

“(1) exhaust the unencumbered assets of the estate; and

“(2) in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

“(f) Notwithstanding the exclusion of ad valorem tax liens set forth in this section and subject to the requirements of subsection (e)—

“(1) claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(3) of this title; or

“(2) claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4) of this title,

may be paid from property of the estate which secures a tax lien, or the proceeds of such property.”.

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking “or” at the end;

(2) in subparagraph (B), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.”.

**SEC. 502. ENFORCEMENT OF CHILD AND SPOUSAL SUPPORT.**

Section 522(c)(1) of title 11, United States Code, is amended by inserting “, except that, notwithstanding any other Federal law or State law relating to exempted property, exempt property shall be liable for debts of a kind specified in paragraph (1) or (5) of section 523(a) of this title” before the semicolon at the end.

**SEC. 503. EFFECTIVE NOTICE TO GOVERNMENT.**

(a) EFFECTIVE NOTICE TO GOVERNMENTAL UNITS.—Section 342 of title 11, United States Code, as amended by section 405, is amended by adding at the end the following:

“(g) If a debtor lists a governmental unit as a creditor in a list or schedule, any notice required to be given by the debtor under this title, any rule, any applicable law, or any order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted. The debtor shall identify (with information such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, where applicable), and describe the underlying basis for the governmental unit’s claim. If the debtor’s liability to a governmental unit arises from a debt or obligation owed or incurred by another individual, entity, or organization, or under a different name, the debtor shall identify such individual, entity, organization, or name.

“(h) The clerk shall keep and update quarterly, in the form and manner as the Director of the Administrative Office of the United States Courts prescribes, and make available to debtors, a register in which a governmental unit may designate a safe harbor mailing address for service of notice in cases pending in the district. A governmental unit may file a statement with the clerk designating a safe harbor address to which notices are to be sent, unless such governmental unit files a notice of change of address.”.

(b) ADOPTION OF RULES PROVIDING NOTICE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption enhanced rules for providing notice to State, Federal, and local government units that have regulatory authority over the debtor or which may be creditors in the debtor’s case. Such rules shall be reasonably calculated to ensure that notice will reach the representatives of the governmental unit, or subdivision thereof, who will be the proper persons authorized to act upon the notice. At a minimum, the rules should require that the debtor—

(1) identify in the schedules and the notice, the subdivision, agency, or entity in respect of which such notice should be received;

(2) provide sufficient information (such as case captions, permit numbers, taxpayer identification numbers, or similar identifying information) to permit the governmental unit or subdivision thereof, entitled to receive such notice, to identify the debtor or the person or entity on behalf of which the debtor is pro-

viding notice where the debtor may be a successor in interest or may not be the same as the person or entity which incurred the debt or obligation; and

(3) identify, in appropriate schedules, served together with the notice, the property in respect of which the claim or regulatory obligation may have arisen, if any, the nature of such claim or regulatory obligation and the purpose for which notice is being given.

(c) EFFECT OF FAILURE OF NOTICE.—Section 342 of title 11, United States Code, as amended by subsection (a) and section 405, is amended by adding at the end the following:

“(i)(1) A notice that does not comply with subsections (d) and (e) shall have no effect unless the debtor demonstrates, by clear and convincing evidence, that timely notice was given in a manner reasonably calculated to satisfy the requirements of this section was given, and that—

“(A) either the notice was timely sent to the safe harbor address provided in the register maintained by the clerk of the district in which the case was pending for such purposes; or

“(B) no safe harbor address was provided in such list for the governmental unit and that an officer of the governmental unit who is responsible for the matter or claim had actual knowledge of the case in sufficient time to act.

“(2) No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed unless the action takes place after notice of the commencement of the case as required by this section has been received.”.

**SEC. 504. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.**

Section 505(b) of title 11, United States Code, is amended by striking “Unless” at the beginning of the second sentence thereof and inserting “If the request is made in the manner designated by the governmental unit and unless”.

**SEC. 505. RATE OF INTEREST ON TAX CLAIMS.**

Chapter 5 of title 11, United States Code, is amended by adding at the end the following:

**“§ 511. Rate of interest on tax claims**

“Notwithstanding any provision of this title that requires the payment of interest on a claim, if interest is required to be paid on a tax claim, the rate of interest shall be as follows:

“(1) In the case of ad valorem tax claims, whether secured or unsecured, other unsecured tax claims where interest is required to be paid under section 726(a)(5) of this title and secured tax claims the rate shall be determined under applicable nonbankruptcy law.

“(2) In the case of unsecured claims for taxes arising before the date of the order for relief and paid under a plan of reorganization, the minimum rate of interest to be applied during the period after the filing of the petition shall be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code of 1986, for the calendar month in which the plan is confirmed, plus 3 percentage points.”.

**SEC. 506. TOLLING OF PRIORITY OF TAX CLAIM TIME PERIODS.**

Section 507(a)(9)(A) of title 11, United States Code, as so redesignated, is amended—

(1) in clause (i) by inserting after “petition” and before the semicolon “, plus any time, plus 6 months, during which the stay of proceedings was in effect in a prior case under this title”; and

(2) amend clause (ii) to read as follows:

“(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

“(I) any time plus 30 days during which an offer in compromise with respect of such tax, was pending or in effect during such 240-day period;

“(II) any time plus 30 days during which an installment agreement with respect of such tax was pending or in effect during such 240-day period, up to 1 year; and

“(III) any time plus 6 months during which a stay of proceedings against collections was in effect in a prior case under this title during such 240-day period.”.

**SEC. 507. ASSESSMENT DEFINED.**

(a) **ASSESSMENT DEFINED FOR PRIORITY PURPOSES.**—Section 101 of title 11, United States Code, is amended by inserting after paragraph (2) the following:

“(3) ‘assessment’—

“(A) for purposes of State and local taxes, means that point in time when all actions required have been taken so that thereafter a taxing authority may commence an action to collect the tax, and

“(B) for Federal tax purposes has the meaning given such term in the Internal Revenue Code of 1986;

and ‘assessed’ and ‘assessable’ shall be interpreted in light of the definition of assessment in this paragraph;”.

(b) **ASSESSMENT DEFINED FOR THE STAY OF PROCEEDINGS.**—Section 362(b)(9)(D) of title 11, United States Code, is amended by inserting after “the making of an assessment” the following: “as defined by applicable nonbankruptcy law notwithstanding the definition of an ‘assessment’ elsewhere in this title”.

**SEC. 508. CHAPTER 13 DISCHARGE OF FRAUDULENT AND OTHER TAXES.**

Section 1328(a)(2) of title 11, United States Code, is amended by inserting “(1),” after “paragraph”.

**SEC. 509. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.**

Section 1141(d) of title 11, United States Code, as amended by section 119A, is amended by adding at the end the following:

“(6) Notwithstanding the provisions of paragraph (1), the confirmation of a plan does not discharge a debtor which is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.”.

**SEC. 510. THE STAY OF TAX PROCEEDINGS.**

(a) **THE SECTION 362 STAY LIMITED TO PREPETITION TAXES.**—Section 362(a)(8) of title 11, United States Code, is amended by striking the period at the end and inserting “, in respect of a tax liability for a taxable period ending before the order for relief.”.

(b) **THE APPEAL OF TAX COURT DECISIONS PERMITTED.**—Section 362(b)(9) of title 11, United States Code, is amended—

(1) in subparagraph (C) by striking “or” at the end,

(2) in subparagraph (D) by striking the period at the end and inserting “; or”, and

(3) by adding at the end the following:

“(E) the appeal of a decision by a court or administrative tribunal which determines a tax liability of the debtor without regard to whether such determination was made prepetition or postpetition.”.

**SEC. 511. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.**

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B) by striking “and” at the end; and

(2) in subparagraph (C)—

(A) by striking “deferred cash payments, over a period not exceeding six years after the date of assessment of such claim,” and inserting “regular installment payments in cash, but in no case with a balloon provision, and no more than three months apart, beginning no later than the effective date of the plan and ending on the earlier of five years after the petition date or the last date payments are to be made under the plan to unsecured creditors,”;

(B) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(D) with respect to a secured claim which would be described in section 507(a)(8) of this title but for its secured status, the holder of such claim will receive on account of such claim cash payments of not less than is required in subparagraph (C) and over a period no greater than is required in such subparagraph.”.

**SEC. 512. THE AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.**

Section 545(2) of title 11, United States Code, is amended by striking the semicolon at the end and inserting “, except where such purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986 or similar provision of State or local law;”.

**SEC. 513. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.**

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting “(a)” before “Any”; and

(2) by adding at the end the following:

“(b) Such taxes shall be paid when due in the conduct of such business unless—

“(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable time after the lien attaches, by the trustee of a bankruptcy estate, pursuant to section 554 of title 11; or

“(2) payment of the tax is excused under a specific provision of title 11.

“(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11 if—

“(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

“(2) before the due date of the tax, the court has made a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as such tax.”.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B) of title 11, United States Code, is amended in clause (i) by inserting after “estate,” and before “except” the following: “whether secured or unsecured, including property taxes for which liability is in rem only, in personam or both.”.

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended by adding at the end the following:

“(D) notwithstanding the requirements of subsection (a) of this section, a governmental unit shall not be required to file a request for the payment of a claim described in subparagraph (B) or (C);”.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting “or State statute” after “agreement”; and

(2) in subsection (c) by inserting “, including the payment of all ad valorem property taxes in respect of the property” before the period at the end.

**SEC. 514. TARDILY FILED PRIORITY TAX CLAIMS.**

Section 726(a)(1) of title 11, United States Code, is amended by striking “before the date on which the trustee commences distribution under this section” and inserting “on or before the earlier of 10 days after the mailing to creditors of the summary of the trustee’s final report or the date on which the trustee commences final distribution under this section”.

**SEC. 515. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.**

Section 523(a)(1)(B) of title 11, United States Code, is amended—

(1) by inserting “or equivalent report or notice,” after “a return,”;

(2) in clause (i)—

(A) by inserting “or given” after “filed”; and

(B) by striking “or” at the end;

(3) in clause (ii)—

(A) by inserting “or given” after “filed”;

(B) by inserting “, report, or notice” after “return”; and

(4) by adding at the end the following:

“(iii) for purposes of this subsection, a return—

“(I) must satisfy the requirements of applicable nonbankruptcy law, and includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or similar State or local law, and

“(II) must have been filed in a manner permitted by applicable nonbankruptcy law; or”.

**SEC. 516. THE DISCHARGE OF THE ESTATE’S LIABILITY FOR UNPAID TAXES.**

Section 505(b) of title 11, United States Code, is amended in the second sentence by inserting “the estate,” after “misrepresentation,”.

**SEC. 517. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.**

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by section 146, is amended—

(1) in paragraph (6) by striking “and” at the end;

(2) in paragraph (7) by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(8) if the debtor has filed all Federal, State, and local tax returns as required by section 1308 of this title.”.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—(1) Chapter 13 of title 11, United States Code, is amended by adding at the end the following:

**“§ 1308. Filing of prepetition tax returns**

“(a) On or before the day prior to the day on which the first meeting of the creditors is convened under section 341(a) of this title, the debtor shall have filed with appropriate tax authorities all tax returns for all taxable periods ending in the 6-year period ending on the date of filing of the petition.

“(b) If the tax returns required by subsection (a) have not been filed by the date on which the first meeting of creditors is convened under section 341(a) of this title, the trustee may continue such meeting for a reasonable period of time, to allow the debtor additional time to file any unfiled returns, but such additional time shall be no more than—

“(1) for returns that are past due as of the date of the filing of the petition, 120 days from such date,

“(2) for returns which are not past due as of the date of the filing of the petition, the later of 120 days from such date or the due date for such returns under the last automatic extension of time for filing such returns to which the debtor is entitled, and for which request has been timely made, according to applicable nonbankruptcy law, and

“(3) upon notice and hearing, and order entered before the lapse of any deadline fixed according to this subsection, where the debtor demonstrates, by clear and convincing evidence, that the failure to file the returns as required is because of circumstances beyond the control of the debtor, the court may extend the deadlines set by the trustee as provided in this subsection for—

“(A) a period of no more than 30 days for returns described in paragraph (1) of this subsection, and

“(B) for no more than the period of time ending on the applicable extended due date for the returns described in paragraph (2).

“(c) For purposes of this section only, a return includes a return prepared pursuant to section 6020 (a) or (b) of the Internal Revenue Code of 1986 or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal.”.

(2) The table of sections of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

“1308. Filing of prepetition tax returns.”.

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and

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

“(e) Upon the failure of the debtor to file tax returns under section 1308 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interests of creditors and the estate.”.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by striking the period at the end and inserting “, and except that in a case under chapter 13 of this title, a claim of a governmental unit for a tax in respect of a return filed under section 1308 of this title shall be timely if it is filed on or before 60 days after such return or returns were filed as required.”.

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference should, within a reasonable period of time after the date of the enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, a governmental unit may object to the confirmation of a plan on or before 60 days after the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax in respect of a return required to be filed under such section 1308 shall be filed until such return has been filed as required.

**SEC. 518. STANDARDS FOR TAX DISCLOSURE.**

Section 1125(a) of title 11, United States Code, is amended in paragraph (1)—

(1) by inserting after “records,” the following: “including a full discussion of the potential material Federal, State, and local tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor domiciled in the State in which the debtor resides or has its principal place of business typical of the holders of claims or interests in the case,”,

(2) by inserting “such” after “enable”, and

(3) by striking “reasonable” where it appears after “hypothetical” and by striking “typical of holders of claims or interests” after “investor”.

**SEC. 519. SETOFF OF TAX REFUNDS.**

Section 362(b) of title 11, United States Code, as amended by sections 130, 146, and 150 is amended—

(1) in paragraph (21) by striking “or”,

(2) in paragraph (22) by striking the period at the end and inserting “; or”, and

(3) by inserting after paragraph (22) (as so redesignated) the following:

“(23) under subsection (a) of the setoff of an income tax refund, by a governmental unit, in respect of a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief, unless—

“(A) prior to such setoff, an action to determine the amount or legality of such tax liability under section 505(a) was commenced; or

“(B) where the setoff of an income tax refund is not permitted because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action.”.

## **TITLE VI—ANCILLARY AND OTHER CROSS-BORDER CASES**

**SEC. 601. AMENDMENT TO ADD A CHAPTER 6 TO TITLE 11, UNITED STATES CODE.**

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 5 the following:

**“CHAPTER 6—ANCILLARY AND OTHER CROSS-BORDER CASES**

“Sec.

“601. Purpose and scope of application.

“SUBCHAPTER I—GENERAL PROVISIONS

“602. Definitions.

“603. International obligations of the United States.

“604. Commencement of ancillary case.

“605. Authorization to act in a foreign country.

“606. Public policy exception.

“607. Additional assistance.

“608. Interpretation.

“SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

“609. Right of direct access.

“610. Limited jurisdiction.

“611. Commencement of bankruptcy case under section 301 or 303.

“612. Participation of a foreign representative in a case under this title.

“613. Access of foreign creditors to a case under this title.

“614. Notification to foreign creditors concerning a case under this title.

“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

“615. Application for recognition of a foreign proceeding.

“616. Presumptions concerning recognition.

“617. Order recognizing a foreign proceeding.

- “618. Subsequent information.
- “619. Relief that may be granted upon petition for recognition of a foreign proceeding.
- “620. Effects of recognition of a foreign main proceeding.
- “621. Relief that may be granted upon recognition of a foreign proceeding.
- “622. Protection of creditors and other interested persons.
- “623. Actions to avoid acts detrimental to creditors.
- “624. Intervention by a foreign representative.

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

- “625. Cooperation and direct communication between the court and foreign courts or foreign representatives.
- “626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
- “627. Forms of cooperation.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

- “628. Commencement of a case under this title after recognition of a foreign main proceeding.
- “629. Coordination of a case under this title and a foreign proceeding.
- “630. Coordination of more than 1 foreign proceeding.
- “631. Presumption of insolvency based on recognition of a foreign main proceeding.
- “632. Rule of payment in concurrent proceedings.

**“§ 601. Purpose and scope of application**

“(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

“(1) cooperation between—

“(A) United States courts, United States Trustees, trustees, examiners, debtors, and debtors in possession; and

“(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

“(2) greater legal certainty for trade and investment;

“(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

“(4) protection and maximization of the value of the debtor’s assets; and

“(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

“(b) This chapter applies where—

“(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

“(2) assistance is sought in a foreign country in connection with a case under this title;

“(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

“(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

“(c) This chapter does not apply to—

“(1) a proceeding concerning an entity identified by exclusion in subsection 109(b); or

“(2) an individual, or to an individual and such individual’s spouse, who have debts within the limits specified in under section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States.

“SUBCHAPTER I—GENERAL PROVISIONS

**“§ 602. Definitions**

“For the purposes of this chapter, the term—

“(1) ‘debtor’ means an entity that is the subject of a foreign proceeding;

“(2) ‘establishment’ means any place of operations where the debtor carries out a nontransitory economic activity;

“(3) ‘foreign court’ means a judicial or other authority competent to control or supervise a foreign proceeding;

“(4) ‘foreign main proceeding’ means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

“(5) ‘foreign nonmain proceeding’ means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

“(6) ‘trustee’ includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapters 9 or 13 of this title; and

“(7) ‘within the territorial jurisdiction of the United States’ when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed under applicable

nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

**“§ 603. International obligations of the United States**

“To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

**“§ 604. Commencement of ancillary case**

“A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 615.

**“§ 605. Authorization to act in a foreign country**

“A trustee or another entity (including an examiner) authorized by the court may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

**“§ 606. Public policy exception**

“Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

**“§ 607. Additional assistance**

“(a) Nothing in this chapter limits the power of the court, upon recognition of a foreign proceeding, to provide additional assistance to a foreign representative under this title or under other laws of the United States.

“(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

“(1) just treatment of all holders of claims against or interests in the debtor’s property;

“(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

“(3) prevention of preferential or fraudulent dispositions of property of the debtor;

“(4) distribution of proceeds of the debtor’s property substantially in accordance with the order prescribed by this title; and

“(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

**“§ 608. Interpretation**

“In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

**“SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT**

**“§ 609. Right of direct access**

“(a) A foreign representative is entitled to commence a case under section 604 by filing a petition for recognition under section 615, and upon recognition, to apply directly to other Federal and State courts for appropriate relief in those courts.

“(b) Upon recognition, and subject to section 610, a foreign representative has the capacity to sue and be sued, and shall be subject to the laws of the United States of general applicability.

“(c) Recognition under this chapter is prerequisite to the granting of comity or cooperation to a foreign proceeding in any State or Federal court in the United States. Any request for comity or cooperation in any court shall be accompanied by a sworn statement setting forth whether recognition under section 615 has been sought and the status of any such petition.

“(d) Upon denial of recognition under this chapter, the court may issue appropriate orders necessary to prevent an attempt to obtain comity or cooperation from courts in the United States without such recognition.

**“§ 610. Limited jurisdiction**

“The sole fact that a foreign representative files a petition under sections 615 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

**“§ 611. Commencement of case under section 301 or 303**

“(a) Upon filing a petition for recognition, a foreign representative may commence—

“(1) an involuntary case under section 303; or

“(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

“(b) The petition commencing a case under subsection (a) of this section must be accompanied by a statement describing the petition for recognition and its current status. The court where the petition for recognition has been filed must be advised of the foreign representative’s intent to commence a case under subsection (a) of this section prior to such commencement.

“(c) A case under subsection (a) shall be dismissed unless recognition is granted.

**“§ 612. Participation of a foreign representative in a case under this title**

“Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debt or under this title.

**“§ 613. Access of foreign creditors to a case under this title**

“(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

“(b)(1) Subsection (a) of this section does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

“(2)(A) Subsection (a) of this section and paragraph (1) of this subsection do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

“(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

**“§ 614. Notification to foreign creditors concerning a case under this title**

“(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

“(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.

“(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

“(1) indicate the time period for filing proofs of claim and specify the place for their filing;

“(2) indicate whether secured creditors need to file their proofs of claim; and

“(3) contain any other information required to be included in such a notification to creditors pursuant to this title and the orders of the court.

“(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND  
RELIEF

**“§ 615. Application for recognition of a foreign proceeding**

“(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

“(b) A petition for recognition shall be accompanied by—

“(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

“(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

“(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

“(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

“(d) The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.

**“§ 616. Presumptions concerning recognition**

“(a) If the decision or certificate referred to in section 615(b) indicates that the foreign proceeding is a foreign proceeding within the meaning of section 101(23) and that the person or body is a foreign representative within the meaning of section 101(24), the court is entitled to so presume.

“(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

“(c) In the absence of evidence to the contrary, the debtor’s registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor’s main interests.

**“§ 617. Order recognizing a foreign proceeding**

“(a) Subject to section 606, an order recognizing a foreign proceeding shall be entered if—

“(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 602;

“(2) the foreign representative applying for recognition is a person or body within the meaning of section 101(24); and

“(3) the petition meets the requirements of section 615.

“(b) The foreign proceeding shall be recognized—

“(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

“(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 602 in the foreign country where the proceeding is pending.

“(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding shall constitute recognition under this chapter.

“(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition. The case under this chapter may be closed in the manner prescribed for a case under section 350.

**“§ 618. Subsequent information**

“From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

“(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative’s appointment; and

“(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

**“§ 619. Relief that may be granted upon petition for recognition of a foreign proceeding**

“(a) From the time of filing a petition for recognition until the petition is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

“(1) staying execution against the debtor’s assets;

“(2) entrusting the administration or realization of all or part of the debtor’s assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

“(3) any relief referred to in paragraph (3), (4), or (7) of section 621(a).

“(b) Unless extended under section 621(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.

“(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

“(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

“(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

**“§ 620. Effects of recognition of a foreign main proceeding**

“(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

“(1) section 362 applies with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States; and

“(2) transfer, encumbrance, or any other disposition of an interest of the debtor in property within the territorial jurisdiction of the United States is restrained as and to the extent that is provided for property of an estate under sections 363, 549, and 552.

Unless the court orders otherwise, the foreign representative may operate the debtor’s business and may exercise the powers of a trustee under section 549, subject to sections 363 and 552.

“(b) The scope, and the modification or termination, of the stay and restraints referred to in subsection (a) of this section are subject to the exceptions and limitations provided in subsections (b), (c), and (d) of section 362, subsections (b) and (c) of section 363, and sections 552, 555 through 557, 559, and 560.

“(c) Subsection (a) of this section does not affect the right to commence individual actions or proceedings in a foreign country to the extent necessary to preserve a claim against the debtor.

“(d) Subsection (a) of this section does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

**“§ 621. Relief that may be granted upon recognition of a foreign proceeding**

“(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

“(1) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under section 620(a);

“(2) staying execution against the debtor’s assets to the extent it has not been stayed under section 620(a);

“(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 620(a);

“(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities;

“(5) entrusting the administration or realization of all or part of the debtor’s assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

“(6) extending relief granted under section 619(a); and

“(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

“(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor’s assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

“(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

“(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

“(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

**“§ 622. Protection of creditors and other interested persons**

“(a) In granting or denying relief under section 619 or 621, or in modifying or terminating relief under subsection (c) of this section, the court must find that the interests of the creditors and other interested persons or entities, including the debtor, are sufficiently protected.

“(b) The court may subject relief granted under section 619 or 621 to conditions it considers appropriate.

“(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 619 or 621, or at its own motion, modify or terminate such relief.

**“§ 623. Actions to avoid acts detrimental to creditors**

“(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a pending case under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).

“(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) of this section relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

**“§ 624. Intervention by a foreign representative**

“Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

**“§ 625. Cooperation and direct communication between the court and foreign courts or foreign representatives**

“(a) In all matters included within section 601, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

“(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

**“§ 626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives**

“(a) In all matters included in section 601, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

“(b) The trustee or other person, including an examiner, designated by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

“(c) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

**“§ 627. Forms of cooperation**

“Cooperation referred to in sections 625 and 626 may be implemented by any appropriate means, including—

“(1) appointment of a person or body, including an examiner, to act at the direction of the court;

“(2) communication of information by any means considered appropriate by the court;

“(3) coordination of the administration and supervision of the debtor’s assets and affairs;

“(4) approval or implementation of agreements concerning the coordination of proceedings; and

“(5) coordination of concurrent proceedings regarding the same debtor.

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

**“§ 628. Commencement of a case under this title after recognition of a foreign main proceeding**

“After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of that case shall be restricted to the assets of the debtor that are within

the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 625, 626, and 627, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

**“§ 629. Coordination of a case under this title and a foreign proceeding**

“Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

“(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

“(A) any relief granted under sections 619 or 621 must be consistent with the case in the United States; and

“(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 620 does not apply.

“(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

“(A) any relief in effect under sections 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

“(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 620(a) shall be modified or terminated if inconsistent with the case in the United States.

“(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

“(4) In achieving cooperation and coordination under sections 628 and 629, the court may grant any of the relief authorized under section 305.

**“§ 630. Coordination of more than 1 foreign proceeding**

“In matters referred to in section 601, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

“(1) Any relief granted under section 619 or 621 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

“(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

“(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

**“§ 631. Presumption of insolvency based on recognition of a foreign main proceeding**

“In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts.

**“§ 632. Rule of payment in concurrent proceedings**

“Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.”

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

“6. Ancillary and Other Cross-Border Cases ..... 601”.

**SEC. 602. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11, UNITED STATES CODE.**

(a) **APPLICABILITY OF CHAPTERS.**—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: “and this chapter, sections 307, 555 through 557, 559, and 560 apply in a case under chapter 6”; and

(2) by adding at the end the following:

“(j) Chapter 6 applies only in a case under that chapter, except that section 605 applies to trustees and to any other entity authorized by the court, including an examiner, under chapters 7, 11, and 12, to debtors in possession under chapters 11 and 12, and to debtors or trustees under chapters 9 and 13 who are authorized to act under section 605.”

(b) **DEFINITIONS.**—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

“(23) ‘foreign proceeding’ means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

“(24) ‘foreign representative’ means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;”.

(c) **AMENDMENTS TO TITLE 28, UNITED STATES CODE.**—

(1) **PROCEDURES.**—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking “and” at the end;

(B) in subparagraph (O), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(P) recognition of foreign proceedings and other matters under chapter 6 of title 11.”

(2) **BANKRUPTCY CASES AND PROCEEDINGS.**—Section 1334(c)(1) of title 28, United States Code, is amended by striking “Nothing in” and inserting “Except with respect to a case under chapter 6 of title 11, nothing in”.

(3) **DUTIES OF TRUSTEES.**—Section 586(a)(3) of title 28, United States Code, is amended by inserting “6,” after “chapter”.

## TITLE VII—MISCELLANEOUS

**SEC. 701. TECHNICAL AMENDMENTS.**

Title 11 of the United States Code is amended—

(1) in section 109(b)(2) by striking “subsection (c) or (d) of”;

(2) in section 541(b)(4) by adding “or” at the end; and

(3) in section 552(b)(1) by striking “product” each place it appears and inserting “products”.

**SEC. 702. APPLICATION OF AMENDMENTS.**

The amendments made by this Act shall apply only with respect to cases commenced under title 11 of the United States Code after the date of the enactment of this Act.

### PURPOSE AND SUMMARY

The purpose of H.R. 3150 is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system and by ensuring that it is fair for both debtors and creditors.

H.R. 3150 is a comprehensive package of reforms pertaining to consumer and business bankruptcy law and practice, and includes provisions regarding the treatment of tax claims and enhanced data collection. H.R. 3150 also establishes a separate chapter under the Bankruptcy Code devoted to the special issues and concerns presented by international insolvencies.

The consumer bankruptcy reforms of H.R. 3150 are implemented through a self-evaluating income/expense screening mechanism, the establishment of new eligibility standards for bankruptcy relief, the imposition of additional financial disclosure requirements for consumer debtors, and augmented responsibilities for those charged with administering consumer bankruptcy cases. In addition, H.R. 3150 institutes a panoply of consumer bankruptcy reforms designed to increase the protections afforded to debtors and creditors.

## BACKGROUND AND NEED FOR THE LEGISLATION

### BACKGROUND

Representative George W. Gekas (R–Pa.) (for himself and Representatives Bill McCollum (R–Fla.), Rick Boucher (D–Va.), and James P. Moran (D–Va.)), introduced H.R. 3150 on February 3, 1998. H.R. 3150 is derived from four major sources, one of which is H.R. 2500, the “Responsible Borrower Bankruptcy Protection Act.” Introduced by Representative McCollum (for himself and Representative Boucher) on September 18, 1997, H.R. 2500 provided the conceptual foundation for needs-based consumer bankruptcy reform, one of the principal precepts of H.R. 3150. Since its introduction last fall, H.R. 2500 has received broad bipartisan support and currently has 185 co-sponsors.

In addition to including the principal features of H.R. 2500, H.R. 3150 implements many of the recommendations issued by the National Bankruptcy Review Commission in its report of October 20, 1997, notably those regarding small business debtors, appellate reform, international insolvencies, and data collection.<sup>1</sup>

Reflecting its bipartisan sponsorship, H.R. 3150 also incorporates provisions from H.R. 3146, the “Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998,”<sup>2</sup> which give consumer debtors additional protections concerning the treatment of pension funds and the provision of utility services under Section 366 of the Bankruptcy Code. In addition, H.R. 3150 responds to various issues raised during hearings on this legislation before the Subcommittee on Commercial and Administrative Law.

### NEED FOR THE LEGISLATION

#### *Consumer bankruptcy*

*Overview.* According to statistics released by the Administrative Office of the United States Courts, more than 1.4 million Americans filed for bankruptcy relief in calendar year 1997.<sup>3</sup> The number

<sup>1</sup> See Report of the National Bankruptcy Review Commission (Oct. 20, 1997). The National Bankruptcy Review Commission was an independent commission established pursuant to the Bankruptcy Reform Act of 1994, Pub. L. No. 103–394, 108 Stat. 4106. The nine-member Commission was created to investigate and study issues relating to the Bankruptcy Code; solicit divergent views of parties concerned with the operation of the bankruptcy system; evaluate the advisability of proposals with respect to such issues; and prepare a report for the President, Congress and the Chief Justice. The 1300-page Report, which was issued on October 20, 1997, contains a detailed statement of the Commission’s findings and conclusions together with recommendations for legislative and administrative action.

<sup>2</sup> H.R. 3146 was introduced on February 3, 1998 by Representative Jerrold Nadler (D–NY) (for himself and Representatives John Conyers, Jr. (D–Mich.) and Earl Hilliard (D–Ala.)).

<sup>3</sup> Administrative Office for United States Courts, *Calendar Year 1997 Shows Bankruptcy Filings Up 19 Percent Over 1996*, Feb. 27, 1998, at 1 (press release).

of bankruptcy cases filed last year was 19.1 percent more than the previous year. The Administrative Office, which compiles statistics on a quarterly basis, reported that this represented the seventh “consecutive record high for a 12-month period since filings passed the one-million mark for the first time in the 12-month period ending June 30, 1996.”<sup>4</sup> Paradoxically, this explosion in bankruptcy filing rates is occurring during a period when the economy is robust. Unemployment is low, personal incomes are rising, and consumer confidence is high.<sup>5</sup>

The extraordinary increase in bankruptcy filings has significant adverse economic consequences. According to one study, financial losses in 1997 resulting from these bankruptcy filings are estimated to exceed \$44 billion, which translates into a loss equal to more than \$400 per household.<sup>6</sup> This study projects that even if the growth rate in personal bankruptcies slows to only 15 percent over the next three years, the American economy will have to absorb a cumulative cost of more than \$220 billion.<sup>7</sup> Notwithstanding these projections, recent studies conclude that many debtors who file for bankruptcy relief can, in fact, repay a significant portion, if not all, of their debts.<sup>8</sup>

The consumer bankruptcy provisions of H.R. 3150 address the needs of creditors as well as debtors. Title I’s creditor protections consist of three main components: needs-based bankruptcy, general protections for creditors, and protections for specific types of creditors. The debtor protections in Title I consist of enhanced requirements for those professionals and others who assist consumer debtors in connection with their bankruptcy cases, expanded notice requirements with regard to alternatives to bankruptcy relief, required participation in a debt repayment program, and the institution of a pilot program to study the effectiveness of consumer financial education for debtors.

*Consumer creditor protections: needs-based reforms.* The heart of H.R. 3150’s consumer bankruptcy reforms is the implementation of a mechanism that ensures consumer debtors repay their creditors the maximum that they can afford. For chapter 7 of the Bankruptcy Code (a form of bankruptcy relief where the debtor generally receives a discharge of his or her personal liability for most unsecured debts), H.R. 3150 implements mandatory eligibility standards for those individuals who seek this form of bankruptcy relief. Parties in interest, such as creditors, are empowered under H.R. 3150 to seek dismissal of Chapter 7 cases where debtors are

<sup>4</sup>*Id.* (emphasis added).

<sup>5</sup>See, e.g., *Hearing Before the Subcomm. on Commercial and Administrative Law on Consumer Bankruptcy Issues in H.R. 3150, “Bankruptcy Reform Act of 1988,” H.R. 2500, “Responsible Borrower Bankruptcy Protection Act,” and H.R. 3146, “Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998,”* 105th Cong. (Mar. 10, 1998) (Statement of Stuart A. Feldstein).

<sup>6</sup>See, e.g., *id.* (Statement of WEFA Group Resource Planning Service, “Final Report: The Financial Costs of Personal Bankruptcy at 16–17 (Feb. 1998)).

<sup>7</sup>*Id.*

<sup>8</sup>See, e.g., *Hearing Before the Subcomm. on Commercial and Administrative Law on Consumer Bankruptcy Issues in H.R. 3150, “Bankruptcy Reform Act of 1988,” H.R. 2500, “Responsible Borrower Bankruptcy Protection Act,” and H.R. 3146, “Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998,”* 105th Cong. (Mar. 12, 1998) (Statement of Ernst & Young LLP—Policy Economics and Quantitative Analysis Group, “Chapter 7 Bankruptcy Petitioners’ Ability to Repay: Additional Evidence from Bankruptcy Petition Files” (Feb. 1998); Michael E. Staten & John M. Barron, “Personal Bankruptcy: A Report on Petitioners’ Ability to Pay” (Oct. 6, 1997)).

ineligible. These reforms should have no impact on consumer debtors who lack the ability to repay their debts and deserve a fresh start.

H.R. 3150's needs-based reforms also create additional financial disclosure requirements for debtors who file for relief under chapter 7 and 13 (a form of bankruptcy relief where the debtor commits to a repayment plan in exchange for receiving a discharge that is broader than a chapter 7 discharge), and augment the monitoring responsibilities of chapter 7 and 13 trustees, among other measures. With regard to chapter 13 cases, H.R. 3150 ensures that these debtors repay the most that they can afford over the entire life of the plan.

The needs-based test operates through objective criteria so that debtors and their counsel can self-evaluate their eligibility for relief under chapter 7 or chapter 13.<sup>9</sup> The needs-based formula is fair and balanced. Expenses are localized and a debtor's extraordinary circumstances are recognized, including episodic losses of income. H.R. 3150 allows the debtor to identify and explain expenses that exceed the specified standards under "extraordinary circumstance" provisions, such as educational expenses for dependents or excessive automobile expenses associated with the operation of the debtor's business.

The Subcommittee on Commercial and Administrative Law heard testimony that, if H.R. 3150's needs-based and other consumer bankruptcy reforms are implemented, the rate of repayment to creditors will increase while the number of bankruptcy filings will decrease.<sup>10</sup> This is because more debtors will be shifted into chapter 13 as opposed to chapter 7.<sup>11</sup>

A critical component of H.R. 3150's needs-based reforms is that they are designed to target only those debtors who have the ability to repay. The Committee approved an amendment offered by Chairman Hyde (for himself and Ms. Jackson Lee) that modifies the needs-based formula by increasing the applicable income level in determining chapter 7 eligibility.<sup>12</sup> Those in the upper half of the income scale are more likely to have the ability to repay a portion of their debts out of future income without significant hardship to themselves and their families. Moreover, the 100 percent of national median income threshold should significantly reduce admin-

<sup>9</sup>The current system as well as other legislative proposals that rely on an amended version of Section 707(b) of the Bankruptcy Code, which provides for the dismissal of chapter 7 cases for "substantial abuse," suffer from the same problem: lack of certainty. Given its inherent uncertainty of application and interpretation, an approach to consumer bankruptcy reform that relies on Section 707(b) will simply engender more litigation, a cost that would have to be borne by creditors and debtors alike, and yield disparate results. H.R. 3150's goal of uniformity, on the other hand, assists both creditors and debtors.

<sup>10</sup>See, e.g., *Hearing Before the Subcomm. on Commercial and Administrative Law on Consumer Bankruptcy Issues in H.R. 3150, "Bankruptcy Reform Act of 1988," H.R. 2500, "Responsible Borrower Bankruptcy Protection Act," and H.R. 3146, "Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998,"* 105th Cong. (Mar. 10, 1998) (Statement of WEFA Group Resource Planning Service, "Final Report: The Financial Costs of Personal Bankruptcy," at 20 (Feb. 1998)).

<sup>11</sup>Based on the results of one economic analysis of H.R. 3150 as originally introduced, the cumulative savings to the American economy that could result from the implementation of these needs-based reforms over the period of 1998 to 2000 may range from \$15 billion to \$30 billion. *Id.* at 23.

<sup>12</sup>The initial screening issue will no longer be whether individuals or couples have 75 percent or more of national median income figures that take into account family size but whether the incomes of debtors at least equal national median figures.

istrative overhead by limiting numbers of debtors potentially subject to the needs based formula.<sup>13</sup>

Rather than creating entirely new standards defining income and expenses, H.R. 3150's needs-based test parallels current law and practice. Under current law, a debtor must complete a schedule that lists all sources of income and expenses.<sup>14</sup> Debtors do not have the discretion to determine whether any source of income or expense should not be disclosed.<sup>15</sup> Without this mandatory disclosure requirement, debtors could shield important financial information.

*Protections for creditors—in general.* H.R. 3150 contains a panoply of reforms that will provide greater protections for creditors, while ensuring that the claims of those creditors entitled to priority treatment, such as spousal and child support claims, are not adversely impacted. H.R. 3150 accomplishes this goal by (1) ensuring that creditors receive proper and timely notice and have sufficient time to respond to the filing of a bankruptcy case, (2) by limiting abusive serial filings and extending the period between successive discharges, (3) by implementing various provisions designed to improve the accuracy of the information contained in debtors' schedules and statements of financial affairs, and (4) by limiting abusive use of exemptions.

*Protection of family support obligations.* Family support obligations receive a number of special protections in bankruptcy, which they will continue to enjoy under the law as amended by H.R. 3150. The claims of spouses, former spouses, and children for alimony, maintenance, or support will retain their current priority status, with the consequence that during the life of a bankruptcy case such obligations will be paid ahead of lower priority claims and general unsecured claims. H.R. 3150 also retains the nondischargeability of family support obligations, with the result that such debts will not be extinguished at the end of the bankruptcy process.

H.R. 3150, as reported by the Committee on the Judiciary, incorporates additional safeguards for family support. The requirements for court confirmation of repayment plans in cases under chapter 11 (reorganization), chapter 12 (adjustment of debts of family farmers), and chapter 13 (adjustment of debts of individuals) are expanded to include full payment of amounts due—after the filing of a bankruptcy petition—under orders for alimony, maintenance, or

<sup>13</sup> According to one study, only 15 percent of consumer debtors would meet H.R. 3150's needs-based test under the former 75 percent income threshold when other requirements of the screening mechanism are taken into account. See *Hearing Before the Subcomm. on Commercial and Administrative Law on Consumer Bankruptcy Issues in H.R. 3150, "Bankruptcy Reform Act of 1988," H.R. 2500, "Responsible Borrower Bankruptcy Protection Act," and H.R. 3146, "Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998,"* 105th Cong. (Mar. 12, 1998) (Statement of Ernst & Young, Chapter 7 Bankruptcy Petitioners' Ability to Repay: the National Perspective, 1997). As amended, H.R. 3150 will impact on an even lower percent of consumer debtors.

<sup>14</sup> 11 U.S.C. §521; Official and Procedural Bankruptcy Form 6—Schedules I and J.

<sup>15</sup> *Id.* For example, on Schedule I, a debtor must report all sources of income, including: estimated monthly overtime; regular income from the operation of a business; alimony, maintenance or support payments payable to the debtor for the debtor's use or that of the debtor's dependents; social security or other government assistance, such as disability income or income a debtor receives from other Federal programs that provide financial assistance; and pension or retirement income.

Correlatively, Schedule J requires the debtor to disclose all expenses, including: alimony, maintenance, and support paid to others; payments for support of additional dependents not living at the debtor's home; and regular expenses from the operation of the debtor's business, profession, or farm.

support. In addition, a debtor will be required to certify full payment of amounts due post-petition under orders for alimony, maintenance, or support in order to qualify for a discharge (of dischargeable obligations) based on completion of plan payments in a chapter 12 or 13 case.

Underscoring the importance the Committee places on family support, the first amendment it adopted was language proposed by Chairman Hyde designed to protect spouses, former spouses, and children from the diversion of funds to other priority creditors.<sup>16</sup> That amendment continues to accord priority to claims for debts incurred to pay nondischargeable obligations, but effectively subordinates such new derivative priority claims to the existing priorities. As a result, the priority treatment of family support claims of spouses, former spouses, and children will not be diluted by according similar priority treatment to the claims of banks and others that loan money for family support related purposes. Such derivative priority claims instead would receive a lower priority.

Finally, Chairman Hyde's amendment addressed a related problem. The language of the legislation as reported by the Subcommittee on Commercial and Administrative Law had given the same priority treatment to debts in the nature of support owed to a state or a municipality as was accorded to direct support obligations to spouses, former spouses, and children. Debts to states or municipalities that arise out of support obligations, under Chairman Hyde's amendment, were given a priority status immediately below direct support obligations—thus not competing with family support needs.

The Committee on the Judiciary adopted Chairman Hyde's family support amendment as well as four amendments by Mr. Boucher that addressed family support related issues. Mr. Boucher's first amendment—now reflected in a new section 150 of the Committee Amendment in the Nature of a Substitute—provides enhanced post-bankruptcy protection to family support claims of spouses, former spouses, and children (in the nature of alimony, maintenance, or support) by subordinating certain other nondischargeable obligations. His second amendment protects judicial flexibility over the timing of payments for family support arrearages; the Committee accepted an amendment by Mr. Nadler (to the amendment by Mr. Boucher) that ensures family support payments are not adversely affected by the minimum chapter 13 plan payment required under H.R. 3150 for general unsecured creditors. Mr. Boucher's third amendment makes H.R. 3150's presumption of nondischargeability for credit extensions during the ninety-day prebankruptcy period inapplicable to certain limited consumer debts. The fourth amendment offered by Mr. Boucher restores the scope of current law's stay of actions against codebtors in limited situations involving obligations under separation agreements or divorce decrees.

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<sup>16</sup>Section 141 of H.R. 3150 as introduced had provided that a claim arising from a debt incurred to pay a nondischargeable obligation would have the same priority as the underlying obligation. The potential problem was such derivative debts might compete for priority treatment with alimony, maintenance, or support, depending on the priority status of a claim for the underlying obligation.

*Protections for secured creditors.* H.R. 3150's reforms with respect to secured creditors clarify important issues such as those concerning the definition of household goods, valuation of a secured interest, and the debtor's retention of property subject to a secured interest. H.R. 3150 also addresses the problem of abusive purchases by debtors on a secured credit basis just before they file for bankruptcy relief. In addition, H.R. 3150 resolves the issue of whether secured debts with respect to personal property of the debtor can "ride through" bankruptcy. These provisions will reduce the potential for abuse that exists under current law.

*Protections for unsecured creditors, including lessors.* These reforms are reasonable and balanced responses to abuse and fraud in the present bankruptcy system. They mainly address abusive practices by consumer debtors who, for example, knowingly load up with credit card purchases or recklessly obtain credit and then file for bankruptcy relief.

H.R. 3150 responds to the problem of debtors who obtain credit extensions on the eve of bankruptcy. It also prevents the discharge of debts incurred by debtors who lack any reasonable expectation that they can repay their debts on an objective basis. In addition, H.R. 3150 prevents the discharge of debts based on fraud, embezzlement and malicious injury in chapter 13 cases.

With respect to the interests of lessors, chapter 13 debtors, under H.R. 3150, must remain current on their personal property leases. The bill also addresses a problem faced by thousands of small landlords across the nation regarding the widespread practice of tenants who file for bankruptcy relief so that they can live "rent free."

*Debtor protections—in general.* H.R. 3150 codifies various debtor protections. One requires that notice of bankruptcy alternatives be supplied to individuals with primarily consumer debts *before* they file for bankruptcy relief. In addition, H.R. 3150 creates a pilot consumer debtor financial management training program. It also regulates the activities of debt relief counseling agencies.

H.R. 3150 creates a debtor's "bill of rights" with regard to the services and notice that a consumer should receive from those that render assistance in connection with the filing of bankruptcy cases. Through misleading advertising and deceptive practices, "petition mills" deceive consumers about the benefits and detriments of bankruptcy. H.R. 3150 responds to this problem by instituting mandatory disclosure and advertising requirements as well as enforcement mechanisms.

H.R. 3150 also ensures that consumers are informed about alternatives to bankruptcy relief and the availability of credit counseling. It is very important that debtors know *before* they file for bankruptcy relief that there may be viable and cost-effective alternatives to bankruptcy. Unless otherwise excepted, consumers will be required under H.R. 3150 to participate in a debt repayment plan sponsored by a credit counseling service *before* they file for bankruptcy relief. The bill also establishes a pilot consumer debtor financial management training project, which will assess the effectiveness of such educational measures.

The bill also reinforces a debtor's "fresh start." It provides a simplified and uniform approach to the exemption of tax-qualified re-

tirement funds and protects the interests of debtors with regard to the continued provision of basic utility services.

*Business bankruptcy*

H.R. 3150 addresses the special problems presented by small business cases by instituting a variety of time frames and enforcement mechanisms that will identify and weed out small business debtors who are not likely to reorganize. It also requires more active monitoring of these cases by United States Trustees and the bankruptcy courts. In addition, H.R. 3150 includes provisions dealing with business bankruptcy cases in general, and chapter 12 (family farmer bankruptcies).

*Small business/single asset real estate debtors.* Most chapter 11 cases are filed by small business debtors. Although the Bankruptcy Code envisions that creditors should play a major role in the oversight of chapter 11 cases, in practice this does not often occur with small business debtors. The main reason is that creditors in these cases do not have claims large enough to warrant the time and money to participate actively in them. The resulting lack of creditor oversight creates a greater need for United States Trustees to monitor these cases actively. Nevertheless, monitoring of these debtors by United States Trustees varies throughout the nation.

The small business and single asset real estate provisions of H.R. 3150 are largely derived from consensus recommendations of the National Bankruptcy Review Commission. These provisions in H.R. 3150 have received broad support from those in the bankruptcy community, including various bankruptcy judges and creditor groups, and the Executive Office for United States Trustees.

With regard to single asset real estate debtors, H.R. 3150 eliminates the monetary cap from the definition currently in the Bankruptcy Code and makes these debtors subject to the small business provisions of the bill. It also amends the automatic stay provisions by permitting a single asset real estate debtor to make requisite interest payments out of rents or other proceeds generated by the real property.

*Other provisions having general impact*

H.R. 3150 contains several provisions having general impact with respect to bankruptcy law and practice. Under H.R. 3150, most appeals from final bankruptcy court decisions will be heard directly by the court of appeals for the appropriate circuit. Another general provision of H.R. 3150 requires the Executive Office for United States Trustees to compile various statistics regarding chapter 7, 11 and 13 cases and to make these data available to the public and to report annually to Congress on the data collected. Other general provisions include a prohibition against the appointment of fee examiners and the allowance of shared compensation with bona fide public service attorney referral programs.

HEARINGS

The Committee began its consideration of comprehensive bankruptcy reform more than one year ago. On April 16, 1997, the Subcommittee on Commercial and Administrative Law conducted a hearing on the operation of the bankruptcy system that was com-

bined with a status report from the National Bankruptcy Review Commission.<sup>17</sup> This was the first of nine hearings that the Subcommittee would conduct on bankruptcy reform over the ensuing year.<sup>18</sup>

With regard to H.R. 3150 alone, the Subcommittee held four hearings. Over the course of those hearings, more than 60 witnesses, representing a broad cross-section of interests and constituencies in the bankruptcy community, testified. Nearly every major organization having an interest in bankruptcy reform had an opportunity to participate in these hearings. Witnesses at the March 10, 1998 hearing included the following: Congressmen Bill McCollum, Rick Boucher and Jim Moran; Hon. Edith Hollan Jones, Judge, United States Court of Appeals for the Fifth Circuit; Hon. Randall J. Newsome, United States Bankruptcy Judge, Northern District of California; Lloyd N. Cutler, Wilmer, Cutler & Pickering, representing the Bankruptcy Issues Council; Hon. Heidi Heitkamp, Attorney General of the State of North Dakota, representing the National Association of Attorneys General; Karen Cosgrove, Vice President of Business Operations, Kemp Management, representing the National Multi-Housing Council and National Apartment Association; John J. Gleason, Vice President/Credit, Bon-Ton Department Stores, representing the National Retail Federation; Bruce L. Hammonds, Senior Vice Chairman, MBNA America Bank, N.A.; Janet Kubica, Chief Executive Officer, Postmark Credit Union, representing the Credit Union National Association; William T. Kosturko, Executive Vice President of People's Bank of Bridgeport, representing America's Community Bankers; Nicholl Russell, a former chapter 7 debtor; James "Ike" Shulman, representing the National Association of Consumer Bankruptcy Attorneys; Henry J. Sommer, Consumer Bankruptcy Assistance Project; Matthew J. Mason, Assistant Director, UAW-GM Legal Services Plan; Stuart A. Feldstein, President, SMR Research Corporation; Mark Lauritano, Senior Vice President, WEFA, Inc.; Prof. Lawrence M. Ausubel, Department of Economics, University of Maryland; and Vern McKinley, regular policy contributor for Cato Institute.

Witnesses at the March 12, 1998 hearing included the following: Dr. Michael E. Staten, Credit Research Center, Georgetown University School of Business; Richard M. Stana, Associate Director, Administration of Justice Issues, U.S. General Accounting Office; Dr. Thomas S. Neubig, National Director, Policy Economics & Quantitative Analysis, Ernst & Young; Dr. Fritz J. Scheuren, Asso-

<sup>17</sup> *Hearing Before the Subcommittee on Commercial and Administrative Law on the Operation of the Bankruptcy System and Status Report from the National Bankruptcy Review Commission*, 105th Cong. (1997).

<sup>18</sup> The dates and subject matters of these hearings are as follows:

April 16, 1997: Hearing on the operation of the bankruptcy system and status report from the National Bankruptcy Review Commission.

April 30, 1997: H.R. 764 & H.R. 120: Bankruptcy Amendments of 1997.

October 9, 1997: H.R. 2592: Private Trustee Reform Act.

November 13, 1997: Hearing on the Report of the National Bankruptcy Review Commission.

February 12, 1998: H.R. 2604 & H.R. 2611: Religious Liberty and Charitable Donation Protection Act of 1997.

March 10, 1998: H.R. 3150, 3146 & 2500: Bankruptcy Reform.

March 11, 1998: Same.

March 18, 1998: Same.

March 19, 1998: Same.

ciate National Technical Director, Statistical Sampling, Ernst & Young; George J. Wallace, Eckert Seamons Cherin & Mellott, representing the American Financial Services Association; Robert F. Mitsch, Mitsch & Crutchfield, representing the National Retail Federation; Robert H. Waldschmidt, Howell & Fisher, representing the National Association of Bankruptcy Trustees; Norma L. Hammes, Gold & Hammes, representing National Association of Consumer Bankruptcy Attorneys; Prof. Karen Gross, New York Law School; Lewis Mandell, Dean, Marquette University; Marion A. Olson, Jr., Standing Chapter 13 Trustee, Western District of Texas—San Antonio Division; and William Brewer, Jr., National Association of Consumer Bankruptcy Attorneys.

Witnesses at the March 18, 1998 hearing included the following: Judith R. Starr, Assistant Chief Litigation Counsel, Enforcement Division, Securities and Exchange Commission; Donald B. Banks, Director of Legal Services, Hudson Corporation, representing the National Retail Federation; Brian L. McDonnell, President and Chief Executive Officer, Navy Federal Credit Union, representing the National Association of Federal Credit Unions; Judith Greenstone Miller, representing the Commercial Law League of America; Hon. Bernice Donald, Judge, United States District Court for the Western District of Tennessee; Thomas H. Boone, Managing Director of Portfolio Services, Countrywide Home Loans, Inc.; Jeffrey A. Tasse, Senior Vice President of Government & Legal Affairs, American Financial Services Association; Mallory B. Duncan, Vice President and General Counsel, National Retail Federation; Michael F. McEneney, Partner, Morrison & Foerster, representing the Bankruptcy Issues Council; Hon. Eugene R. Wedoff, United States Bankruptcy Judge, Northern District of Illinois, representing the American Bankruptcy Institute; Prof. Jeffrey W. Morris, University of Dayton School of Law, representing the National Bankruptcy Conference; Michael J. Kane, Deputy Secretary for Enforcement, Pennsylvania Department of Revenue; James I. Shepard, former member of the National Bankruptcy Review Commission; Prof. Grant William Newton, Pepperdine University; and Paul H. Asofsky, former member of the Tax Advisory Committee of the National Bankruptcy Review Commission.

Witnesses at the fourth and final hearing on March 19, 1998 included the following: Stephen H. Case of Davis, Polk & Wardwell, Senior Advisor to the National Bankruptcy Review Commission; John A. Gose of Preston, Gates & Ellis, former member of the National Bankruptcy Review Commission; Patricia A. Staiano, United States Trustee for Region 3; Christopher F. Graham of Thacher Proffit & Wood, representing the American Bankruptcy Institute; Prof. Alan N. Resnick, Hofstra University School of Law, representing the National Bankruptcy Conference; Hon. Robert F. Hershner, Jr., Chief Bankruptcy Judge, Middle District of Georgia, and President of the National Conference of Bankruptcy Judges; Norman Kranzendorf, President, Kranzco Realty Trust, representing the International Council of Shopping Centers; James E. Smith, President and Chief Executive Officer, Union State Bank and Trust of Clinton, representing the American Bankers Association; Charles M. Tatelbaum, Johnson, Blakely, Pope, Bakar & Ruppel, representing National Association of Credit Managers; Leon S. Forman,

Blank Rome Comisky & McCauley, representing American College of Bankruptcy; William J. Perlstein of Wilmer Cutler & Pickering, representing American Bar Association-Business Section; Harold J. Bordwin, Keen Realty Consultants Inc.; Kevyn Orr, Deputy Director, Executive Office for United States Trustees; Hon. Michael J. Kaplan, Chief Bankruptcy Judge, Western District of New York; and Prof. Lynn M. LoPucki, Cornell Law School, Senior Advisor/Data Study Project for the National Bankruptcy Review Commission.

#### COMMITTEE CONSIDERATION

On April 23, 1998, the Subcommittee on Commercial and Administrative Law met in open session and ordered reported the bill H.R. 3150, as amended, by a voice vote, a quorum being present. On May 12, 13, and 14, 1998, the Committee met in open session and ordered reported favorably the bill H.R. 3150, with an amendment in the nature of a substitute, by a recorded vote of 18 to 10, a quorum being present.

#### VOTE OF THE COMMITTEE

1. An amendment offered by Ms. Jackson Lee concerning the treatment of child support paid by a debtor under section 102 of H.R. 3150. Defeated 12 to 13.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. Gekas
Mr. Nadler	Mr. Smith
Mr. Scott	Mr. Gallegly
Mr. Watt	Mr. Inglis
Ms. Lofgren	Mr. Goodlatte
Ms. Jackson Lee	Mr. Buyer
Ms. Waters	Mr. Bryant
Mr. Meehan	Mr. Chabot
Mr. Delahunt	Mr. Pease
Mr. Wexler	Mr. Cannon
Mr. Rothman	Mr. Rogan
	Mr. Boucher

2. An amendment offered by Ms. Jackson Lee concerning the treatment of child support received by a debtor as income under section 101 of H.R. 3150. Defeated 12 to 17.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. McCollum
Mr. Nadler	Mr. Gekas
Mr. Scott	Mr. Coble
Mr. Watt	Mr. Smith
Ms. Lofgren	Mr. Gallegly
Ms. Jackson Lee	Mr. Inglis
Ms. Waters	Mr. Goodlatte
Mr. Meehan	Mr. Buyer
Mr. Delahunt	Mr. Bryant
Mr. Wexler	Mr. Chabot

Mr. Rothman

Mr. Barr  
 Mr. Jenkins  
 Mr. Pease  
 Mr. Cannon  
 Mr. Graham  
 Mr. Boucher

3. An amendment offered by Ms. Jackson Lee striking certain provisions under section 102 of H.R. 3150 pertaining to chapter 13 plans. Defeated 5 to 18.

AYES

Mr. Nadler  
 Mr. Scott  
 Ms. Jackson Lee  
 Mr. Meehan  
 Mr. Delahunt

NAYS

Mr. Hyde  
 Mr. Sensenbrenner  
 Mr. Gekas  
 Mr. Coble  
 Mr. Canady  
 Mr. Inglis  
 Mr. Goodlatte  
 Mr. Buyer  
 Mr. Bryant  
 Mr. Chabot  
 Mr. Barr  
 Mr. Jenkins  
 Mr. Hutchinson  
 Mr. Pease  
 Mr. Cannon  
 Mr. Rogan  
 Mr. Boucher  
 Mr. Rothman

4. An amendment offered by Mr. Meehan striking sections 141 (debts incurred to pay nondischargeable debts), 142 (credit extensions on the eve of bankruptcy presumed nondischargeable) and 145 (credit extensions without a reasonable expectation of repayment made nondischargeable) from H.R. 3150. Defeated 6 to 18.

AYES

Mr. Nadler  
 Mr. Scott  
 Mr. Meehan  
 Mr. Delahunt  
 Mr. Wexler  
 Mr. Rothman

NAYS

Mr. Hyde  
 Mr. Sensenbrenner  
 Mr. Gekas  
 Mr. Smith  
 Mr. Gallegly  
 Mr. Canady  
 Mr. Inglis  
 Mr. Goodlatte  
 Mr. Buyer  
 Mr. Bryant  
 Mr. Chabot  
 Mr. Barr  
 Mr. Jenkins  
 Mr. Hutchinson  
 Mr. Pease  
 Mr. Cannon  
 Mr. Rogan  
 Mr. Boucher

5. An amendment offered by Mr. Meehan amending the needs-based formula in section 101 and striking sections 130 (protection of holders of claims secured by debtor's principal residence) and 409 (chapter 13 plans to have a five-year duration in certain cases) of H.R. 3150. Defeated 9 to 15.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. Sensenbrenner
Mr. Nadler	Mr. Gekas
Mr. Scott	Mr. Coble
Ms. Lofgren	Mr. Canady
Ms. Jackson Lee	Mr. Goodlatte
Mr. Meehan	Mr. Buyer
Mr. Delahunt	Mr. Bryant
Mr. Rothman	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Rogan
	Mr. Graham
	Mr. Boucher

6. An amendment offered by Mr. Meehan striking the totality of the circumstances provision as a ground for dismissal of a chapter 7 case. Defeated 9 to 15.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Nadler	Mr. Sensenbrenner
Mr. Scott	Mr. McCollum
Mr. Watt	Mr. Gekas
Ms. Lofgren	Mr. Gallegly
Ms. Jackson Lee	Mr. Canady
Mr. Meehan	Mr. Goodlatte
Mr. Delahunt	Mr. Buyer
Mr. Rothman	Mr. Bryant
	Mr. Chabot
	Mr. Barr
	Mr. Pease
	Mr. Rogan
	Mr. Frank
	Mr. Boucher

7. An amendment offered by Mr. Delahunt that would except a debtor's receipt of social security as income under H.R. 3150's needs-based formula of H.R. 3150. Defeated 7 to 17.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Nadler	Mr. Sensenbrenner
Mr. Scott	Mr. McCollum
Ms. Lofgren	Mr. Gekas
Ms. Jackson Lee	Mr. Coble
Ms. Waters	Mr. Smith
Mr. Delahunt	Mr. Canady
	Mr. Goodlatte

Mr. Buyer  
 Mr. Bryant  
 Mr. Chabot  
 Mr. Barr  
 Mr. Pease  
 Mr. Cannon  
 Mr. Rogan  
 Mr. Graham  
 Mr. Boucher

8. An amendment offered by Ms. Jackson Lee providing a safe harbor for middle class families under the needs-based formula of H.R. 3150. Defeated 4 to 11.

AYES

Mr. Berman  
 Ms. Jackson Lee  
 Mr. Meehan  
 Mr. Delahunt

NAYS

Mr. Hyde  
 Mr. Gekas  
 Mr. Smith  
 Mr. Canady  
 Mr. Inglis  
 Mr. Goodlatte  
 Mr. Bryant  
 Mr. Barr  
 Mr. Jenkins  
 Mr. Pease  
 Mr. Rogan

9. An amendment offered by Ms. Jackson Lee setting a date by which the needs-based reforms of H.R. 3150 must sunset and directing the General Accounting Office to study whether they have a disparate economic impact on certain categories of individuals. Defeated 7 to 14.

AYES

Mr. Berman  
 Mr. Nadler  
 Mr. Scott  
 Ms. Jackson Lee  
 Ms. Waters  
 Mr. Meehan  
 Mr. Delahunt

NAYS

Mr. Hyde  
 Mr. Gekas  
 Mr. Canady  
 Mr. Inglis  
 Mr. Goodlatte  
 Mr. Bryant  
 Mr. Chabot  
 Mr. Barr  
 Mr. Jenkins  
 Mr. Hutchinson  
 Mr. Pease  
 Mr. Rogan  
 Mr. Graham  
 Mr. Boucher

10. An amendment offered by Ms. Jackson Lee setting a date by which the needs-based reforms of H.R. 3150 must sunset and directing the General Accounting Office to study whether they produced more than \$200 in collections. Defeated 10 to 16.

AYES

Mr. Conyers  
 Mr. Frank  
 Mr. Berman

NAYS

Mr. Hyde  
 Mr. McCollum  
 Mr. Gekas

Mr. Nadler  
 Mr. Scott  
 Ms. Lofgren  
 Ms. Jackson Lee  
 Ms. Waters  
 Mr. Delahunt  
 Mr. Wexler

Mr. Coble  
 Mr. Gallegly  
 Mr. Canady  
 Mr. Inglis  
 Mr. Goodlatte  
 Mr. Bryant  
 Mr. Chabot  
 Mr. Barr  
 Mr. Jenkins  
 Mr. Hutchinson  
 Mr. Pease  
 Mr. Rogan  
 Mr. Boucher

11. An amendment offered by Mr. Nadler disallowing certain claims incurred in or adjacent to a gambling facility. Defeated 8 to 17.

## AYES

Mr. Conyers  
 Mr. Nadler  
 Mr. Scott  
 Ms. Lofgren  
 Ms. Waters  
 Mr. Delahunt  
 Mr. Inglis  
 Mr. Pease

## NAYS

Mr. Hyde  
 Mr. McCollum  
 Mr. Gekas  
 Mr. Coble  
 Mr. Gallegly  
 Mr. Canady  
 Mr. Goodlatte  
 Mr. Bryant  
 Mr. Chabot  
 Mr. Barr  
 Mr. Jenkins  
 Mr. Hutchinson  
 Mr. Rogan  
 Mr. Frank  
 Mr. Berman  
 Mr. Boucher  
 Mr. Wexler

12. An amendment offered by Mr. Nadler regarding the definition of small business case and striking sections 235 (uniform reporting rules and forms), 236 (duties in small business cases) 237 (plan filing and confirmation deadlines), 238 (plan confirmation deadline), 239 (prohibition against extension of time), 240 (duties of the United States Trustee and bankruptcy administrator), and 242 (serial filer provisions). Defeated 5 to 14.

## AYES

Mr. Nadler  
 Mr. Scott  
 Ms. Lofgren  
 Ms. Jackson Lee  
 Mr. Delahunt

## NAYS

Mr. Hyde  
 Mr. Gekas  
 Mr. Coble  
 Mr. Gallegly  
 Mr. Canady  
 Mr. Inglis  
 Mr. Goodlatte  
 Mr. Bryant  
 Mr. Chabot  
 Mr. Barr  
 Mr. Jenkins

Mr. Pease  
 Mr. Rogan  
 Mr. Boucher

13. Vote on final passage of H.R. 3150. Adopted 18 to 10.

AYES	NAYS
Mr. Hyde	Mr. Conyers
Mr. Sensenbrenner	Mr. Nadler
Mr. McCollum	Mr. Scott
Mr. Gekas	Mr. Watt
Mr. Coble	Ms. Lofgren
Mr. Smith	Ms. Jackson Lee
Mr. Canady	Ms. Waters
Mr. Goodlatte	Mr. Meehan
Mr. Buyer	Mr. Delahunt
Mr. Bryant	Mr. Wexler
Mr. Chabot	
Mr. Barr	
Mr. Jenkins	
Mr. Pease	
Mr. Cannon	
Mr. Rogan	
Mr. Boucher	
Mr. Rothman	

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### COMMITTEE COST ESTIMATE

The estimate of the Congressional Budget Office was not available at the time of filing this report. In compliance with clause 7 (a) of rule XIII of the Rules of the House of Representatives, the Committee believes that enactment of H.R. 3150 will not have a substantial budget effect for fiscal year 1999 and subsequent years.

The Congressional Budget Office, in a letter dated May 8, 1998 to Senator Charles E. Grassley, compared the bankruptcy needs-based provisions of H.R. 3150 (as introduced) and S. 1301. The Congressional Budget Office estimated preliminarily that these provisions of H.R. 3150 would likely cost between \$16 million and \$20 million annually. However, that estimate was based on the assumption that there would be no substantial change in the number of bankruptcy filings. The Congressional Budget Office noted that if, as some experts predict, the enactment of H.R. 3150 would lead to a noticeable decline in such filings, then federal costs would be reduced. Moreover, an amendment to H.R. 3150 adopted during Committee consideration raised the income level relevant for the needs-based formula under H.R. 3150 from 75 percent of the national median family income to 100 percent, which is another factor that would likely reduce federal costs required to implement this legislation.

Although the bill provides for eliminating quarterly fees for certain chapter 11 debtors, which may result in reduced collections in an estimated amount of \$6 million dollars annually, it is anticipated that there will be offsetting adjustments that will be enacted before the effective date of this provision.

It is anticipated that the cost of H.R. 3150's audit provisions will require additional expenditure. Nevertheless, these costs are likely to be offset by enhanced collections resulting from greater protections accorded to federal taxing authorities.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, clause 4 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

### TITLE I. CONSUMER BANKRUPTCY PROVISIONS

#### Subtitle A. Needs Based Bankruptcy

##### *Section 101. Needs-based bankruptcy*

Section 101 implements the needs-based reforms of H.R. 3150 by creating a self-evaluating mechanism for individuals to assess their eligibility for bankruptcy relief based on the ability to repay their debts. Specifically, section 101 establishes an income and expense formula that individuals must use before they file for bankruptcy relief. Individuals having the ability to repay their debts under this formula would be ineligible for relief under chapter 7 of the Bankruptcy Code, which grants debtors a discharge of their prepetition unsecured debts without any requirement of repayment, unless excepted from such discharge. Individuals ineligible for relief under chapter 7 would have the option of filing for relief under other chapters of the Bankruptcy Code, such as chapter 13, which requires debtors to commit their available income to a plan of repayment.

Subsection (1) establishes two new definitions under section 101 of the Bankruptcy Code. “Current monthly total income” means the average monthly income that a debtor derives from all sources without regard to whether it is taxable income in the six months preceding the date of determination. It also includes any amount of money paid by anyone other than the debtor or, in a joint case, the debtor’s spouse, on a regular basis for the household expenses of the debtor or the debtor’s dependents and, in a joint case, the debtor’s spouse. In addition, subsection (1) defines “national median family income” and “national median household income for 1 earner” as the amounts reported by the Bureau of the Census as of January 1 for the most recent calendar year.

Subsection (2) amends section 104 of the Bankruptcy Code, which provides for the adjustment of dollar amounts, to include references to subsections (b), (e) and (h) of section 109 of the Bankruptcy Code, as amended by H.R. 3150.

Subsection (3) amends section 109(b) of the Bankruptcy Code, which sets forth the eligibility criteria for who may be a chapter 7 debtor. Specifically, subsection (3) provides that an individual and such individual’s spouse, if they intend to file for relief under chapter 7 in a joint case, who have income available to pay creditors as determined under new section 109(h), are not eligible to be debtors under chapter 7 of the Bankruptcy Code.

Subsection (4) adds subsection (h) to section 109 of the Bankruptcy Code. Section 109(h) sets forth a three-stage test by which an individual must assess his or her ability to repay such individual’s creditors. Should an individual fail to meet one or more stages of this test, such individual is eligible to be a debtor under chapter 7 of the Bankruptcy Code. On the other hand, should the debtor meet all three stages of this test, such individual is ineligible for relief under chapter 7.

The first stage of this eligibility test requires the debtor to have “current monthly total income,” as defined in section 101(1) of H.R. 3150, that is not less than the highest “national median family income,”<sup>19</sup> as defined in section 101(1) of H.R. 3150, for a family of

<sup>19</sup>The following table sets forth the 1996 median household income figures based on size of the household:

<i>Size of household</i>	<i>1996 median income</i>
1 .....	\$17,897
2 .....	37,283
3 .....	44,813
4 .....	51,405
5 .....	47,841
6 .....	42,438
7 or more .....	40,337

equal or lesser size.<sup>20</sup> In the case of a household of one person, the individual's income must be not less than the "national median household income for 1 earner," as defined in section 101(1) of H.R. 3150. Should an individual have income below the applicable threshold amount, that individual is eligible to be a chapter 7 debtor.<sup>21</sup>

The second stage requires the individual to determine whether he or she has "projected monthly net income" greater than \$50. An individual's "projected monthly net income" is determined by deducting three categories of expenses from such individual's "current total monthly income," as defined in section 101(1) of H.R. 3150.

The first category of expense items that must be deducted from an individual's current monthly total income consists of certain expenses determined pursuant to the Internal Revenue Manual Handbook,<sup>22</sup> which sets forth National Standards,<sup>23</sup> Local Standards<sup>24</sup> and Other Necessary Expenses Allowances.<sup>25</sup> In the event that an individual establishes extraordinary circumstances that require allowance for expenses in excess of the amounts recognized in the Internal Revenue Manual Handbook, such individual may deduct these additional expenses from his or her current total monthly income. The existence of any "extraordinary circumstances" must be documented by the individual in a sworn statement signed by the debtor and his or her counsel.<sup>26</sup> A trustee or party in interest may object to an assertion of extraordinary circumstances within 60 days from the date on which the debtor's sworn statement of extraordinary circumstances is filed. If an objection is filed, the court, after notice and hearing, must determine the propriety of such claimed extraordinary circumstances and their amount. The debtor has the burden of proof on these issues.

The two remaining categories of expenses that an individual may deduct from his or her current monthly total income consist of the following: the individual's average monthly payments to secured creditors (calculated as the total of all amounts scheduled as contractually payable over a five-year period, divided by 60 months) and the individual's average monthly payment to priority credi-

<sup>20</sup> In light of the fact that the Census Bureau statistics may trend downward for larger households, section 101(4) of H.R. 3150 permits individuals with larger households to claim the highest national median family income reported by the Census Bureau for a family of equal or lesser size.

<sup>21</sup> An individual, in a sworn statement, may explain any lost income that occurred during the six-month reachback determination period. This statement must also contain an explanation of whether the individual was offered any replacement income or whether such individual expected the lost income to be replaced. In addition, the individual must explain why the lost income will not be replaced.

<sup>22</sup> Internal Revenue Manual Handbook, Part 5, Collection Activity (Sept. 25, 1996). This Manual is utilized by the Internal Revenue Service to assess a taxpayer's ability to repay back taxes.

<sup>23</sup> The National Standards Expense Allowances pertain to food, housekeeping supplies, apparel, and personal care product expenditures. As the title implies, these expense allowances are determined on a national basis, without adjustment for regional variation.

<sup>24</sup> The Local Standards Expense Allowances consist of housing, utilities and transportation costs. These expenses are determined regionally by county where the taxpayer resides.

<sup>25</sup> Expenses in this category include taxes, health care, court-ordered payments and involuntary deductions.

<sup>26</sup> The amendment in the nature of a substitute responds to certain concerns expressed regarding "phantom income." As reported out of the Subcommittee, section 101 permits a debtor to file an explanation of any income lost within the six-months preceding the date of determination. The debtor must also explain any replacement income that was offered or expected together with an itemization of such lost and replacement income. If applicable, the debtor must explain why the lost income will not be replaced.

tors<sup>27</sup> (calculated as the total of all estimated payments over a five-year period, divided by 60 months).

If the amount remaining after these three types of expenses are deducted from the individual's current total monthly income is less than \$50, the individual is eligible for relief under chapter 7 of the Bankruptcy Code.

The third and final stage of H.R. 3150's eligibility test requires the individual to determine whether he or she has sufficient projected monthly net income to repay at least 20% of unsecured nonpriority claims scheduled by the debtor<sup>28</sup> over a five-year repayment plan.<sup>29</sup> To make this determination, the individual must multiply his or her projected monthly net income by 60 months. If the end result is less than 20 percent "of the total amount scheduled as payable to unsecured nonpriority creditors," then the debtor is eligible for relief under chapter 7 of the Bankruptcy Code.

If an individual satisfies all three components of this eligibility test, then he or she is not eligible for relief under chapter 7. If such individual nevertheless requires bankruptcy relief, he or she would have to file under other chapters of the Bankruptcy Code, such as chapters 11, 12, or 13.

Subsection (5) amends section 704 of the Bankruptcy Code to require the chapter 7 trustee to perform additional responsibilities. First, the chapter 7 trustee must review financial disclosure documents and tax returns filed by the debtor under section 521 of the Bankruptcy Code, as amended by H.R. 3150. Second, the chapter 7 trustee must verify the debtor's "projected monthly net income," as defined in subsection 101(4) of H.R. 3150. Third, the chapter 7 trustee must file a report within 30 days from the date on which the debtor supplies the disclosure document. This report must state whether the debtor is eligible for relief under chapter 7. If the chapter 7 trustee concludes that an individual is ineligible to be a debtor under chapter 7, then the trustee must provide a copy of the report to parties in interest.

Subsection (5) also requires a chapter 13 trustee to perform many of the duties it assigns to chapter 7 trustees. In addition, subsection (5) amends section 1302(b) of the Bankruptcy Code to require a chapter 13 trustee to file annual reports with the court, with copies to allowed claimants, regarding whether a debtor is devoting sufficient income to fund his or her plan of repayment based on changes in the debtor's "monthly net income," a term defined in section 102 of H.R. 3150.

<sup>27</sup> A "creditor," under section 101(10) of the Bankruptcy Code means an entity that has a claim against the debtor that arose at the time of or before the filing of the debtor's bankruptcy case. Section 507 of the Bankruptcy Code, *inter alia*, accords priority status to certain types of prepetition debts owed by a debtor. These include debts for spousal and child support and certain unsecured claims of governmental units, such as income taxes.

<sup>28</sup> This refers to nonpriority claims as scheduled by the debtor and therefore includes contingent, unliquidated and disputed claims, which typically are not "allowed claims" within the meaning of 11 U.S.C. §502 and thus not entitled to payment. By contrast, 11 U.S.C. §109(e) presently defines chapter 13 eligibility based on the amount of the debtor's "noncontingent, liquidated" debts.

<sup>29</sup> The requisite percentage does not refer to a present value amount nor does it include trustee and attorney fees.

*Section 102. Adequate income shall be committed to a plan that pays unsecured creditors*

Section 102 of H.R. 3150 implements needs-based reforms to chapter 13 cases to ensure that debtors commit the maximum amount of income that they can afford to their repayment plans. It also institutes a requirement that chapter 13 trustees scrutinize the amount debtors repay prior to confirmation of their plans and on an annual basis thereafter.

Subsection (1) adds to the Bankruptcy Code the definition of the term “monthly net income.” It is defined as the debtor’s “current monthly total income,” which is, in turn, defined in section 101(1) of H.R. 3150, less certain expenses. These include the Internal Revenue Service’s National Standards, Local Standards and Other Necessary Expense Allowances; the debtor’s average monthly payment to secured creditors (calculated as the total of all amounts remaining to be paid as of the date of determination [less any amounts to be paid by third parties] divided by the total months remaining under the chapter 13 plan); the debtor’s average monthly payment to priority creditors (calculated as the total of all amounts remaining to be paid as of the date of determination [less any amounts to be paid by third parties] divided by the total months remaining under the chapter 13 plan); and any additional expenses occasioned by “extraordinary circumstances” (as documented in a sworn statement by the debtor and his or her counsel).

Subsection (2) amends section 104(b)(1) of the Bankruptcy Code, which provides for the adjustment of dollar amounts, to include a reference to section 1325(b)(1) of the Bankruptcy Code, as amended by H.R. 3150.

Subsection (3) adds a new provision that allows adjustments to a chapter 13 debtor’s “monthly net income” if the debtor has “extraordinary circumstances,” which can include loss of income or additional expenses. The debtor must document such changed financial circumstances by a sworn statement signed by the debtor and his or her counsel. This statement must be filed with the court and served on the chapter 13 trustee 45 days before the anniversary of the confirmation date of his or her plan. Within 15 days from receipt of this statement, the chapter 13 trustee must notify the debtor’s creditors of the amount of monthly net income it states. Any objection to this statement must be filed within 30 days from when the trustee receives the statement.

Subsection (4) requires a chapter 13 debtor to include a statement in his or her plan of repayment, under penalty of perjury, specifying the amount of monthly net income to be paid to unsecured nonpriority creditors under the plan.

Subsection (5) amends section 1325(b)(1)(B) of the Bankruptcy Code by instituting the following additional requirements for confirmation of a chapter 13 plan:

(1) The plan must provide that the monthly payment to unsecured nonpriority creditors equals at least \$50.

(2) The duration of the plan may not be less than five years if the debtor’s total current monthly income is more than the highest national median family income reported for a family of equal or lesser size (or in the case of a household of one person, the debtor’s income is not less than the national median household income for

one earner). If the debtor's income falls below the that income threshold, then the plan can be not less than three years in length.

(3) The amount to be paid to the class of unsecured nonpriority claimants under the plan must be increased or decreased proportionately to the debtor's monthly net income during the term of the plan, as determined by the annual statement that the debtor must file under section 102(3) of H.R. 3150.

Section 102(5)'s provisions are not intended to prevent the payment of spousal and child support obligations entitled to priority under section 507(a)(7) of the Bankruptcy Code.

Subsection (6) eliminates the current "disposable income" test of section 1325(b)(2) of the Bankruptcy Code. Under current law, if a holder of an allowed unsecured claim or the trustee objects to confirmation of a chapter 13 plan, all of the debtor's disposable income must be devoted to the plan. Section 102(6) replaces the disposable income test under chapter 13 with one based on the debtor's monthly net income.<sup>30</sup>

### *Section 103. Definition of inappropriate use*

Section 707(b) of the Bankruptcy Code provides that a bankruptcy court may sua sponte or on motion of the United States Trustee dismiss a chapter 7 case filed by an individual debtor whose debts are primarily consumer debts if the granting of relief under chapter 7 constitutes a "substantial abuse." This provision has been inconsistently applied across the nation as the case law interpreting the meaning of "substantial abuse" is disparate.<sup>31</sup>

Section 103 amends section 707(b) in several respects. First, it allows parties in interest, such as creditors, to seek relief under this provision, in addition to the bankruptcy court and United States Trustee. Second, it replaces the term "substantial abuse" with "inappropriate use" and defines two grounds constituting "inappropriate use." Third, section 103 makes the dismissal of a chapter 7 case under section 707(b) mandatory. Under current law, the bankruptcy court has discretion as to whether to dismiss a chapter 7 case for substantial abuse under section 707(b).

Under section 707(b), as amended, a chapter 7 case may be dismissed for inappropriate use if the debtor is ineligible for relief under chapter 7 pursuant to section 109 of the Bankruptcy Code, as amended by H.R. 3150. Alternatively, a bankruptcy court may dismiss a chapter 7 case if the granting of relief under the totality of the circumstances based on the debtor's financial condition would constitute an inappropriate use of chapter 7.

Section 103 also provides for the mandatory imposition of attorney's fees and costs if the bankruptcy court finds that the moving party's position was not substantially justified, unless special circumstances would make the award unjust. This mandatory provi-

<sup>30</sup> "Disposable income," under section 1325(b)(2) of the Bankruptcy Code, is defined as income received by the debtor less that portion that is reasonably necessary for the maintenance and support of the debtor and his or her dependents. If the debtor is engaged in business, operational expenses for the business can be deducted from this amount.

<sup>31</sup> See, e.g., David White, *Disorder in the Court: Section 707(b) of the Bankruptcy Code*, 1995-96 Annual Survey of Bankruptcy Law 333, 476 (1996). Mr. White describes at least four different definitions of "substantial abuse" utilized by the courts as well as other interpretive quandaries presented by section 707(b).

sion, however, does not apply to bankruptcy trustees or United States Trustees.

If a chapter 7 debtor's bankruptcy case is dismissed or converted to another chapter for relief under the Bankruptcy Code on motion of a trustee or the United States Trustee, section 103 mandates the award of reasonable attorney's fees and costs payable by the debtor, unless the payment of such fees and costs would impose an undue hardship on the debtor. Section 103 further provides that the signature of a debtor's attorney on any paper filed in connection with the debtor's bankruptcy case shall constitute a certificate that the attorney performed a reasonable investigation into the circumstances warranting the filing of such pleading and that it is well grounded in fact and comports with existing law or can be supported by a good faith argument for the extension, modification or reversal of existing law. A paper found to be filed in violation of this provision requires the court to assess an appropriate civil penalty against the debtor's attorney, which is payable to the chapter 7 trustee or United States Trustee.

*Section 104. Debtor participation in credit counseling program.*

Section 104 creates an additional eligibility requirement under section 109 of the Bankruptcy Code. Under this provision, an individual may not be a debtor under the Bankruptcy Code unless such individual during the 90-day period preceding the filing of his or her bankruptcy case has made a good faith attempt to participate in a debt repayment plan through a credit counseling program approved by the United States Trustee or bankruptcy administrator. Such program may not be approved unless its services are available without charge or at an appropriate reduced charge, if payment at the regular rate would impose a hardship on the debtor. To document his or her participation in a debt repayment plan, the debtor must file a certificate from the credit counseling agency together with a copy of the debt repayment plan, if any. If the debtor did not participate in a repayment plan, he or she must file a verified statement as to why no attempt was required.

A bankruptcy court may waive the requirement for participation in a prepetition debt repayment plan under the following circumstances: no credit counseling services are available in the debtor's geographic location, the providers of the credit counseling services are unable or unwilling to provide such services to the debtor, or a foreclosure or similar creditor enforcement action that would deprive the debtor of his or her property commenced before the debtor could complete a good faith attempt to participate in a repayment plan. If the debtor does not participate in a repayment plan prepetition, then he or she must participate in one within 30 days following the filing of the bankruptcy case.

Should the debtor fail to comply with these requirements, the United States Trustee may move for dismissal of the debtor's bankruptcy case on the basis of such noncompliance.

## Subtitle B. Adequate Protections for Consumers

### *Section 111. Notice of alternatives*

Under current law, the bankruptcy clerk is required to provide written notice of the forms of bankruptcy relief to consumer debtors before they file for bankruptcy relief.<sup>32</sup> Nevertheless, some debtors may not be aware that there are alternatives to bankruptcy and the adverse consequences that bankruptcy relief may present.

To ensure that debtors know about alternatives to bankruptcy before they file for bankruptcy relief, section 111 mandates that notice of these alternatives to bankruptcy be supplied to these individuals before they file for bankruptcy relief.<sup>33</sup> The notice must contain a brief description of the forms of relief available under chapters 7, 11, 12 and 13, including the benefits and costs of each. In addition, the notice must include a list of independent nonprofit debt counseling entities in the judicial district together with a description of the services they provide and contact information.<sup>34</sup> Section 111 also ensures that debtors are notified about the availability of nonprofit debt counseling services outside the debtor's district that can be contacted toll-free. The procedures for including and removing such services from the list of non-profit debt counseling services are specified in section 111 as well as the procedures for periodic updating of this list.

In addition, section 111 requires bankruptcy clerks to make the requisite notice available to debtors upon request. This requirement ensures that *pro se* debtors receive this notice. The Committee intends that the clerk provide these materials to each debtor whose debts are primarily consumer debts. The Committee does not, however, intend the failure of the clerk to fulfill his or her duties under this subsection to act as a bar to any form of relief to which the debtor might otherwise be entitled under title 11, nor does the Committee intend to create a cause of action for a United States Trustee, trustee, or party in interest against a debtor based on the clerk's failure to provide such notice.

### *Section 112. Debtor financial management training test program.*

Section 112 of H.R. 3150 establishes a one-year pilot program on financial management education for debtors under the auspices of the Executive Office for United States Trustees.<sup>35</sup> The program should be tested in three judicial districts for the purpose of evaluating individual debtor education efforts aimed at assisting debtors in better managing their finances. Bankruptcy judges in those dis-

<sup>32</sup> 11 U.S.C. §342; Official Form 1—Voluntary Petition. This notice requirement is effectuated by requiring the consumer debtor and his or her attorney to sign a statement that appears on the petition used to commence the bankruptcy case: "I am aware that I may proceed under chapter 7, 11, or 12, or 13 of title 11, United States Code, understand the relief available under such chapter, and choose to proceed under chapter 7 of such title."

<sup>33</sup> This requirement only applies to individuals with primarily consumer debts. Section 101(8) of the Bankruptcy Code defines "consumer debt" as debt incurred by an individual primarily for a personal, family, or household purpose.

<sup>34</sup> The bankruptcy clerk's office is responsible for maintaining this list. Although any nonprofit debt counseling service is eligible to appear on this list, the chief bankruptcy judge of the district, on motion of the United States Trustee, may determine that a particular debt counseling service should not be included on this list.

<sup>35</sup> Section 112 requires the Director of the Executive Office for United States Trustees to consult with a wide range of individuals who are experts in the field of debtor education, in addition to chapter 13 trustees.

tricts where the pilot program is in effect have the authority to require debtors to undergo this financial training as a condition to receiving a discharge in their cases. Upon the conclusion of the pilot program, the Director of the Executive Office for United States Trustees is required to submit a report to Congress and the President conveying his or her findings regarding the effectiveness of the program as well as other consumer education programs described in the Report of the National Bankruptcy Review Commission.<sup>36</sup>

This provision authorizes bankruptcy courts in each of the test districts to require individual debtors to undergo such financial management training as a condition to receiving a discharge. The Committee intends courts to use this authority only on a case-by-case basis after evaluating a debtor's individual circumstances, including the debtor's need for such training and the likelihood that the debtor would benefit from such training. The Committee does not intend to give the bankruptcy courts the authority to require such training as a condition of discharge of all individual debtors, or to certain classes of debtors, in the test districts.

#### *Section 113. Definitions*

Section 113 creates several mechanisms designed to regulate the activities of a "debt relief counseling agency" ("DRCA"). As defined under this section, a DRCA includes any person who provides "bankruptcy assistance" to "assisted persons."<sup>37</sup> It applies to attorneys as well as to non-attorneys, such as petition preparers. The term "bankruptcy assistance" includes the provision of any goods or services with the "express or implied purpose of providing information, advice, counsel, document preparation or filing," including the provision of legal representation. Outside the scope of H.R. 3150's definition of DRCA's are nonprofit organizations and creditors, as well as state and federal credit unions.

#### *Section 114. Disclosures*

Under section 114, a DRCA must provide written notice to the assisted person informing him or her that all documents filed in connection with a bankruptcy case must be complete, accurate, and truthful and that the information they contain may be subject to audit.<sup>38</sup> The agency must also supply a statement alerting the assisted person of his or her responsibilities should he or she file for bankruptcy relief. In addition, section 114 specifies that an assisted person is entitled to a contract specifying exactly what services the DRCA will provide in connection with the bankruptcy case.

Further, section 114 of H.R. 3150 requires the DRCA to provide assistance with regard to the following matters:

- (1) How to value assets at replacement value.
- (2) How to determine current monthly total income, projected monthly income and, for chapter 13 cases, how to determine net monthly income and related calculations.

<sup>36</sup>REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 293-94; Recommendations for Reform of Consumer Bankruptcy Law by Four Dissenting Commissioners, at 49-51 (1997).

<sup>37</sup>The term, "assisted person," under H.R. 3150, includes any person with primarily consumer debts and whose nonexempt assets were less than \$150,000.

<sup>38</sup>The DRCA must retain a copy of the requisite notices for two years following the date on which it provided the notice to the assisted person.

(3) How to complete the list of creditors (including proper addresses and amounts owed).

(4) How to determine whether property can be claimed as exempt and how to value such property at replacement value as defined in 11 U.S.C. § 506.

*Section 115. Debtor's bill of rights*

DRCAs, under section 115, are required to execute a written contract with the assisted person that clearly and conspicuously identifies the services to be provided, how fees are determined, and the terms of payment. In addition, DRCAs must include in any advertisement directed to the public regarding the benefits of bankruptcy a statement that contains, *inter alia*, the following statement: "We are a debt relief counseling agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code." This requirement also applies to advertisements by DRCAs regarding their assistance with respect to credit defaults, mortgage foreclosures, lease eviction proceedings, excessive debt, debt collection pressure or inability to pay consumer debts.

Section 115 of H.R. 3150 mandates that DRCAs perform all services as stated to the assisted person in connection with the bankruptcy case. DRCAs are also prohibited from advising any assisted person to make an untrue or misleading statement in connection with a bankruptcy case. In addition, DRCAs are prohibited from advising an assisted person or prospective assisted person to incur additional debt in contemplation of filing for bankruptcy relief or for the purpose of paying fees for services rendered by an attorney or petition preparer in connection with the filing of a bankruptcy case.

*Section 116. Enforcement.*

A series of enforcement and penalty mechanisms with regard to DRCAs are instituted under section 116 of H.R. 3150. These include the following:

(1) Any waiver by an assisted person of the protections and rights as established by this legislation is invalid.

(2) Any DRCA contract that does not comply with the requirements as specified by the legislation is deemed void.

(3) A DRCA may be required to return to the assisted person all fees he or she paid to the DRCA for any of the following reasons:

(a) The DRCA failed to comply with the requirements as previously described.

(b) The DRCA provided assistance to a debtor whose case was dismissed or converted in lieu of dismissal under section 707 or such case was dismissed because of a failure to file any requisite document in connection with the bankruptcy case.

(c) The DRCA negligently or intentionally disregarded the requirements of the Bankruptcy Code or Federal Rules of Bankruptcy Procedure.

In addition to ordering the DRCA to return to the debtor all fees she or he paid, the bankruptcy court may also direct the DRCA to provide bankruptcy assistance services to the debtor without further charge or upon such terms as the court may order. Section 116 specifies that DRCAs must comply with the mandatory disclosure

requirements of section 114 as well as the mandatory services and other requirements set forth in section 115 of H.R. 3150.

Section 116 authorizes states to seek various remedies<sup>39</sup> for violation of the requirements imposed on DRCAs. The United States District Court, under this provision, has concurrent jurisdiction with the state courts to hear such actions.

*Section 117. Sense of the Congress*

Section 117 memorializes the sense of the Congress that the States develop curricula relating to the subject of personal finance to be used in elementary and secondary schools.

*Section 118. Charitable contributions*

Section 118 incorporates H.R. 2604, the “Religious Liberty and Charitable Donation Protection Act of 1997,” which was introduced by Mr. Packard on October 2, 1997.<sup>40</sup> This section institutes several protections for qualified religious or charitable entities, defined by reference to the Internal Revenue Code.

Section 118 excepts religious and charitable contributions made by a debtor before filing for bankruptcy relief from the applicability of certain fraudulent transfer avoidance provisions of section 548 of the Bankruptcy Code. In effect, prepetition transfers made by a debtor to a religious or charitable organization may not be avoided under section 548 if they did not exceed 15 percent of the debtor’s gross income or were in a higher amount if they comported with the debtor’s prior pattern of giving. This provision also preempts state and Federal law with regard to the trustee’s status as a lien creditor under section 544(b) of the Bankruptcy Code.

In addition to protecting charitable contributions made by a debtor before he or she filed for bankruptcy relief, section 118 protects a debtor’s postpetition charitable contributions. For a chapter 7 debtor, it prevents a bankruptcy court from considering such debtor’s charitable contributions in determining a motion to dismiss the case under section 707(b) of the Bankruptcy Code. Likewise, section 118 allows a chapter 13 debtor to contribute up to 15 percent of his or her gross income postpetition to qualified religious and charitable organizations.

*Section 119. Reinforce the fresh start*

Section 119 is derived from section 13 of H.R. 3146, “Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998,” introduced by Representative Nadler, the Ranking Member of the Subcommittee on Commercial and Administrative Law, on February 3, 1998. This provision has several components. First, it clarifies that the nondischargeability provisions regarding certain court fees under section 523(a)(17) of the Bankruptcy Code apply to such fees incurred by prisoners. Second, it allows debtors to claim as exempt property certain retirement funds to the extent

<sup>39</sup>These include injunctions, actual damages, and the imposition of costs, including reasonable attorney’s fees.

<sup>40</sup>On February 12, 1998, the Subcommittee on Commercial and Administrative Law conducted a hearing on this bill as well as on H.R. 2611, the “Religious Fairness in Bankruptcy Act of 1997,” which was introduced by Mrs. Chenoweth. S. 1244, the “Religious Liberty and Charitable Donation Protection Act of 1998,” which is nearly identical to H.R. 2604, was reported by the Senate Judiciary Committee on February 28, 1998.

that they are exempt from taxation under applicable provisions of the Internal Revenue Code of 1986. Third, the amendment clarifies the protections against termination of utility services under section 366 of the Bankruptcy Code by specifying the types of utility services covered. These services include providers of gas, electric, telephone, telecommunication, cable television, and satellite communication as well as water and sewer service.

*Section 119A. Chapter 11 discharge of debts arising from tobacco-related products*

Section 119A amends the discharge provisions for confirmed chapter 11 cases in section 1141 of the Bankruptcy Code for certain claims related to the consumption or consumer purchase of a tobacco product. Specifically, claims that are based in whole or in part on a false pretense, false representation or actual fraud are not discharged notwithstanding confirmation.

Subtitle C. Adequate Protections for Secured Creditors

*Section 121. Discouraging bad faith repeat filings*

Under current law, debtors may file successive bankruptcy cases following the dismissal of their prior cases with limited exception.<sup>41</sup> The filing of a bankruptcy case causes the immediate imposition of an automatic stay, which prevents creditors from pursuing actions against debtors and their property.<sup>42</sup> In light of this, some debtors file successive bankruptcy cases to prevent secured creditors from foreclosing on their collateral.

Section 121 remedies this problem by terminating the automatic stay in cases filed by an individual debtor under chapters 7, 11 and 13 if his or her prior case was dismissed within the preceding year. In the subsequently filed bankruptcy case, the automatic stay terminates 30 days following the filing date of the case unless the court, upon request of a party in interest, grants an extension. The party in interest must demonstrate that the subsequent bankruptcy case was filed in good faith “as to the creditors stayed.” A case is deemed to be presumptively filed in bad faith<sup>43</sup> as to all creditors if:

- (1) More than one bankruptcy case under chapter 7, 11 or 13 was filed either by or against the debtor within the one-year period preceding the filing of the instant bankruptcy case.
- (2) The prior bankruptcy case was dismissed for the debtor’s failure to file any requisite bankruptcy document or to amend any bankruptcy document without substantial excuse.<sup>44</sup>
- (3) The prior bankruptcy case was dismissed for the debtor’s failure to provide “adequate protection.”<sup>45</sup>

<sup>41</sup> Section 109(g) of title 11 only imposes a limited ban on repeat filings. Under this provision, a debtor is ineligible for bankruptcy relief if, within the preceding 180 days, the prior case was dismissed based on the debtor’s willful failure to abide by orders of the court or “to appear before the court in proper prosecution of the case.” 11 U.S.C. §109(g)(1). In addition, the debtor is also ineligible for bankruptcy relief if, within the preceding 180 days, he or she in the prior case sought and obtained its dismissal following the filing of a request for relief from the automatic stay.

<sup>42</sup> 11 U.S.C. §362(a). Exceptions to the automatic stay are set forth in 11 U.S.C. §362(b).

<sup>43</sup> This presumption can be rebutted by clear and convincing evidence.

<sup>44</sup> Mere inadvertence or negligence does not constitute substantial excuse, unless the dismissal was caused by the debtor’s attorney.

<sup>45</sup> This term is defined in 11 U.S.C. §361 as follows:

(4) There has not been a substantial change in the debtor's financial or personal affairs since the dismissal of the prior case.

A case is presumptively deemed filed in bad faith as to any creditor who sought relief from the automatic stay in the prior case if such action was still pending at the time of dismissal or had been resolved by the granting of relief from the automatic stay.

The court must promptly enter an order confirming that the automatic stay does not apply in a bankruptcy case filed by an individual debtor where such debtor had previously filed a bankruptcy case within the previous year and such case was dismissed. Section 121 specifies the grounds that the bankruptcy court may consider in reimposing the automatic stay in the later filed bankruptcy case.

Section 121 also responds to another problem presented by successive filings. Occasionally, debtors transfer their property interests to others who then file for bankruptcy relief to invoke the protection of the automatic stay under section 362 of the Bankruptcy Code. Under section 121, this abuse is addressed by allowing bankruptcy courts to grant prospective *in rem* relief from the automatic stay with respect to real or personal property in future bankruptcy cases filed by the debtor. It also extends this protection to bankruptcy cases filed by other entities to whom the subject property was transferred.<sup>46</sup> In addition, it requires *in rem* orders pertaining to real property to be recorded. Such recording constitutes notice to all parties having or claiming an interest in such property.

### *Section 122. Definition of household goods*

Under current law, debtors must list all personal property that they own.<sup>47</sup> The applicable official bankruptcy form requires *inter alia* that a description and current market valuation of these items be stated. Among the types of personal property items that are required to be disclosed by debtors are "household goods."<sup>48</sup> The Bankruptcy Code, however, does not define this term. Accordingly, section 122 defines this term by reference to applicable regulatory provisions issued by the Federal Trade Commission.<sup>49</sup>

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the [automatic] stay under section 362 of this title, use, sale or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or

(3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

<sup>46</sup> Both the majority and minority viewpoints expressed by the National Bankruptcy Review Commission's members supported *in rem* relief from the automatic stay. See REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION at 281-287; Recommendations for Reform of Consumer Bankruptcy Law by Four Dissenting Commissioners, at 57-59 (1997).

<sup>47</sup> 11 U.S.C. §521(1); Official Form 6—Schedule B.

<sup>48</sup> Official Form 6—Schedule B.

<sup>49</sup> C.F.R. 444.1(i). This regulation defines "household goods" as follows: Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included within the scope of the term "household goods":

- (1) Works of art;
- (2) Electronic entertainment equipment (except one television and one radio);

Continued

*Section 123. Debtor retention of personal property security*

Under the Bankruptcy Code, a debtor may agree to reaffirm a debt that is otherwise dischargeable, providing certain procedures are followed.<sup>50</sup> Alternatively, a chapter 7 debtor may choose to redeem certain types of personal property from a lien securing a dischargeable debt by paying the lienholder the amount of the allowed secured claim.<sup>51</sup>

Section 123 responds to two areas of uncertainty in the law with regard to how personal property interests are treated under the current law. One concerns the unsettled law as to whether a chapter 7 debtor may retain personal property without having either to reaffirm the underlying obligation<sup>52</sup> or redeem it.<sup>53</sup> While a literal reading of section 521 of the Bankruptcy Code would appear to require that a debtor must either reaffirm the underlying obligation or redeem the property, not all courts have so interpreted this provision.<sup>54</sup>

Subsection (1) addresses this issue by requiring chapter 7 debtors to reaffirm the underlying debt for such property or redeem it, as recommended by the National Bankruptcy Review Commission,<sup>55</sup> If the debtor fails to do either, the subject property is no longer property of the estate. This means that the creditor having an interest in this personal property could take whatever action with regard to such property as permitted under applicable nonbankruptcy law. A bankruptcy trustee, upon notice and hearing, may oppose the automatic abandonment of such property to the extent that such property has value for the estate.

Subsection (2) also responds to a current split in authority regarding the debtor's redemption rights under section 722 of the Bankruptcy Code. While most courts have interpreted this provision to require chapter 7 debtors to pay the redemption value in a lump sum payment, some permit debtors to stretch this payment out over time. H.R. 3150 amends section 722 to specify that the required payment must be made in full at the time of redemption.

*Section 124. Relief from stay when the debtor does not complete intended surrender of consumer debt collateral*

Subsection (1) of this provision expands the grounds upon which the automatic stay of section 362 of the Bankruptcy Code expires. Currently, section 362(c) provides that the automatic stay expires once property is no longer property of the estate.<sup>56</sup> In addition, the

(3) Items acquired as antiques; and

(4) Jewelry (except wedding rings).

<sup>50</sup> 11 U.S.C. § 524(c), (d).

<sup>51</sup> 11 U.S.C. § 722.

<sup>52</sup> 11 U.S.C. § 524(c).

<sup>53</sup> 11 U.S.C. § 722.

<sup>54</sup> See, e.g., *Capital Communications Fed. Credit Union v. Boodrow (In re Boodrow)*, 126 F.3d 43, 53 (2d Cir. 1997) (holding that 11 U.S.C. § 521(2) "does not prevent a bankruptcy court from allowing a debtor who is current on loan obligations to retain the collateral and keep making payments under the original loan agreement.")

<sup>55</sup> This recommendation had the support of both the Commission's majority and minority viewpoints. See REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 165-69; Recommendation for Reform of Consumer Bankruptcy Law by Four Dissenting Commissioners, at 57-59 (1997).

<sup>56</sup> In consumer bankruptcy cases, the process by which property leaves a bankruptcy estate is typically accomplished by abandonment. 11 U.S.C. § 554. Under section 554, the bankruptcy trustee is permitted to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(a). A party in interest,

automatic stay expires once the bankruptcy case is closed, dismissed or a discharge is granted or denied.

To provide greater protection to secured creditors and lessors, subsection (1) causes the automatic stay to terminate should an individual chapter 7, 11 or 13 debtor fail to comply timely with certain duties with respect to property of the estate securing a claim or subject to an unexpired lease under section 521 of the Bankruptcy Code. Under current law, an individual debtor must file a statement of intention with respect to his or her secured property. In the statement of intention, the debtor is required to indicate whether he or she will reaffirm, redeem or surrender the property. Under subsection (1), the automatic stay terminates if the debtor fails to timely file the statement of intention or to execute the stated intention.<sup>57</sup> A bankruptcy trustee may oppose, upon notice and hearing, the termination of the automatic stay with respect to such property.

Subsection (2) makes several revisions to section 521(a)(2). First, this provision amends section 521(a)(2) to make it apply to all debts, not just consumer debts. Second, a debtor must fulfill his or her stated intention within 30 days after the first date set for the meeting of creditors under section 341 of the Bankruptcy Code.<sup>58</sup> With respect to property that has been leased or bailed to a debtor or in which a creditor holds a security interest, Subsection (2) provides that nothing in the Bankruptcy Code shall prevent or limit the operation of a provision in the underlying lease or agreement that has the effect of placing the debtor in default by reason of the debtor's insolvency or filing for bankruptcy relief.

*Section 125. Giving secured creditors fair treatment in chapter 13*

During the course of a chapter 13 case, the rights of secured creditors may be modified. Notwithstanding such modification, the chapter 13 case could thereafter be converted to one under chapter 7 or dismissed. Section 125 requires, as an element of confirmation, that the chapter 13 plan provide that secured creditors retain their lienholder status even if the chapter 13 case is subsequently dismissed or converted prior to consummation of the plan.

*Section 126. Prompt relief from stay in individual cases*

Section 362(e) of the Bankruptcy Code provides that within 30 days of a request for relief from the automatic stay, such stay is terminated unless the bankruptcy court orders the stay continued after notice and hearing. The hearing, as contemplated under section 362(e), can be preliminary or deemed final. If the hearing is preliminary, the final hearing must be concluded not later than 30 days from the conclusion of the preliminary hearing. This 30-day

such as a creditor, may likewise seek to have property abandoned from the estate. 11 U.S.C. §554(b). In addition, property of the estate that is not otherwise administered by the bankruptcy trustee (e.g., sold or transferred) is automatically deemed to be abandoned upon the closing of the bankruptcy case pursuant to section 350 of the Bankruptcy Code. 11 U.S.C. §554(c).

<sup>57</sup> H.R. 3150 creates an exception for instances where the debtor seeks to reaffirm the underlying obligation, but the creditor refuses to enter into a reaffirmation agreement with the debtor. H.R. 3150 also provides that the automatic stay does not prevent or limit the operation of default provisions in an underlying lease or bailment agreement "by reason of the occurrence, pendency or existence" of a bankruptcy case or the debtor's insolvency.

<sup>58</sup> Under current procedure, the section 341 meeting is usually held between 25 and 40 days following the petition date. Fed. R. Bankr. P. 2003(a).

period can be extended by the court with consent of the parties or if the court finds that such extension is warranted based on compelling circumstances.

For chapter 7, 11 or 13 cases filed by individuals, Section 126 creates an exception to section 362(e). Specifically, this provision requires the automatic stay to terminate within 60 days following a request for relief from the stay, unless the bankruptcy court renders a final decision prior to the expiration of such 60-day time period, or such 60-day time period is extended on consent of the parties, or the court finds that there are compelling circumstances.

*Section 127. Stopping abusive conversions from chapter 13*

Section 506 of the Bankruptcy Code<sup>59</sup> provides that a creditor secured by a lien in property of the estate has an allowed secured claim to the extent of the value of such creditor's interest in the property and an unsecured claim to the extent that the value of the creditor's interest is less than the amount of the claim. A chapter 13 debtor, during the course of his or her case, may apply for a determination from the bankruptcy court that fixes the value of a secured creditor's interest in property of the estate. Under present law, if the chapter 13 case is subsequently converted to another chapter under the Bankruptcy Code, such valuations apply in the converted case, with allowance, of course, for any payments made on such secured claims.<sup>60</sup>

Section 127 of H.R. 3150 carves out an exception for chapter 13 cases converted to chapter 7. It specifies that a secured creditor in any bankruptcy case converted from chapter 13 continues to be secured unless its claim was paid in full as of the date of conversion, notwithstanding any valuation determination made during the pendency of the chapter 13 case. In addition, H.R. 3150 recognizes the effect of a prebankruptcy default under applicable nonbankruptcy law, unless such default was cured prior to the conversion of the bankruptcy case.

*Section 128. Restraining abusive purchases on secured credit*

Section 128 creates an exception to the valuation standards of section 506 of the Bankruptcy Code with regard to personal property purchased by the debtor on secured credit within 180 days preceding the filing of his or her bankruptcy case. This provision addresses the following problem. Under present law, a debtor, for instance, can finance the purchase of an automobile with a showroom value of \$20,000 by giving the lender a security interest in the vehicle. If the debtor then files for bankruptcy relief one day later, then the value of the secured creditor's lien must be determined under section 506 of the Bankruptcy Code. Even though the vehicle is one day old, the amount of the secured creditor's claim is, under current law, limited to the value of the automobile taking into account the immediate effect of depreciation upon purchase. Accordingly, that secured creditor has an allowed secured claim in a reduced amount based on the value of a used automobile and an allowed unsecured claim for the difference between the present

<sup>59</sup>H.R. 3150 provides for an exception with regard to bankruptcy cases of individuals under chapters 7, 11, 12 and 13.

<sup>60</sup>11 U.S.C. §348(f)(1)(B).

value of the automobile and the amount owed to the secured creditor.

Section 128 protects against this abuse by providing that if the claim is secured only by personal property acquired by the debtor within 180 days prior to filing for bankruptcy relief, then the value of the property as well as the allowed amount of the secured claim is the sum of the unpaid principal balance and the amount of accrued and unpaid interest and charges at the contract rate. If the allowed claim is secured by property in addition to the personal property so acquired, then section 506 may be used to determine the value of the underlying security. Nevertheless, section 128 provides that the amount of the allowed secured claim may not be less than the unpaid principal balance of the personal property's purchase price together with unpaid interest and charges at the contract rate. The protections interposed by section 128 also apply to any subsequent bankruptcy case that the debtor files within two years from the filing date of the original bankruptcy case.

*Section 129. Fair valuation of collateral*

Section 129 resolves the unsettled state of the law following a decision rendered by the Supreme Court that concerned the proper valuation standard applicable to secured property under section 506 of the Bankruptcy Code.<sup>61</sup> Under section 129, the valuation standard with respect to property securing an allowed claim in chapter 7 and 13 cases of individuals is based on the property's replacement value as of the petition filing date, without deduction for costs of sale or marketing. With respect to property acquired for personal, family or household use, replacement value is the price a retail merchant would charge for such property given its age and condition at time of valuation.

*Section 130. Protection of holders of claims secured by the debtor's principal residence*

Section 130 provides various protections to creditors secured by an interest in a debtor's principal residence.

Subsection (1) defines the term "debtor's principal residence," as including residential structures containing up to four units as well as structures not attached to real property, such as mobile homes, trailers and manufactured homes. This definition also includes an individual condominium or cooperative unit as well as "incidental property." Subsection (1), in turn, provides that "incidental property" includes such items as window treatments, carpets, appliances and equipment located in the residence as well as easements, appurtenances, fixtures, rents, royalties, mineral rights, oil and gas rights, escrow funds and insurance proceeds.

In subsection (2), an additional exception to the automatic stay provisions of the Bankruptcy Code is codified with regard to chapter 13 cases where a prepetition default has not been fully cured. Specifically, until such default is cured, the postponement, continu-

<sup>61</sup> *Associates Comm. Corp. v. Rash*, 117 S. Ct. 1879, n. 6 (1997) (Utilizing "replacement value," the Court explained that this meant the "price a willing buyer in the debtor's trade, business, or situation would pay a willing seller to obtain property of like age and condition."). The National Bankruptcy Review Commission also considered a valuation test. See REPORT OF NATIONAL BANKRUPTCY REVIEW COMMISSION, at 243-58; Recommendations for Reform of Consumer Bankruptcy Law by Four Dissenting Commissioners, at 44-47(1997).

ation or other similar delay in a prepetition foreclosure proceeding or sale does not constitute a violation of the automatic stay. In effect, subsection 2 permits secured creditors to maintain the status quo with regard to prepetition foreclosure actions pending at the time a chapter 13 case is filed.

Subsection (3) further limits the ability of a chapter 13 debtor to modify the rights of secured creditors having an interest in the debtor's principal residence. Specifically, the debtor may not modify the rights of claimants secured primarily by an interest in property used as the debtor's principal residence within the 180 days preceding the filing of the bankruptcy case.

*Section 131. Aircraft equipment and vessels*

Section 131 amends section 1110(a)(1) of the Bankruptcy Code, which defines the rights of secured creditors and lessors having an interest in aircraft and aircraft equipment. It clarifies that a default under a security agreement, lease or conditional sale contract with respect to such property must be cured within 60 days from the filing of the bankruptcy case. Section 131 also provides that if the default occurs after the expiration of this time period, it must be cured in accordance with the terms of the underlying security agreement, lease or conditional sales contract.

Subtitle D. Adequate Protections for Unsecured Creditors

*Section 141. Debts incurred to pay nondischargeable debts*

Under the Bankruptcy Code, certain unsecured debts are not discharged, notwithstanding the entry of a discharge order relieving the debtor from personal liability for these obligations in general. Section 523(a) of the Bankruptcy Code presently lists 18 categories of obligations that may not be discharged, under certain circumstances. To avoid the obvious consequences of section 523(a), debtors can borrow money to pay these nondischargeable debts and then seek to discharge the debt incurred for the money borrowed. For example, a debtor, under current law, can obtain a cash advance with a credit card and use those funds to pay an outstanding obligation for child support, which would have not been discharged.

Under section 141, a debt incurred, such as the cash advance, to pay an obligation that otherwise would be nondischargeable under section 523(a) is itself nondischargeable. Section 523(a)(19) is amended to create a new category for these nondischargeable debts.

In addition, Section 141 accords the same priority of payment to these types of debts. Under current law, all unsecured creditors are not equal. For various reasons, the Bankruptcy Code recognizes a hierarchy of payment among unsecured creditors.<sup>62</sup> If there are sufficient nonexempt assets in a bankruptcy case available for distribution to unsecured creditors, the Bankruptcy Code in section 507 fixes an order of priority with regard to entitlement to payment. Child support obligations, for instance, are entitled to paid out of estate assets before tax claims are paid. In turn, certain tax

<sup>62</sup> 11 U.S.C. §§ 507, 726.

claims are entitled to be paid in full before the claims of general unsecured creditors may be paid.

Under section 141, a general unsecured claim incurred by a debtor to pay a tax or child support obligation is entitled to priority of payment after payment of higher order priority claims in Section 507(a)(10), as amended by this provision. Claims within this tenth category of priority claims are paid according to their respective priority. This ensures that higher priority claims, such as child support claims, will be paid in full, before estate assets can be used to pay those obligations accorded a lower priority under section 507 of the Bankruptcy Code.

*Section 142. Credit extensions on the eve of bankruptcy presumed nondischargeable*

Under current law, only certain credit extensions obtained on the eve of a debtor's filing for bankruptcy relief are nondischargeable under the Bankruptcy Code. For example, consumer debts in excess of \$1,000 incurred for "luxury goods or services" incurred within 60 days or certain cash advances obtained within the same time period are presumed to be nondischargeable.<sup>63</sup>

Section 142 amends Section 523(a)(2)(C) of the Bankruptcy Code to provide that consumer debts incurred by an individual debtor within 90 days before the bankruptcy filing are presumed to be nondischargeable. This presumption, however, does not apply to consumer debts owed to a single creditor that were incurred for necessities and do not exceed \$250 in the aggregate.

*Section 143. Fraudulent debts are nondischargeable in chapter 13 cases*

Under current law, a chapter 13 debtor may discharge the following types of obligations for money, property or services or extensions of credit obtained by:

- (1) false pretenses, false representations and actual fraud (other than a statement regarding the debtor's or an insider's financial condition);
- (2) materially false written statements regarding the debtor's or insider's financial condition that the debtor prepared with intent to deceive on which the creditor reasonably relied;
- (3) fraud or defalcation while acting in a fiduciary capacity;
- (4) embezzlement; and
- (5) larceny.

In addition, obligations resulting from the debtor's willful and malicious injury to another person or to the property of another person can also be discharged under chapter 13.<sup>64</sup>

Section 143 amends the discharge provisions of chapter 13 by making the above-specified debts nondischargeable.

*Section 144. Applying the codebtor stay only when it protects the debtor*

With regard to the co-debtor stay provisions of chapter 13, section 144 limits the applicability of this stay to instances where the

<sup>63</sup> 11 U.S.C. § 523(a)(2)(C).

<sup>64</sup> See generally Susan Jensen-Conklin, *Nondischargeable Debts in Chapter 13: "Fresh Start" or "Haven for Criminals?"*, 7 BANKR. DEV. J. 517 (1990).

debtor received value for the underlying obligation. Further, the co-debtor stay does not apply where the chapter 13 plan provides that the debtor's interest in personal property subject to a lease is to be surrendered or abandoned. This exception, however, does not apply if the debtor is primarily obligated to pay the creditor in whole or in part with respect to the claim under a legally binding separation agreement, or divorce or dissolution decree, with respect to the person who has possession of such property.

*Section 145. Credit extensions without a reasonable expectation of repayment made nondischargeable*

To establish the nondischargeability of the underlying debt, a creditor, under current law, must prove that the debtor, with intent to deceive, prepared a materially false financial statement by which money, property, services or credit was obtained. With regard to determining whether the use of a credit or charge card by a debtor who has no reasonable expectation or ability to repay constitutes a nondischargeable debt, the courts currently diverge on the factors that should be considered to impute intent.<sup>65</sup>

Section 145 clarifies that obligations incurred through the use of a credit or charge card or similar device to access a credit line without a reasonable expectation or ability to repay are nondischargeable under section 523(a)(2)(A) of the Bankruptcy Code, unless access to such credit was extended without an application therefor and reasonable evaluation of the debtor's ability to repay.

Section 145 also eliminates the requirement that a creditor prove the debtor's intent to deceive in section 523(a)(2)(B) of the Bankruptcy Code. Rather, the creditor can merely establish that the debtor prepared the materially false financial statement "without taking reasonable steps to ensure" its accuracy.

*Section 146. Debts for alimony, maintenance, and support*

Section 146 institutes various provisions designed to ensure payment of spousal and child support notwithstanding the intervention of bankruptcy. It also provides greater protections to governmental units that hold claims under Section 523(a)(18) of the Bankruptcy Code, which makes obligations in the nature of support owed to states or municipalities nondischargeable.

In addition, section 146 excepts from the automatic stay certain enforcement actions by governmental units in connection with such obligations. Section 146 also provides for the continued liability of exempt property to debts under section 523(a)(18) of the Bankruptcy Code and accords priority status to these debts under section 507(a)(7) as well. Further, section 146 requires chapter 11, 12 and 13 debtors to be current on their postpetition spousal and child support payments as a requirement of confirmation of their plans. It also imposes a similar requirement with regard to the entry of a discharge order in chapter 12 and 13 cases. Finally, section 146 creates an exception to the discharge provisions of chapter 13 for debts owed to states or municipalities that are in the nature of sup-

<sup>65</sup>See, e.g., *Anastas v. American Sav. Bank (In re Anastas)*, 94 F.3d 1280 (9th Cir. 1996) (reviews factors).

port. Conforming amendments to Section 456(b) of the Social Security Act are made by section 146.

*Section 147. Nondischargeability of certain debts for alimony, maintenance, and support*

Section 147 clarifies that spousal and child support obligations resulting from property settlements, hold harmless agreements or other obligations not in the nature of support are also nondischargeable under section 523(a)(5) of the Bankruptcy Code. In addition, this provision also deems such debts to be nondischargeable if assigned to the obligee's attorney.

*Section 148. Other exceptions to discharge*

Section 148 amends section 523(a)(7) of the Bankruptcy Code to prevent the discharge of judgments for disgorgement and restitution obtained by government units. It also eliminates section 523(a)(15), which limits the discharge of obligations incurred by a debtor in connection with a divorce or separation that are not in the nature of support.

*Section 149. Fees arising from certain ownership interests*

Section 149 amends section 523(a)(16) of the Bankruptcy Code to clarify that it applies to fees or assessments arising from the debtor's interest in a condominium, cooperative or homeowners association, irrespective of whether or not the debtor physically occupies such property. It also provides that the executory contract provisions of section 365 of the Bankruptcy Code do not apply to this type of obligation.

*Section 150. Protection of child support and alimony*

Section 150 provides that, notwithstanding the provisions of any state constitution or state law providing otherwise, support obligations owed by a debtor who has received a discharge are entitled to priority in payment and collection over certain debts determined to be nondischargeable under section 523(a)(2), (4) and (14) of the Bankruptcy Code. This priority, however, does not affect the priority accorded to consensual liens, mortgages or security interests.

*Section 151. Adequate protection for investors*

Section 151 creates an exception to the automatic stay provisions of Section 362 of the Bankruptcy Code for nonmonetary enforcement actions<sup>66</sup> by "securities self regulatory organizations." Such organizations, as defined under Section 151 by reference to applicable provisions of the Securities Exchange Act of 1934, include either a securities association or a national securities exchange registered with the Securities and Exchange Commission.

<sup>66</sup>Such actions include the delisting or refusal to permit quotation of any stock that does not meet applicable regulatory requirements.

Subtitle E. Adequate Protections for Lessors

*Section 161. Giving debtors the ability to keep leased personal property by assumption*

Under current law, a trustee may assume, reject or assign the interest that the bankruptcy estate has in a lease of personal property.<sup>67</sup> Upon the trustee's rejection or failure to timely assume a lease of personal property, section 161 provides that such lease is no longer property of the estate and that the provisions of the automatic stay no longer apply. In addition, section 161 allows a chapter 7 debtor to notify the lessor of his or her desire to assume the lease. The lessor, at its option, may then agree to allow the debtor to assume the lease of personal property and may condition such assumption upon the cure of any outstanding default by the debtor.

For chapter 11 and 13 debtors, if they fail to assume the personal property lease prior to confirmation, such lease shall be deemed to be rejected as of the conclusion of the confirmation hearing, under section 161. Further, if such lease is rejected, neither the automatic stay nor the co-debtor stay, which applies in chapter 13 cases, applies.

*Section 162. Adequate protection in chapter 13 cases for lessors*

Section 162 requires a chapter 13 debtor to make postpetition payments on personal property lessors and creditors secured by personal property of the debtor within 30 days from the filing of the bankruptcy case. The payments must be in cash and paid at least on a monthly basis. Although the bankruptcy court may alter the amount of the requisite payments, they cannot be reduced to less than the reasonable depreciation of such property on a month-to-month basis. If the property was repossessed prepetition, the creditor can retain such property postpetition until it receives the first adequate protection payments required under this provision. A creditor's postpetition possession of the debtor's personal property does not constitute a violation of the automatic stay under section 162. If required, the debtor must provide to the lessor evidence of insurance. This requirement continues for as long as the debtor remains in possession of such property.

*Section 163. Adequate protection for lessors*

Residential lessee-debtors, under current law, can invoke the protection of the automatic stay to prevent their eviction even if the underlying lease has terminated. As a result, many debtors repeatedly file for bankruptcy relief for the sole purpose of reinvoking the automatic stay and thereby halt the eviction proceeding yet again.<sup>68</sup> Section 163 excepts from the automatic stay provisions of section 362 of the Bankruptcy Code any act by a lessor with respect to a residential lease that has terminated prepetition.

<sup>67</sup> 11 U.S.C. § 365.

<sup>68</sup> See, e.g., REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, Recommendations for Reform of Consumer Bankruptcy Law by Four Dissenting Commissioners, at 62-64 (1997).

### Subtitle F. Extend Period Between Bankruptcy Discharges

#### *Section 171. Extend period between bankruptcy discharges*

Under current law, a chapter 7 debtor may not receive a discharge in a subsequently filed chapter 7 case if the latter case was filed within six years of when the debtor obtained a discharge in the prior case. Section 171 of H.R. 3150 extends the current six-year period to ten years.

With only limited exception,<sup>69</sup> no refiling bar currently applies to successively filed chapter 13 cases. Section 171 institutes a five-year bar.

### Subtitle G. Exemptions

#### *Section 181. Exemptions*

Section 522 of the Bankruptcy Code describes the various property interests that a debtor may claim as exempt, that is, property that may not be liquidated in order to satisfy the claims of his or her creditors. Under section 522(b), states may chose to opt out of the federal exemption scheme set forth under the Bankruptcy Code. As a result of this provision, the amount and type of exempt property interests that may be claimed varies widely among the states. Some debtors intentionally relocate to states with more generous exemption provisions to protect assets, which would have been liquidated to pay the debtor's debts under his or her home state's exemption provisions.

Section 181 addresses the potential for abuse under present law. Section 522(b)(2)(A) currently provides that the applicable exemption laws of the state where the debtor's domicile is located for the 180 days<sup>70</sup> preceding the filing applies. Section 181 requires a debtor to be domiciled in the state for one year before he or she can assert that state's exemption scheme.

#### *Section 182. Limitation*

Section 182 limits the amount of the exemption in certain property that a debtor may claim under Section 522 of the Bankruptcy Code. Specifically, a debtor may not exempt under state or local law any interest that exceeds \$100,000 in aggregate value in real or personal property that a debtor uses as a residence, a cooperative or burial plot. This limitation under Section 182, however, does not apply to the principal residence of a family farmer.

## TITLE II. BUSINESS BANKRUPTCY PROVISIONS

### Subtitle A. General Provisions

#### *Section 201. Limiting the use of fee examiners*

Section 330 of the Bankruptcy Code requires the bankruptcy court to approve all applications for compensation and reimbursement of expenses made by trustees and professionals employed by

<sup>69</sup> See, e.g., 11 U.S.C. § 109(g).

<sup>70</sup> Section 522(b)(2)(A) alternatively provides "or for a longer portion of such 180-day period than in any other place[.]"

trustees.<sup>71</sup> In practice, some bankruptcy courts have appointed fee examiners to review applications for compensation. This practice typically occurs in large chapter 11 cases where professionals seek millions of dollars in compensation from these estates.

Section 201 prohibits a bankruptcy court from having the authority to appoint a fee examiner.<sup>72</sup> The National Bankruptcy Review Commission, which made a similar recommendation, noted that “fee examiners assume a judicial role, akin to special masters, whose appointment is not permitted in bankruptcy cases.”<sup>73</sup>

*Section 202. Sharing of compensation*

Current law prohibits professionals in bankruptcy cases from sharing their fees with other persons.<sup>74</sup> Section 202 carves out a limited exception to this prohibition to allow compensation to be shared with bona fide public service attorney referral programs.<sup>75</sup>

*Section 203. Chapter 12 made permanent law*

Chapter 12 is a form of bankruptcy relief only available to “family farmers,” a defined term.<sup>76</sup> It was enacted in response to the particularized needs of farmers in financial distress as part of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986. Nevertheless, the Act only provided for the creation of chapter 12 on a temporary basis. Chapter 12 is due to sunset on October 1, 1998.

Section 203 makes chapter 12 a permanent component of the Bankruptcy Code. The National Bankruptcy Review Commission made a similar recommendation.<sup>77</sup>

*Section 204. Meetings of creditors and equity security holders*

Under current law, all chapter 11 debtors must appear for examination under oath pursuant to section 341 of the Bankruptcy Code. This examination provides an opportunity for the United States Trustee, creditors, and other parties in interest to assess the debtor’s financial condition.

Section 204 allows the bankruptcy court to dispense with this requirement for cause where the chapter 11 debtor solicited prepetition acceptances of its plan of reorganization.<sup>78</sup> This provision particularly applies to “prepackaged chapter 11 plans,” that is, plans where the debtor, before filing for bankruptcy relief, obtained the acceptance of creditors and interest holders in its plan of reorganization. Section 204 requires notice and hearing as a prerequisite to dispensing with the requirement for a meeting of creditors and equity security holders.

<sup>71</sup>The reference to “trustees” here also applies to chapter 11 debtors in possession.

<sup>72</sup>The National Bankruptcy Review Commission made a similar recommendation. See REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, AT 888–92 (1997).

<sup>73</sup>*Id.* at 889.

<sup>74</sup>See 11 U.S.C. § 504.

<sup>75</sup>This proposal comports with one adopted by the National Bankruptcy Review Commission. See REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 892–94 (1997).

<sup>76</sup>See 11 U.S.C. § 101(18).

<sup>77</sup>See REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 1014–16 (1997).

<sup>78</sup>The National Bankruptcy Review Commission made a similar recommendation. See REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 487–89 (1997).

*Section 205. Creditors' and equity security holders' committees*

An important premise in a chapter 11 case is the need to have creditor participation. This participation theoretically fosters the debtor's reorganization and serves an oversight function as well. One of the principal means by which creditor participation is encouraged and implemented is through the appointment of a creditors' committee.<sup>79</sup> The United States Trustee is charged with the responsibility to appoint creditors' and equity security holders' committees. The membership of a committee ordinarily consists of creditors holding the seven largest claims that are representative of the types of creditors in the chapter 11 case.

Section 205 clarifies that bankruptcy courts may, on their own motion or on motion of a party in interest, order a change in a committee's membership to ensure adequate representation of other parties in a case.<sup>80</sup>

*Section 206. Postpetition disclosure and solicitation*

Under current law, the acceptance or rejection of a chapter 11 plan of reorganization may not be solicited from parties affected by the plan absent a court-approved disclosure statement.<sup>81</sup> The disclosure statement is required to ensure that these parties receive adequate information about the plan and its consequences.

Section 206 permits postpetition solicitation of creditors and equity security holders in chapter 11 cases if they were solicited prepetition in compliance with applicable nonbankruptcy law.<sup>82</sup> This creates an exception to the requirement that these parties receive a court-approved disclosure statement prior to their solicitation.

*Section 207. Preferences*

One of the linchpins of the Bankruptcy Code is equality of treatment among similarly situated creditors. To effectuate this goal, section 547 of the Bankruptcy Code permits the avoidance of certain prepetition transfers of property made by the debtor that effectively prefer some creditors over others. While the Bankruptcy Code acknowledges defenses to preferential transfer actions,<sup>83</sup> defendants cite the difficulty of establishing certain defenses as well as the attendant inconvenience and costs of litigation.

Section 207 allows a defendant in a preference action to establish that the transfer was made in the ordinary course of the debtor's financial affairs or business or that the transfer was made in accordance with ordinary business terms.<sup>84</sup> Presently, the Bankruptcy Code requires both of these grounds to be established in order to sustain a defense to a preferential transfer action.

<sup>79</sup>Correlatively, if the debtor has equity security holders, a committee representing these interests can also be appointed. *See* 11 U.S.C. § 1102.

<sup>80</sup>The National Bankruptcy Review Commission made a similar recommendation. *See* REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 492–501 (1997).

<sup>81</sup>*See* 11 U.S.C. § 1125(b).

<sup>82</sup>The National Bankruptcy Review Commission made a similar recommendation. *See* REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 595–98 (1997).

<sup>83</sup>*See, e.g.*, 11 U.S.C. § 547(c).

<sup>84</sup>The National Bankruptcy Review Commission made a similar recommendation. *See* Report of the NATIONAL BANKRUPTCY REVIEW COMMISSION, at 800–803 (1997).

Section 207 also establishes a threshold amount for a preferential transfer action.<sup>85</sup> To file a preferential transfer action in a case where the claims are not primarily consumer debts, the aggregate amount of all property constituting the transfer must be at least \$5,000 or more.

*Section 208. Venue of certain proceedings*

Section 208 amends the venue provisions for preferential transfer actions. A preferential transfer action in the amount of \$10,000 or less must be filed in the district where the defendant resides.<sup>86</sup> Currently, this amount is fixed at \$1,000.<sup>87</sup>

*Section 209. Period for filing plan under chapter 11*

Section 209 mandates that a chapter 11 debtor's exclusive period for filing a plan may not be extended beyond a date that is 18 months after the order for relief. It likewise provides that the debtor's exclusive period for obtaining acceptances of the plan may not be extended beyond 20 months after the order for relief.

*Section 210. Period for filing plan under chapter 12*

Section 210 has three components. First, it mandates that a chapter 12 debtor must file its plan not later than 150 days after the order for relief. Second, it provides for relief from the automatic stay if the debtor has not filed a plan in accordance with section 1221 of the Bankruptcy Code. Third, it creates a new provision recognizing special treatment for secured claims. This provision allows secured claimants to elect to have their claims be treated as secured to the extent that such claims are allowed, notwithstanding section 506(a) of the Bankruptcy Code.

*Section 211. Cases ancillary to foreign proceedings involving foreign insurance companies that are engaged in the business of insurance or reinsurance in the United States*

Section 211 amends section 304 of the Bankruptcy Code to prohibit a foreign representative for the estate of an insurance company from obtaining relief with respect to certain types of property. The property interests that are protected under this provision include a deposit required by State insurance and reinsurance laws and certain multibeneficiary trusts.

*Section 212. Rejection of executory contracts affecting intellectual property rights to recordings of artistic performance*

Section 212 provides that the rejection of an executory contract affecting the intellectual property rights to recordings of artistic performances does not impair any applicable nonbankruptcy law to enforce noncompetition or exclusivity provisions that may be contained in such contract. The enforcement is subject to the nondebtor party's provision of notice of an offer to perform the contract under all of its original terms. In addition, the amendment provides that the rights to enforce such noncompetition and exclusivity provisions cannot be treated as dischargeable claims.

<sup>85</sup> *Id.* at 797–98.

<sup>86</sup> *Id.* at 799–800.

<sup>87</sup> See 28 U.S.C. § 1409(b).

*Section 213. Unexpired leases of nonresidential real property*

Under current law, a bankruptcy trustee or a chapter 11 debtor in possession has 60 days to either assume, assign, or reject a non-residential lease of real property in which the bankruptcy estate is a lessee.<sup>88</sup> In practice, however, trustees and debtors typically seek and obtain multiple extensions of this period.

Section 213 amends section 365(d)(4) of the Bankruptcy Code to establish finite deadlines by which a nonresidential lease of real property must be assumed or rejected. It provides that this period is the earlier of 120 days after the date of the order for relief or the entry of an order confirming a plan. The failure to act within that period causes the lease to be deemed rejected automatically. This provision does permit the 120-day period to be extended for an additional period of 150 days if the lessor agrees or the court approves such extension, providing that all postpetition lease obligations have been performed by the lessee. Section 213 provides that under no circumstance may this period be extended beyond 270 days from the order for relief or the entry of an order approving a disclosure statement.

*Section 214. Definition of disinterested person*

Section 214 amends the definition of a disinterested person under section 101(14) of the Bankruptcy Code by eliminating its references to investment bankers.<sup>89</sup>

## Subtitle B. Specific Provisions

### CHAPTER 1. SMALL BUSINESS BANKRUPTCY

*Section 231. Definitions*

Section 231 defines a “small business debtor” as an entity that has aggregate noncontingent, liquidated secured and unsecured debts in the amount of \$5 million<sup>90</sup> or less as of the commencement of the case. The definition also includes a single asset real estate debtor without regard to the amount of its debts, unless such debtor is one of a group of affiliated debtors having aggregate noncontingent liquidated secured and unsecured debts greater than \$5 million.

*Section 232. Flexible rules for disclosure statements and plans*

Under current law, a chapter 11 debtor must obtain court approval of a disclosure statement before it can solicit acceptances of its reorganization plan.<sup>91</sup> The disclosure statement must provide creditors and other interested parties basic information about the plan, including its feasibility and consequences. Typically, court approval is obtained after a hearing on 25 days’ notice to all creditors and parties in interest. The current process can be costly and time-consuming.

Section 232 authorizes a bankruptcy court, in determining whether a disclosure statement provides adequate information, to

<sup>88</sup> See 11 U.S.C. § 365(d)(4).

<sup>89</sup> Section 101(14) of the Bankruptcy Code provides that an investment banker is not a disinterested person nor an attorney for such investment banker. See 11 U.S.C. §101(14)(B),(C), (D).

<sup>90</sup> This cap excludes debts owed to one or more affiliates or insiders of the debtor.

<sup>91</sup> See 11 U.S.C. §1125(b).

consider the complexity of the small business debtor's case and the cost of providing such information to the debtor's creditors. If, for example, the court finds that the plan of reorganization itself provides adequate information, it may allow the debtor to solicit acceptances without having to prepare and send a disclosure statement along with the plan. Further, it permits a court to approve conditionally a disclosure statement subject to final approval after notice and hearing, which would then be combined with the confirmation hearing.

*Section 233. Standard form disclosure statements and plans*

Section 233 implements section 232 of H.R. 3150 bill by requiring the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States Courts to issue form disclosure statements and plans of reorganization for small business debtors. The forms are designed to achieve a practical balance between the needs of those charged with administration of these cases and parties in interest who require information about the case with the need for economy and simplicity.

*Section 234. Uniform national reporting requirements*

The United States Trustee Guidelines generally require chapter 11 debtors to report their financial circumstances on a monthly basis. These reports are used to determine a chapter 11 debtor's economic viability. If completed accurately, these reports can provide valuable information about the case to the bankruptcy court, the United States Trustee, and parties in interest, such as creditors. In practice, however, some debtors fail to file these reports or file incomplete or inaccurate reports, thereby frustrating the ability of those charged with the oversight of these cases to fulfill their responsibility. Section 234 mandates that a small business debtor file periodic financial reports containing specified information.<sup>92</sup>

*Section 235. Uniform reporting rules and forms*

Section 235 mandates that the Attorney General shall issue uniform reporting rules and forms and requires the Attorney General to consult with the Executive Office for United States Trustees and the Administrative Office of the United States Courts.

*Section 236. Duties in small business cases*

To implement greater administrative controls over small business chapter 11 debtors, section 236 institutes additional duties that these debtors must perform. First, the small business debtor must include with the bankruptcy petition its most recent financial

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<sup>92</sup>The types of disclosures that must appear in these reports are the following:

- (1) the debtor's profitability;
- (2) reasonable approximations of the debtor's projected cash receipts and disbursements;
- (3) comparisons of actual cash receipts and disbursements with projections in prior reports;
- (4) a statement as to whether or not the debtor is in compliance with certain other postpetition requirements; and
- (5) a statement as to whether the debtor has timely filed tax returns and paid taxes and administrative expenses when due.

statements, including a balance sheet, statement of operations, cash flow statement and federal income tax return.<sup>93</sup>

Second, the small business debtor is required to attend, through its senior management, meetings scheduled by the bankruptcy court or the United States Trustee as well as meetings held pursuant to section 341 of the Bankruptcy Code. Meetings held by the bankruptcy court include scheduling conferences where the court could fix deadlines by which a plan must be filed and confirmation achieved. Meetings scheduled by the United States Trustee also include “initial debtor interviews,” where the United States Trustee explains to the debtor various requirements such as the need to maintain insurance, to file periodic financial reports, and to remain current on postpetition obligations. Meetings held pursuant to section 341, alternatively known as “Section 341 meetings” or the “first meetings of creditors,” provide an opportunity for the debtor to be examined under oath by the United States Trustee and by other parties in interest, such as creditors. Third, the small business debtor is required to file in a timely manner all requisite schedules and the statement of financial affairs as well as postpetition financial reports. Fourth, the small business debtor must maintain insurance that was customary and appropriate for the industry.

Fifth, section 236 establishes special protections with regard to taxes. All tax returns must be timely filed. In addition, all postpetition taxes must be paid, except for those that are contested, subject to section 363(c) of the Bankruptcy Code.<sup>94</sup> Separate bank accounts for the deposit of taxes collected or withheld for government authorities must be established not later than ten business days following the entry of the order for relief.

Sixth, section 236 permits the United States Trustee to inspect the debtor’s books and records and business premises at reasonable hours with proper notice.

#### *Section 237. Plan filing and confirmation deadlines*

Under current law, a chapter 11 debtor has the exclusive right to file a plan within the 120 days following the entry of the order for relief.<sup>95</sup> The Bankruptcy Court also extends to the chapter 11 debtor the exclusive right to effect confirmation of the plan within 180 days following the entry of the order for relief.<sup>96</sup> As a result of amendments made in 1994 to the Bankruptcy Code, the exclusive period that a small business debtor has to file a plan and achieve confirmation were reduced to 100 days and 160 days respectively from the entry of the order for relief.<sup>97</sup>

Section 237 further reduces the time periods for filing plans and achieving confirmation for small business debtors. First, the small business debtor’s exclusive period to file a plan is 90 days from the entry date of the order for relief. A bankruptcy court may extend

<sup>93</sup> If the debtor lacks such information, then it must file a statement under penalty of perjury verifying this fact.

<sup>94</sup> Section 363(c)(2) prohibits the use of cash collateral without consent of those having an interest in such collateral or the court authorizes such use.

<sup>95</sup> See 11 U.S.C. § 1121(b).

<sup>96</sup> See 11 U.S.C. § 1121(c).

<sup>97</sup> See 11 U.S.C. § 1121(e). Under this provision, a party in interest may apply for an order reducing or enlarging this period. 11 U.S.C. § 1121(e)(3).

this time period on request of a party in interest for cause. Section 237 clarifies that while the debtor has the exclusive right to file a plan for 90 days following the date of the order for relief, this period may be shortened on request of a party in interest. Likewise, section 237 requires a small business debtor to effect confirmation within 150 days from the entry date of the order for relief, unless this period is extended by the court on request of a party in interest.

*Section 238. Plan confirmation deadline*

Should a debtor seek to extend either of these time periods, the debtor has to demonstrate by a preponderance of the evidence that it is more likely than not that the debtor will confirm a plan of reorganization within a reasonable time under section 238.

*Section 239. Prohibition against extension of time*

To ensure that the strict time frames instituted by H.R. 3150 are not eviscerated, section 239 of this bill limits a court's authority to avoid the impact of these provisions.<sup>98</sup>

*Section 240. Duties of the United States Trustee and bankruptcy administrator*

Section 240 mandates that the United States Trustee conduct an "initial debtor interview" of all small business debtors. This interview, which must be held shortly after the case was filed, allows the United States Trustee to investigate the debtor's viability and business plan. It also provides an opportunity for the United States Trustee to explain the debtor's obligation to file monthly operating reports and other requirements. During the course of the interview, the United States Trustee may explore whether the debtor would consent to the entry of a scheduling order fixing various time frames, such as the date for filing a plan and effecting confirmation.

Section 240 also authorizes the United States Trustee to inspect the debtor's premises, review its books and records, and verify that the debtor has filed its tax returns. The United States Trustee, under this provision, is responsible for diligently monitoring the small business debtor's activities and determining its ability to confirm a plan. Should the United States Trustee discover material grounds warranting either dismissal or conversion of the chapter 11 case to one under chapter 7 for liquidation, section 240 requires the United States Trustee to apply promptly for such relief.

*Section 241. Scheduling conferences*

Under current law, a bankruptcy court may conduct a scheduling conference on its own motion or on request of a party in interest in any bankruptcy case. In a chapter 11 case, for example, a scheduling conference provides an opportunity for the court to set certain

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<sup>98</sup> Under section 105(a) of the Bankruptcy Code, a bankruptcy court is empowered to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. In practice, section 105(a) has been used to avoid specific provisions of the Bankruptcy Code based on equitable grounds. H.R. 3150 specifically limits the court's authority to use section 105(a) to extend the time frames fixed for filing and confirming the plans of small business debtors.

dates by which the debtor must file and confirm a plan, among other matters.

Section 241 mandates that a bankruptcy court conduct scheduling conferences in all bankruptcy cases, if necessary, to further the expeditious and economical resolution of such cases.

*Section 242. Serial filer provisions*

Under section 242, the automatic stay does not apply to four categories of small business chapter 11 debtors who have previously sought bankruptcy relief. The effect of this provision is to restrict repetitive filings by these debtors. The automatic stay does not apply when:

- (1) the small business debtor is simultaneously a debtor in another bankruptcy case pending at the time of the filing of the second case;
- (2) the small business debtor's prior case was dismissed within two years from the filing of the second case;
- (3) the second case was filed within two years following the confirmation of the prior case; or
- (4) an entity that acquired substantially all of the assets of a small business debtor has itself filed for bankruptcy relief, unless that entity can establish by a preponderance of the evidence that the filing was necessitated by circumstances beyond its control and that it will confirm a feasible plan of reorganization<sup>99</sup> within a reasonable time.

This provision also limits the type of sanctions that may be imposed to actual damages for violations of the automatic stay resulting from a good faith belief. In addition, it provides that the automatic stay applies to an involuntarily commenced chapter 11 case involving no collusion between a small business debtor and its creditors.

*Section 243. Expanded grounds for dismissal or conversion and appointment of trustee*

The Bankruptcy Code currently lists ten grounds that a bankruptcy court may consider in determining whether to convert a chapter 11 case to one under chapter 7 for liquidation or to dismiss the case.<sup>100</sup> Section 243 requires the conversion or dismissal of a chapter 11 case if the movant establishes cause. An exception to this mandate is also specified in this Section.<sup>101</sup> Cause warranting either mandatory conversion or dismissal of a chapter 11 case under section 243 includes the following:

- (1) substantial or continuing loss to or diminution of the estate;
- (2) gross mismanagement of the estate;
- (3) failure to maintain appropriate insurance;

<sup>99</sup>This exception specifically excludes liquidation plans.

<sup>100</sup>See 11 U.S.C. § 1112(b). The ten grounds enumerated in this provision, however, are not exclusive.

<sup>101</sup>The debtor or other party in interest must prove by a preponderance of the evidence that a plan can be confirmed within a time fixed by the court or within a reasonable time. In addition, the debtor must establish that a reasonable justification supports its action or omission that prompted the filing of the motion under section 1112(b) and that it will be cured by a date certain.

- (4) unauthorized use of cash collateral that is harmful to creditors;
- (5) failure to comply with a court order;
- (6) failure to comply timely with any filing or reporting requirement;
- (7) failure to attend the section 341 meeting of creditors;
- (8) failure to provide timely information or to attend meetings requested by the United States Trustee;
- (9) failure to pay postpetition taxes when due;
- (10) failure to file a disclosure statement or to confirm a plan within the time fixed by a court;
- (11) failure to pay any requisite fees or charges;
- (12) revocation of a confirmation order;
- (13) denial of confirmation of another plan or modified plan;
- (14) inability to effectuate substantial consummation of a confirmed plan;
- (15) material default by a debtor with respect to a confirmed plan; and
- (16) termination of a plan by reason of the occurrence of a condition specified in the plan.

Section 243 also requires the bankruptcy court to hold a hearing on a motion seeking either conversion or dismissal of the case within 30 days of the filing of such motion. In addition, the bankruptcy court is required to decide this motion within 15 days following the commencement of the hearing, unless the moving party expressly consents to a continuance.

Should grounds exist for either conversion or dismissal of the chapter 11 case, the bankruptcy court, under Section 243, has the authority to appoint a chapter 11 trustee, if this is in the best interests of creditors and the bankruptcy estate.

#### CHAPTER 2. SINGLE ASSET REAL ESTATE CASES

A single asset real estate chapter 11 case presents special concerns. As the name implies, the principal asset in this type of case consists of some form of real estate, such as undeveloped land, a shopping mall or building. Typically, the form of ownership of a single asset real estate debtor is a corporation or limited partnership. For tax planning purposes, the limited partnership is formed to acquire the underlying asset.

The largest creditor in a single asset real estate case is usually the secured lender who advanced the funds to the debtor to acquire the real property. Often, a single asset real estate debtor resorts to filing for bankruptcy relief for the sole purpose of staying an impending foreclosure proceeding or sale commenced by the secured lender. Foreclosure actions are filed when the debtor lacks sufficient cash flow to service the debt and maintain the property. Taxing authorities may also have liens against the property.

Based on the nature of its principal asset, a single asset real estate debtor often has few, if any, unsecured creditors. If unsecured creditors exist, they may have only nominal claims against the single asset real estate debtor. Depending on the nature and ownership of any business operating on the debtor's real property, the debtor may have few, if any, employees. Accordingly, there may be

little interest on behalf of unsecured creditors in a single asset real estate case to serve on a creditors' committee.

In 1994, the Bankruptcy Code was amended to accord special treatment for a single asset real estate debtor. It defined this type of debtor as a bankruptcy estate comprised of a single piece of real property or project, other than residential real property with fewer than four residential units. The property or project must generate substantially all of the debtor's gross income. A debtor that conducts substantial business on the property beyond that relating to its operation is excluded from this definition. In addition, the definition fixed a monetary cap. To qualify as a single asset real estate debtor, the debtor could not have noncontingent, liquidated secured debts in excess of \$4 million.<sup>102</sup>

In addition, the 1994 amendments to the Bankruptcy Code created two new alternative grounds for relief from the automatic stay as applied to single asset real estate debtors. For creditors secured by an interest in the debtor's real property, relief from the automatic stay is available if the debtor fails, within 90 days from entry date of the order for relief, to file a plan that has a reasonable likelihood of being confirmed. Another ground is the debtor's failure to commence making monthly payments to the secured creditor (other than a creditor secured by virtue of a judgment lien or unmatured statutory lien) within the same 90-day period. The amount of the payment must equal the current fair market interest rate based on the value of that creditor's claim against the property.<sup>103</sup>

Last year, the House passed a bill that amended the Bankruptcy Code's definition of a single asset real estate.<sup>104</sup> It increased the monetary cap from \$4 million to \$15 million, determined as of the date the case was commenced. The Report accompanying this bill explained:

The present \$4 million cap prevents use of the expedited relief procedure in many commercial property reorganizations, and effectively provides an opportunity for a number of debtors to abusively file for bankruptcy in order to obtain the protection of the automatic stay against their creditors. The bill raises the ceiling to \$15 million at this time, thereby deferring the issue of eliminating the ceiling altogether, as proposed in H.R. 764 as introduced, to a later date.<sup>105</sup>

#### *Section 251. Single asset real estate defined*

Section 251 restructures the Bankruptcy Code's definition of a single asset real estate debtor in several respects. First, it eliminates the monetary cap from the definition. Second, section 251 includes as part of the definition a specific reference to undeveloped real property. Third, the definition extends the "substantial business" requirement to activities conducted by a commonly controlled group of entities where they are all concurrently chapter 11 debtors.

<sup>102</sup> See 11 U.S.C. § 101(51B).

<sup>103</sup> See 11 U.S.C. § 362(d)(3).

<sup>104</sup> Bankruptcy Amendments Act of 1997, H.R. 764, 105th Cong. (1997).

<sup>105</sup> H.R. Rep. No. 105-342, at 10 (1997).

*Section 252. Payment of interest*

Section 252 amends the automatic stay termination provision that applies to single asset real estate debtors. Specifically, it permits a debtor to make the requisite interest payments out of rents or other proceeds generated by the real property. It, however, changes the amount of these payments. Under section 252, the amount must equal the interest at the then-applicable nondefault contract rate of interest based on the value of the creditor's claim against the real estate.

## TITLE III. MUNICIPAL BANKRUPTCY PROVISIONS

*Section 301. Petition and proceedings*

Chapter 9 is a form of bankruptcy relief that is only available to municipalities. Section 301 clarifies that a court must enter the order for relief for these cases.

## TITLE IV. BANKRUPTCY ADMINISTRATION

## Subtitle A. General Provisions

*Section 401. Adequate preparation time for creditors before the first meeting of creditors in individual cases*

The Bankruptcy Code provides that a debtor must be examined under oath by a bankruptcy trustee.<sup>106</sup> Various known as the “first meeting of creditors” or “section 341 meeting,” creditors and other parties in interest are permitted to attend this examination. At the section 341 meeting, creditors can question the debtor with regard to his or her financial circumstances and eligibility for a discharge, among other matters. Important deadlines, such as the time within which to object to the debtor's discharge,<sup>107</sup> obtain a determination of the nondischargeability of a particular debt,<sup>108</sup> or to file a proof of claim,<sup>109</sup> are based on the first date set for the meeting of creditors. Pursuant to the Federal Rules of Bankruptcy Procedure, the first meeting of creditors in a chapter 7 or 11 case must be held not less than 20 days and not more than 40 days following the order for relief.<sup>110</sup> For chapter 13 cases, the requisite time period is between 20 and 35 days.

For chapter 7, 11, or 13 cases filed by individual debtors, section 401 amends section 341 of the Bankruptcy Code to require that the first meeting of creditors be held not earlier than 60 days and not later than 90 days following the order for relief. This is intended to give creditors more time to prepare for the first meeting of creditors. It also allows creditors additional time to object to a debtor's discharge, oppose the discharge of certain debts, and file proofs of claim.

*Section 402. Creditor participation at first meeting of creditors*

Section 402 permits *pro se* creditors to appear and participate at the section 341 meeting of creditors in chapter 7 and 13 cases. Cur-

<sup>106</sup> 11 U.S.C. § 343.

<sup>107</sup> 11 U.S.C. § 727(a); FED. R. BANKR. P. 4004(a).

<sup>108</sup> See, e.g., 11 U.S.C. § 523(a)(2), (4), (6); FED. R. BANKR. P. 4007(c).

<sup>109</sup> 11 U.S.C. § 502; FED. R. BANKR. P. 3002(a).

<sup>110</sup> FED. R. BANKR. P. 2003(a).

rently, some districts require corporate creditors and others to be represented by counsel in legal proceedings, such as the section 341 meeting of creditors. This amendment allows creditors to save the cost of obtaining legal representation to participate in the section 341 meeting.

*Section 403. Filing proofs of claim*

Currently, creditors in chapter 13 cases and in asset chapter 7 cases must timely file proofs of claim to ensure that they receive a distribution in the case. The filing of a proof of claim is *prima facie* evidence of its validity and amount. In chapter 11 cases, however, creditors are not required to file proofs of claim if the debtor has scheduled their claims as undisputed, noncontingent, and in a liquidated amount.<sup>111</sup>

Section 403 extends the procedure under chapter 11 to chapter 7 and chapter 13 cases. As a result, creditors in chapter 7 and 13 cases do not have to file proofs of claim if their claims were scheduled as undisputed, noncontingent, and in a liquidated amount. This amendment is intended to save creditors the time and expense of having to file proofs of claim.

*Section 404. Audit procedures*

Section 404 requires the Attorney General to establish procedures for auditing the accuracy and completeness of information supplied by individuals in connection with their bankruptcy cases under chapter 7 and chapter 13 of the Bankruptcy Code. The audit must be performed by independent certified public accountants or independent licensed public accountants pursuant to generally accepted auditing standards. One in every 100 cases are to be selected on a random basis for audit. Procedures for fully funding such audits also must be established.

Should the audit disclose a material misstatement with regard to a debtor's income, expenses or assets, a statement must be filed with the court specifying the facts constituting the material misstatement. Notice thereof must also be provided to the debtor's creditors. Where appropriate, the matter could be referred to the United States Attorney for possible criminal prosecution.

*Section 405. Giving creditors fair notice in chapter 7 and chapter 13 cases*

To ensure that a creditor receives proper notice, section 405 requires debtors to identify the account number for all obligations and to supply the address as specified by the creditor. Failure to do so invalidates any notice otherwise provided to the creditor. In addition, noncompliance prevents the imposition of sanctions against a creditor who violates the automatic stay.<sup>112</sup>

<sup>111</sup> 11 U.S.C. § 1111(a). This, of course, presumes that the creditor agrees with how the debt has been scheduled (e.g., priority or general unsecured) and its amount.

<sup>112</sup> Under present law, an individual injured as a result of any willful violation of the automatic stay is entitled to actual damages, including costs and attorney's fees, and may recover punitive damages in appropriate circumstances. 11 U.S.C. § 362(h).

*Section 406. Debtor to provide tax returns and other information*

To augment the integrity of the financial disclosure that must be provided, section 406 requires the debtor to file the following additional documents:

(1) Copies of all payment advices or other evidence of payment from any employer within 60 days of the bankruptcy filing.

(2) An itemized statement of the debtor's projected net monthly income.

(3) If applicable, a statement of any extraordinary circumstances with regard to the debtor's financial condition.

(4) A statement disclosing any reasonable anticipated increase in income that the debtor expects to receive over the next 12 months.

(5) A certificate by the debtor's attorney or petition preparer stating that the debtor received the notice describing alternatives to bankruptcy relief (if the debtor is *pro se*, then the debtor must state that he or she received and read this notice).

Should a creditor request a copy of the debtor's petition, schedules, or statement of financial affairs, the debtor would be required to supply such copy, together with any amendments to the subject document, within ten days of the request. This requirement also applies to requests for copies of a chapter 13 debtor's plan.

In addition to these requirements, an individual chapter 7 or 13 debtor must provide to the United States Trustee copies of all federal tax returns (including any schedules and attachments) filed by the debtor for the three most recent years preceding the commencement of the bankruptcy case. This requirement also applies to tax returns that the debtor files while his or her bankruptcy case is pending as well as to any amendments to his or her tax returns. In turn, the United States Trustee is required to make these tax returns available to any party in interest upon request for inspection and copying.

Additional requirements apply to chapter 13 debtors. A chapter 13 debtor is required to file a copy of his or her tax return 45 days before each anniversary of the plan's confirmation date until the case is closed. In addition, the chapter 13 debtor must submit a statement under penalty of perjury regarding the debtor's income, expenditures for the preceding year, and monthly net income, including the way in which it was calculated.<sup>113</sup>

*Section 407. Dismissal for failure to file schedules timely or provide required information*

Should an individual chapter 7 or 13 debtor fail to provide any of the information required by Section 406 within 45 days after the petition filing date, section 407 requires the debtor's bankruptcy case to be automatically dismissed, effective on the 46th day. No court order is necessary to effectuate this dismissal.

Likewise, should an individual chapter 7 or 13 debtor fail to perform certain enumerated duties, any party in interest may request that the bankruptcy court order the debtor to comply within a pe-

<sup>113</sup>The statement must disclose the amount and sources of the debtor's income as well as identify any persons who contributed to the debtor's household and the amounts they contributed.

riod not to exceed 30 days. Should the debtor thereafter fail to comply, the court may enter an order dismissing the debtor's bankruptcy case upon submission of a certification of noncompliance by a party in interest.

*Section 408. Adequate time to prepare for hearing on confirmation of the plan*

Section 408 requires the confirmation hearing in a chapter 13 case to be held not earlier than 20 days following the first date set for the meeting of creditors and not later than 45 days from this date.

*Section 409. Chapter 13 plans to have a five-year duration in certain cases*

Under the present law, the duration of a chapter 13 plan is three years, unless the court, for cause, extends it to a maximum of five years.<sup>114</sup> To ensure that creditors receive the maximum in a chapter 13 case, section 409 extends the permissible duration of a chapter 13 plan under certain circumstances. If the debtor's total current monthly income is at least the national family median income or more, then the duration of the chapter 13 plan may not exceed five years, unless the court extends it to a maximum of seven years. If, however, the debtor's total current monthly income is less than the national family income, then the plan's length may not exceed three years, unless the court for cause extends it to a maximum of five years.

*Section 410. Sense of the Congress regarding expansion of Rule 9011 of the Federal Rules of Bankruptcy Procedure*

To reaffirm the need for accuracy, completeness and truthfulness of documents filed by debtors and their counsel, section 410 provides that it is the sense of the Congress that all such documents be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify the information they contain.<sup>115</sup> This requirement applies to signed as well as unsigned documents.<sup>116</sup>

*Section 411. Jurisdiction of courts of appeals*

Currently, appeals from decisions rendered by the bankruptcy court are either heard by the district court or a bankruptcy appellate panel. In addition to the time and cost factors attendant to the present appellate system, decisions rendered by a district court as an appellate court are not binding and lack *stare decisis* value.

To address these problems, section 411 permits appeals from final bankruptcy court decisions in core proceedings to be heard directly by the circuit court of appeals.<sup>117</sup> In addition, section 411 establishes parameters governing appeals of interlocutory orders.

<sup>114</sup> 11 U.S.C. § 1322(d).

<sup>115</sup> One would be required to verify that the information contained in such documents is well-grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

<sup>116</sup> Federal Rule of Bankruptcy Procedure 9011 presently only applies to signed documents.

<sup>117</sup> The National Bankruptcy Review Commission made a similar recommendation. See NATIONAL BANKRUPTCY REVIEW COMMISSION REPORT, at 752-67 (1997).

*Section 412. Establishment of Official Forms*

To ensure greater compliance and uniformity, section 412 directs the Judicial Conference of the United States to issue official forms that would effectuate the needs-based eligibility formula.

*Section 413. Elimination of certain fees payable in chapter 11 bankruptcy cases*

Section 1930(6) of title 28 of the United States Code requires a chapter 11 debtor to pay a quarterly fee to the United States Trustee based on the amount of the debtor's disbursements made during the quarter. This requirement applies until the case is converted or dismissed and applies even after confirmation until the case is closed.<sup>118</sup>

Section 413 limits this requirement's applicability to small business debtors. Specifically, debtors with disbursements of less than \$300,000 would be required to pay this fee only until the case is converted or confirmation is obtained, whichever occurs first. For debtors having disbursements of \$300,000 or more, the requirement to pay these quarterly fees would remain the same as under current law.

## Subtitle B. Data Provisions

*Section 441. Improved bankruptcy statistics*

Section 441 requires the Executive Office for United States Trustees to compile various statistics regarding chapter 7, 11, and 13 cases and to make these data available to the public. In addition, the Executive Office is required to report annually to the Congress. The statistics that must be compiled under section 441 include the following:

- (1) the total assets and liabilities as scheduled by the debtor;
- (2) the debtor's total current monthly income, projected monthly net income, and average expenses;
- (3) the aggregate amount of debt discharged during the reporting period;
- (4) the average time between the filing of the bankruptcy case and the closing of the case;
- (5) information regarding reaffirmation agreements;
- (6) for chapter 13 cases, information on the number of orders determining the amount of secured claims and on the number of cases dismissed for failure to make payments under the plan; and
- (7) for chapter 7 cases, the number of cases in which the debtor had previously sought bankruptcy relief within the six years preceding the filing of the present chapter 7 case.

*Section 442. Bankruptcy data*

To implement the data gathering provisions of section 441, section 442 requires the Attorney General to issue rules establishing uniform forms for final reports filed by bankruptcy trustees and monthly operating reports filed by chapter 11 debtors in posses-

<sup>118</sup>Pub. L. 104-91, §101 (1996), as amended, Pub. L. No.104-99, title II, §211 (1996).

sion. It also specifies the information that should be contained in these reports.

*Section 443. Sense of the Congress regarding the availability of bankruptcy data*

Section 443 expresses the sense of the Congress that the data so collected should be made available to the public in electronic form and that a single bankruptcy data system should be established. The public records pertaining to bankruptcy cases should be released in a useable form in bulk to the public subject to appropriate privacy safeguards.

## TITLE V. TAX PROVISIONS

*Section 501. Treatment of certain liens*

Section 501 makes several changes to section 724 to provide greater protection for *ad valorem* tax liens on real or personal property of the estate. Although their subordination is still possible under section 724(b), the purposes are more limited. Subordination is permissible only to pay for chapter 7 administrative expenses, priority wage claims and priority claims for contributions to employee benefit plans. Section 501 does not permit subordination for the purpose of paying chapter 11 administrative expenses. Also, section 501 requires the chapter 7 trustee to utilize all other estate assets before he or she could resort to section 724 to subordinate liens on personal and real property of the estate.

In addition, Section 501 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 has expired. This amendment addresses those instances where debtors or trustees use section 505 of the Bankruptcy Code as a means to have bankruptcy courts set aside these types of taxes, to the detriment of the local communities that depend on them for revenue.

*Section 502. Enforcement of child and spousal support*

Under section 522(c)(1) of the Bankruptcy Code, property that a debtor exempts under section 522 is nevertheless liable to nondischargeable tax and support debts under section 523(a)(1) and (5). Section 502 extends the scope of 522(c)(1) by making property that is exempt under any other Federal or state law nevertheless subject to nondischargeable tax and support claims under Section 523(a) of the Bankruptcy Code.

*Section 503. Effective notice to government*

To ensure that government entities receive effective notice, section 503 requires the debtor to provide specific mailing and claim identification information for all government creditors. The categories of information that a debtor must supply include the following: (1) identification of the department or agency of the governmental unit; (2) the debtor's taxpayer identification number, if applicable; (3) reference information such as permit, loan, account or contract number; and (4) the basis of the claim. If the debtor's liability to a governmental unit arises from a debt or obligation owed

or incurred by another entity, the debtor must identify such entity. In addition, section 503 requires the bankruptcy clerk to maintain a current list, updated quarterly, of addresses designated by government units as “safe harbor” addresses for service of notices in that district.

Should the debtor fail to provide notice to governmental entities pursuant to the requirements of section 503, then such notice is deemed to be ineffective unless the debtor could demonstrate by clear and convincing evidence that timely notice was given in a manner reasonably calculated to provide adequate notice. This provision also protects governmental creditors from the imposition of sanctions if they act in a way that is detrimental to the estate, having failed to receive adequate notice.<sup>119</sup>

*Section 504. Notice of request for a determination of taxes*

Section 504 amends section 505 of the Bankruptcy Code by requiring that notice of a request for a determination of taxes comply with the taxing authority’s notice requirements.<sup>120</sup> This amendment comports with section 503 of H.R. 3150 requiring adequate notice to governmental entities.

*Section 505. Rate of interest on tax claims*

Section 505 creates a new provision in the Bankruptcy Code specifying the rate of interest for tax claims. For ad valorem tax claims, secured or unsecured, other unsecured tax claims for which interest must be paid under Section 726(a)(5) of the Bankruptcy Code, and secured tax claims, the rate is determined under applicable nonbankruptcy law.

For prepetition unsecured tax claims to be paid under a plan of reorganization, Section 505 of H.R. 3150 specifies that the minimum rate of interest must be the Federal short-term rate rounded to the nearest full percent as determined under section 1274(d) of the Internal Revenue Code of 1986 for the calendar month in which the plan is confirmed, plus three percentage points.

*Section 506. Tolling of priority of tax claim time periods*

Section 506 of H.R. 3150 suspends the applicable time periods under section 507(a)(8) of the Bankruptcy Code by six months and for other matters. It provides how installment agreements affect the tolling of priority tax claim time periods. Specifically, it tolls this period for 30 days plus the time that an installment agreement was pending during the 240-day period prior to the filing of the bankruptcy case. The length of the tolling period can be up to one year. The amendment also tolls the period for six months with regard to collection actions pending within the 240-day period.

*Section 507. Assessment defined*

Although the Bankruptcy Code references the term “assessment date” for tax claims, it does not define this term.<sup>121</sup> Section 507 ad-

<sup>119</sup>Under current law, for instance, a creditor who willfully violates the automatic stay may be required to pay actual as well as punitive damages for injuries resulting from such violation. 11 U.S.C. § 362(h).

<sup>120</sup>The National Bankruptcy Review Commission made a similar recommendation. See REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 951 (1997).

<sup>121</sup>See, e.g., 11 U.S.C. §§ 507(a)(8)(A)(ii), 1129(a)(9)(c).

dresses this problem with regard to both state and local taxes, as well as federal taxes, by providing a definition for each. For purposes of state and local taxes, assessment is defined as that point in time “which is sufficiently final so that thereafter a taxing authority may commence an action to collect the tax.” For federal tax purposes, section 507 defines assessment by reference to the Internal Revenue Code.

Section 507, in addition, clarifies the automatic stay exception for tax assessments in section 362(b)(9)(D) of the Bankruptcy Code. For purposes of section 363(b)(9)(D), assessment is defined by applicable nonbankruptcy law.

*Section 508. Chapter 13 discharge of fraudulent and other taxes*

Debtors who seek bankruptcy relief under chapter 7 of the Bankruptcy Code are not able to discharge certain types of tax claims.<sup>122</sup> Chapter 13 debtors, on the other hand, can discharge these same tax claims. Section 508 modifies chapter 13 to prevent the discharge of these tax claims.

*Section 509. Chapter 11 discharge of fraudulent taxes*

Section 509 amends the discharge provisions of chapter 11 to prevent the discharge of tax or customs duty 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.

*Section 510. The stay of proceedings in tax court*

Upon the filing of a bankruptcy case, a broad stay of most creditor collection actions immediately and automatically goes into effect.<sup>123</sup> Section 510 modifies the scope of the automatic stay to provide that it only prevents the commencement or continuation of tax proceedings for tax liabilities incurred for a tax period ending *before* the date on which the order for relief is entered. Section 510 also carves out a specific exception from the automatic stay for appeals of tax determinations by courts or administrative tribunals. Under this provision, the automatic stay does not apply to an appeal of a decision by either a court or administrative tribunal that determines a tax liability of a debtor, regardless of whether such determination was made pre- or postpetition.

*Section 511. Periodic payment of taxes in chapter 11 cases*

Section 1129(a)(9)(C) of the Bankruptcy Code requires, as a condition of confirmation, that a chapter 11 plan must provide for payment of priority tax claims over a period that does not exceed six years from the date of assessment of such claims. Section 511 specifies that these payments must be made paid in regular cash installments not longer than three months apart. The payments must begin on the plan’s effective date and be substantial and not disproportionate to all payments made to other creditors under the chapter 11 plan. Section 511 specifically prohibits balloon pay-

<sup>122</sup> See 11 U.S.C. § 523(a)(1).

<sup>123</sup> See 11 U.S.C. § 362(a).

ments. The six-year payment period commences, under the amendment, as of the assessment date of the tax claim.

For secured claims entitled to priority under section 507(a)(8), but for their secured status, the holder of such claims must receive cash payments in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, as amended by section 511.

*Section 512. The avoidance of statutory tax liens prohibited*

Section 512 of H.R. 3150 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<sup>124</sup> or similar provisions of either state or local law.

*Section 513. Payment of taxes in the conduct of business*

Section 513 provides four additional protections to ensure the payment of tax obligations in bankruptcy cases. First, it requires bankruptcy trustees and chapter 11 debtors in possession to pay tax obligations in the course of the debtors' business,<sup>125</sup> with only one limited exception.<sup>126</sup> Section 513 does not, however, require the payment of taxes if excused under any provision of the Bankruptcy Code. In addition, it permits a chapter 7 trustee to defer payment of a course-of-business tax if the tax was not incurred by the trustee or if the court has determined that there are insufficient funds in the estate to pay administrative expenses.

Second, section 513 clarifies that certain secured and postpetition unsecured taxes incurred by a bankruptcy estate, including property taxes, are entitled to administrative expense priority. The present provisions of the Bankruptcy Code do not so specify.<sup>127</sup>

Third, section 513 eliminates the need for a governmental unit to formally request payment of an administrative expense relating to a tax liability or tax penalty. Under current law, all holders of administrative expense claims must submit a request for payment of such claims.

Four, section 513 amends section 506(b) of the Bankruptcy Code, which determines the entitlement of secured claimants to interest, fees, and costs pursuant to the underlying agreement. Section 513 adds a reference to "state statute" to extend this entitlement to state tax claimants.

Fifth, section 513 allows a trustee to recover from property securing a claim for the payment of all *ad valorem* property taxes relating to such property.

<sup>124</sup>Section 6323 of the Internal Revenue Code defines "purchaser" as a person who, for adequate consideration, acquires an interest (other than a lien or security interest) in property, which is valid under local law against subsequent purchasers without notice.

<sup>125</sup>Section 960 of Title 28 of the United States Code presently requires bankruptcy trustees and debtors in possession to pay tax obligations, but does not state how or when such payments must be made.

<sup>126</sup>The exception applies to property of the estate, subject to a secured property tax lien, that is abandoned.

<sup>127</sup>*See* 11 U.S.C. § 503(b)(1)(B). The National Bankruptcy Review Commission recommended that postpetition *ad valorem* real estate taxes be entitled to administrative expense status. *See* REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 956 (1997).

*Section 514. Tardily filed priority tax claims*

To receive a payment in an asset chapter 7 case, a creditor must file a proof of claim.<sup>128</sup> Once the case is fully administered, the chapter 7 trustee prepares a final report and account,<sup>129</sup> which then is noticed to all creditors and other parties in interest. Thereafter, the chapter 7 trustee can commence making distribution to creditors who have filed proofs of claim. Under current law, creditors holding priority claims in asset chapter 7 cases must file their proofs of claim before the date on which the trustee commences making distribution to creditors in the estate. Certain types of tax claims are entitled to priority status.<sup>130</sup>

Section 514 permits a priority tax claim to be filed either before the trustee commences distribution or ten days following the mailing to creditors of the summary of the trustee's final report, whichever is earlier.

*Section 515. Income tax returns prepared by tax authorities*

Section 523(a)(1) of the Bankruptcy Code prevents the discharge of certain types of tax claims. Section 515 of H.R. 3150 extends the nondischargeability provisions of section 523(a)(1) to obligations based on income tax returns prepared by tax authorities as well as to certain reports and notices.

*Section 516. The discharge of the estate's liability for unpaid taxes*

Section 505(b) of the Bankruptcy Code provides for the discharge of tax liability for bankruptcy trustees and debtors after the passage of a stated period of time following a request made to a government unit for a determination of such liability. Section 516 of H.R. 3150 extends the applicability of section 505(b) to bankruptcy estates.

*Section 517. Requirement to file tax returns to confirm chapter 13 plans*

Section 517 requires chapter 13 debtors to file tax returns and institute enforcement mechanisms to ensure compliance.<sup>131</sup> First, section 517 creates an additional requirement for plan confirmation. Namely, the debtor must file all prepetition tax returns for the six-year period ending prior to the filing of the chapter 13 case.<sup>132</sup> Second, the returns must be filed within 120 days from the date set for the first meeting of creditors. A chapter 13 debtor could apply for an extension of this time period upon showing by clear and convincing evidence that the failure to file the returns was due to circumstances beyond his or her control. Third, the failure to comply with this provision constitutes cause warranting dismissal or conversion of the chapter 13 case. Fourth, section 517 extends the applicable time periods pertaining to the allowance and disallowance of tax claims that are the subject of tax returns.

<sup>128</sup> See 11 U.S.C. § 502.

<sup>129</sup> See 11 U.S.C. § 704(9).

<sup>130</sup> See, e.g., 11 U.S.C. § 507(a).

<sup>131</sup> REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 961-65 (1997).

<sup>132</sup> For purposes of this provision, a "return" includes one prepared under section 6020(a) or (b) of the Internal Revenue Code or similar state or local law. In addition, it also includes a judgment entered by a nonbankruptcy tribunal.

*Section 518. Standards for tax disclosure*

A key component of the plan confirmation process in chapter 11 cases is the disclosure statement. The disclosure statement is a document that must be sent to creditors and other parties in interest who are affected by a chapter 11 plan.<sup>133</sup> The purpose of the disclosure statement is to provide adequate information about the plan so that those who are affected by it can make an informed judgment about the plan.<sup>134</sup>

Section 518 of H.R. 3150 mandates that the disclosure statement include a full discussion of the potential material consequences of the plan with regard to Federal, state, and local taxes to the debtor and a hypothetical investor typical of creditors and interest holders in the case domiciled in the state in which the debtor resides or has its principal place of business.<sup>135</sup>

*Section 519. Setoff of tax refunds*

The automatic stay prevents the commencement and continuation of various efforts by creditors to collect prepetition obligations against either the debtor or the debtor's property.<sup>136</sup> At present, the Bankruptcy Code enumerates nearly 20 exceptions to the automatic stay.<sup>137</sup>

Section 519 of H.R. 3150 creates a further exception to the automatic stay. It allows a governmental unit to set off an income tax refund relating to a prepetition tax period against a prepetition income tax liability for a prepetition tax period.<sup>138</sup>

TITLE VI—ANCILLARY AND OTHER CROSS-BORDER CASES

Title VI of H.R. 3150 adds a new chapter to the Bankruptcy Code for transnational bankruptcy cases. This incorporates the Model Law on Cross-Border Insolvency to encourage cooperation between the United States and foreign countries with respect to transnational insolvency cases. Title VI is intended to provide greater legal certainty for trade and investment as well as to provide for the fair and efficient administration of cross-border insolvencies, which protects the interests of creditors and other interested parties, including the debtor. In addition, it serves to protect and maximize the value of debtor's assets.

*Section 601. 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.<sup>139</sup>

<sup>133</sup> See 11 U.S.C. § 1125(b).

<sup>134</sup> See 11 U.S.C. § 1125(a).

<sup>135</sup> The National Bankruptcy Review Commission made a similar recommendation. See REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 960 (1997).

<sup>136</sup> See 11 U.S.C. § 362(a).

<sup>137</sup> See 11 U.S.C. § 362(b).

<sup>138</sup> The National Bankruptcy Review Commission made a similar recommendation. See REPORT OF THE NATIONAL BANKRUPTCY REVIEW COMMISSION, at 818–22 (1997).

<sup>139</sup> The text of the Model Law and the Report of UNCITRAL on its adoption are found at U.N. G.A., 52d Sess., Supp. No. 17 (A/52/17) ["Report"]. That Report and the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, U.N. Gen. Ass., UNCITRAL 30th Sess. U.N. Doc. A/CN.9/442 (1997) ["Guide"], which was discussed in the negotiations leading to the Model Law and published by UNCITRAL as an aid to enacting countries, should be consulted

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 other chapter and limit the United States' role to an ancillary case under this chapter.<sup>140</sup> In any case, a petition for recognition is required as a prerequisite to the use of sections 301 and 303 by a foreign representative.

Section 601 combines the Preamble to the Model Law (subsection 1) with its article 1 (subsections 2 and 3).<sup>141</sup> It largely follows the language of the Model Law, except that it adds in subsection 3 an exclusion of certain natural persons who may be considered ordinary consumers. Although the consumer exclusion is not in the text of the Model Law, the discussions at UNCITRAL recognized that some such exclusion would be necessary in countries like the United States where there are special provisions for consumer debtors in the insolvency laws.<sup>142</sup> The reference to section 109(e) incorporates the debt limitations of that section, but not its requirement of regular income. The exclusion adds a requirement that the debtor or debtor couple be citizens or long-term legal residents of the United States. This ensures that residents of other countries will not be able to manipulate this exclusion to avoid recognition of foreign proceedings in their home countries or elsewhere.

The first exclusion in subsection 3 constitutes for the United States, the exclusion provided in article 1, subsection 2, of the Model Law.<sup>143</sup> The reference to section 109(b) covers entities governed by different insolvency regimes under United States law and therefore excluded from liquidation proceedings under Title 11.

### *Section 602. 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" in the Model Law has been replaced with "entity," which is defined broadly in section 101(15) to include natural persons and various legal entities, thus matching the intended breadth of the term "person" in the Model Law. The exceptions include contexts in which a natural person is intended and those in which the Model Law language already refers to both persons and entities other than persons. The definition of "trustee" for this chapter ensures that debtors in possession and debtors; as well as trustees, are included in the term.<sup>144</sup>

The definition in subsection (g) is not taken from the Model Law. It has been added because the United States, like some other countries, asserts insolvency jurisdiction over property outside its terri-

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for guidance as to the meaning and purpose of its provisions. The development of the provisions in the negotiations at UNCITRAL, in which the United States was an active participant, is recounted in the interim reports of the Working Group that are cited in the Report.

<sup>140</sup> See section 629 and commentary.

<sup>141</sup> Guide at 16–19.

<sup>142</sup> See *id.* at 18 para. 60; 19 para. 66.

<sup>143</sup> *Id.* at 17.

<sup>144</sup> See section 605.

torial limits under appropriate circumstances. Thus a limiting phrase is useful where the Model Law and this chapter intend to refer only to property within the territory of the enacting state.

Two key definitions, of “foreign proceeding” and “foreign representative,” are found in subsections 101(24)–(25), which have been amended consistent with Model Law Article 2.<sup>145</sup>

The definitions “establishment,” “foreign court,” “foreign main proceeding,” and “foreign non-main proceeding” have been taken from Model Law Article 2, which varies in language only as necessary to comport with United States law. Additionally, defined terms have been placed in alphabetical order.<sup>146</sup> In order to at least be recognized as a foreign non-main proceeding, the debtor must at least have an establishment in that foreign country.<sup>147</sup>

### *Section 603. International obligations of the United States*

This section is taken exactly from the Model Law.<sup>148</sup> Although this section makes an international obligation prevail, the courts will attempt to read the Model Law and the international obligation so as not to conflict, especially if the international obligation addresses a subject matter less directly related than the Model Law to a case before the court.

### *Section 604. Commencement of Ancillary Case*

This section paraphrases current section 304(a), which is repealed. Article 4 of the Model Law is designed for designation of the competent court, which in United States law is done in subsection 1334(a) in title 28, which gives exclusive jurisdiction to the district courts in a “case” under this title.<sup>149</sup> Therefore, this section provides that a petition for recognition opens a “case,” an approach that also invokes a number of other useful procedural provisions. In addition, a new subsection (P) 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 courts, thus completing the designation of the competent court. Finally, the particular bankruptcy court that will rule on the petition is determined pursuant to section 1410 of title 28 governing venue and transfer.

The title “ancillary” in this section and in the title of this chapter emphasizes the United States policy in favor of a general rule that countries other than the home country of the debtor, where a main proceeding would be brought, should usually act through ancillary proceedings in aid of the main proceedings, in preference to a system of full bankruptcies (often called “secondary” proceedings) in each state where assets are found. Under the Model Law, full bankruptcy cases are permitted in each country (see sections 628 and 629), but in the United States, the court will have the power to suspend or dismiss such cases where appropriate under section 305.

Additional assistance under the successor provision to current section 304 is set forth in section 607.

<sup>145</sup> Guide at 19–21 paras. 67–68.

<sup>146</sup> See Guide at 19, (Model Law) 21 para 75 (concerning establishment) 21 para. 74 (concerning foreign court) 21 paras. 72, 73 and 75 (concerning foreign main and non-main proceedings).

<sup>147</sup> See *id.* at 21 para. 75.

<sup>148</sup> See *id.* at 22 Art. 63.

<sup>149</sup> See *id.* at 23 (Article 4).

*Section 605. Authorization to act in a foreign country*

The language in this section varies from the wording of article 5 of the Model Law only as necessary to comport with United States law. In addition, the slight alteration to the language in the last sentence is meant to make it clear that the identification of the entity entitled to act is under United States law, while the scope of actions that may be taken by an estate representative under foreign law is limited by that foreign law.<sup>150</sup> The related amendments to chapters 7 and 13 make acting pursuant to authorization under this section an additional power of a trustee or debtor in possession.

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.<sup>151</sup> Its main purpose is to ensure that the court has knowledge and control of possibly expensive activities, but it will have the collateral benefit of providing further assurance to foreign courts that the United States debtor or representative is under judicial authority and supervision. This requirement means that the first-day order 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.<sup>152</sup>

*Section 606. Public policy exception*

This provision follows the Model Law Article 5 exactly and is standard in UNCITRAL texts and has been narrowly interpreted on a consistent basis in courts around the world. The word “manifestly” in international usage restricts the public policy exception to the most fundamental policies of the United States.<sup>153</sup>

*Section 607. Additional assistance*

Subsection 1 follows the language of Model Law Article 7.<sup>154</sup> Subsection 2 makes the authority for additional relief subject to existing United States law under section 304, which is repealed. This section is intended to permit the further development of international cooperation begun under section 304, but is not to be the basis for denying or limiting relief otherwise available under this chapter. The additional assistance is made conditional upon the court’s consideration of the factors set forth in the current subsection 304(c) in a context of a reasonable balancing of interests following current case law. The references to “estate” in the current subsection have been changed to refer to the debtor’s property, be-

<sup>150</sup>*Id.* at 24.

<sup>151</sup>*See id.* at 24 (Article 5).

<sup>152</sup>*See id.* at 23–24 and para. 82.

<sup>153</sup>*See id.* at 25.

<sup>154</sup>*Id.* at 26

cause many foreign systems do not create an estate in insolvency proceedings of the sort recognized under this chapter. Although the case law construing section 304 clearly makes comity the central consideration, its physical placement as one of six factors in subsection c of section 304 is misleading. Therefore, in subsection 2 of this section, comity is raised to the introductory language to make it clear that it is the central concept to be addressed.

*Section 608. Interpretation*

This provision follows exactly Model Law Article 8 and is a standard one in recent UNCITRAL treaties and model laws.<sup>155</sup> Interpretation of this chapter on a uniform basis will be aided by reference to the Guide and the Reports cited therein, which explain the reasons for the terms used and often cite their origins as well. Uniform interpretation will also be aided by reference to CLOUT, the UNCITRAL Case Law On Uniform Texts, which is a service of UNCITRAL. CLOUT receives reports from national reporters all over the world concerning court decisions interpreting treaties, model laws, and other text promulgated by UNCITRAL. Not only are these sources persuasive, but they 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 609. Right of direct access*

This section follows the intent of article 9 of the Model Law, but varies the language to fit United States procedural requirements.<sup>156</sup> Subsections 2 and 3 give the foreign representative full legal capacity under United States law, but also make the representative's operations in the United States subject to generally applicable United States laws, just as 28 U.S.C. §959 does for domestic trustees in bankruptcy.

Subsections 4 and 5 make it clear that Chapter 6 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 state like the United States with many different courts, state and federal, that may have pending actions involving the debtor or the debtor's property. This section, therefore, completes for the United States the work of article 4 of the Model Law ("competent court") as well as article 9.<sup>157</sup>

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 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

<sup>155</sup>*Id.* at 26 paras. 91–91.

<sup>156</sup>*Id.* at 27 para. 93.

<sup>157</sup>*See id.* 23, (Article 4, para. 79–83) 27 (Article 9, para. 93).

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.<sup>158</sup>

Subsection 5 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.

*Section 610. Limited jurisdiction*

Section 610, article 10 of the Model Law, is modeled on section 306 of the Code, which has been repealed.<sup>159</sup> Although the language referring to conditional relief in section 306 is not included, the court has the power under section 622 to attach appropriate conditions to any relief it may grant. Nevertheless, the authority in section 622 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 611. Commencement of case under Section 301 or 303*

This section follows the intent of article 11 of the Model Law, but adds language that is necessary in the United States given its many different courts and the importance of full information and coordination among them.<sup>160</sup> Article 11 does not distinguish between voluntary and involuntary proceedings, but seems to have implicitly assumed an involuntary proceeding.<sup>161</sup>

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

*Section 612. Participation of a foreign representative in a case under this title*

This section follows article 12 of the Model Law with a slight alteration to tie into United States procedural terminology.<sup>162</sup> 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.<sup>163</sup> 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 613. 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 2 and section

<sup>158</sup>*See id.* at 27 (Article 9), 34–35 (Article 15 and paras. 116–119–35), 39–40 (Article 18, paras. 133–134); *see also* subsection 615(3) and section 618.

<sup>159</sup>*Id.* at 27, 28 paras. 94–96.

<sup>160</sup>*See id.* at 28 (Article 11).

<sup>161</sup>*Id.* at 38 paras. 97–99.

<sup>162</sup>*Id.* at 29 (Article 12).

<sup>163</sup>*Id.* at 29 paras. 10–102.

614. It follows the intent of Model Law Article 13, but the language required alteration to fit into the Bankruptcy Code.<sup>164</sup>

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.<sup>165</sup>

The Model Law allows for an exception to nondiscrimination as to foreign revenue and other public law claims.<sup>166</sup> 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 is not clear if this policy should be maintained or modified, so this section leaves it to developing case law. It also allows the Department of Treasury to negotiate reciprocal arrangements with our tax treaty partners in this regard, although it does not mandate any restriction of the evolution of case law pending such negotiations.

*Section 614. 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.<sup>167</sup> As “foreign creditor” is not a defined term, foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure should be amended to conform to the requirements of this section, including a special form for notice to such creditors. In particular, the rules must provide for additional time for such creditors to file proofs of claim where appropriate and must provide for the court to make specific orders in that regard in proper circumstances. Of course, if a foreign creditor has made an appropriate request for notice, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. The notice must specify that secured claims must be asserted, because in many countries such claims are not affected by an insolvency proceeding and need not be filed.<sup>168</sup>

Subsection 4 replaces the reference to “a reasonable time period” in Model Law article 14(3)(a).<sup>169</sup> It makes clear that the Federal Rules of Bankruptcy Procedure, local rules, and court orders must make appropriate adjustments in time periods and bar dates so that foreign creditors have a reasonable time within which to receive notice or take an action.

<sup>164</sup> *Id.* at 30 para. 103.

<sup>165</sup> *See id.* at 30 para. 104.

<sup>166</sup> *See id.* at 31 para. 105.

<sup>167</sup> *See* Model Law Article 14 and Guide at 31–32 paras. 106–109.

<sup>168</sup> Guide at 33 para. 111.

<sup>169</sup> *Id.* at 31 (Article 14(3)(a)).

*Section 615. Application for recognition of a foreign proceeding*

This section follows article 15 of the Model Law with minor changes.<sup>170</sup> The rules will require amendment to provide forms for some or all of the documents mentioned in this section, to make necessary additions to rules 1000 and 2002 of the Federal Rules of Bankruptcy Procedure to facilitate appropriate notices of the hearing on the petition for recognition, and to require filing of lists of creditors and other interested persons who should receive notices. Throughout the Model Law, the question of notice procedure is left to the law of the enacting state.<sup>171</sup>

*Section 616. Presumptions concerning recognition*

This section follows article 16 of the Model Law with minor changes.<sup>172</sup> Although sections 615 and 616 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 616. 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.<sup>173</sup> “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.<sup>174</sup> The presumption that the place of the registered office is also the center of the debtor’s main interest is included for speed and convenience of proof where there is no serious controversy.

*Section 617. Order recognizing a foreign proceeding*

This section closely follows article 17 of the Model Law, with a few exceptions.<sup>175</sup> 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 602 and subsections 101(23)–(24), are all that must be fulfilled to attain recognition.

The drafters of the Model Law understood that only a main proceeding or a non-main proceeding meeting the standards of section 602 (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 602 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 615 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 620, so those effects are not viewed

<sup>170</sup>*Id.* at 33.

<sup>171</sup>*See id.* at 36 para. 121.

<sup>172</sup>*Id.* at 36.

<sup>173</sup>*Id.* at 36 (Article 16(3)).

<sup>174</sup>*Id.* at 36 (Article 16(3)).

<sup>175</sup>*Id.* at 37.

as orders to be modified, as are orders granting relief under sections 619 and 621. Subsection 4 states the grounds for modifying or terminating recognition. On the other hand, the effects of recognition are subject to modification under section 362(d), made applicable by section 620(2), which permits lifting the stay of section 620 for cause.

Paragraph 1(d) 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.<sup>176</sup> The reference to section 350 refers to the routine closing of a case that has been completed and will invoke requirements including a final report from the foreign representative in such form as the rules or a court order may provide.

*Section 618. 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 602 and to provide for a formal document to be filed with the court.<sup>177</sup> Judges in several jurisdictions, including the United States, have reported to need for a requirement of complete and candid reports to the court of all proceedings, worldwide, involving the debtor. This provision will ensure that such information is provided to the court on a timely basis. Any failure to comply with this section will be subject to the sanctions available to the court for violations of the statute. The section leaves to the Rules the form of the required notice and related questions of notice to parties in interest, the time for filing, and the like.

*Section 619. Relief that may be granted upon petition for recognition of a foreign proceeding*

This section generally follows article 19 of the Model Law.<sup>178</sup> 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 for cases under section 105 nor does it modify the sweep of sections 555 to 560.

*Section 620. 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 607 and this chapter has no effect on any relief currently available under section 105.

Subsection (1)(a) combines subsection 1(a) and (b) of article 20 of the Model Law, because section 362 imposes the restrictions required by those two subsections and additional restrictions as well.<sup>179</sup> Subsection (1)(b) applies 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 restraints the

<sup>176</sup>*Id.* at 37 (Article 17(1)(d)).

<sup>177</sup>*Id.* at 39–40 paras. 133–134.

<sup>178</sup>*Id.* at 40.

<sup>179</sup>*Id.* at 42 (Article 20 1(a), (b)).

Model Law provisions would impose.<sup>180</sup> 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 602. 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.

Subsection 2 makes applicable the United States exceptions and limitations to the restraints imposed on creditors, debtors, and other in a case under this title, as stated in article 20(2) of the Model Law.<sup>181</sup> These exceptions and limitations include those set forth in subsections 362 (b), (c) and (d). As one result, the court has the power to terminate the stay pursuant to section 362(d), for cause.

Section 108 of the Bankruptcy Code provides the tolling protection intended by Model Law article 20(3), so no exception is necessary as to claims that might be extinguished under United States law.<sup>182</sup> Subsection 3 permits suits in other countries to the extent such suits are required to preserve the existence of a claim.

*Section 621. 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.<sup>183</sup> The exceptions in subsection (1)(g) relate to avoiding powers. The foreign representative’s status as to such powers is governed by section 623 below. The avoiding power in section 549 and the exceptions to that power are covered by section 620(1)(b).

The word “adequately” in the Model Law, articles 21(2) and 22(1), has been changed to “sufficiently” in subsections 621(2) and 622(1) to avoid confusion with a very specialized legal term in United States bankruptcy, “adequate protection.”<sup>184</sup>

Subsection (3) 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.<sup>185</sup>

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

*Section 622. Protection of creditors and other interested persons*

This section follows article 22 of the Model Law exactly.<sup>186</sup> It gives the bankruptcy court broad latitude to mold relief to circumstances, including appropriate responses if it is shown that the

<sup>180</sup> *Id.* at 42–45.

<sup>181</sup> *Id.* at 42 (Article 20(2)); 44, paras. 148–150.

<sup>182</sup> *Id.* at 42 (Article 20(3)) and 44–45 paras. 151–152.

<sup>183</sup> *Id.* at 45–46 (Article 21).

<sup>184</sup> *Id.* at 46 (Article 21(2)), 47 (Article 22(1)).

<sup>185</sup> *See id.* at 46–47, paras. 158–160.

<sup>186</sup> *Id.* at 47.

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 617. Concerning the change of “adequately” in the Model Law to “sufficiently” in this section, see section 621.

*Section 623. 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.<sup>187</sup> It merely confers standing on a recognized foreign representative to assert an avoiding action in a pending case under another chapter of this title. It 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.<sup>188</sup> The courts will determine the nature and extent of any such action and what national law may be applicable to such action.

*Section 624. Intervention by a foreign representative*

The wording is the same as the Model Law, except for a few clarifying words.<sup>189</sup> This section gives the foreign representative the right to intervene in United States cases, state or federal, where the debtor is a party. Recognition being an act under federal bankruptcy law, it must take effect in state as well as federal courts. This section does not require substituting the foreign representative for the debtor, although that result may be appropriate in some circumstances.

*Section 625. Cooperation and direct communication between the court and foreign courts or foreign representatives*

The wording is almost exactly that of the Model Law.<sup>190</sup> The right of courts to communicate with other courts in worldwide insolvency cases is of central importance. This section authorizes courts to do so. This right must be exercised, however, with due regard to the rights of the parties. Guidelines for such communications are left to the rules.

*Section 626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives*

This section follows the Model Law almost exactly.<sup>191</sup> 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.

<sup>187</sup> *Id.* at 48–49.

<sup>188</sup> *See id.* at 49, para. 166.

<sup>189</sup> *Id.* at 49.

<sup>190</sup> *Id.* at 50.

<sup>191</sup> *Id.* at 51.

*Section 627. Forms of cooperation*

This section follows the Model Law exactly. Guide at 51–53. United States bankruptcy courts have already engaged in most of the forms of cooperation mentioned here, but they now have explicit statutory authorization for acts like the approval of protocols of the sort used in cases.<sup>192</sup>

*Section 628. 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.<sup>193</sup> In a full bankruptcy case, the United States bankruptcy court generally has jurisdiction over assets outside the United States. Here that jurisdiction is limited where those assets are controlled by another recognized proceeding.

The court may use section 305 of this title to dismiss, stay, or limit a case as necessary to promote cooperation and coordination in a cross-border case. In addition, although the jurisdictional limitation applies only 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 629. Coordination of a case under title 11 and a foreign proceeding*

This section follows the Model Law almost exactly, but subsection (d) adds a reference to section 305 to make it clear 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.<sup>194</sup> This provision is consistent with United States policy to act ancillary to a foreign main proceeding whenever possible.

*Section 630. Coordination of more than one foreign proceeding*

This section follows exactly article 30 of the Model Law.<sup>195</sup> 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 631. 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.<sup>196</sup> Where an insolvency proceeding has begun in the home country of the

<sup>192</sup> See e.g., *In re Maxwell Communication Corp.*, 93 F.3d 1036 (2d Cir. 1996).

<sup>193</sup> Guide at 54–55.

<sup>194</sup> *Id.* at 55–56.

<sup>195</sup> *Id.* at 57.

<sup>196</sup> *Id.* at 58.

debtor, and in the absence of contrary evidence, the foreign representative should not have to make a new showing that the debtor is in the sort of financial distress requiring a collective judicial remedy. The word “proof” here means “presumption.” The presumption does not arise for any purpose outside this section.

*Section 632. 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).<sup>197</sup>

The first amendment provides that the bankruptcy court in any district in which there has been a reference under subsection 157(a) will have core jurisdiction over cases commenced under chapter 6, ancillary cross-border cases.

Although the United States will continue to assert worldwide jurisdiction over property of a domestic or foreign debtor in a full bankruptcy case under chapters 7 and 13 of this title, subject to deference to foreign proceedings under chapter 6 and section 305, the situation is different in a case commenced under chapter 6. There the United States is acting solely in an ancillary position, so jurisdiction over property is limited to that stated in chapter 6.

The third provision complements the automatic inclusion of chapter 6 in the U.S. Trustee’s language of prior section 508(a).<sup>198</sup>

The first amendment provides that the bankruptcy court in any district in which there has been a reference under subsection 157(a) will have core jurisdiction over cases commenced under chapter 6, ancillary cross-border cases.

Although the United States will continue to assert worldwide jurisdiction over property of a domestic or foreign debtor in a full bankruptcy case under chapters 7 and 13 of this title, subject to deference to foreign proceedings under chapter 6 and section 305, the situation is different in a case commenced under chapter 6. There the United States is acting solely in an ancillary position, so jurisdiction over property is limited to that stated in chapter 6.

The third provision complements the automatic inclusion of chapter 6 in the U.S. Trustee’s standing under section 307 and provides authority for the United States Trustee to act as necessary under section 626(3).

## TITLE VII. MISCELLANEOUS

*Section 701. Technical amendments*

This provision of H.R. 3150 makes several conforming and typographical corrections to the Bankruptcy Code.

*Section 702. Applicability*

Section 702 of H.R. 3150 provides that the amendments apply to cases filed after the date of their enactment.

<sup>197</sup> *Id.* at 59.

<sup>198</sup> *Id.* at 59.

## AGENCY VIEWS

DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
*Washington, DC, May 7, 1998.*

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

DEAR MR. CHAIRMAN: We understand the House Judiciary Committee will mark up H.R. 3150, the Bankruptcy Reform Act of 1998, on May 13, 1998. This letter provides the Administration's general views on the consumer bankruptcy reform proposals currently under consideration in the Congress, as well as the views of the Department of Justice on other provisions in H.R. 3150.

*Consumer provisions*

Over the past two decades, consumer bankruptcy filings have risen sharply. While there are many competing theories on the cause of that increase, it is clear that there is no single explanation. Nonetheless, the growing number of filings, examples of abuse of Chapter 7 and state exemptions, and evidence of imprudent extensions of credit suggest some changes to the consumer bankruptcy laws are appropriate. The lack of definitive evidence about the reasons for the rise in bankruptcies means reforms. The Administration, therefore, has developed the following set of principles to guide its review of changes to the consumer bankruptcy laws.

1. Access to Chapter 7 should not be governed by an arbitrary means test; the court must have discretion to account fairly for the great variations in circumstances that bring debtors into bankruptcy (including medical expenses, unemployment, divorce, responsibility for the care of others, etc.). to promote more uniform application of bankruptcy standards, however, the determination whether a person is eligible for a Chapter 7 filing should take place within indicative or presumptive guidelines established by Congress that take into account factors such as the debtor's current and expected income and ability to repay a portion of the debt.

2. National bankruptcy policy can respect state variation in exemption levels without allowing state exemptions to be used to shield excessive assets from creditors.

3. It is appropriate to expect debtors who can afford to repay a portion of their debts (taking into account all relevant circumstances) to act responsibly; but the bankruptcy and the credit reporting and granting system should reward those who complete a Chapter 13 plan.

4. Child support and alimony payments should be carefully protected. We must ensure that reforms have no unintended adverse impact on debtors' ability to meet those, and other, priority payments.

5. Bankruptcy reform should not create opportunities for creditors to coerce debtors to forego bona fide rights in bankruptcy.

6. Bankruptcy rules should discourage bad-faith repeat filings and other attempts to abuse the privilege accorded by access to bankruptcy.

7. Bankruptcy data collection and data accuracy must be improved. Analysis and understanding of the forces affecting bankruptcy filings are impeded by the lack of high-quality, nationally uniform data. Better data collection and verification procedures should be incorporated into any reform proposals. Such data can be used to assess and monitor the impact of reform legislation.

8. Scrutiny must also be given to credit industry practices that have led some borrowers to overextend themselves. While some of these issues may fall outside of the Judiciary Committee's jurisdiction, the Congress and the Administration should consider proposals dealing with such issues as deceptive credit marketing and granting and enhancing disclosure of the implications of consumer credit agreements.

The Administration is open to responsible consumer bankruptcy reforms that meet these principles. The Administration has reluctantly concluded that it cannot support H.R. 3150 in its present form. The Administration looks forward to working with the Congress toward consumer bankruptcy legislation more similar to the approach embodied in S. 1301—with important modifications necessary to meet the principles articulated above.

The following are some additional comments regarding specific provisions in H.R. 3150:

*Section 111. Notice of alternatives*

Section 111 of H.R. 3150 would, in part, amend section 342 of the Bankruptcy Code (“the Code”) to ensure that consumer debtors receive information about debt counseling services and their options before filing bankruptcy. The form of the notice would be prescribed by the United States Trustee for the district and would contain a brief description of the bankruptcy chapters, the benefits and costs of each chapter and services available from an independent nonprofit debt counseling service. The notice would also provide the name, address, and other identifying information of each nonprofit debt counseling service in the district. We support the concept of consumer education that underlies section 111, but question whether the notice will be effective when it is likely provided after the debtor has decided to file bankruptcy.

In addition, we oppose the requirement that the notice list the nonprofit debt counseling services in the district. H.R. 3150 provides no other parameters on what types of services should be listed, other than being nonprofit, and we are concerned that the provision might put United States Trustees in the position of publicizing unscrupulous debt counselors. We recommend that this requirement be deleted from this provision, or at a minimum, be amended to provide that no listed nonprofit debt counseling service can charge the debtor a fee and to provide the United States Trustee with the ability to petition the bankruptcy court to remove a debt counseling service from the notice list where there is evidence indicating that the counseling service has engaged in unscrupulous behavior.

*Section 112. Debtor financial management test program*

Section 112 of H.R. 3150 would require the Executive Office for United States Trustees, in consultation with standing trustees, to

develop a financial management training curriculum for debtor education in three pilot districts for a one-year period. The materials would also be made available to individual debtors on request. The courts in the pilot districts would be authorized to make attendance at the debtor education program a condition of discharge. The Director of the Executive Office would also be required to evaluate the effectiveness of the pilots and existing debtor education programs and to submit a report of his findings to Congress.

The Department supports this test program as the best way to refine effective debtor education programs before they are extended nationwide. Subsection (b), however, only gives the Executive Office 60 days after enactment to develop the training curriculum and materials. We recommend that this period be extended to 180 days to give the Executive Office adequate time to develop an effective curriculum.

*Sections 113 to 116. Debt relief counseling agencies*

Sections 113 through 116 H.R. 3150 deal with debt relief counseling agencies ("counseling agencies"). Section 113 defines covered "counseling agencies." Section 114 would require such agencies to provide the person they are assisting with written notice of the requirements that all bankruptcy schedules must be accurate, that the information is subject to audit, and that the failure to provide accurate information may result in dismissal of the bankruptcy case, sanctions or criminal prosecution. Counseling agencies would be required to provide a separate notice advising the assisted person that the counseling agency is required, *inter alia*, to enter a written contract. Finally, counseling agencies would be required to inform assisted individuals on matters such as "how to determine what property is exempt and how to value exempt property at replacement value."

The Department opposes section 114, as currently drafted, because it would undercut the consumer protections currently contained in section 110 of the Code and state law, which impose penalties on person who negligently or fraudulently prepare bankruptcy petitions. Because counseling agencies would be defined to include petition preparers and other nonattorneys, the advice required to be given by a counseling agency could constitute the unauthorized practice of law. To avoid this problem, section 114 of H.R. 3150 should be amended to exclude nonattorneys from the provisions of new section 526(c), and to add to the form notice in section 526(b) a notice that the debt relief counseling agency employee cannot provide legal advice if he or she is not an attorney.

Section 115 of H.R. 3150 would provide the assisted person certain substantive rights when using a debt relief counseling agency, including the right to a written contract that fully discloses all services and all charges. We do not oppose this provision, but believe that the standard of liability in the provisions should be changed. New section 115(b)(2) provides that a debt relief counseling agency should not "make any statement \* \* \* which is untrue or misleading or which upon the exercise of reasonable care, should be known by the debt relief counseling agency to be untrue or misleading" (emphasis added). The italicized disjunctive "or" would impose strict liability upon a debt relief counseling agency by impos-

ing liability if the statement is untrue or misleading, even if the agency had no reason to know of the untruth or misleading nature of the statement. The Department suggests replacing the italicized “or” with “and” to establish a more appropriate standard of liability.

Finally, section 116 of H.R. 3150 would provide penalties and other remedies for the failure of a counseling agency to comply with the requirements of section 114 and 115; for providing bankruptcy assistance in a case which is dismissed (or converted to a chapter 13 in lieu of a dismissal) under section 707(b) of the Code; or for a failure to file bankruptcy papers. In such circumstances, counseling agencies would be required to refund or waive fees and, if the case has not been closed, a court could require the counseling agency to complete the services in the case without charge. In addition, the state Attorneys General could bring actions to enjoin such violations, and recover for their affected residents actual damages, including costs and attorney fees.

To provide additional protections against abusive practices, the Department urges that section 116 be strengthened to provide monetary penalties for intentional or repeat violations and to empower the United States Trustees to bring actions seeking such penalties and injunctions against offending counseling agencies and their principals. Section 116 should also be clarified to allow a debtor to bring an action for a violation. The experience of the United States Trustees in enforcing violations by petition preparers under section 110 of the Code is that the penalties must be severe and be able to address the enforcement problems posed by shell corporate entities. Finally, section 116 should be amended to clarify that the enforcement remedies of this section are in addition to Chapter 9 of Title 18 and section 110 of the Code. We would be happy to work with the Committee to draft appropriate language.

#### *Section 121. Repeat filings*

In cases of refiling within a year, section 121 of H.R. 3150 would provide a 30-day limit on the application of the automatic stay of section 362 of the Code, unless, prior to termination and upon request of a party-in-interest, the court provides notice and a hearing to affected parties regarding the potential extension of the stay. Serial filings are a serious problem in many jurisdictions and, accordingly, we endorse the adoption of firm measures to address this issue. Repeat filings—whether to obtain multiple discharges or to hold creditors at bay temporarily—should not be encouraged. This provision would provide a welcome limitation to abuse of the automatic stay provision of the Code by serial filers who have no hope or intention of ever being granted a discharge in bankruptcy.

#### *Section 125. Giving secured creditors fair treatment in chapter 13*

Section 125 of H.R. 3150 would amend section 1325(a) (5) (B) (i) of the Bankruptcy Code to protect the lien of a secured creditor from release by a chapter 13 plan if the debtor fails to complete the plans. This provision would resolve an issue on which the bankruptcy courts are split. The issue arises when the debtor confirms a chapter 13 plan that reduces a creditor’s lien to the current value of the collateral (so-called “lien stripping”) and then, after complet-

ing the payments due on the secured portion of the claim, but before the plan is completed, the debtor seeks to discharge the lien. Some courts hold that the collateral does not vest in the debtor until the entire plan is completed. *See, e.g., In re Pruitt*, 203 B.R. 134 (Bankr. N.D. Ind. 1996); *In re Schieirl*, 186 B.R. 498 (Bankr. D. Minn. 1995). Other courts have held that, upon payment of the secured portion of the creditor's claim, the collateral is released. *See, e.g., In re Lee*, 156 B.R. 628 (Bankr. D. Minn.), *aff'd*, 162 B.R. 217 (D. Minn. 1993); *In re Nicewonger*, 192 B.R. 886 (Bankr. N.D. Ohio 1996).

We support the limitations on lien stripping contained in section 125. A key advantage that chapter 13 offers debtors over chapter 7 is that a larger universe of property is subject to lien "strip down." Furthermore, in a chapter 13 plan, the debtor can redeem collateral with payment over time from future income. These advantages are often the debtor's chief reason for undertaking a chapter 13 plan. Because debtors may allocate their plan payments preferentially to pay secured indebtedness sooner than unsecured debt, the result can be a disincentive for debtors to finish their plans after paying enough to redeem the collateral. Such "front loading" of payments for secured debt accounts, in part, for the high percentage of chapter 13 plans that are uncompleted. Debtors should not be permitted to obtain the benefits of chapter 13 without bearing its burdens.

*Section 127. Stopping abuse conversions from chapter 13*

Section 127 of H.R. 3150 would amend section 348(f)(1) of the Code to reverse the bifurcation of a secured creditor's claim into secured and unsecured portions accomplished through a chapter 13 plan, if the case is converted to chapter 7. This provision thus would limit the debtor's ability to release the lien in a chapter 7 case under section 722 of the Code.

For the same reasons we support section 125 of H.R. 3150, we also support this change. This provision addresses a different aspect of the same problem dealt with in section 125 above. Both provisions concern a debtor who confirms a chapter 13 plan that reduces a creditor's lien to the value of the collateral. Unlike section 125, however, section 127 deals with the situation where, after paying part of the secured portion of the claim, the debtor converts his unfinished 13 plan into chapter 7 liquidation. In the chapter 7 case, the debtor then redeems the collateral by tendering the balance due on the "stripped down" lien after taking credit for the payments made under the chapter 13 plan. Unless this option is barred, debtors will have an incentive to take the benefits conferred by chapter 13, and then convert to a chapter 7 without finishing their chapter 13 plans.

*Section 201. Limitation relating to the use of free examiners*

Section 201 of H.R. 3150 would prohibit a court's use of third-party examiners to review professional fee applications. We oppose this provision in its current form because it is overly broad and may be detrimental in large reorganization cases where fee applications are frequent, complex and voluminous. The use of a fee examiner by a bankruptcy judge is not an improper delegation of the

court's duty to review and award compensation; even with a fee examiner, a court must rule on every professional fee application filed. The Department, however, would not oppose amendments to correct perceived abuses relating to compensating fee examiners based upon a percentage of fees successfully challenged and to prohibit the use of fee examiners in small business cases (where the expense of such examiners is likely unwarranted). We would be happy to work with the Committee to draft appropriate language.

*Section 204. Meetings of creditors and equity security holders*

Section 204 of H.R. 3150 would amend section 341 of the Code to allow a court to direct the United States Trustee to dispense with the meeting of creditors in a case with a so-called "pre-packaged plan," *i.e.*, a reorganization plan worked out with creditors in advance of the filing of a Chapter 11 petition. We oppose this provision, which would significantly hinder the ability to creditors and the United States Trustee to examine a debtor's affairs under oath. Dispensing with the meeting could also increase the possibility of fraud and collusion by a debtor and its major creditors.

*Section 205. Creditor and equity security holders committees*

Section 205 of H.R. 3150 would amend section 1102 of the Code to allow a court to order changes in the membership of creditor and equity security holder committees. We strongly oppose this provision. Under section 1102 of the Code, United States Trustees are responsible for creating committees and appointing their members, while courts are called upon to resolve controversies arising from the committees. Section 205 of H.R. 3150 would upset this balance and improperly involve the court in the administration cases. This could create an appearance of favoritism if a court were called upon to resolve a controversy involving a committee it had constituted. The proposal could also result in increased cost and delay because early litigation over committee membership would inevitably decrease the ability of committees to participate at the early, critical stages of cases.

Nevertheless, the Department recognizes the desirability of revising section 1102 to ensure the effective and representative committees are appointed. Accordingly, we would suggest that this section be amended to require that any request to create or alter the membership of a committee be first directed to the United States Trustee and to permit the court, upon a request of a party in interest after an adverse decision by the United States Trustee, to make the requisite findings and order the United States Trustee to alter a committee. Such an amendment should also reaffirm the United States Trustee's authority to alter a committee. We would be happy to work with the Committee to draft language to accomplish this objective.

*Section 207. Preferences*

Section 207 of H.R. 3150 would amend section 547(c) of the Code, which deals with preferential transfers of property to creditors after the filing of a bankruptcy petition. Section 207 would eliminate the ability of a trustee to avoid such a transfer in a case filed

by a debtor whose debts are no primarily consumer debts, where all the property that constitutes or is affected by the transfer is worth less than \$5,000.

We oppose this provision. Although this provision is apparently designed to protect the interests of smaller creditors, this section, without appropriate supervision, could lead to abuse and manipulation by debtors wishing to pay preferred creditors. For example, nothing in the provision would prohibit a debtor from breaking a larger payment into several smaller ones that each total less than \$5,000. If such preferential payments are not avoidable, the result could be a substantial diminution of the property available to pay priority claims.

*Sections 232 and 233. Flexible rules for disclosure statement and plan; standard form disclosure statements and plans*

Section 232 of H.R. 3150 would add a new section 1125(f) to the Code to allow the court to relax the plan confirmation procedures in small business bankruptcies. Specifically, for a small business case, the court would be empowered to: (i) waive the disclosure statement; (ii) use a form disclosure statement; (iii) allow plan solicitation based on a “conditionally approved” disclosure statement; or (iv) combine the confirmation and disclosure statement hearing. Section 233 of H.R. 3150 would require the Judicial Conference to adopt “standard form” disclosure statements and plans of reorganization that balance the need for “reasonably complete information” with “economy and simplicity.”

These provisions would remove procedural barriers to early confirmation and, to the extent they encourage quicker confirmations, are advantageous to debtors and creditors alike. Care will be needed lest the execution of these provisions lead to confirmations without adequate disclosure to creditors and other affected parties. We believe, however, that this risk is manageable.

*Section 234. Uniform national reporting requirements*

Section 234 of H.R. 3150 would add a new section 308 to the Code requiring a small business debtor to file periodic reports explaining: (i) its profitability; (ii) projected income and expenses; (iii) how prior projections compare with actuality; (iv) compliance with bankruptcy requirements; (v) whether taxes returns are timely filed; (vi) what taxes and other administrative claim are in default and when remedied; and (vii) “other matters” needed in the creditors’ and the public’s interest.

We support these disclosure requirements and the need for consistent financial reporting standards. By helping to identify faltering cases, financial reports prevent undue delay in the administration of chapter 11 cases. We further urge extending this section to all chapter 11 debtors, not just small business debtors.

*Section 235. Uniform reporting rules and forms*

Section 235 of H.R. 3150 would require the Attorney General to propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to comply with the provisions added by Section 234 of the bill. We support this provision, but suggest that it be amended to

indicate that the Attorney General would also consult with the Small Business Administration in developing the rule and form proposals.

*Section 236 through 239. Other small business provisions*

The Department is not taking a position on these provisions at this time, which are still under review.

*Section 240. Duties of the United States Trustee and Bankruptcy Administrator*

Section 240 of H.R. 3150 would amend 28 U.S.C. § 586 to expand the United States Trustee's oversight of small business debtors. It would oblige the United States Trustee to interview the debtor before the first meeting of creditors, visit the debtor's premises, monitor the debtor's actions and, where grounds are found to do so, move to convert the case to a Chapter 7 or to dismiss the case altogether.

We support this provision, which would clarify and codify the United States Trustee's obligation to move hopeless cases out of chapter 11. This section reflects the current practice of the United States Trustees, except for the duty to visit the debtor's premises. We estimate that site visits would cost an additional \$9 million over 5 years.

*Section 241. Scheduling conferences*

Section 241 of H.R. 3150 would amend section 105(d) of the Code to require the courts to hold status conferences, and empower the courts to issue administrative orders to establish deadlines and relax the disclosure statement requirements. This provision would apply to all chapter 11 cases. To the extent it empowers the court to override requirements of the Code and Bankruptcy Rules, or to intrude into areas currently entrusted to the United States trustee, it goes too far. While bankruptcy procedures should be somewhat flexible, we believe that it is important that bankruptcy judges not be permitted to vary, essentially at will, from statutory and rule requirements, potentially depriving creditors and other parties in interest of key procedural protections. We believe that the standard incorporated in section 241—allowing the court to vary from the Code and the Bankruptcy Rules if “necessary to further the expeditious and economical resolution of the case”—does not adequately preserve these procedural protections, and therefore oppose the provision.

*Section 242. Serial filer provisions*

Section 242 of H.R. 3150 would amend section 362 of the Bankruptcy Code to disable the automatic stay for a small business filing, where: (i) the debtor is already in bankruptcy; (ii) had a case dismissed or a plan confirmed within two years prior to filing; or (iii) acquired the assets of a debtor in a proceeding covered by (i) or (ii), unless the debtor shows that its filing resulted from causes unforeseeable during the prior case and that a non-liquidating plan may be confirmed within a reasonable time.

Serial filings are a serious problem in many jurisdictions and we endorse the adoption of firm measures to address this issue. Repeat

filings—whether to obtain multiple discharges or to hold creditors at bay temporarily—should not be permitted. Accordingly, we support section 242 of the bill. However, we believe that applying this restriction only to small business debtors is too limited and that this provision instead should apply to all debtors in chapter 11.

*Section 243. Expanded grounds for dismissal or conversion and appointment of trustee*

Section 243 of H.R. 3150 would amend section 1112 of the Code to require the conversion to chapter 7 or dismissal of any chapter 11 case where “cause” is shown. This requirement would not apply if the debtor could show that a plan may be confirmed within a reasonable time and, where the “cause” is a default, that the default is justified and will be cured promptly. “Cause” would be defined to include a variety of situations, including “gross mismanagement;” misuse of cash collateral; a violation of a court order; default of a filing or reporting requirement; the nonpayment of taxes or nonfiling a return; and not filing timely a disclosure statement or plan or confirming a plan.

We support this provision. This provision is one of several in the bill designed to move cases that cannot be confirmed out of chapter 11. Defining “cause” using more objective standards would foster uniformity and enhance efficiency. Shifting the burden to the debtor to justify defaults and prove satisfactory progress when cause is shown appropriately conditions the debtor’s enjoyment of the benefits of bankruptcy on responsible actions.

*Section 251. Single asset real estate defined*

Section 251 of H.R. 3150 would amend section 101(51B) of the Code to remove the \$4 million debt cap from the current definition of “single asset real estate.” Further, it would clarify that unimproved real estate qualifies for this designation. Finally, it would exclude from the definition property owned by a debtor who is part of a commonly controlled group consolidated in one bankruptcy if the group operates a business larger than the single property.

Currently, the mortgagee of Single Asset Real Estate (“SARE”) secures relief from the bankruptcy stay 90 days after the debtor files unless, prior to the running of the 90 days, the debtor files a confirmable plan or commences interest payments based on the property’s fair market value. 11 U.S.C. § 362(d)(3). Removing the cap under section 251 of the bill would allow a larger set of mortgagees to benefit from section 362(d)(3). Many bankruptcies considered abusive by creditors have concerned SAREs. We strongly favor the proposed changes, which would benefit federal lenders and insurers, most notably the Department of Housing and Urban Development (HUD).

HUD, however, needs and deserves additional protection for its unique bankruptcy problems. HUD borrowers are usually limited partnerships that enjoy tax shelters for their investors, favorable interest rates, and, frequently, subsidies for their tenants. Projects without sufficient income to service indebtedness also lack the income to manage and maintain the insured property. Deteriorating property not only diminishes property values but also can lead to unsafe and unsanitary conditions for the tenants, many of whom

have low to moderate income. HUD's remedy for the owner's financial and regulatory defaults—foreclosure—is easily and completely frustrated by the filing of a bankruptcy and the attendant invocation of the automatic stay of section 362 of the Code.

When owners file for bankruptcy, debt service is usually reduced or withheld entirely. Some courts allow the rents to accumulate as a dollar for dollar reduction in HUD's secured claim; hence, in those courts, delay is rewarded because the longer the delay, the more the secured debt is paid down. Meanwhile, the owners continue to enjoy the tax advantages of ownership, such as depreciation deductions. While bankruptcy restrictions limit HUD's usual remedies and rights, HUD must continue to pay rent and other subsidy payments which inure to the benefit of the project owners. Although the owner/partnership's only asset is the project that is wholly encumbered by HUD's mortgage, the owner often can stave off a motion by HUD seeking relief from the automatic stay by promising new investments to enable a successful reorganization. Such scenarios can force HUD to accept plans that reduce its mortgage and discharge unsecured debt, yet allow the debtors to retain their ownership interests through relatively small investments of new capital. Even where HUD is allowed to proceed with foreclosure, the result can be further deterioration of the mortgaged property, creating hazards for tenants, and reduced—often sharply—sale values.

HUD did not suffer these consequences until 1978 when Congress repealed a long-held exception to the automatic stay for multifamily projects insured under the National Housing Act. We recommend that exception be restored. Such a change could be accomplished by amending section 362(b)(8) of the Code to read:

(8) under subsection (a) of this section, of any act to foreclose a lien insured or held by the Secretary of Housing and Urban Development, or the Secretary of Agriculture pursuant to title V of the Housing Act of 1949, on property that has more than four living units; is a hospital or nursing home; or is a project for the elderly or persons with disabilities.

*Section 252. Payment of interest*

Section 252 of H.R. 3150 would amend section 362(d)(3) of the Bankruptcy Code to limit the automatic stay in case of a SARE, where the debtor fails to file a plan or commence interest payments within 90 days of filing, to: (i) allow the payment to commence 30 days after the court determines that the debtor is a SARE; (ii) allow the debtor to make the interests payments from post-petition rents of the SARE; and (iii) specify the non-default contract rate as the interest rate.

We oppose this change. Under current section 362(d)(3) of the Code, creditors of a SARE debtor may have the automatic stay lifted if the debtor has not filed a “feasible” reorganization plan within 90 days of filing or has not commenced monthly payments to secured creditors. Giving the debtor 30 days to comply after the court rules that the debtor is subject to section 362(d)(3) is unwise. The exception to the automatic stay in section 362(d)(3) takes its force from the 90 days time limit. That force is substantially diminished by relaxing that limit for debtors who claim, or who can find a pre-

text for claiming, that it does not apply. It is also unnecessary; the court currently can extend the 90 days for “cause.”

Giving the debtor the “sole discretion” to override section 363(c)(2) and make interest payments out of post-petition rents is also ill-advised. First, the amendment does not require that the creditor receiving the rents be the same as the creditor whose rights are voided. Second, even if the creditor receiving the rents is being paid its own collateral, the amendment serves to limit that creditor’s rights. Currently, this section works largely as a predicate to allow the secured creditor and the debtor to negotiate a consensual payment schedule. Giving the debtor the discretion to override the secured creditor’s interests stands the purpose of the section on its head.

Finally, allowing the debtor to pay at the contract rate is inconsistent with paying a “stripped down” value in the case of an undersecured creditor. If the payment’s principal is a function of market value, the interest rate should be calculated the same way. We oppose this change as well.

*Section 401. Adequate preparation time for creditors before the first meeting of creditors in individual cases*

Section 401 of H.R. 3150 would amend section 341 of the Code to provide that the first meeting of creditors in individual cases shall not be convened earlier than 60 days, nor longer than 90 days, after the Order for Relief, absent a court determination of unusual circumstances. This proposal is contrary to the expeditious administration of bankruptcy cases. Any delay in the meeting of creditors would impeded the ability of trustees and the United States Trustee to intervene in problem cases, and impair the ability of trustees to obtain control of estate property and promptly investigate the debtor’s financial affairs.

The Department would not oppose amendments allowing creditors additional time to protect their interests, such as amendments extending the time periods for objecting to the entry of the debtor’s discharge, seeking a determination that a particular debt is non-dischargeable, filing a motion to dismiss for substantial abuse under section 707(b) of the Code, and objecting the debtor’s claimed exemptions. We would be happy to work with the Committee to draft acceptable language.

*Section 402. Creditor representation at the first meeting of creditors*

Section 402 of H.R. 3150 would amend section 341 of the Code to allow non-attorney consumer creditor representatives to attend and participate in chapters 7 and 13 creditor’s meetings notwithstanding federal, state or local non-bankruptcy law to the contrary. The Department supports this provision because it promotes the participation of creditors in the bankruptcy process. We strongly encourage further amendment to delete the phrase “holding a consumer debt” from the section to ensure the ability of all creditors, including non-lawyer representatives of governmental creditors, to participate in creditor meetings.

*Section 404. Audit procedures*

Section 404 of H.R. 3150 would amend 28 U.S.C. § 586 to require the Attorney General to establish procedures for auditing of a debtor's petition, schedules, statement of financial affairs and other similar information in all consumer chapters 7 and 13 cases. At least one percent of the consumer cases in each judicial district would be randomly chosen for audit, in addition to those cases where the debtor's income and expenses exceed the mean variance in the judicial district.

The Department supports the concept of debtor audits. The bankruptcy system is dependent upon the full and voluntary disclosure by debtors of accurate information regarding their assets, liabilities and financial affairs. A systematic program of random audits would serve to deter those who might otherwise be tempted to conceal assets and information from their creditors. We also believe assigning this responsibility to the Department makes sense given the central role of United States Trustees in ensuring the integrity of the bankruptcy system.

The Department, however, opposes section 404 in its current form because of its feasibility and cost. The proposal requires independent Certified Public Accountants (CPAs) to conduct "audits" in accordance with "generally accepted auditing standards," a term of art within the accounting profession. It is questionable whether an audit conducted by an independent CPA and in accordance with these principles is feasible or desirable in most consumer cases given that a debtor's financial records are often nonexistent or in disarray.

Assuming that the practical problems associated with conducting an audit can be resolved, the provision as drafted would be costly. The Department has estimated that implementing the audit program contemplated by this section could cost from \$45 million to more than \$174 million over five years. This cost is in large part a function of the number audited and the use of independent CPAs. The cost of the audits could easily exceed the total sum appropriated to fund the entire United States Trustee program in Fiscal Year 1998. Moreover, the bill provides no funding mechanism to cover these costs.

The use of an audit report is left similarly vague. Copies of the audit reports are to be filed with the Court, but it is uncertain if this would be merely for the purpose of providing a public repository for the report accessible to all parties in interest, or if it is intended that the Court would, *sua sponte*, initiate action based on the auditors' findings. The report of each audit is also to be filed with the United States Attorney, thereby burdening that office with storing and indexing this information. However, absent notification from the United States Trustee that a material misstatement has been made in a case that warrants a criminal investigation, it is unclear what if any additional role the United States Attorney is to play in resolving audit deficiencies.

We recommend that the following changes be made to Section 404:

Require the Attorney General to establish a system to audit consumer debtor cases on either a random or targeted basis, but without a minimal prescribed percentage;

Eliminate the mandatory use of independent CPAs and generally accepted auditing standards, and grant the Attorney General the authority to determine and define the scope of the audits;

Eliminate the requirement of filing the audit reports with the court and the United States Attorney;

Provide a civil sanction to ensure debtor's compliance with the audit and defer a section 727 discharge until the U.S. Trustee reports a satisfactory audit; and

Provide a source to fund the audits other than assessments upon the affected debtors.

Given the size of the audit program and its cost, the Department also urges the committee to consider a pilot program for audits that would allow the costs and benefits of various approaches to be considered. In addition, consideration should be given to limiting random audits to chapter 7 debtors.

*Section 405. Giving creditors fair notice in chapter 7 and 13 cases*

Section 405 of H.R. 3150, which is similar to section 309 of S. 1301, would amend the notice provisions of section 342 of the Bankruptcy Code to require, in an individual bankruptcy case, that notices to creditors include any account number and be sent to the address that a creditor has specified. It also would require that a matrix of addresses prescribed by creditors for notices in a district be established. Further, unless actual notice is sent to the specified addresses and received by a responsible person or department at the creditor, notice would be ineffective, the creditor could not be sanctioned for violating the automatic stay and turnover of property could not be enforced.

While this section has some technical difficulties, we strongly support its intent to ensure that debtors know how to give effective notice and that the creditors, in fact, receive such notice. Indeed, we urge that this provision for fair notice apply to all bankruptcy chapters—there is no reason to limit this provision only to chapters 7 and 13. We would be happy to work with the Committee to draft acceptable language.

*Section 406. Debtor to provide tax returns and other information*

Section 406 to H.R. 3150 would, *inter alia*, require the debtor to provide the United States Trustees with copies of all Federal tax returns for the 3 most recent tax years, and copies of all returns filed during the pendency of the bankruptcy case. The United States Trustee would be required to maintain these records and to make them available to any party in interest for inspection and copying within 10 days of receiving a request.

The Department supports the requirements that tax records be provided by the debtor, but opposes the requirement that these documents be filed with the United States Trustees. Rather, we believe these records should be filed with the court as a repository of the public record. In particular, we believe that these tax documents should be public records, given the consequences that would flow under section 407 of the bill, which would lead to a case being automatically dismissed if the tax returns are not filed within 45 days following the petition. Alternatively, the records could be filed

with the chapter 7 and chapter 13 trustees, who, both under existing law and the provisions of the bill, have an obligation to review the debtor's financial conditions.

*Section 411. Jurisdiction of courts of appeals*

Section 411 of H.R. 3150 would amend 28 U.S.C. § 1293 to allow a court of appeals to review: (i) final orders in core bankruptcy matters; (ii) all bankruptcy injunctions; and (iii) orders appointing a trustee or extending the period within which the debtor exclusively may file a plan. Further, it would allow a court of appeals to review all interlocutory bankruptcy orders in its discretion or upon certification by the issuing court.

We strongly oppose this change. In the 1978 Bankruptcy Reform Act, the Congress established bankruptcy courts that were independent of the district courts, but declined to confer Article III status on the bankruptcy judges. In *Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 458 U.S. 50 (1982), the Supreme Court found this 1978 grant of jurisdiction to bankruptcy judges unconstitutionally broad because it conferred Article III authority on judges who lacked the life tenure and salary security of Article III judges. Two years later, Congress responded by passing the Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA), Pub. L. No. 98-353, 98 Stat. 333. BAFJA sought to remedy the constitutional deficiencies identified in *Northern Pipeline* by vesting jurisdiction over the district courts to refer cases to the bankruptcy courts, which were expressly made units of the federal district courts. 28 U.S.C. §§ 151, 157, 1334. BAFJA specifies the so-called “core” matters as to which bankruptcy judges may issue final orders and reserves “non core” matters for final decision by the federal district court.<sup>1</sup> 28 U.S.C § 157.

Currently, the district courts review most bankruptcy court rulings before final appeal may be taken to the courts of appeals. Section 412 would displace the district court from bankruptcy matters, except where it withdraws the reference or where it enters a final judgment in a non-core proceeding. This would diminish substantially the district court's oversight of bankruptcy judges. That oversight is a key element of the constitutional cure enacted in BAFJA. The Supreme Court has yet to rule upon the BAFJA structure, and its constitutionality has been hotly debated. Until this constitutional question is resolved, we urge the Congress not to lessen district court review and remove this potentially significant basis for the constitutionality of the bankruptcy court's exercise of judicial power.

*Sections 441 and 442. Data collection*

Section 441 of H.R. 3150 would add 28 U.S.C. § 159 to require the Executive Office for United States Trustees to compile statistics

<sup>1</sup>“Core” matters are generally those matters arising directly under the bankruptcy laws, such as the administration of the estate, the allowance or disallowance of claims and the estimation of claims or interest for the purposes of confirming a plan. “Non core” matters are proceedings merely “related to” a bankruptcy, for example, a suit not arising under the bankruptcy laws brought by a debtor against a third party who has not voluntarily entered the bankruptcy proceeding. In non core matters, a bankruptcy judge may enter only a recommended decision; the final order is entered by a district judge following *de novo* review of the bankruptcy judge's proposed findings.

regarding consumer bankruptcy filings and report annually to Congress. We support this provision as a necessary aid to tracking the health of the consumer bankruptcy system.

The Department opposes, however, provisions in section 441 that would require the collection of certain categories of data for several reasons. First, the report would be based largely on information derived from bankruptcy schedules filed by the debtors, and this information is often subject to questions about accuracy. Second, many of the requirements for data required in Section 441 would call for information that would not be routinely collected and analyzed by either the United States Trustees or the courts. Working with information on a day to day basis increases its integrity, and as errors are identified they are corrected. Information that is gathered for reporting purposes only, as is the case for many of the elements of Section 441, lacks this essential safeguard of data integrity.

Finally, the Department also opposes the provision directing the Administrative Office of the United States Courts ("Administrative Office") to prescribe the form of the statistics. We believe section 441 should be amended to provide the Executive Office of the United States Trustees, after consultation with the Administrative Office, with the discretion on what statistics to compile within certain broad categories. This approach would create a flexible tool in which to provide Congress with crucial and timely information about the bankruptcy system.

The Department supports the data collection provisions of section 442, which would add a new 28 U.S.C. § 589b. This provision would build upon data that will be readily ascertainable after amendment to the final and periodic report forms. We do note two problems with this provision. It conflicts with section 235, which requires the Administrative Office to create an official form for periodic reports in small business chapter 11 cases. Section 235 should be amended to reflect the role of the Attorney General in promulgating the form of these reports. We also question the provision in section 442 requiring the Attorney General to maintain final reports in one or more central locations. Currently, all final reports are filed with the courts, and section 442 provides for electronic access through the Internet. We would be happy to work with the Committee to recommend appropriate changes to these provisions.

#### *Section 501. Treatment of certain liens*

Section 501 of H.R. 3150 deals with subordination of tax liens under section 724(b) of the Code, and is identical to section 2 of S. 1149, the Investment in Education Act, a bill passed by the Senate on October 30, 1997. Under the proposed changes, ad valorem property taxes would generally be protected from subordination. Reversing current law, expenses of a failed chapter 11 proceeding would not be given preferential treatment over tax liens, with a limited exception. Exhaustion of unencumbered assets would be required before tax liens could be subordinated, and expenses of preserving or disposing of secured property must be recovered from the property (reducing the expenses to which a tax lien would be subordinated).

We support this provision. The public fisc should not be required to subsidize failed chapter 11 cases by having tax liens subordinated in order to pay administrative expenses of insolvent reorganization proceedings. Moreover, in chapter 7 cases, other unencumbered assets should be used to satisfy administrative expenses and any expenses properly allocable to secured claims should be recovered from the property.

*Section 502. Effective notice to government*

Section 502 of H.R. 3150 would amend section 342 of the Code to improve notice to the entities most frequently participating in the bankruptcy process—governmental units. It would require identification of the agency through which the debtor is indebted; disclosure of identifying information concerning the claim (such as taxpayer identification numbers and real estate parcel designations); and creation of a matrix of addresses of governmental units. In addition, it would give incentives to debtors to use the designated addresses.

We support these provisions. They are in accord with Recommendation 4.2.1 of the National Bankruptcy Review Commission, which recommended redressing the current deficiencies in notifying governmental units. This provision would ensure reasonable identification of both the affected government agency and the debtor obligated on the debt. It would also create a mechanism for giving debtors accurate addresses to which notices should be sent. Finally, it would promote compliance with the mechanism by providing exceptions to bar dates and discharge-ability when a debtor fails to comply with the prescribed mechanism. We suggest, however, that the reference point in subsection (c) be corrected from notice of the bankruptcy “case” to notice of “the matter or proceeding in respect to which the notice was provided.”

*Section 503. Notice of request for a determination of taxes*

Section 503 of H.R. 3150 would amend section 505(b) of the Code to provide that a request for prompt audit of a tax return should be sent to the office designated by the taxing authority. Thus, for example, a notice sent to the Secretary of the Treasury in Washington, rather than to the Special Procedures unit of the IRS District Director where the bankruptcy is pending, would not suffice. We support this proposal. However, we do not believe it necessary to introduce further complications by requiring that the designation must be made on a local court registry.

*Section 504. Rate of interest on tax claims*

Section 505 of H.R. 3150, as introduced provided that when a governmental unit is entitled to postpetition interest on a tax claim, the rate of interest would be the rate determined under section 6621(a)(2) of the Internal Revenue Code (26 U.S.C.). Under current law, the court must generally determine the “market rate” for such interest. As reported by the Subcommittee, Section 504 of H.R. 3150 provides that if the holder of an *unsecured* prepetition tax claim is entitled to interest on such claim, the *minimum* rate of interest will be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal

Revenue Code for the calendar month in which the plan is confirmed, plus three percentage points.

We oppose this provision. We believe that the legislation should simply fix the interest rate for deferred tax payments at the applicable nonbankruptcy interest rate, *i.e.*, the section 6621(a)(2) rate. Moreover, the legislation should address, as well, the interest rate for secured tax claims.

*Section 505. Tolling of priority of tax claims time periods*

Section 505 of H.R. 3150 would suspend the time periods under the Code pertaining to the priority and discharge of tax claims during the pendency of a prior bankruptcy for the period in which the government was prohibited from collecting the claim, plus six months. We support this proposal. The filing of successive bankruptcies should not disadvantage governmental units by reducing their opportunity to collect a tax, and should not result in a more expansive discharge of tax claims for debtors. Adding six months to the suspension period mirrors section 6503(h) of the Internal Revenue Code (26 U.S.C.), and is appropriate given the disruption to collection efforts caused by the filing of a bankruptcy petition. The additional time is needed to get collection efforts back on track.

*Section 507. Chapter 13 discharge of fraudulent and other taxes*

Section 507 of H.R. 3150 would generally conform the discharge of tax claims in chapter 13 cases to the discharge of such claims available in chapter 7 cases. We support this provision. Under current law priority tax claims for which a proof of claim is filed must be paid in full pursuant to the plan, and if a proof of claim is not filed, such taxes may be discharged. Taxes attributable to fraud or unfiled returns can be discharged upon completion of all payments under the plan, but many jurisdictions permit plans providing for “zero payment” of taxes, or plans distributing payments covering only small percentages of such claims. Permitting taxes attributable to fraud, or for which returns have never been filed, to be discharged on the basis of a tax evader’s commitment to make payments to his or her creditors for three or five years makes bankruptcy a tax haven. In our view, a debtor should be entitled to the same discharge in chapters 7 and 13, as proposed in section 507. Taxes attributable to fraud should be not discharged in a chapter 13 proceeding, and chapter 13 plans should not be confirmed unless prepetition tax returns are filed as proposed in section 516 of the HR. 3150.

*Section 508. Chapter 11 discharge of fraudulent taxes*

Section 508 of H.R. 3150 would deny a discharge to a chapter 11 corporate debtor for taxes that arose because of fraudulent tax returns or an attempt to evade taxes. We support this proposal. Corporations that engage in tax fraud or otherwise attempt to evade taxes should not be entitled to a discharge vis-a-vis those taxes.

*Section 509. The stay of proceedings in Tax Court*

Section 509 of H.R. 3150 would limit the automatic stay applicable to Tax Court proceedings to proceedings regarding a tax liabil-

ity for a tax period ending before the order for relief, and would clarify that the automatic stay does not apply to an appeal of a decision determining a tax liability of the debtor. We support these proposals. No purpose is served in staying the commencement or continuation of a Tax Court proceeding for taxes incurred postpetition. Moreover, a court of appeals case regarding the liability of a taxpayer for a tax should be allowed to continue to a decision.

*Section 510. Periodic payment of taxes in chapter 11 cases*

Section 510 of H.R. 3150 would require the payment of tax claims in installments over the course of the plan with the result that balloon payments would be proscribed. We support this prohibition on balloon payments.

In addition, section 510 would modify the deferral period for payment of prepetition tax claims in a chapter 11 plan by allowing payments to be made within six years of the petition date. Current law provides that payments are to be completed within six years of the assessment date of the taxes. We oppose the proposal to measure the deferral period from the date of the petition, rather than from the assessment date. The proposal would extend the payment of some prepetition taxes for a period extending beyond the statute of limitations on tax collection. This would not only raise questions as to the legality of accepting payments for which collection would otherwise be barred, but would also prevent the IRS from seeking to enforce collection in the event of a default.

Finally, we note the version of H.R. 3150 approved by the Subcommittee does not include a provision that was in the original bill that would have treated secured tax claims as priority claims for deferred payment purposes under section 1129(a)(9)(C) of the Code, where such claims would have had priority absent their secured status. We urge you to restore this provision to the bill. We believe that it is illogical for the Bankruptcy Code to treat tax claims that would be entitled to priority absent their secured status less favorably than unsecured priority claims.

*Section 511. The avoidance of statutory tax liens prohibited*

Section 511 of H.R. 3150 would resolve litigation over the interaction of section 545(2) of the Code, and the protection accorded certain purchasers of property under 26 U.S.C. § 6323 even after a notice of tax lien has been filed. We support the proposal. The purpose of the special treatment for such purchasers is to facilitate the flow of these goods in commerce. Debtors would receive a windfall if section 545(2) of the Code applied to tax liens.

*Section 514. Income tax returns by tax authorities*

Section 514 of H.R. 3150 would concern the exception from discharge for taxes relating to unfiled tax returns when substitute tax returns are prepared by taxing authorities. For tax purposes, a tax return prepared by the IRS is not considered a tax return, unless it is signed by the taxpayer. The proposal would confirm that a substitute return prepared by the IRS is not a return for discharge purposes, unless it is signed by the taxpayer. This section further provides, however, that a written stipulation to a judgment entered

in a nonbankruptcy court would be treated in the same manner and have the same effect as a signed tax return. We are uneasy at the prospect of having different definitions of “tax returns” for Internal Revenue Code and Bankruptcy Code purposes. Furthermore, stipulation to a judgment represents a level of cooperation much different in degree and kind than the signing under penalty of perjury of a return prepared by a taxing authority. Thus, we do not support the provision equating a stipulated judgment with a signed return.

*Section 515. The discharge of the estate’s liability for unpaid taxes*

Section 515 of H.R. 3150 would absolve the debtor’s estate of liability for administrative taxes after a request for a prompt audit is made in accordance with section 505(b) of the Code. Several courts have held that while a trustee, the debtor, and a successor to the debtor are discharged from liability for administrative period taxes after a prompt audit request is made, the estate remains liable for any taxes uncovered by a taxing authority in a subsequent audit. We oppose the proposal to extinguish the liability of the estate. Section 505(b) already protects the trustee, the debtor and the debtor’s successors from liability, and extinguishing the liability of the estate for taxes that it should have reported on its return will result in an unjust windfall for other creditors.

*Section 516. Requirement to file tax returns to confirm chapter 13 plans*

Section 515 of H.R. 3150 would require chapter 13 debtors to file all tax returns due for six years prior to the petition date, and implements a proposal adopted by the National Bankruptcy Review Commission. Tax authorities are placed at a severe disadvantage in filing timely proofs of claim when a chapter 13 debtor is delinquent in filing prepetition tax returns. We support this proposal. It is ironic and troubling that individuals who invoke the protections of government against their creditors, defy their government in failing to discharge their tax return filing responsibilities. We submit that chapter 13 plans of debtors who continue to disregard their tax return filing obligations should not be confirmed.

*Section 518. Setoff of tax refunds*

Section 518 of H.R. 3150 would create an exception to the automatic stay allowing taxing authorities to set off prepetition tax refunds against prepetition tax claims. We support this proposal.

Even when consumer bankruptcy filings were a mere 300,000 cases a year, the cost to the government of filing lift stay motions for relief from the automatic stay in order to effect a setoff of tax refunds would have been significant. With consumer filings now surpassing 1.3 million cases a year, the cost of filing such lift stay motions would be prohibitive. Given the number of cases in which refund offset arise, the solution is to permit taxing authorities to use the administrative processes that apply outside of bankruptcy rather than dealing with the issue on a case-by-case basis using a litigation model.

We look forward to working with the Committee as it considers these and other issues raised by H.R. 3150. The Office of Manage-

ment and Budget advises that it has no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

ANN M. HARKINS,  
*Acting Assistant Attorney General.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 11—UNITED STATES CODE**

Chap.		Sec.
1.	<b>General Provisions</b> .....	<b>101</b>
	* * * * *	
6.	<b>Ancillary and Other Cross-Border Cases</b> .....	<b>601</b>
	* * * * *	

**CHAPTER 1—GENERAL PROVISIONS**

\* \* \* \* \*

**§ 101. Definitions**

In this title—

(1) \* \* \*

\* \* \* \* \*

(3) “assessment”—

*(A) for purposes of State and local taxes, means that point in time when all actions required have been taken so that thereafter a taxing authority may commence an action to collect the tax, and*

*(B) for Federal tax purposes has the meaning given such term in the Internal Revenue Code of 1986; and “assessed” and “assessable” shall be interpreted in light of the definition of assessment in this paragraph;*

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

(4) “attorney” means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law;

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

\* \* \* \* \*

(10) “creditor” means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim;

(10A) *“current monthly total income” means the average monthly income from all sources derived which the debtor, or in a joint case, the debtor and the debtor’s spouse, receive without regard to whether it is taxable income, in the six months preceding the date of determination, and includes any amount paid by anyone other than the debtor or, in a joint case, the debtor and the debtor’s spouse on a regular basis to the household expenses of the debtor or the debtor’s dependents and, in a joint case, the debtor’s spouse if not otherwise a dependent;*

\* \* \* \* \*

(12A) *“debt for child support” means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor;*

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

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

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

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

(13) *“debtor” means person or municipality concerning which a case under this title has been commenced;*

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

(13B) *“incidental property” means property incidental to such residence including, without limitation, property commonly conveyed with a principal residence where the real estate is located, window treatments, carpets, appliances and equipment located in the residence, and easements, appurtenances, fixtures, rents, royalties, mineral rights, oil and gas rights, escrow funds and insurance proceeds;*

【(14) *“disinterested person” means person that—*

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

[(B) is not and was not an investment banker for any outstanding security of the debtor;

[(C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

[(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and

[(E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason;]

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

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

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

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

\* \* \* \* \*

[(23) "foreign proceeding" means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization;

[(24) "foreign representative" means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding;]

(23) "foreign proceeding" means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

(24) "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;

\* \* \* \* \*

(27) "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government;

(27A) "household goods" has the meaning given such term in the Trade Regulation Rule on Credit Practices promulgated by the Federal Trade Commission (16 C.F.R. 444.1(i)), as in effect on the effective date of this paragraph;

\* \* \* \* \*

(39A) "monthly net income" means the amount determined by taking the current monthly total income of the debtor less—

(A) the expense allowances under the applicable National Standards, Local Standards and Other Necessary Expenses allowance (excluding payments for debts) for the debtor, the debtor's dependents, and, in a joint case, the debtor's spouse if not otherwise a dependent, in the area in which the debtor resides as determined under the Internal Revenue Service financial analysis for expenses in effect as of the date it is being determined;

(B) the average monthly payment on account of secured creditors, which shall be calculated as of the date of determination as the total of all amounts then remaining to be paid on account of secured claims pursuant to the plan less any of such amounts to be paid from sources other than the debtor's income, divided by the total months remaining of the plan; and

(C) the average monthly payment on account of priority creditors, which shall be calculated as the total of all amounts then remaining to be paid on account of priority claims pursuant to the plan less any of such amounts to be paid from sources other than the debtor's income, divided by the total months remaining of the plan;

(40) "municipality" means political subdivision or public agency or instrumentality of a State;

(40A) "national median family income" and "national median household income for 1 earner" shall mean during any calendar year, the national median family income and the national median household income for 1 earner which the Bureau of the Census has reported as of January 1 of such calendar year for the most recent previous calendar year;

\* \* \* \* \*

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

\* \* \* \* \*

[(51B) “single asset real estate” means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto having aggregate noncontingent, liquidated secured debts in an amount no more than \$4,000,000;

](51C) “small business” means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed \$2,000,000;]

*(51B) “single asset real estate” means undeveloped real property or other real property constituting a single property or project, other than residential real property with fewer than 4 residential units, on which is located a single development or project which property or project generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor, or by a commonly controlled group of entities all of which are concurrently debtors in a case under chapter 11 of this title, other than the business of operating the real property and activities incidental thereto;*

*(51C) “small business case” means a case filed under chapter 11 of this title in which the debtor is a small business debtor;*

*(51D) “small business debtor” means—*

*(A) a person (including affiliates of such person that are also debtors under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than \$5,000,000 (excluding debts owed to 1 or more affiliates or insiders); or*

*(B) a debtor of the kind described in paragraph (51B) but without regard to the amount of such debtor’s debts; except that if a group of affiliated debtors has aggregate noncontingent liquidated secured and unsecured debts greater than \$5,000,000 (excluding debt owed to 1 or more affiliates or insiders), then no member of such group is a small business debtor;*

\* \* \* \* \*

**§ 103. Applicability of chapters**

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title *and this chapter, sections 307, 555 through 557, 559, and 560 apply in a case under chapter 6.*

\* \* \* \* \*

*(j) Chapter 6 applies only in a case under that chapter, except that section 605 applies to trustees and to any other entity authorized by the court, including an examiner, under chapters 7, 11, and 12, to debtors in possession under chapters 11 and 12, and to debtors or trustees under chapters 9 and 13 who are authorized to act under section 605.*

**§ 104. Adjustment of dollar amounts**

(a) \* \* \*

(b)(1) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections 101(3), [109(e)] subsections (b), (e), and (h) of section 109, 303(b), 507(a), 522(d), [and 523(a)(2)(C)] 523(a)(2)(C), and 1325(b)(1) immediately before such April 1 shall be adjusted—

(A) \* \* \*

\* \* \* \* \*

**§ 105. Power of court**

(a) \* \* \*

\* \* \* \* \*

(d) The court, on its own motion or on the request of a party in interest[, may]—

[(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and]

*(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and*

(2) [unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure,] *may* issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) \* \* \*

\* \* \* \* \*

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan[.]; *and*

*(3) in a small business case, not extend the time periods specified in sections 1121(e) and 1129(e) of this title except as provided in section 1121(e)(3) of this title.*

\* \* \* \* \*

**§ 109. Who may be a debtor**

(a) \* \* \*

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a small business investment company licensed by the Small Business Administration under [subsection (c) or (d) of] section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act; [or]

(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States[.]; or

(4) an individual or, in a joint case, an individual and such individual's spouse, who have income available to pay creditors as determined under subsection (h).

\* \* \* \* \*

(h)(1) An individual or, in a joint case, an individual and such individual's spouse, have income available to pay creditors if the individual, or, in a joint case, the individual and the individual's spouse combined, as of the date of the order for relief, have—

(A) current monthly total income of not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, of not less than the national median household income for 1 earner, as of the date of the order for relief;

(B) projected monthly net income greater than \$50; and

(C) projected monthly net income sufficient to repay twenty percent or more of unsecured nonpriority claims during a five-year repayment plan.

(2) Projected monthly net income shall be sufficient under paragraph (1)(C) if, when multiplied by 60 months, it equals or exceeds 20 percent of the total amount scheduled as payable to unsecured nonpriority creditors.

(3) "Projected monthly net income" means current monthly total income less—

(A) the expense allowances under the applicable National Standards, Local Standards and Other Necessary Expenses allowance (excluding payments for debts) for the debtor, the debtor's dependents, and, in a joint case, the debtor's spouse if not otherwise a dependent, in the area in which the debtor resides as determined under the Internal Revenue Service financial analysis for expenses in effect as of the date of the order for relief;

(B) the average monthly payment on account of secured creditors, which shall be calculated as the total of all amounts scheduled as contractually payable to secured creditors in each month of the 60 months following the date of the petition by the debtor, or, in a joint case, by the debtor and the debtor's spouse combined, and dividing that total by 60 months; and

(C) the average monthly payment on account of priority creditors, which shall be calculated as the total amount of debts entitled to priority, reasonably estimated by the debtor as of the date of the petition, and dividing that total by 60 months.

(4) In the event that the debtor establishes extraordinary circumstances that require allowance for additional expenses or adjustment of current monthly income, projected monthly net income for purposes of this section shall be the amount calculated under paragraph (3) less such additional expenses or income adjustment as such extraordinary circumstances require.

(A) This paragraph shall not apply unless the debtor files with the petition—

(i) a written statement that this paragraph applies in determining the debtor's eligibility for relief under chapter 7 of this title;

(ii) if adjustment of current monthly income is claimed, an explanation of what income has been lost in the 6 months preceding the date of determination and any replacement income that has been offered or secured, or is expected, and an itemization of such lost and replacement income;

(iii) if allowance for additional expenses is claimed, a list itemizing each additional expense which exceeds the expenses allowances provided under paragraph (3)(A);

(iv) a detailed description of the extraordinary circumstances that explain why each loss of income described under clause (ii) will not be replaced or each additional expense itemized under clause (iii) requires allowance; and

(v) a sworn statement signed by the debtor and, if the debtor is represented by counsel, by the debtor's attorney, that the information required under this paragraph is true and correct.

(B) Until the trustee or any party in interest objects to the debtor's statement that this paragraph applies and the court rejects or modifies the debtor's statement, the projected monthly net income in the debtor's statement shall be the projected monthly net income for the purposes of this section. If an objection is filed with the court within 60 days after the debtor has provided all the information required under subsections (a)(1) and (c)(1)(A) of section 521, the court, after notice and hearing, shall determine whether such extraordinary circumstances exist and shall establish the amount of the additional expense allowance, if any. The burden of proving such extraordinary circumstances shall be on the debtor.

(i)(1) Subject to paragraph (2) and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 90-day period preceding the date of filing of the petition, made a good-faith attempt to create a debt repayment plan outside the judicial system for bankruptcy law (commonly referred to as the "bankruptcy system"), through a credit counseling program offered through credit counseling services described in section 342(b)(2) that has been approved by—

(A) the United States trustee; or

(B) the bankruptcy administrator for the district in which the petition is filed.

(2) The United States trustee or bankruptcy administrator may not approve a program for inclusion on the list under paragraph (1) unless the counseling service offering the program offers the program without charge, or at an appropriately reduced charge, if payment of the regular charge would impose a hardship on the debtor or the debtor's dependents.

(3) The United States trustee or bankruptcy administrator shall designate any geographical areas in the United States trustee region or judicial district, as the case may be, as to which the United States trustee or bankruptcy administrator has determined that

credit counseling services needed to comply with this subsection are not available or are too geographically remote for debtors residing within the designated geographical areas. The clerk of the bankruptcy court for each judicial district shall maintain a list of the designated areas within the district.

(4) The clerk shall exclude a particular counseling service from the list maintained under section 342(b)(2) of this title if the United States trustee or bankruptcy administrator orders that the counseling service not be included in the list.

(5) The court may waive the requirement specified in paragraph (1) if—

(A) no credit counseling services are available as designated under paragraphs (2) and (3);

(B) the providers of credit counseling services available in the district are unable or unwilling to provide such services to the debtor in a timely manner; or

(C) foreclosure, garnishment, attachment, eviction, levy of execution, or similar claim enforcement procedure that would have deprived the individual of property had commenced before the debtor could complete a good faith attempt to create such a repayment plan.

(6) A debtor who is subject to the exemption under paragraph (5)(C) shall be required to make a good-faith attempt to create a debt repayment plan outside the judicial system in the manner prescribed in paragraph (1) during the 30-day period beginning on the date of filing of the petition of that debtor.

(7) A debtor shall be exempted from the bad faith presumption for repeat filing under section 362(c) of title 11 if the case is dismissed due to the creation of a debt repayment plan.

(8) Only the United States trustee may make a motion for dismissal on the ground that the debtor did not comply with this subsection.

\* \* \* \* \*

### **§ 111. Adjustment to monthly net income**

(a) Monthly net income for purposes of a plan under chapter 13 of this title shall be adjusted under this section when the debtor's extraordinary circumstances require adjustment as determined herein. Under this section, monthly net income shall be determined by subtracting therefrom such loss of income or additional expenses as the debtor's extraordinary circumstances require as determined under this section. This section shall not apply unless—

(1) the debtor files with the court and, in a case in which a trustee has been appointed, with the trustee at the times required in subsection (b) a statement of extraordinary circumstances as follows—

(A) a written statement that this section applies in determining the debtor's monthly net income;

(B) if applicable, an explanation of what income has been lost in the six months preceding the date of determination and any replacement income which has been secured or is expected, and an itemization of such lost and replacement income;

(C) if applicable, a list itemizing each additional expense which exceeds the expense allowance provided in determining monthly net income under section 101(39A);

(D) if applicable, a detailed description of the extraordinary circumstances which explains why each of the additional expenses itemized under paragraph (C) requires allowance; and

(E) a sworn statement signed by the debtor and, if the debtor is represented by counsel, by the debtor's attorney, of the amount of monthly net income that the debtor has pursuant to this subsection and that the information provided under this subsection is true and correct; and

(2) until the trustee or any party in interest objects to the debtor's request that this section be applied and the court rejects or modifies the debtor's statement, the monthly net income in the debtor's statement shall be the monthly net income for the purposes of the debtor's plan. If an objection is filed with the court within the times provided in subsection (b), the court, after notice and hearing, shall determine whether such extraordinary circumstances asserted by the debtor exist and establish the amount of the loss of income and such additional expense allowance, if any. The burden of proving such extraordinary circumstances and the amount of the loss of income and the additional expense allowance, if any, shall be on the debtor. The court may award to the party that prevails with respect to such objection a reasonable attorney's fee and costs incurred by the prevailing party in connection with such objection if the court finds that the position of the nonprevailing party was not substantially justified, but the court shall not award such fee or such costs if special circumstances make the award unjust.

(b) For the purposes of chapter 13 of this title, the statement of extraordinary circumstances shall be filed with the court and served on the trustee on or before 45 days before each anniversary of the confirmation of the plan in order to be applicable during the next year of the plan. Any objection thereto shall be filed 30 days after the statement is filed with the trustee. Whenever a statement is timely filed with the trustee, the trustee shall give notice to creditors that such statement has been filed and the amount of monthly net income stated therein within 15 days of receipt of the statement.

(c) For purposes of subsection (a), charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (defined in section 548(d)(4)), but not to exceed 15 percent of the debtor's gross income for the year in which such contributions are made, shall be considered to be additional expenses of the debtor required by extraordinary circumstances.

\* \* \* \* \*

**CHAPTER 3—CASE ADMINISTRATION**

SUBCHAPTER I—COMMENCEMENT OF A CASE

Sec.							
301.	Voluntary cases.	*	*	*	*	*	*
308.	<i>Debtor reporting requirements.</i>	*	*	*	*	*	*

SUBCHAPTER I—COMMENCEMENT OF A CASE

**§ 301. Voluntary cases**

(a) A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter. **【The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.】**

(b) *The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.*

\* \* \* \*

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

(a) \* \* \*

(b) Subject to the **【provisions of subsection (c)】** *subsections (c) and (d)* of this section, if a party in interest does not timely controvert the petition, or after trial, the court may—

(1) \* \* \*

\* \* \* \*

(d) *The court may not grant to a foreign representative of the estate of an insurance company that is not organized under the law of a State and that is engaged in the business of insurance, or reinsurance, in the United States relief under subsection (b) with respect to property that is—*

(1) *a deposit required by a State law relating to insurance or reinsurance;*

(2) *a multibeneficiary trust required by a State law relating to insurance or reinsurance to protect holders of insurance policies issued in the United States or to protect holders or claimants against such policies; or*

(3) *a multibeneficiary trust authorized by a State law relating to insurance or reinsurance to allow a person engaged in the business of insurance in the United States—*

(A) *to cede reinsurance to such an insurance company;*  
and

(B) *to treat so ceded reinsurance as an asset, or deduction from liability, in financial statements of such person.*

**§ 305. Abstention**

(a) \* \* \*

\* \* \* \*

(c) An order under subsection (a) of this section dismissing a case or suspending all proceedings in a case, or a decision not so to dismiss or suspend, is not reviewable by appeal or otherwise by the

court of appeals under section [158(d), 1291, or 1292] 1291, 1292, or 1293 of title 28 or by the Supreme Court of the United States under section 1254 of title 28.

\* \* \* \* \*

**§ 308. Debtor reporting requirements**

*A small business debtor shall file periodic financial and other reports containing information including—*

- (1) the debtor's profitability, that is, approximately how much money the debtor has been earning or losing during current and recent fiscal periods;*
- (2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;*
- (3) comparisons of actual cash receipts and disbursements with projections in prior reports;*
- (4) whether the debtor is—*
  - (A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and*
  - (B) timely filing tax returns and paying taxes and other administrative claims when due, and, if not, what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and*
- (5) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.*

\* \* \* \* \*

**SUBCHAPTER II—OFFICERS**

\* \* \* \* \*

**§ 330. Compensation of officers**

(a) \* \* \*

\* \* \* \* \*

*(e) The court may not appoint any person to examine any request for compensation or reimbursement payable under this section.*

\* \* \* \* \*

**SUBCHAPTER III—ADMINISTRATION**

**§ 341. Meetings of creditors and equity security holders**

(a) Within a reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside at a meeting of creditors. *If the debtor is an individual in a voluntary case under chapter 7, 11, or 13, the meeting of creditors shall not be convened earlier than 60 days (or later than 90 days) after the date of the order for relief, unless the court, after notice and hearing, determines unusual circumstances justify an earlier meeting.*

\* \* \* \* \*

(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors. *Notwithstanding any local court rule, provision of a State constitution, any other State or Federal nonbankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or its representatives (which representatives may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13 either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.*

\* \* \* \* \*

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

#### **§ 342. Notice**

(a) \* \* \*

**[(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed.]**

*(b)(1) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the individual shall be given or obtain (as required to be certified under section 521(a)(1)(B)(viii)) a written notice that is prescribed by the United States trustee for the district in which the petition is filed pursuant to section 586 of title 28 and that contains the following:*

*(A) A brief description of chapters 7, 11, 12 and 13 of this title and the general purpose, benefits, and costs of proceeding under each of such chapters.*

*(B) A brief description of services that may be available to the individual from an independent nonprofit debt counselling service.*

*(C) The name, address, and telephone number of each nonprofit debt counselling service (if any)—*

*(i) with an office located in the district in which the petition is filed; or*

*(ii) that offers toll-free telephone communication to debtors in such district.*

*(2) Any such nonprofit debt counselling service that registers with the clerk of the bankruptcy court on or before December 10 of the preceding year shall be included in such list unless the chief bankruptcy judge of the district, after notice to the debt counselling service and the United States trustee and opportunity for a hearing, for good cause, orders that such debt counselling service shall not be so listed.*

(3) *The clerk shall make such notice available to individuals whose debts are primarily consumer debts.*

(c) *If notice is required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court, such notice shall contain the name, address, and taxpayer identification number of the debtor, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice. If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor which is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include such account number in any notice to the creditor required to be given under this title. If the creditor has specified to the debtor an address at which the creditor wishes to receive correspondence regarding the debtor's account, any notice to the creditor required to be given by the debtor under this title shall be given at such address. For the purposes of this section, "notice" shall include, but shall not be limited to, any correspondence from the debtor to the creditor after the commencement of the case, any statement of the debtor's intention under section 521(a)(2) of this title, notice of the commencement of any proceeding in the case to which the creditor is a party, and any notice of the hearing under section 1324.*

(d) *At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. Five days after receipt of such notice, if the court or the debtor is required to give the creditor notice, such notice shall be given at that address.*

(e) *An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (d) with respect to a particular case.*

(f) *Notice given to a creditor other than as provided in this section shall not be effective notice until it has been brought to the attention of the creditor. If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to such department or person, notice will not be brought to the attention of the creditor until received by such person or department. No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.*

(g) *If a debtor lists a governmental unit as a creditor in a list or schedule, any notice required to be given by the debtor under this title, any rule, any applicable law, or any order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted. The debtor shall identify (with information*

such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, where applicable), and describe the underlying basis for the governmental unit's claim. If the debtor's liability to a governmental unit arises from a debt or obligation owed or incurred by another individual, entity, or organization, or under a different name, the debtor shall identify such individual, entity, organization, or name.

(h) The clerk shall keep and update quarterly, in the form and manner as the Director of the Administrative Office of the United States Courts prescribes, and make available to debtors, a register in which a governmental unit may designate a safe harbor mailing address for service of notice in cases pending in the district. A governmental unit may file a statement with the clerk designating a safe harbor address to which notices are to be sent, unless such governmental unit files a notice of change of address.

(i)(1) A notice that does not comply with subsections (d) and (e) shall have no effect unless the debtor demonstrates, by clear and convincing evidence, that timely notice was given in a manner reasonably calculated to satisfy the requirements of this section was given, and that—

(A) either the notice was timely sent to the safe harbor address provided in the register maintained by the clerk of the district in which the case was pending for such purposes; or

(B) no safe harbor address was provided in such list for the governmental unit and that an officer of the governmental unit who is responsible for the matter or claim had actual knowledge of the case in sufficient time to act.

(2) No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed unless the action takes place after notice of the commencement of the case as required by this section has been received.

\* \* \* \* \*

**§ 348. Effect of conversion**

(a) \* \* \*

\* \* \* \* \*

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion; **[and]**

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply **[in the converted case, with allowed secured claims]** only in a case converted to chapter 11 or 12 but not in one converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan**[.]**; and

*(C) with respect to cases converted from chapter 13, the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of that claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter of this title. Unless a prebankruptcy default has been fully cured pursuant to the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.*

\* \* \* \* \*

SUBCHAPTER IV—ADMINISTRATIVE POWERS

\* \* \* \* \*

**§ 362. Automatic stay**

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) \* \* \*

\* \* \* \* \*

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor~~[\.]~~, *in respect of a tax liability for a taxable period ending before the order for relief.*

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) \* \* \*

\* \* \* \* \*

(9) under subsection (a), of—

(A) \* \* \*

\* \* \* \* \*

(C) a demand for tax returns; **[or]**

(D) the making of an assessment *as defined by applicable nonbankruptcy law notwithstanding the definition of an “assessment” elsewhere in this title* for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor~~[\.]~~; *or*

(E) *the appeal of a decision by a court or administrative tribunal which determines a tax liability of the debtor without regard to whether such determination was made prepetition or postpetition.*

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of **[nonresidential]** real prop-

erty that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

\* \* \* \* \*

(17) under subsection (a) of this section, of the setoff by a swap participant, of any mutual debt and claim under or in connection with any swap agreement that constitutes the setoff of a claim against the debtor for any payment due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property of the debtor held by or due from such swap participant to guarantee, secure or settle any swap agreement; **[or]**

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax imposed by the District of Columbia, or a political subdivision of a State, if such tax comes due after the filing of the petition **[.]**;

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

*(20) under subsection (a) with respect to the withholding of income pursuant to an order as specified in section 466(b) of the Social Security Act;*

*(21) under subsection (a) with respect to the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law as specified in section 466(a)(15) of the Social Security Act or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;*

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

*(23) under subsection (a) of the setoff of an income tax refund, by a governmental unit, in respect of a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief, unless—*

*(A) prior to such setoff, an action to determine the amount or legality of such tax liability under section 505(a) was commenced; or*

*(B) where the setoff of an income tax refund is not permitted because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action.*

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), **[(e), and (f)]** *(e), (f), and (h)* of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; **[and]**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied**【.】**; and

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

(A) as to all creditors if—

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

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

(iii) there has not been a substantial change in the financial or personal affairs of the debtor since the dis-

*missal of the next most previous case under any of chapters 7, 11, or 13 of this title, or any other reason to conclude that the later case will be concluded, if a case under chapter 7 of this title, with a discharge, and if a chapter 11 or 13 case, a confirmed plan which will be fully performed;*

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

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

*(A) as to all creditors if—*

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

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

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

*(B) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual*

*was a debtor if, as of the date of dismissal of that case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to action of that creditor.*

(5)(A) *If a request is made for relief from the stay under subsection (a) with respect to real or personal property of any kind, and such request is granted in whole or in part, the court may order in addition that the relief so granted shall be in rem either for a definite period not less than 1 year or indefinitely. After the issuance of such an order, the stay under subsection (a) shall not apply to any property subject to such an in rem order in any case of the debtor under this title. If such an order so provides, such stay shall also not apply in any pending or later-filed case of any entity under this title that claims or has an interest in the subject property other than those entities identified in the court's order.*

(B) *The court shall cause any order entered pursuant to this paragraph with respect to real property to be recorded in the applicable real property records, which recording shall constitute notice to all parties having or claiming an interest in such real property for purpose of this section.*

(6) *For the purposes of this section, a case is pending from the time of the order for relief until the case is closed.*

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) \* \* \*

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization; **[or]**

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

**[(B) the debtor has commenced monthly payments to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at a current fair market rate on the value of the creditor's interest in the real estate.]**

*(B) the debtor has commenced monthly payments (which payments may, in the debtor's sole discretion, notwithstanding section 363(c)(2) of this title, be made from rents*

*or other income generated before or after the commencement of the case by or from the property) to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at the then-applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or*

*(4) with respect to a stay of an act against property under subsection (a) of a debtor in a case under chapter 12, by a creditor whose claim is secured by an interest in such property, unless the debtor has filed a plan in accordance with section 1221.*

(e) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances. *Notwithstanding the foregoing, in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate 60 days after a request under subsection (d) of this section, unless—*

*(1) a final decision is rendered by the court within such 60-day period; or*

*(2) such 60-day period is extended either by agreement of all parties in interest or by the court for a specific time which the court finds is required by compelling circumstances.*

\* \* \* \* \*

*(h) In an individual case pursuant to chapter 7, 11, or 13 the stay provided by subsection (a) is terminated with respect to property of the estate securing in whole or in part a claim, or subject to an unexpired lease, if the debtor fails within the applicable time set by section 521(a)(2) of this title—*

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

*(2) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for*

*taking action, unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms;*

*unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.*

**[(h) An]** *(i)(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.*

*(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, then recovery under paragraph (1) against such entity shall be limited to actual damages.*

*(j) The filing of a petition under chapter 11 of this title operates as a stay of the acts described in subsection (a) only in an involuntary case involving no collusion by the debtor with creditors and in which the debtor—*

*(1) is a debtor in a small business case pending at the time the petition is filed;*

*(2) was a debtor in a small business case which was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;*

*(3) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or*

*(4) is an entity that has succeeded to substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C) unless the debtor proves, by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and that it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable time.*

\* \* \* \* \*

**§ 365. Executory contracts and unexpired leases**

(a) \* \* \*

\* \* \* \* \*

(d)(1) \* \* \*

\* \* \* \* \*

**[(4) Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.]**

*(4) In a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real prop-*

erty under which the debtor is the lessee before the earlier of (A) 120 days after the date of the order for relief, or (B) the entry of an order confirming a plan, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor but in no event shall such time period exceed 120 days. Notwithstanding the immediately preceding sentence, and provided no plan has been confirmed, upon debtor's motion, and after notice and a hearing, the court may within such 120-day period extend the 120-day period by a period not to exceed 150 days, contingent upon written consent of the affected lessor or with the approval of the court, and provided trustee has timely performed all post-petition lease obligations, but in no circumstance shall such period extend beyond the earlier of (i) 270 days from the date of the order for relief or (ii) the entry of an order approving a disclosure statement, without the consent of the lessor.

\* \* \* \* \*

(n)(1) \* \* \*

\* \* \* \* \*

(5) The rejection by the trustee of an executory contract affecting the intellectual property rights to recordings of artistic performance shall not in any way diminish or impair any applicable nonbankruptcy law rights to enforce noncompetition provision or provisions regarding the rendering of exclusive services as a performing artist that may be contained in such contracts, except that such enforcement shall be subject to the nondebtor party providing to the debtor notice of an offer to perform the contract under all of its original terms. The rights to enforce such noncompetition or exclusivity provision shall not be treated as claims that can be discharged under this title.

\* \* \* \* \*

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

(2) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the lessor. If within 30 days of such notice the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate. The stay under section 362 of this title and the injunction under section 524(a)(2) of this title shall not be violated by notification of the debtor and negotiation of cure under this subsection.

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

any stay under section 1301 is automatically terminated with respect to the property subject to the lease.

(q) A debt of a kind described in section 523(a)(16) of this title shall not be considered to be a debt arising from an executory contract.

**§ 366. Utility service**

(a) \* \* \*

\* \* \* \* \*

(c) For the purposes of this section, the term "utility" includes any provider of gas, electric, telephone, telecommunication, cable television, satellite communication, water, or sewer service, whether or not such service is a regulated monopoly.

\* \* \* \* \*

**CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE**

SUBCHAPTER I—CREDITORS AND CLAIMS

Sec.

501. Filing of proofs of claims or interest.

\* \* \* \* \*

SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

521. Debtor's duties.

\* \* \* \* \*

526. Disclosures.

527. Debtor's bill of rights.

528. Debt relief counselling agency enforcement.

529. Protection of child support and alimony.

\* \* \* \* \*

SUBCHAPTER I—CREDITORS AND CLAIMS

**§ 501. Filing of proofs of claims or interests**

(a) \* \* \*

\* \* \* \* \*

(e) In a case under chapter 7 or 13, a proof of claim or interest is deemed filed under this section for any claim or interest that appears in the schedules filed under section 521(a)(1) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.

**§ 502. Allowance of claims or interests**

(a) \* \* \*

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) \* \* \*

\* \* \* \* \*

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide[.], *and except that in a case under chapter 13 of this title, a claim of a governmental unit for a tax in respect of a return filed under section 1308 of this title shall be timely if it is filed on or before 60 days after such return or returns were filed as required.*

\* \* \* \* \*

**§ 503. Allowance of administrative expenses**

(a) \* \* \*

(b) After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)(A) \* \* \*

(B) any tax—

(i) incurred by the estate, *whether secured or unsecured, including property taxes for which liability is in rem only, in personam or both*, except a tax of a kind specified in section 507(a)(8) of this title; or

\* \* \* \* \*

*(D) notwithstanding the requirements of subsection (a) of this section, a governmental unit shall not be required to file a request for the payment of a claim described in subparagraph (B) or (C);*

\* \* \* \* \*

**§ 504. Sharing of compensation**

(a) \* \* \*

\* \* \* \* \*

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

**§ 505. Determination of tax liability**

(a)(1) \* \* \*

(2) The court may not so determine—

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title; **[or]**

(B) any right of the estate to a tax refund, before the earlier of—

- (i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or
  - (ii) a determination by such governmental unit of such request[.]; or
  - (C) *the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.*
- (b) A trustee may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax. **[Unless]** *If the request is made in the manner designated by the governmental unit and unless such return is fraudulent, or contains a material misrepresentation, the estate, the trustee, the debtor, and any successor to the debtor are discharged from any liability for such tax—*
- (1) \* \* \*

\* \* \* \* \*

**§ 506. Determination of secured status**

- (a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor’s interest. *In the case of an individual debtor under chapters 7 and 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of filing the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purpose, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.*
- (b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or *State statute* under which such claim arose.
- (c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit

to the holder of such claim, including the payment of all ad valorem property taxes in respect of the property.

\* \* \* \* \*

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

(1) subsection (a) shall not apply to an allowed claim to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor within 180 days of the filing of the petition, except for the purpose of applying paragraph (3) of this subsection;

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

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

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

**§ 507. Priorities**

(a) The following expenses and claims have priority in the following order:

(1) \* \* \*

\* \* \* \* \*

(8) Eighth, allowed unsecured claims for debts that are non-dischargeable under section 523(a)(18).

[(8) Eighth] (9) Ninth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts—

(i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition, plus any time, plus 6 months, during which the stay of proceedings was in effect in a prior case under this title;

[(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition; or]

(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

(I) any time plus 30 days during which an offer in compromise with respect of such tax, was pending or in effect during such 240-day period;

(II) any time plus 30 days during which an installment agreement with respect of such tax was pending or in effect during such 240-day period, up to 1 year; and

(III) any time plus 6 months during which a stay of proceedings against collections was in effect in a prior case under this title during such 240-day period.

\* \* \* \* \*

[(9) Ninth] (10) Tenth, allowed unsecured claims based upon any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency), to maintain the capital of an insured depository institution.

(11) Eleventh, remaining allowed unsecured claims for debts that are nondischargeable under section 523(a)(19), but which shall be payable under this paragraph in the higher order of priority (if any) as the respective claims paid by incurring such debts.

\* \* \* \* \*

### **§ 511. Rate of interest on tax claims**

Notwithstanding any provision of this title that requires the payment of interest on a claim, if interest is required to be paid on a tax claim, the rate of interest shall be as follows:

(1) In the case of ad valorem tax claims, whether secured or unsecured, other unsecured tax claims where interest is required to be paid under section 726(a)(5) of this title and secured tax claims the rate shall be determined under applicable nonbankruptcy law.

(2) In the case of unsecured claims for taxes arising before the date of the order for relief and paid under a plan of reorganization, the minimum rate of interest to be applied during the period after the filing of the petition shall be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code of 1986, for the calendar month in which the plan is confirmed, plus 3 percentage points.

## SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

### **§ 521. Debtor's duties**

(a) The debtor shall—

[(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs;]

(1) file—

(A) a list of creditors, and

(B) unless the court orders otherwise—

(i) a schedule of assets and liabilities;

(ii) a schedule of current income and current expenditures;

(iii) a statement of the debtor's financial affairs;

(iv) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition;

(v) a statement of the amount of projected monthly net income, itemized to show how calculated;

(vi) if applicable, any statement under paragraphs (3) and (4) of section 109(h);

(vii) a statement disclosing any reasonably anticipated increase in income or expenditures over the next 12 months; and

(viii) a certificate, if applicable—

(I) of an attorney whose name is on the petition as the attorney for the debtor, or of any bankruptcy petition preparer who signed the petition pursuant to section 110(b)(1) of this title, indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b)(1) of this title; or

(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition of the debtor, that such notice was obtained and read by the debtor;

(2) if an individual debtor's schedule of assets and liabilities includes [consumer] debts which are secured by property of the estate—

(A) \* \* \*

(B) within [forty-five days after the filing of a notice of intent under this section] 30 days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such [forty-five day] 30-day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title except as provided in section 362(h);

\* \* \* \* \*

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title; [and]

(5) appear at the hearing required under section 524(d) of this title[.]; and

(6) in an individual case under chapter 7 of this title, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor takes 1 of the following ac-

tions within 30 days after the first meeting of creditors under section 341(a)—

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

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

If the debtor fails to so act within the 30-day period, the personal property affected shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee, and after notice and a hearing, that such property is of consequential value or benefit to the estate.

(b) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor notice that the creditor requests the petition, schedules, and statement of financial affairs filed by the debtor in the case. At any time, a creditor in a case under chapter 13 of this title may file with the court and serve on the debtor notice that the creditor requests the plan filed by the debtor in the case. Within 10 days of the first such request in a case under this subsection for the petition, schedules, and statement of financial affairs and the first such request for the plan under this subsection, the debtor shall serve on that creditor a conformed copy of the requested documents or plan and any amendments thereto as of that date, and shall thereafter promptly serve on that creditor at the time filed with the court—

(1) any requested document or plan which is not filed with the court at the time requested; and

(2) any amendment to any requested document or plan.

(c)(1) An individual debtor in a case under chapter 7 or 13 shall provide to the United States trustee—

(A) copies of all Federal tax returns (including any schedules and attachments) filed by the debtor for the 3 most recent tax years preceding the order for relief;

(B) at the time the debtor files them with the Commissioner of Internal Revenue, all Federal tax returns (including any schedules and attachments) for the debtor's tax years ending while such case is pending; and

(C) at the time the debtor files them with the Commissioner of Internal Revenue, all amendments to the tax returns (including schedules and attachments) described in subparagraphs (A) and (B).

(2)(A) The United States trustee shall make such Federal tax returns (including schedules, attachments, and amendments) available to any party in interest for inspection and copying not later than 10 days after receiving a request by such party.

(B) If the United States trustee does not comply with subparagraph (A), on the motion of such party, the court shall issue an order compelling the United States trustee to comply with subparagraph (A).

(d) A debtor in a case under chapter 13 of this title shall file, from a time which is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief unless a plan has then

been confirmed, and thereafter on or before 45 days before each anniversary of the confirmation of the plan until the case is closed, a statement subject to the penalties of perjury by the debtor of the debtor's income and expenditures in the preceding tax year and monthly net income, showing how calculated. Such statement shall disclose the amount and sources of income of the debtor, the identity of any persons responsible with the debtor for the support of any dependents of the debtor, and any persons who contributed and the amount contributed to the household in which the debtor resides. Such tax returns, amendments and statement of income and expenditures shall be available to the United States trustee, any bankruptcy administrator, any trustee and any party in interest for inspection and copying.

(e) Notwithstanding section 707(a) of this title, if an individual debtor in a voluntary case under chapter 7 or 13 fails to provide all of the information required under subsections (a)(1) and (c)(1)(A) within 45 days after the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the filing of the petition without the need for any order of court, but any party in interest may request the court to enter an order dismissing the case and the court shall, if so requested, enter an order of dismissal within 5 days of such request. Upon request of the debtor made within 45 days after the filing of the petition, the court may allow the debtor up to an additional 15 days to provide the information required under subsections (a)(1) and (c)(1)(A) if the court finds compelling justification for doing so.

(f) If an individual debtor in a case under chapter 7 or 13 fails to perform any of the duties imposed by subsections (b), (c)(1)(B), (c)(1)(C), and (d), any party in interest may request that the court order the debtor to comply. Within 10 days of such request the court shall order that the debtor do so within a period of time set by the court no longer than 30 days. If the debtor does not comply with that order within the period of time set by the court, the court shall, on request of any party in interest certifying that the debtor has not so complied, enter an order dismissing the case within 5 days of such request.

(g)(1) In addition to the requirements under subsection (a), an individual debtor shall file with the court—

(A) a certificate from the credit counseling services that provided the debtor services under section 109(i), or a verified statement as to why such attempt was not required under section 109(i) or other substantial evidence of a good-faith attempt to create a debt repayment plan outside the bankruptcy system in the manner prescribed in section 109(i); and

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

(2) Only the United States trustee may make a motion for dismissal on the ground that the debtor did not comply with this subsection.

(h) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which

*a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.*

**§ 522. Exemptions**

(a) \* \* \*

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is—

(1) \* \* \*

(2)(A) *subject to subsection (n)*, any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the **[180]** 365 days immediately preceding the date of the filing of the petition**[, or for a longer portion of such 180-day period than in any other place; and]**;

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law**[.]**; and

(C) *retirement funds to the extent exempt from taxation under section 401, 403, 408, 414, 457, or 501(a) of the Internal Revenue Code of 1986.*

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in **[section 523(a)(1) or 523(a)(5)]** *paragraph (1), (5), or (18) of section 523(a)* of this title, *except that, notwithstanding any other Federal law or State law relating to exempted property, exempt property shall be liable for debts of a kind specified in paragraph (1) or (5) of section 523(a) of this title;*

\* \* \* \* \*

(d) The following property may be exempted under subsection (b)(1) of this section:

(1) \* \* \*

\* \* \* \* \*

(12) *Retirement funds to the extent exempt from taxation under 401, 403, 408, 414, 457, or 501(a) of the Internal Revenue Code of 1986.*

\* \* \* \* \*

(n)(1) *Except as provided in paragraph (2), as a result of electing under subsection (b)(2)(A) to exempt property under State or local law, a debtor may not exempt any interest to the extent that such interests exceeds \$100,000 in value, in the aggregate, in—*

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

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

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

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

**§ 523. Exceptions to discharge**

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) \* \* \*

(B) with respect to which a return, or equivalent report or notice, if required—

(i) was not filed or given; [or]

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(iii) for purposes of this subsection, a return—

(I) *must satisfy the requirements of applicable nonbankruptcy law, and includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or similar State or local law, and*

(II) *must have been filed in a manner permitted by applicable nonbankruptcy law; or*

\* \* \* \* \*

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) *false pretenses, a false representation, [or actual fraud,] actual fraud, or use of a credit or charge card or other device to access a credit line without a reasonable ex-*

*pectation or ability to repay, unless access to such credit, credit or charge card or other device to access the credit line was extended without an application therefor and reasonable evaluation of the debtor's ability to repay, other than a statement respecting the debtor's or an insider's financial condition;*

(B) use of a statement in writing—

(i) \* \* \*

\* \* \* \* \*

(iv) that the debtor caused to be made or published **【with intent to deceive】** *without taking reasonable steps to ensure the accuracy of the statement; or*

**【(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than \$1,000 for “luxury goods or services” incurred by an individual debtor on or within 60 days before the order for relief under this title, or cash advances aggregating more than \$1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 60 days before the order for relief under this title, are presumed to be nondischargeable; “luxury goods or services” do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act;】**

*(C) for purposes of subparagraph (A), consumer debts owed to a single creditor incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable, except that such presumption shall not apply to consumer debts owed to a single creditor which are incurred for necessities and aggregate \$250 or less.*

\* \* \* \* \*

**【(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—**

**【(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or**

**【(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;】**

*(5) to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of such spouse or child, or to a spouse, former spouse, or child of the debtor, to the ex-*

*tent such debt is the result of a property settlement agreement, a hold harmless agreement, or any other type of debt that is not in the nature of alimony, maintenance, or support in connection with or incurred by the debtor in the course of a separation agreement, divorce decree, any modifications thereof, or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, but not to the extent that such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or such debt that has been assigned to the Federal government, or to a State or political subdivision of such State, or the creditor's attorney);*

\* \* \* \* \*

(7) to the extent such debt is for a fine, penalty (*including property or funds required to be disgorged*), or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

(A) \* \* \*

\* \* \* \* \*

[(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless—

[(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

[(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor;]

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a [dwelling] unit that has condominium [ownership or] *ownership*, in a share of a cooperative [housing] corporation, [but only if such fee or assessment is payable for a period during which—

[(A) the debtor physically occupied a dwelling unit in the condominium or cooperative project; or

[(B) the debtor rented the dwelling unit to a tenant and received payments from the tenant for such period,] *or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,*

but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assess-

ment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed **by a court** *on a prisoner by any court* for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under section **1915(b) or (f)** *subsection (b) or (f)(2) of section 1915*, of title 28 *(or a similar non-Federal law)*, or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 *(or a similar non-Federal law)*; **or**

(18) owed under State law *(including interest)* to a State or municipality that is—

(A) in the nature of support, **and** *or*

(B) enforceable under part D of title IV of the Social Security Act ( 42 U.S.C. 601 et seq.)**;** *or*

(19) *incurred to pay a debt that is nondischargeable under any other paragraph of this subsection.*

\* \* \* \* \*

(c)(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), **(6), or (15)** *or (6)* of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), (6), or (15), as the case may be, of subsection (a) of this section.

\* \* \* \* \*

**§ 526. Disclosures**

(a) *A debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide the following notices to the assisted person:*

(1) *the written notice required under section 342(b)(1) of this title; and*

(2) *to the extent not covered in the written notice described in paragraph (1) of this section and no later than three business days after the first date on which a debt relief counselling agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons of the following:*

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

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

(C) *current monthly total income, projected monthly net income and, in a chapter 13 case, monthly net income must be stated after reasonable inquiry;*

(D) *that information an assisted person provides during their case may be audited pursuant to this title and that*

*failure to provide such information may result in dismissal of the proceeding under this title or other sanction including, in some instances, criminal sanctions.*

*(b) A debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:*

**“IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER**

*“If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.*

*“The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.*

*“Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a ‘trustee’ and by creditors.*

*“If you select a chapter 7 proceeding, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so.*

*“If you select a chapter 13 proceeding in which you repay your creditors what you can afford over three to seven years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.”*

*“If you select another type of proceeding under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what needs to be done from someone familiar with that type of proceeding.*

*“Your bankruptcy proceeding may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can represent you in litigation.”*

(c) *Except to the extent the debt relief counselling agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief counselling agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which may be provided orally or in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—*

*(1) how to value assets at replacement value, determine current monthly total income, projected monthly income and, in a chapter 13 case, net monthly income, and related calculations;*

*(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown;*

*(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506 of this title.*

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

#### **§527. Debtor's bill of rights**

(a) *A debt relief counselling agency shall—*

*(1) no later than three business days after the first date on which a debt relief counselling agency provides any bankruptcy assistance services to an assisted person, execute a written contract with the assisted person specifying clearly and conspicuously the services the agency will provide the assisted person and the basis on which fees or charges will be made for such services and the terms of payment, and give the assisted person a copy of the fully executed and completed contract in a form the person can keep.*

*(2) disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages or otherwise) that the services or benefits are with respect to proceedings under this title, clearly and conspicuously using the following statement: "We are a debt relief counselling agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code." or a substantially similar statement. An advertisement shall be of bankruptcy assistance services if it describes or offers bankruptcy assistance with a chapter 13 plan, regardless of whether chapter 13 is specifically mentioned, including such statements as "federally supervised repayment plan" or "Federal debt restructuring help" or other similar statements which would lead a reasonable consumer to believe that help with debts was being offered when in fact in most cases the help available is bankruptcy assistance with a chapter 13 plan.*

- (3) if an advertisement directed to the general public indicates that the debt relief counselling agency provides assistance with respect to credit defaults, mortgage foreclosures, lease eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt, disclose conspicuously in that advertisement that the assistance is with respect to or may involve proceedings under this title, using the following statement: "We are a debt relief counselling agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code." or a substantially similar statement.
- (b) A debt relief counselling agency shall not—
- (1) fail to perform any service which the debt relief counseling agency has told the assisted person or prospective assisted person the agency would provide that person in connection with the preparation for or activities during a proceeding under this title;
  - (2) make any statement, or counsel or advise any assisted person to make any statement in any document filed in a proceeding under this title, which is untrue or misleading or which upon the exercise of reasonable care, should be known by the debt relief counselling agency to be untrue or misleading;
  - (3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, what services the debt relief counselling agency can reasonably expect to provide that person, or the benefits an assisted person may obtain or the difficulties the person may experience if the person seeks relief in a proceeding pursuant to this title; and
  - (4) advise an assisted person or prospective assisted person to incur more debt in contemplation of that person filing a proceeding under this title or in order to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a proceeding under this title.

### **§ 528. Debt relief counselling agency enforcement**

(a) **ASSISTED PERSON WAIVERS INVALID.**—Any waiver by any assisted person of any protection or right provided by or under section 526 or 527 of this title shall be void and may not be enforced by any Federal or State court or any other person.

(b) **NONCOMPLIANCE.**—

(1) Any contract between a debt relief counselling agency and an assisted person for bankruptcy assistance which does not comply with the requirements of section 526 or 527 of this title shall be treated as void and may not be enforced by any Federal or State court or by any other person.

(2) Any debt relief counselling agency which has been found, after notice and hearing, to have—

(A) failed to comply with any provision of section 526 or 527 with respect to a bankruptcy case or related proceeding of an assisted person, or

(B) provided bankruptcy assistance to an assisted person in a case or related proceeding which is dismissed or converted in lieu of dismissal under section 707 of this title or

because of a failure to file bankruptcy papers, including papers specified in section 521 of this title; or

(C) negligently or intentionally disregarded the requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such debt relief counselling agency shall be liable to the assisted person in the amount of any fees and charges in connection with providing bankruptcy assistance to such person which the debt relief counselling agency has already been paid on account of that proceeding and if the case has not been closed, the court may in addition require the debt relief counselling agency to continue to provide bankruptcy assistance services in the pending case to the assisted person without further fee or charge or upon such other terms as the court may order.

(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating section 526 or 527 of this title, the State—

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

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

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

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

(c) **RELATION TO STATE LAW.**—This section and sections 526 and 527 shall not annul, alter, affect or exempt any person subject to those sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency.

**§529. Protection of child support and alimony payments after the discharge**

Notwithstanding the provisions of the constitution or law of any State providing a different priority, any debts of the individual who has received a discharge under this title to a spouse, former spouse, or child for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

(1) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

(2) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support,

shall have priority in payment and collection over a creditor's claim which is not discharged in the individual's case pursuant to paragraph (2), (4), or (14) of section 523(a) of this title, but such priority

shall not affect the priority of any consensual lien, mortgage, or security interest securing such creditor's claim.

SUBCHAPTER III—THE ESTATE

§ 541. Property of the estate

(a) \* \* \*

(b) Property of the estate does not include—

(1) \* \* \*

\* \* \* \* \*

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

(A) \* \* \*

(B)(i) \* \* \*

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 542 of this title; or

\* \* \* \* \*

§ 544. Trustee as lien creditor and as successor to certain creditors and purchasers

(a) \* \* \*

[(b) The trustee] (b)(1) Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as defined in section 548(d)(3) of this title) that is not covered under section 548(a)(1)(B) of this title by reason of section 548(a)(2) of this title. Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.

§ 545. Statutory liens

The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien—

(1) \* \* \*

(2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such a purchaser exists[;], except where such purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986 or similar provision of State or local law;

\* \* \* \* \*

§ 546. Limitations on avoiding powers

(a) \* \* \*

\* \* \* \* \*

(e) Notwithstanding sections 544, 545, 547, **548(a)(2)**, *548(a)(1)(B)*, and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, made by or to a commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency, that is made before the commencement of the case, except under section **548(a)(1)** *548(a)(1)(A)* of this title.

(f) Notwithstanding sections 544, 545, 547, **548(a)(2)**, *548(a)(1)(B)*, and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, made by or to a repo participant, in connection with a repurchase agreement and that is made before the commencement of the case, except under section **548(a)(1)** *548(a)(1)(A)* of this title.

(g) Notwithstanding sections 544, 545, 547, **548(a)(2)**, *548(a)(1)(B)* and 548(b) of this title, the trustee may not avoid a transfer under a swap agreement, made by or to a swap participant, in connection with a swap agreement and that is made before the commencement of the case, except under section **548(a)(1)** *548(a)(1)(A)* of this title.

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

**§ 547. Preferences**

(a) In this section—

\* \* \* \* \*

(c) The trustee may not avoid under this section a transfer—

(1) \* \* \*

**(2) to the extent that such transfer was—**

**[(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;**

**[(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and**

**[(C) made according to ordinary business terms;]**

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

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

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

\* \* \* \* \*

(7) to the extent such transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

(A) \* \* \*

(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support; **[or]**

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600**[.]**; or

(9) *if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$5000.*

#### § 548. Fraudulent transfers and obligations

(a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

**[(1) made]** (A) *made* such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

**[(2)(A)]** (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

**[(B)(i)]** (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

**[(ii) was]** (II) *was* engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or

**[(iii)]** (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

(2) *A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—*

*(A) the amount of such contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or*

*(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.*

\* \* \* \* \*

(d)(1) \* \* \*

\* \* \* \* \*

(3) *In this section, the term “charitable contribution” means a charitable contribution as defined in section 170(c) of the Internal Revenue Code of 1986, if such contribution—*

*(A) is made by a natural person; and*

*(B) consists of—*

*(i) a financial instrument (as defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or*

*(ii) cash.*

*(4) In this section, the term “qualified religious or charitable entity or organization” means—*

*(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or*

*(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.*

\* \* \* \* \*

**§ 552. Postpetition effect of security interest**

(a) \* \* \*

(b)(1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, **[product]** *products*, offspring, or profits of such property, then such security interest extends to such proceeds, **[product]** *products*, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

\* \* \* \* \*

**CHAPTER 6—ANCILLARY AND OTHER CROSS-BORDER CASES**

*Sec.*

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**§ 601. Purpose and scope of application**

*(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—*

*(1) cooperation between—*

*(A) United States courts, United States Trustees, trustees, examiners, debtors, and debtors in possession; and*

*(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;*

*(2) greater legal certainty for trade and investment;*

*(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;*

*(4) protection and maximization of the value of the debtor's assets; and*

*(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.*

*(b) This chapter applies where—*

*(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;*

*(2) assistance is sought in a foreign country in connection with a case under this title;*

*(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or*

*(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.*

*(c) This chapter does not apply to—*

(1) a proceeding concerning an entity identified by exclusion in subsection 109(b); or

(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in under section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States.

## SUBCHAPTER I—GENERAL PROVISIONS

### § 602. Definitions

For the purposes of this chapter, the term—

(1) “debtor” means an entity that is the subject of a foreign proceeding;

(2) “establishment” means any place of operations where the debtor carries out a nontransitory economic activity;

(3) “foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;

(4) “foreign main proceeding” means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

(5) “foreign nonmain proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

(6) “trustee” includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapters 9 or 13 of this title; and

(7) “within the territorial jurisdiction of the United States” when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

### § 603. International obligations of the United States

To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

### § 604. Commencement of ancillary case

A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 615.

### § 605. Authorization to act in a foreign country

A trustee or another entity (including an examiner) authorized by the court may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

**§ 606. Public policy exception**

*Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.*

**§ 607. Additional assistance**

*(a) Nothing in this chapter limits the power of the court, upon recognition of a foreign proceeding, to provide additional assistance to a foreign representative under this title or under other laws of the United States.*

*(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—*

*(1) just treatment of all holders of claims against or interests in the debtor's property;*

*(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;*

*(3) prevention of preferential or fraudulent dispositions of property of the debtor;*

*(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and*

*(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.*

**§ 608. Interpretation**

*In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.*

**SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES  
AND CREDITORS TO THE COURT**

**§ 609. Right of direct access**

*(a) A foreign representative is entitled to commence a case under section 604 by filing a petition for recognition under section 615, and upon recognition, to apply directly to other Federal and State courts for appropriate relief in those courts.*

*(b) Upon recognition, and subject to section 610, a foreign representative has the capacity to sue and be sued, and shall be subject to the laws of the United States of general applicability.*

*(c) Recognition under this chapter is prerequisite to the granting of comity or cooperation to a foreign proceeding in any State or Federal court in the United States. Any request for comity or cooperation in any court shall be accompanied by a sworn statement setting forth whether recognition under section 615 has been sought and the status of any such petition.*

*(d) Upon denial of recognition under this chapter, the court may issue appropriate orders necessary to prevent an attempt to obtain comity or cooperation from courts in the United States without such recognition.*

**§ 610. Limited jurisdiction**

*The sole fact that a foreign representative files a petition under sections 615 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.*

**§ 611. Commencement of case under section 301 or 303**

(a) *Upon filing a petition for recognition, a foreign representative may commence—*

*(1) an involuntary case under section 303; or*

*(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.*

(b) *The petition commencing a case under subsection (a) of this section must be accompanied by a statement describing the petition for recognition and its current status. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) of this section prior to such commencement.*

(c) *A case under subsection (a) shall be dismissed unless recognition is granted.*

**§ 612. Participation of a foreign representative in a case under this title**

*Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.*

**§ 613. Access of foreign creditors to a case under this title**

(a) *Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.*

(b)(1) *Subsection (a) of this section does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.*

(2)(A) *Subsection (a) of this section and paragraph (1) of this subsection do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.*

(B) *Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.*

**§ 614. Notification to foreign creditors concerning a case under this title**

(a) *Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.*

(b) *Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.*

(c) *When a notification of commencement of a case is to be given to foreign creditors, the notification shall—*

(1) *indicate the time period for filing proofs of claim and specify the place for their filing;*

(2) *indicate whether secured creditors need to file their proofs of claim; and*

(3) *contain any other information required to be included in such a notification to creditors pursuant to this title and the orders of the court.*

(d) *Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.*

### SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

#### **§615. Application for recognition of a foreign proceeding**

(a) *A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.*

(b) *A petition for recognition shall be accompanied by—*

(1) *a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;*

(2) *a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or*

(3) *in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.*

(c) *A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.*

(d) *The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.*

#### **§616. Presumptions concerning recognition**

(a) *If the decision or certificate referred to in section 615(b) indicates that the foreign proceeding is a foreign proceeding within the meaning of section 101(23) and that the person or body is a foreign representative within the meaning of section 101(24), the court is entitled to so presume.*

(b) *The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.*

(c) *In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.*

**§ 617. Order recognizing a foreign proceeding**

(a) Subject to section 606, an order recognizing a foreign proceeding shall be entered if—

(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 602;

(2) the foreign representative applying for recognition is a person or body within the meaning of section 101(24); and

(3) the petition meets the requirements of section 615.

(b) The foreign proceeding shall be recognized—

(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 602 in the foreign country where the proceeding is pending.

(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding shall constitute recognition under this chapter.

(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition. The case under this chapter may be closed in the manner prescribed for a case under section 350.

**§ 618. Subsequent information**

From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

**§ 619. Relief that may be granted upon petition for recognition of a foreign proceeding**

(a) From the time of filing a petition for recognition until the petition is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

(1) staying execution against the debtor's assets;

(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(3) any relief referred to in paragraph (3), (4), or (7) of section 621(a).

(b) *Unless extended under section 621(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.*

(c) *It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.*

(d) *The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.*

(e) *The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.*

**§ 620. Effects of recognition of a foreign main proceeding**

(a) *Upon recognition of a foreign proceeding that is a foreign main proceeding—*

(1) *section 362 applies with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States; and*

(2) *transfer, encumbrance, or any other disposition of an interest of the debtor in property within the territorial jurisdiction of the United States is restrained as and to the extent that is provided for property of an estate under sections 363, 549, and 552.*

*Unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the powers of a trustee under section 549, subject to sections 363 and 552.*

(b) *The scope, and the modification or termination, of the stay and restraints referred to in subsection (a) of this section are subject to the exceptions and limitations provided in subsections (b), (c), and (d) of section 362, subsections (b) and (c) of section 363, and sections 552, 555 through 557, 559, and 560.*

(c) *Subsection (a) of this section does not affect the right to commence individual actions or proceedings in a foreign country to the extent necessary to preserve a claim against the debtor.*

(d) *Subsection (a) of this section does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.*

**§ 621. Relief that may be granted upon recognition of a foreign proceeding**

(a) *Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—*

(1) *staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 620(a);*

(2) *staying execution against the debtor's assets to the extent it has not been stayed under section 620(a);*

(3) *suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 620(a);*

(4) *providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;*

(5) *entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;*

(6) *extending relief granted under section 619(a); and*

(7) *granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).*

(b) *Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.*

(c) *In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.*

(d) *The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.*

(e) *The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).*

#### **§ 622. Protection of creditors and other interested persons**

(a) *In granting or denying relief under section 619 or 621, or in modifying or terminating relief under subsection (c) of this section, the court must find that the interests of the creditors and other interested persons or entities, including the debtor, are sufficiently protected.*

(b) *The court may subject relief granted under section 619 or 621 to conditions it considers appropriate.*

(c) *The court may, at the request of the foreign representative or an entity affected by relief granted under section 619 or 621, or at its own motion, modify or terminate such relief.*

#### **§ 623. Actions to avoid acts detrimental to creditors**

(a) *Upon recognition of a foreign proceeding, the foreign representative has standing in a pending case under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).*

(b) *When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) of this section relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.*

**§ 624. Intervention by a foreign representative**

*Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.*

**SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS  
AND FOREIGN REPRESENTATIVES**

**§ 625. Cooperation and direct communication between the court and foreign courts or foreign representatives**

*(a) In all matters included within section 601, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.*

*(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.*

**§ 626. Cooperation and direct communication between the trustee and foreign courts or foreign representatives**

*(a) In all matters included in section 601, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.*

*(b) The trustee or other person, including an examiner, designated by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.*

*(c) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.*

**§ 627. Forms of cooperation**

*Cooperation referred to in sections 625 and 626 may be implemented by any appropriate means, including—*

- (1) appointment of a person or body, including an examiner, to act at the direction of the court;*
- (2) communication of information by any means considered appropriate by the court;*
- (3) coordination of the administration and supervision of the debtor's assets and affairs;*
- (4) approval or implementation of agreements concerning the coordination of proceedings; and*
- (5) coordination of concurrent proceedings regarding the same debtor.*

**SUBCHAPTER V—CONCURRENT PROCEEDINGS**

**§ 628. Commencement of a case under this title after recognition of a foreign main proceeding**

*After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of that case shall be restricted to the assets of the debtor that are within the territorial ju-*

isdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 625, 626, and 627, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

**§ 629. Coordination of a case under this title and a foreign proceeding**

Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

(A) any relief granted under sections 619 or 621 must be consistent with the case in the United States; and

(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 620 does not apply.

(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

(A) any relief in effect under sections 619 or 621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 620(a) shall be modified or terminated if inconsistent with the case in the United States.

(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

(4) In achieving cooperation and coordination under sections 628 and 629, the court may grant any of the relief authorized under section 305.

**§ 630. Coordination of more than 1 foreign proceeding**

In matters referred to in section 601, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 625, 626, and 627, and the following shall apply:

(1) Any relief granted under section 619 or 621 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 619 or

621 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

**§ 631. Presumption of insolvency based on recognition of a foreign main proceeding**

In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts.

**§ 632. Rule of payment in concurrent proceedings**

Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.

**CHAPTER 7—LIQUIDATION**

\* \* \* \* \*

**SUBCHAPTER I—OFFICERS AND ADMINISTRATION**

\* \* \* \* \*

**§ 704. Duties of trustee**

The trustee shall—

(1) \* \* \*

\* \* \* \* \*

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires; **[and]**

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee~~].~~; *and*

(10) *with respect to an individual debtor, review all materials provided by the debtor under subsections (a)(1) and (c)(1) of section 521, investigate and verify the debtor's projected monthly net income and within 30 days after such materials are so provided—*

*(A) file a report with the court as to whether the debtor qualifies for relief under this chapter under section 109(b)(4); and*

*(B) if the trustee determines that the debtor does not qualify for such relief, the trustee shall provide a copy of such report to the parties in interest.*

\* \* \* \* \*

### § 707. Dismissal

(a) \* \* \*

[(b) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor.]

*(b)(1) After notice and a hearing, the court—*

*(A) on its own motion or on the motion of the United States trustee or any party in interest, shall dismiss a case filed by an individual debtor under this chapter; or*

*(B) with the debtor's consent, convert the case to a case under chapter 13 of this title;*

*if the court finds that the granting of relief would be an inappropriate use of the provisions of this chapter.*

*(2) The court shall determine that inappropriate use of the provisions of this chapter exists if—*

*(A) the debtor is excluded from this chapter pursuant to section 109 of this title; or*

*(B) the totality of the circumstances of the debtor's financial situation demonstrates such inappropriate use.*

*(3) In the case of a motion filed by a party in interest other than the trustee or United States trustee under paragraph (1) that is denied by the court, the court shall award against the moving party a reasonable attorney's fee and costs that the debtor incurred in opposing the motion if the court finds that the position of the moving party was not substantially justified, but the court shall not award such fee and costs if special circumstances would make the award unjust.*

*(4)(A) If a trustee appointed under this title or the United States Trustee files a motion under this subsection and the case is subsequently dismissed or converted to another chapter, the court shall award to such party in interest a reasonable attorney's fee and costs incurred in connection with such motion, payable by the debtor, unless the court finds that awarding such fee and costs would impose an unreasonable hardship on the debtor, considering the debtor's conduct.*

*(B) The signature of the debtor's attorney on any petition, pleading, motion, or other paper filed with the court in the case of the debtor shall constitute a certificate that the attorney has—*

*(i) performed a reasonable investigation into the circumstances that gave rise to the petition and its schedules and statement of financial affairs or the pleading, as applicable; and*

(ii) determined that the petition and its schedules and statement of financial affairs or the pleading, as applicable, including the choice of this chapter—

(I) is well grounded in fact; and

(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an inappropriate use of the provisions of this chapter.

(C) If the court finds that the attorney for the debtor signed a paper in violation of subparagraph (B), at a minimum, the court shall order—

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

(ii) the payment of the civil penalty to the trustee or the United States Trustee.

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

## SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

\* \* \* \* \*

### § 722. Redemption

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien *in full at the time of redemption*.

\* \* \* \* \*

### § 724. Treatment of certain liens

(a) \* \* \*

(b) Property in which the estate has an interest and that is subject to a lien that is not avoidable under this title (*other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate*) and that secures an allowed claim for a tax, or proceeds of such property, shall be distributed—

(1) \* \* \*

(2) second, to any holder of a claim of a kind specified in section 507(a)(1) (*except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title*), 507(a)(2), 507(a)(3), 507(a)(4), 507(a)(5),

507(a)(6), or 507(a)(7) of this title, to the extent of the amount of such allowed tax claim that is secured by such tax lien;

\* \* \* \* \*

(e) *Before subordinating a tax lien on real or personal property of the estate, the trustee shall—*

(1) *exhaust the unencumbered assets of the estate; and*

(2) *in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.*

(f) *Notwithstanding the exclusion of ad valorem tax liens set forth in this section and subject to the requirements of subsection (e)—*

(1) *claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(3) of this title; or*

(2) *claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4) of this title,*

*may be paid from property of the estate which secures a tax lien, or the proceeds of such property.*

\* \* \* \* \*

**§ 726. Distribution of property of the estate**

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed [before the date on which the trustee commences distribution under this section] *on or before the earlier of 10 days after the mailing to creditors of the summary of the trustee’s final report or the date on which the trustee commences final distribution under this section;*

\* \* \* \* \*

**§ 727. Discharge**

(a) The court shall grant the debtor a discharge, unless—

(1) \* \* \*

\* \* \* \* \*

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within [six] 10 years before the date of the filing of the petition;

\* \* \* \* \*

**CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY**

\* \* \* \* \*

SUBCHAPTER II—ADMINISTRATION

**§ 921. Petition and proceedings relating to petition**

(a) \* \* \*

\* \* \* \* \*

(d) If the petition is not dismissed under subsection (c) of this section, the court shall order relief under this chapter *notwithstanding section 301(b)*.

\* \* \* \* \*

**CHAPTER 11—REORGANIZATION**

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.

1101. Definitions for this chapter.

\* \* \* \* \*

1115. *Duties of trustee or debtor in possession in small business cases.*

\* \* \* \* \*

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

\* \* \* \* \*

**§ 1102. Creditors' and equity security holders' committees**

(a)(1) \* \* \*

\* \* \* \* \*

(3) On request of a party in interest in a case in which the debtor is a small business *debtor* and for cause, the court may order that a committee of creditors not be appointed.

(b)(1) \* \* \*

\* \* \* \* \*

(3) *The court on its own motion or on request of a party in interest, and after notice and a hearing, may order a change in membership of a committee appointed under subsection (a) if necessary to ensure adequate representation of creditors or of equity security holders.*

\* \* \* \* \*

**§ 1104. Appointment of trustee or examiner**

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; **[or]**

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, with-

out regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor[.]; or

(3) *if grounds exist to convert or dismiss the case under section 1112 of this title, but the court determines that the appointment of a trustee is in the best interests of creditors and the estate.*

\* \* \* \* \*

**§ 1110. Aircraft equipment and vessels**

(a)(1) The right of a secured party with a security interest in equipment described in paragraph (2) or of a lessor or conditional vendor of such equipment to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract is not affected by section 362, 363, or 1129 or by any power of the court to enjoin the taking of possession unless—

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

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

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

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

(I) \* \* \*

(II) the expiration of such 60-day period[.]; *and*

(iii) *that occurs after the date of the order and such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract.*

\* \* \* \* \*

**§ 1112. Conversion or dismissal**

(a) \* \* \*

[(b) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee or bankruptcy administrator, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including—

[(1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;

[(2) inability to effectuate a plan;

[(3) unreasonable delay by the debtor that is prejudicial to creditors;

[(4) failure to propose a plan under section 1121 of this title within any time fixed by the court;

[(5) denial of confirmation of every proposed plan and denial of a request made for additional time for filing another plan or a modification of a plan;

【(6) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or a modified plan under section 1129 of this title;

【(7) inability to effectuate substantial consummation of a confirmed plan;

【(8) material default by the debtor with respect to a confirmed plan;

【(9) termination of a plan by reason of the occurrence of a condition specified in the plan; or

【(10) nonpayment of any fees or charges required under chapter 123 of title 28.】

*(b)(1) Except as provided in paragraph (2), in subsection (c), and in section 1104(a)(3) of this title, on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 of this title or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, if the movant establishes cause.*

*(2) The relief provided in paragraph (1) shall not be granted if the debtor or another party in interest objects and establishes, by a preponderance of the evidence that—*

*(A) it is more likely than not that a plan will be confirmed within a time as fixed by this title or by order of the court entered pursuant to section 1121(e)(3), or within a reasonable time if no time has been fixed; and*

*(B) if the reason is an act or omission of the debtor that—*

*(i) there exists a reasonable justification for the act or omission; and*

*(ii) the act or omission will be cured within a reasonable time fixed by the court not to exceed 30 days after the court decides the motion, unless the movant expressly consents to a continuance for a specific period of time, or compelling circumstances beyond the control of the debtor justify an extension.*

*(3) For purposes of this subsection, cause includes—*

*(A) substantial or continuing loss to or diminution of the estate;*

*(B) gross mismanagement of the estate;*

*(C) failure to maintain appropriate insurance;*

*(D) unauthorized use of cash collateral harmful to 1 or more creditors;*

*(E) failure to comply with an order of the court;*

*(F) failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;*

*(G) failure to attend the meeting of creditors convened under section 341(a) of this title or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure;*

*(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee;*

*(I) failure timely to pay taxes due after the date of the order for relief or to file tax returns due after the order for relief;*

*(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;*

(K) failure to pay any fees or charges required under chapter 123 of title 28;

(L) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or of a modified plan under section 1129 of this title;

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan; and

(O) termination of a plan by reason of the occurrence of a condition specified in the plan.

(4) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

\* \* \* \* \*

**§ 1115. Duties of trustee or debtor in possession in small business cases**

In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

(1) append to the voluntary petition or, in an involuntary case, file within 3 days after the date of the order for relief—

(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 of this title;

(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

(6)(A) timely file tax returns;

(B) subject to section 363(c)(2), timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

(C) subject to section 363(c)(2), establish 1 or more separate deposit accounts not later than 10 business days after the date

*of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units; and*

*(7) allow the United States trustee or bankruptcy administrator, or its designated representative, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.*

\* \* \* \* \*

## SUBCHAPTER II—THE PLAN

### § 1121. Who may file a plan

(a) \* \* \*

\* \* \* \* \*

(d) **[On]** *(1) Subject to paragraph (1), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.*

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

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

**[(e)** In a case in which the debtor is a small business and elects to be considered a small business—

**[(1)** only the debtor may file a plan until after 100 days after the date of the order for relief under this chapter;

**[(2)** all plans shall be filed within 160 days after the date of the order for relief; and

**[(3)** on request of a party in interest made within the respective periods specified in paragraphs (1) and (2) and after notice and a hearing, the court may—

**[(A)** reduce the 100-day period or the 160-day period specified in paragraph (1) or (2) for cause; and

**[(B)** increase the 100-day period specified in paragraph (1) if the debtor shows that the need for an increase is caused by circumstances for which the debtor should not be held accountable.]

*(e) In a small business case—*

*(1) only the debtor may file a plan until after 90 days after the date of the order for relief, unless shortened on request of a party in interest made during the 90-day period, or unless extended as provided by this subsection, after notice and hearing the court, for cause, orders otherwise;*

*(2) the plan, and any necessary disclosure statement, shall be filed not later than 90 days after the date of the order for relief; and*

(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) of this title, within which the plan shall be confirmed may be extended only if—

(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable time;

(B) a new deadline is imposed at the time the extension is granted; and

(C) the order extending time is signed before the existing deadline has expired.

\* \* \* \* \*

### § 1125. Postpetition disclosure and solicitation

(a) In this section—

(1) “adequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, *including a full discussion of the potential material Federal, State, and local tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor domiciled in the State in which the debtor resides or has its principal place of business typical of the holders of claims or interests in the case*, that would enable such a hypothetical [reasonable] investor [typical of holders of claims or interests] of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan; and

\* \* \* \* \*

[(f) Notwithstanding subsection (b), in a case in which the debtor has elected under section 1121(e) to be considered a small business—

[(1) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

[(2) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement as long as the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed at least 10 days prior to the date of the hearing on confirmation of the plan; and

[(3) a hearing on the disclosure statement may be combined with a hearing on confirmation of a plan.]

(f) *Notwithstanding subsection (b), in a small business case—*

(1) *in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;*

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

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

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

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

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

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

\* \* \* \* \*

**§ 1129. Confirmation of plan**

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) \* \* \*

\* \* \* \* \*

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) \* \* \*

(B) with respect to a class of claims of a kind specified in section 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(i) \* \* \*

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; **[and]**

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim **[deferred cash payments, over a period not exceeding six years after the date of assessment of such claim,]** *regular installment payments in cash, but in no case with a balloon provision, and no more than three months apart, beginning no later than the effective date of the plan and ending on the earlier of five years after the petition date or the last date payments are to be made under the plan to unsecured creditors, of a value, as of the effective date of the plan, equal to the allowed amount of such claim***[.]; and**

*(D) with respect to a secured claim which would be described in section 507(a)(8) of this title but for its secured status, the holder of such claim will receive on account of such claim cash payments of not less than is required in subparagraph (C) and over a period no greater than is required in such subparagraph.*

\* \* \* \* \*

*(14) If the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed.*

\* \* \* \* \*

*(e) In a small business case, the plan shall be confirmed not later than 150 days after the date of the order for relief unless such 150-day period is extended as provided in section 1121(e)(3) of this title.*

**SUBCHAPTER III—POSTCONFIRMATION MATTERS**

**§ 1141. Effect of confirmation**

(a) \* \* \*

\* \* \* \* \*

(d)(1) \* \* \*

\* \* \* \* \*

*(5) The confirmation of a plan does not discharge a debtor that is a corporation from any debt arising from a judicial, administrative, or other action or proceeding that is—*

*(A) related to the consumption or consumer purchase of a tobacco product; and*

*(B) based in whole or in part on false pretenses, a false representation, or actual fraud.*

*(6) Notwithstanding the provisions of paragraph (1), the confirmation of a plan does not discharge a debtor which is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.*

\* \* \* \* \*

**CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER WITH REGULAR ANNUAL INCOME**

\* \* \* \* \*

**SUBCHAPTER II—THE PLAN**

1221. Filing of plan.

\* \* \* \* \*

1232. *Special treatment of secured claims.*

\* \* \* \* \*

SUBCHAPTER II—THE PLAN

**§ 1221. Filing of plan**

The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period *to any period not later than 150 days after the order for relief* if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.

\* \* \* \* \*

**§ 1225. Confirmation of plan**

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) \* \* \*

\* \* \* \* \*

(5) with respect to each allowed secured claim provided for by the plan—

(A) \* \* \*

\* \* \* \* \*

(C) the debtor surrenders the property securing such claim to such holder; **[and]**

(6) the debtor will be able to make all payments under the plan and to comply with the plan~~['.];~~ *and*

*(7) the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed.*

\* \* \* \* \*

**§ 1228. Discharge**

(a) As soon as practicable after completion by the debtor of all payments under the plan, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(10) of this title, *and only after a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, certifies that all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed have been paid*, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) \* \* \*

\* \* \* \* \*

**§ 1232. Special treatment of secured claims**

*(a)(1) A claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if*

the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse, unless—

(A) subject to paragraph (2), the holder of such claim elects to apply subsection (b); or

(B) such holder does not have such recourse, and such property is sold under section 363 of this title or is to be sold under the plan.

(2) A holder of a claim may not elect to apply subsection (b) if—

(A) such claim is of inconsequential value; or

(B) the holder of a claim has recourse against the debtor on account of such claim, and such property is sold under section 363 of this title or is to be sold under the plan.

(b) If such an election is made to apply this subsection, then notwithstanding section 506(a) of this title, such claim is a secured claim to the extent such claim is allowed.

**CHAPTER 13—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME**

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

Sec.

1301.	Stay of action against codebtor.	*	*	*	*	*	*
1308.	Filing of prepetition tax returns.	*	*	*	*	*	*

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

**§ 1301. Stay of action against codebtor**

(a) \* \* \*

(b)(1) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(2) When the debtor did not receive the consideration for the claim held by a creditor, the stay provided by subsection (a) does not apply to such creditor, notwithstanding subsection (c), to the extent the creditor proceeds against the individual which received such consideration or against property not in the possession of the debtor which secures such claim, but this subsection shall not apply if the debtor is primarily obligated to pay the creditor in whole or in part with respect to the claim under a legally binding separation agreement, or divorce or dissolution decree, with respect to such individual or the person who has possession of such property.

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

\* \* \* \* \*

**§ 1302. Trustee**

(a) \* \* \*

(b) The trustee shall—

(1) \* \* \*

\* \* \* \* \*

(4) advise, other than on legal matters, and assist the debtor in performance under the plan; **[and]**

(5) ensure that the debtor commences making timely payments under section 1326 of this title**[.];**

(6) *investigate and verify the debtor's monthly net income and other information provided by the debtor pursuant to sections 521 and 1322, and pursuant to section 111, if applicable; and*

(7) *file annual reports with the court, with copies to holders of claims under the plan, as to whether a modification of the amount paid creditors under the plan is appropriate because of changes in the debtor's monthly net income.*

\* \* \* \* \*

### § 1307. Conversion or dismissal

(a) \* \* \*

\* \* \* \* \*

*(e) Upon the failure of the debtor to file tax returns under section 1308 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interests of creditors and the estate.*

**[(e)]** *(f) The court may not convert a case under this chapter to a case under chapter 7, 11, or 12 of this title if the debtor is a farmer, unless the debtor requests such conversion.*

**[(f)]** *(g) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.*

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

*(a)(1) On or before 30 days after the filing of a case under this chapter, the debtor shall make cash payments in the amount described below to any lessor of personal property and to any creditor holding a claim secured by personal property to the extent such claim is attributable to the purchase of such property by the debtor. The debtor or the plan shall continue such payments until the earlier of—*

*(A) the time at which the creditor begins to receive actual payments under the plan; or*

*(B) the debtor relinquishes possession of such property to the lessor or creditor, or to any third party acting under claim of right, as applicable.*

*(2) Such cash payments shall be in the amount of any weekly, bi-weekly, monthly or other periodic payment scheduled as payable under the contract between the debtor and creditor; shall be paid at the times at which such payments are scheduled to be made; and shall not include any arrearages, penalties, or default or delinquency charges. Such payments shall be deemed to be adequate protection payments under section 362 of this title.*

(b) *The court may, after notice and hearing, change the amount and timing of the adequate protection payment under subsection (a), but in no event shall it be payable less frequently than monthly or in an amount less than the reasonable depreciation of such property month to month.*

(c) *Notwithstanding section 1326(b) of this title, if a confirmed plan provides for payments to a creditor or lessor described in subsection (a) and provides that payments to such creditor or lessor under the plan will be deferred until payment of amounts described in section 1326(b) of this title, the payments required hereunder shall nonetheless be continued in addition to plan payments until actual payments to the creditor begin under the plan.*

(d) *Notwithstanding sections 362, 542, and 543 of this title, a lessor or creditor described in subsection (a) may retain possession of property described in subsection (a) which was obtained rightfully prior to the date of filing of the petition until the first such adequate protection payment is received by the lessor or creditor. Such retention of possession and any acts reasonably related thereto shall not violate the stay imposed under section 362(a) of this title, nor any obligations imposed under section 542 or 543 of this title.*

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

### **§ 1308. Filing of prepetition tax returns**

(a) *On or before the day prior to the day on which the first meeting of the creditors is convened under section 341(a) of this title, the debtor shall have filed with appropriate tax authorities all tax returns for all taxable periods ending in the 6-year period ending on the date of filing of the petition.*

(b) *If the tax returns required by subsection (a) have not been filed by the date on which the first meeting of creditors is convened under section 341(a) of this title, the trustee may continue such meeting for a reasonable period of time, to allow the debtor additional time to file any unfiled returns, but such additional time shall be no more than—*

(1) *for returns that are past due as of the date of the filing of the petition, 120 days from such date,*

(2) *for returns which are not past due as of the date of the filing of the petition, the later of 120 days from such date or the due date for such returns under the last automatic extension of time for filing such returns to which the debtor is entitled, and for which request has been timely made, according to applicable nonbankruptcy law, and*

(3) *upon notice and hearing, and order entered before the lapse of any deadline fixed according to this subsection, where the debtor demonstrates, by clear and convincing evidence, that the failure to file the returns as required is because of circumstances beyond the control of the debtor, the court may ex-*

tend the deadlines set by the trustee as provided in this subsection for—

(A) a period of no more than 30 days for returns described in paragraph (1) of this subsection, and

(B) for no more than the period of time ending on the applicable extended due date for the returns described in paragraph (2).

(c) For purposes of this section only, a return includes a return prepared pursuant to section 6020 (a) or (b) of the Internal Revenue Code of 1986 or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal.

## SUBCHAPTER II—THE PLAN

\* \* \* \* \*

### § 1322. Contents of plan

(a) The plan shall—

(1) \* \* \*

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; **and**

(3) if the plan classifies claims, provide the same treatment for each claim within a particular class **and**

(4) state, under penalties of perjury, the amount of monthly net income, which may be as adjusted under section 111, if applicable, of this title and the amount of monthly net income which will be paid per month to unsecured nonpriority creditors under the plan.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) \* \* \*

**[(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;]**

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

\* \* \* \* \*

**[(d) The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years.]**

*(d) If the total current monthly income of the debtor and in a joint case, the debtor and the debtor's spouse combined, is not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, the*

*plan may not provide for payments over a period that is longer than 5 years, unless the court, for cause, approves a longer period, but the court may not approve a period that exceeds 7 years. If the total current monthly income of the debtor or in a joint case, the debtor and the debtor's spouse combined, is less than the highest national median family income reported for a family of equal or lesser size, or in the case of a household of 1 person less than the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.*

\* \* \* \* \*

#### **§ 1324. Confirmation hearing**

**[After]** (a) *Except as provided in subsection (b) and after notice, the court shall hold a hearing on confirmation of the plan. A party in interest may object to confirmation of the plan.*

(b) *The hearing on confirmation of the plan may be held not earlier than 20 days, and not later than 45 days, after the meeting of creditors under section 341(a) of this title.*

#### **§ 1325. Confirmation of plan**

(a) *Except as provided in subsection (b), the court shall confirm a plan if—*

(1) \* \* \*

\* \* \* \* \*

(5) *with respect to each allowed secured claim provided for by the plan—*

(A) *the holder of such claim has accepted the plan;*

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

(ii) *the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or*

(C) *the debtor surrenders the property securing such claim to such holder; [and]*

(6) *the debtor will be able to make all payments under the plan and to comply with the plan[.];*

(7) *if the debtor is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, the debtor has paid all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed; and*

(8) *if the debtor has filed all Federal, State, and local tax returns as required by section 1308 of this title.*

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) \* \* \*

【(B) the plan provides that all of the debtor’s projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.】

(B) *the plan provides—*

(i) *that payments to unsecured nonpriority creditors who are not insiders shall equal or exceed \$50 in each month of the plan;*

(ii) *that during the applicable commitment period beginning on the date that the first payment is due under the plan, the total amount of monthly net income received by the debtor shall be paid to unsecured nonpriority creditors under the plan less only payments pursuant to section 1326(b); the “applicable commitment period” shall be not less than 5 years if the debtor’s total current monthly income is not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, is not less than the national median household income for 1 earner, as of the date of confirmation of the plan and shall be not less than 3 years if the debtor’s total current monthly income is less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, is less than the national median household income for 1 earner, as of the date of confirmation of the plan;*

(iii) *that the amount payable to each class of unsecured nonpriority claims under the plan shall be increased or decreased during the plan proportionately to the extent the debtor’s monthly net income during the plan increases or decreases as reasonably determined by the trustee, subject to section 111 of this title, no less frequently than as of each anniversary of the confirmation of the plan based on monthly net income as of 45 days before such anniversary; and*

(iv) *nothing in subparagraph (i) or (ii) shall prevent the payment of obligations described in section 507(a)(7) at the times provided for in the plan, and the plan shall specify how payments to other creditors under subparagraph (ii) will be accordingly adjusted.*

【(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and】

\* \* \* \* \*

**§ 1328. Discharge**

(a) As soon as practicable after completion by the debtor of all payments under the plan, *and only after a debtor who is required by a judicial or administrative order to pay alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor, certifies that all amounts payable under such order for alimony, maintenance, or support that are due after the date the petition is filed have been paid*, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) \* \* \*

(2) of the kind specified in paragraph (1), (2), (3)(B), (4), (5), (6), (8), **[or (9)]** (9), or (18) of section 523(a) of this title; or

\* \* \* \* \*

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

**§ 1329. Modification of plan after confirmation**

(a) \* \* \*

\* \* \* \* \*

(c) A plan modified under this section may not provide for payments over a period that expires after **[three years]** *the applicable commitment period under section 1325(b)(1)(B)(ii)* after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after **[five years]** *maximum duration period* after such time. *The maximum duration period shall be 5 years if the total current monthly income of the debtor, and in a joint case, the debtor and the debtor’s spouse combined, is not less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, as of the date of the modification and shall be 3 years if the total current monthly income is less than the highest national median family income reported for a family of equal or lesser size or, in the case of a household of 1 person, less than the national median household income for 1 earner as of the date of the modification.*

\* \* \* \* \*



**TITLE 28, UNITED STATES CODE**

**PART I—ORGANIZATION OF COURTS**

\* \* \* \* \*

**CHAPTER 6—BANKRUPTCY JUDGES**

**Sec.**

151. Designation of bankruptcy courts.

\* \* \* \* \*

**[158. Appeals.]**

159. *Bankruptcy statistics.*

\* \* \* \* \*

**§ 157. Procedures**

(a) \* \* \*

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under **[section 158]** *section 1293* of this title.

(2) Core proceedings include, but are not limited to—

(A) \* \* \*

\* \* \* \* \*

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; **[and]**

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims**[.]; and**

(P) *recognition of foreign proceedings and other matters under chapter 6.*

\* \* \* \* \*

(c)(1) \* \* \*

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under **[section 158]** *section 1293* of this title.

\* \* \* \* \*

**[§ 158. Appeals**

**(a)** The district courts of the United States shall have jurisdiction to hear appeals—

**[(1)** from final judgments, orders, and decrees;

**[(2)** from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

[(3) with leave of the court, from other interlocutory orders and decrees; and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

[(b)(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

[(A) there are insufficient judicial resources available in the circuit; or

[(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11. Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

[(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

[(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

[(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

[(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

[(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

[(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

[(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

[(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have

authorized such service to hear and determine appeals originating in such district.

[(c)(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

[(A) the appellant elects at the time of filing the appeal; or

[(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.

[(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

[(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.]

#### **§ 159. Bankruptcy statistics**

*The Director of the Executive Office for United States Trustees shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11, United States Code. Such statistics shall be in a form prescribed by the Administrative Office of the United States Courts. The Office shall compile such statistics, and make them public, and report annually to the Congress on the information collected, and on its analysis thereof, no later than October 31 of each year. Such compilation shall be itemized by chapter of title 11 of the United States Code, shall be presented in the aggregate and for each district, and shall include the following:*

(1) *Total assets and total liabilities of such debtors, and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by such debtors.*

(2) *The current total monthly income, projected monthly net income, and average income and average expenses of such debtors as reported on the schedules and statements the debtor has filed under sections 111, 521, and 1322 of title 11.*

(3) *The aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable.*

(4) *The average time between the filing of the petition and the closing of the case.*

(5) *The number of cases in the reporting period in which a reaffirmation was filed and the total number of reaffirmations filed in that period, and of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney, and of those the number of cases in which the reaffirmation was approved by the court.*

(6) *With respect to cases filed under chapter 13 of title 11—*

(A) *the number of cases in which a final order was entered determining the value of property securing a claim*

*less than the claim, and the total number of such orders in the reporting period; and*  
*(B) the number of cases dismissed for failure to make payments under the plan.*  
*(7) The number of cases in which the debtor filed another case within the 6 years previous to the filing.*

\* \* \* \* \*

**PART II—DEPARTMENT OF JUSTICE**

\* \* \* \* \*

**CHAPTER 39—UNITED STATES TRUSTEES**

Sec.  
 581. United States trustees.  
 \* \* \* \* \*  
 589b. Bankruptcy data.  
 \* \* \* \* \*

**§ 586. Duties; supervision by Attorney General**

(a) Each United States trustee, within the region for which such United States trustee is appointed, shall—

(1) \* \* \*  
 \* \* \* \* \*

(3) supervise the administration of cases and trustees in cases under chapter 6, 7, 11, 12, or 13 of title 11 by, whenever the United States trustee considers it to be appropriate—

(A) \* \* \*  
 \* \* \* \* \*

(G) monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress;  
**[and]**

*(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases;*

**[(H)] (I)** monitoring applications filed under section 327 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications;

\* \* \* \* \*

(5) perform the duties prescribed for the United States trustee under title 11 and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe;  
**[and]**

(6) make such reports as the Attorney General directs.  
 \* \* \* \* \*

*(f)(1) The Attorney General shall establish procedures for the auditing of the accuracy and completeness of petitions, schedules, and other information which the debtor is required to provide under sec-*

tions 521 and 1322, and, if applicable, section 111, of title 11 in individual cases filed under chapter 7 or 13 of such title. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants. Such procedures shall—

(A) establish a method of selecting appropriate qualified persons to contract with the United States trustee to perform such audits;

(B) establish a method of randomly selecting cases to be audited according to generally accepted audit standards, provided that no less than 1 out of every 100 cases in each Federal judicial district shall be selected for audit;

(C) require audits for schedules of income and expenses which reflect higher than average variances from the statistical norm of the district in which the schedules were filed;

(D) establish procedures for reporting the results of such audits and any material misstatement of income, expenditures or assets of a debtor to the Attorney General, the United States Attorney and the court, as appropriate, and for providing public information no less than annually on the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported; and

(E) establish procedures for fully funding such audits.

(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1) of this subsection.

(3) According to procedures established under paragraph (1), upon request of a duly appointed auditor, the debtor shall cause the accounts, papers, documents, financial records, files and all other papers, things or property belonging to the debtor as the auditor requests and which are reasonably necessary to facilitate an audit to be made available for inspection and copying.

(4) The report of each such audit shall be filed with the court, the Attorney General, and the United States Attorney, as required under procedures established by the Attorney General under paragraph (1). If a material misstatement of income or expenditures or of assets is reported, a statement specifying such misstatement shall be filed with the court and the United States trustee shall give notice thereof to the creditors in the case and, in an appropriate case, in the opinion of the United States trustee, requires investigation with respect to possible criminal violations, the United States Attorney for the district.

\* \* \* \* \*

#### **§589b. Bankruptcy data**

(a) *RULES.*—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

(b) *REPORTS.*—All reports referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at 1 or more central filing locations, and by electronic access through the Internet or other appropriate media.

(c) *REQUIRED INFORMATION.*—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; and

(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports.

(d) *FINAL REPORTS.*—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

(1) information about the length of time the case was pending;

(2) assets abandoned;

(3) assets exempted;

(4) receipts and disbursements of the estate;

(5) expenses of administration;

(6) claims asserted;

(7) claims allowed;

(8) distributions to claimants and claims discharged without payment;

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

(e) *PERIODIC REPORTS.*—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

(2) length of time the case has been pending;

(3) number of full-time employees as at the date of the order for relief and at end of each reporting period since the case was filed;

(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, in for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.

\* \* \* \* \*

**PART III—COURT OFFICERS AND EMPLOYEES**

\* \* \* \* \*

**CHAPTER 57—GENERAL PROVISIONS APPLICABLE TO COURT OFFICERS AND EMPLOYEES**

\* \* \* \* \*

**§ 960. Tax liability**

(a) Any officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.

(b) Such taxes shall be paid when due in the conduct of such business unless—

(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable time after the lien attaches, by the trustee of a bankruptcy estate, pursuant to section 554 of title 11; or

(2) payment of the tax is excused under a specific provision of title 11.

(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11 if—

(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

(2) before the due date of the tax, the court has made a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as such tax.

\* \* \* \* \*

**PART IV—JURISDICTION AND VENUE**

\* \* \* \* \*

**CHAPTER 83—COURTS OF APPEALS**

Sec.  
 1291. Final decisions of district courts.  
           \*          \*          \*          \*          \*          \*          \*  
 1293. *Bankruptcy appeals.*  
           \*          \*          \*          \*          \*          \*          \*

**§ 1293. Bankruptcy appeals**

*The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from the following:*

- (1) *Final orders and judgments of bankruptcy courts entered under—*
  - (A) *section 157(b) of this title in core proceedings arising under title 11, or arising in or related to a case under title 11; or*
  - (B) *section 157(c)(2) of this title in proceedings referred to such courts.*
- (2) *Final orders and judgments of district courts entered under section 157 of this title in—*
  - (A) *core proceedings arising under title 11, or arising in or related to a case under title 11; or*
  - (B) *proceedings that are not core proceedings, but that are otherwise related to a case under title 11.*
- (3) *Orders and judgments of bankruptcy courts or district courts entered under section 105 of title 11, or the refusal to enter an order or judgment under such section.*
- (4) *Orders of bankruptcy courts or district courts entered under section 1104(a) or 1121(d) of title 11, or the refusal to enter an order under such section.*
- (5) *An interlocutory order of a bankruptcy court or district court entered in a case under title 11, in a proceeding arising under title 11, or in a proceeding arising in or related to a case under title 11, if—*
  - (A) *such court is of the opinion that—*
    - (i) *such order involves a controlling question of law as to which there is substantial ground for difference of opinion; and*
    - (ii) *an immediate appeal from such order may materially advance the ultimate termination of such case or such proceeding; or*
  - (B) *the court of appeals that would have jurisdiction of an appeal of a final order entered in such case or such proceeding permits, in its discretion, appeal to be taken from such interlocutory order.*

\*          \*          \*          \*          \*          \*          \*

**CHAPTER 85—DISTRICT COURTS; JURISDICTION**

\*          \*          \*          \*          \*          \*          \*

**§ 1334. Bankruptcy cases and proceedings**

(a) \* \* \*

\* \* \* \* \*

(c)(1) **[Nothing in]** *Except with respect to a case under chapter 6 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.*

(2) \* \* \*

(d) Any decision to abstain or not to abstain made under this subsection (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section **[158(d), 1291, or 1292]** *1291, 1292, or 1293* of this title or by the Supreme Court of the United States under section 1254 of this title. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

\* \* \* \* \*

**CHAPTER 87—DISTRICT COURTS; VENUE**

\* \* \* \* \*

**§ 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11**

(a) \* \* \*

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than \$1,000 or a consumer debt of less than \$5,000, or a nonconsumer debt against a noninsider of less than \$10,000, only in the district court for the district in which the defendant resides.

\* \* \* \* \*

**CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS**

\* \* \* \* \*

**§ 1452. Removal of claims related to bankruptcy cases**

(a) \* \* \*

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section **[158(d), 1291, or 1292]** *1291, 1292, or 1293* of this title or by the Supreme Court of the United States under section 1254 of this title.

\* \* \* \* \*

## PART V—PROCEDURE

### CHAPTER 123—FEES AND COSTS

#### § 1930. Bankruptcy fees

(a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

(1) \* \* \*

\* \* \* \* \*

(6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) [until the case is converted or dismissed, whichever occurs first]. [The] *Until the plan is confirmed or the case is converted (whichever occurs first) the fee shall be \$250 for each quarter in which disbursements total less than \$15,000; \$500 for each quarter in which disbursements total \$15,000 or more but less than \$75,000; \$750 for each quarter in which disbursements total \$75,000 or more but less than \$150,000; \$1,250 for each quarter in which disbursements total \$150,000 or more but less than \$225,000; \$1,500 for each quarter in which disbursements total \$225,000 or more but [less than \$300,000;] less than \$300,000. Until the case is converted or dismissed (whichever occurs first and without regard to confirmation of the plan) the fee shall be \$3,750 for each quarter in which disbursements total \$300,000 or more but less than \$1,000,000; \$5,000 for each quarter in which disbursements total \$1,000,000 or more but less than \$2,000,000; \$7,500 for each quarter in which disbursements total \$2,000,000 or more but less than \$3,000,000; \$8,000 for each quarter in which disbursements total \$3,000,000 or more but less than \$5,000,000; \$10,000 for each quarter in which disbursements total \$5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.*

\* \* \* \* \*

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### SECTION 456 OF THE SOCIAL SECURITY ACT

#### SUPPORT OBLIGATIONS

SEC. 456. (a) \* \* \*

(b) NONDISCHARGEABILITY.—A debt (as defined in section 101 of title 11 of the United States Code), *including interest accrued on such debt under State law*, owed under State law to a State (as defined in such section) or municipality (as defined in such section) that is in the nature of support [and] *or* that is enforceable under

this part is not [released by a discharge] *dischargeable* in bankruptcy under title 11 of the United States Code.

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**SECTION 302 OF THE BANKRUPTCY JUDGES, UNITED STATES TRUSTEES, AND FAMILY FARMER BANKRUPTCY ACT OF 1986**

**SEC. 302. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.**

(a) \* \* \*

\* \* \* \* \*

[(f) REPEAL OF CHAPTER 12 OF TITLE 11.—Chapter 12 of title 11 of the United States Code is repealed on October 1, 1998. All cases commenced or pending under chapter 12 of title 11, United States Code, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter had not been repealed. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed.]

## DISSENTING VIEWS

Although we could support a responsible and balanced bankruptcy reform effort, which remedies debtor abuses while responding to the legitimate needs and concerns of hardworking debtors and small businesses, we believe the legislation reported by the Committee is too extreme. The case has not been made to support the adoption of a bureaucratic, costly and untested one-size fits all “means test” approach to consumer bankruptcy. The means test, along with other consumer changes vastly enhancing the rights of unsecured creditors, will have a severe impact on the most vulnerable members of society, including women and children reliant on alimony and child support payments. At the same time, the small business, real estate, and tax provisions of H.R. 3150 unduly elevate the rights of creditors at the expense of hundreds of thousands of businesses and the many jobs they support.

The legislation and its rapid pace have been opposed by a number of important groups, including:

(A) groups concerned about the impact of bankruptcy on hardworking Americans and consumers, such as the AFL–CIO, UAW, UNITE, the Consumer Federation of America, Consumers’ Union, and Public Citizen;

(B) groups concerned about the integrity and fairness of the bankruptcy process, such as the National Conference of Bankruptcy Judges, the National Bankruptcy Conference, the American College of Bankruptcy, the National Association of Consumer Bankruptcy Attorneys, the National Association of Bankruptcy Trustees, the National Association of Chapter 13 Trustees, and the Alliance for Justice; and

(C) groups concerned about the bankruptcy rights of women and children and victims of crimes and torts, such as the National Organization of Women, Mothers Against Drunk Driving, the National Organization for Victim Assistance, the National Victim Center, the Association for Children of Enforcement Support, and the Governing Counsel of the Family Law Section of the American Bar Association.

The Justice Department also has taken a position in opposition to many of H.R. 3150’s provisions, including the controversial consumer portions of the bill, and the Small Business Administration is opposed to the small business provisions of the bill.

Many of us support various sections in the bill, such as those providing for streamlined bankruptcy administration (section 411), enhanced protections for retirement plans in bankruptcy (section 118), making chapter 12 concerning family farm reorganizations permanent (section 203), protection of tithing in bankruptcy (section 118), clarifying the law relating to international insolvencies (Title VI), eliminating the dischargeability of smoking claims involving fraud or deceit (section 119A), and capping state home-

stead exemptions (section 182). However, any merit in these sections is in our view outweighed by the problems inherent in the consumer, and business provisions of H.R. 3150. For these and the following reasons, we dissent from H.R. 3150.

#### I. THE PROCESS HAS BEEN UNNECESSARILY HURRIED AND PARTISAN

Unlike previous efforts to enact bankruptcy reform, the process concerning H.R. 3150 has been unnecessarily hurried and partisan. The legislation is being brought to the House floor a mere five months and five hearings after receipt of the report of the congressionally-created National Bankruptcy Review Commission. Unfortunately, we cannot say that the final bill reported by the Committee reflects any substantive negotiations or give and take with the Democratic Members of the Committee. Democrats received a 177-page Chairman's substitute effectuating substantial revisions from the original bill less than 24 hours before the Subcommittee markup, which took place at the same time when the Committee had major legislation on the floor. The Committee markup took three contentious days, and the final bill is being reported a mere two business days after the markup—the bare minimum permitted under House Rules—which hardly affords time to complete the reviews, cost estimates and examinations needed for a bill of this magnitude.

By contrast, the last major overhaul of the bankruptcy laws—the 1978 Bankruptcy Code—was enacted a full five years and sixty days of hearings after the 1973 Bankruptcy Commission issued its report. In addition, all of the recent bankruptcy law changes (enacted in 1978, 1984, and 1994) were developed in close bipartisan cooperation and were approved by the House on a consensus basis, typically by voice vote. Such careful and bipartisan deliberation is important given the wide-ranging impact of the bankruptcy laws, the intricate and technical nature of the laws, and the fact that more Americans come into contact with the bankruptcy courts than all other federal courts combined.

It is for these reasons, among others, that a wide range of mainstream bankruptcy groups have asked Congress to delay consideration of omnibus bankruptcy legislation until it can be considered deliberately and in depth. The National Conference of Bankruptcy Judges (which includes 319 of the nation's 326 bankruptcy judges) has written to the Speaker that "[t]he fast-paced approach to [bankruptcy legislation] concerns [us]."<sup>1</sup> Separately, 110 bankruptcy judges have written a joint letter complaining that the pending bankruptcy bills "are too important and their proposed changes too sweeping to be acted on without thorough consideration. We are alarmed by how little study appears to have been given to the bills."<sup>2</sup>

Bankruptcy academics are also alarmed by the hurried pace of the legislative process, with fifty-seven leading law professors writing in March that "the pace related to the examination of [the bankruptcy] legislation has been fast, and the study of its con-

<sup>1</sup>Letter from Robert F. Hershner, Jr., President, *The National Conference of Bankruptcy Judges*, to Rep. Gingrich (Apr. 2, 1998).

<sup>2</sup>Letter from 110 United States bankruptcy judges to All Members of the United States Congress (Apr. 2, 1998).

sequences was superficial.”<sup>3</sup> Leading bankruptcy practitioners, represented by the American College of Bankruptcy, have testified also that “there are dangers lurking in a rush to judgment without further study. Wrong answers could cause more problems than they solve.”<sup>4</sup>

The Majority is also acting in the complete absence of any objective study establishing any need or basis for the radical revisions being proposed by H.R. 3150. The only evidence, other than anecdotal evidence, cited by the proponents of this legislation has been from studies commissioned and funded by the credit card industry, which has a direct financial interest in the outcome of this legislation.<sup>5</sup> The reports purport to demonstrate that a significant number of debtors have the ability to discharge large amounts of debt under current law which they are otherwise able to repay. The reports also argue that this ability to discharge such debt imposes a net cost on other consumers of credit and of goods and services.

These studies have been reviewed by the General Accounting Office on numerous occasions.<sup>6</sup> In each case, the GAO found these industry-sponsored studies to be based on anecdotal evidence, questionable assumptions and methodologies, and non-public data. Thus, the GAO concluded, “[a] number of these data sources and assumptions were discussed only in general terms. Without more detailed explanation, it is difficult to assess the reliability of the data used; the reasonableness of the reports assumptions; and, thus, the accuracy of the report’s estimates of creditor losses and bankruptcy system costs in 1997.”<sup>7</sup> Similarly, discussing the works

<sup>3</sup>Letter from Professor Bruce A. Markell to All Members of the House and Senate Judiciary Committees (Mar. 31, 1998).

<sup>4</sup>[cite to hearing testimony] The Alliance for Justice, an umbrella organization of more than 40 public interest organizations, has also written that “the Bankruptcy Code is an extremely technical area of law, relied upon by Americans in times of great need. In the past, substantive revisions to the Code were carefully analyzed and only made after a thorough examination of the record. The 1978 revisions to the Code have worked well, largely because these changes were the product of careful deliberation.” [cite]

<sup>5</sup>John M. Barron, Ph.D., and Michael E. Staten, Ph.D., *Personal Bankruptcy: A Report on Petitioners’ Ability to Pay* (October 6, 1997); Ernst & Young, LLP, *Chapter 7 Bankruptcy Petitioners’ Ability to Repay: Additional Evidence from Bankruptcy Petition Files* (February 1998); WEFA Group, *The Financial Costs of Personal Bankruptcy* (February 1998). The Subcommittee requested the underlying data but all three groups completing these studies refused to make it available.

<sup>6</sup>General Accounting Office, *Personal Bankruptcy: The Credit Research Center Report on Debtors’ Ability to Pay* (GAO/GGD98-47, February 1998); *Hearing on Pending Bankruptcy Legislation Before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee, 105th Congress* (March 12, 1998) (Statement of Richard M. Stana); Letter from Richard M. Stana, Associate Director, Administration of Justice Issues, *General Accounting Office*, to The Honorable Martin T. Meehan (April 23, 1998). The reviews were completed at the request of the Committee Minority on two occasions following numerous requests from Subcommittee Ranking Member Jerrold Nadler that the request be made on a bipartisan basis, and on one occasion at the request of the Chair and Ranking Minority Member of the Senate Subcommittee on Administrative Oversight and the Courts.

<sup>7</sup>In addition, GAO noted that “both studies assume that 100 percent of debtors’ net income after allowable expenses for a 5-year period would be used for debt repayment, which does not reflect actual bankruptcy practice. In fiscal year 1996, 14 percent of chapter 13 debtor payments were used for administrative costs, such as statutory trustee fees. Also, each report’s estimate of potential debt repayment assumes that all repayment plans will be successfully completed. Data from the Administrative Office of the U.S. Courts shows that only about one-third of the 953,180 chapter 13 repayment plans terminated between 1981 and 1993 were successfully completed. . . . The samples were not designed to be representative of the nation as a whole or of each city for the year in which they were drawn. Therefore, the data on which the reports were based may not reflect all bankruptcy filings nationwide or in each of the 15 locations for the years from which the petitions were drawn.”

of the Credit Research Center and Ernst & Young on debtors' ability to pay, the GAO concluded:

\* \* \* both of these studies share two fundamental assumptions that have not been validated: (1) that the information found on debtors' initial schedules of estimated income, estimated expenses, and debts is accurate; and (2) that this information can be used to satisfactorily forecast debtors' income and expenses for a 5-year period.<sup>8</sup>

Moreover, other analyses conducted by independent academics and governmental agencies have drawn very different conclusions. For example, Prof. Lawrence M. Ausubel testified:

\* \* \* [a]ll available statistical evidence points to the record level of household debt as the immediate cause [of the increase in individual bankruptcies] \* \* \* In 1984, aggregate American Household debt (consumer credit outstanding + mortgage debt) equaled 58.0% of aggregate American disposal personal income. By the third quarter of 1997, the household debt had mushroomed to 83.5% of disposal personal income. Along the way, changes in the rate of personal bankruptcy filings fairly closely tracked changes in the household debt burden, with changes in the debt burden leading changes in bankruptcy filings by several quarters.<sup>9</sup>

Similarly, a study published by the Federal Deposit Insurance Corporation reviewed the impact of interest rate deregulation and concluded that "the pricing and underwriting decisions of lenders and the rational borrowing decisions of consumers \* \* \* suggests that an increase in both credit availability and bankruptcies was a perhaps inevitable result of interest rate deregulation."<sup>10</sup>

Moreover, other analyses indicate that the rise in bankruptcies is more properly attributable to a number of changes unrelated to the bankruptcy laws, such as unexpected medical costs, increasing divorce, loss of high paying full time jobs, and the deregulation of credit card interest rates and the increase in credit card solicitations and overall consumer debt.<sup>11</sup> It also has been shown that the

<sup>8</sup>Id. Statement of Richard M. Stana, *supra* note , at (i).

<sup>9</sup>Hearing on Pending Bankruptcy Legislation Before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee, 105th Congress 4 (March 10, 1998) (Statement of Prof. Lawrence M. Ausubel).

<sup>10</sup>Diane Ellis, Senior Financial Analyst, Economic Analysis Section, Division of Insurance, Federal Deposit Insurance Corporation, *The Effect of Interest Rate Deregulation on Credit Card Volumes, Charge-Offs, and the Personal Bankruptcy Rate*, Bank Trends, 2 (March 1998). Similarly, comparing bankruptcy and indebtedness trends in the United States and Canada, FDIC noted that "From 1966 to 1976, the personal bankruptcy rate in Canada grew by 340 percent. Over the same period, the personal bankruptcy rate in the United States grew by only 8 percent \* \* \* after interest rate deregulation in the United States, the personal bankruptcy rates in both countries a remarkably similar pattern \* \* \* Canada's personal bankruptcy rate has taken a very similar path to the U.S. personal bankruptcy rate since 1978, although there have been no significant recent changes to Canada's bankruptcy laws," *Id.* 8-9.

<sup>11</sup>Professor Elizabeth Warren, *et. al.*, have found that unreimbursed medical costs, divorce, and unemployment contribute significantly to individual bankruptcies. Nearly 40% of older Americans surveyed reported being unable to pay outstanding medical debts as a primary reason for filing for bankruptcy. Two-thirds of the debtors aged 50-65 cite either a medical reason or a job reason for their bankruptcy filings. Similarly, the economic stress following divorce plays a significant role in bankruptcy filings. Prof. Warren's sample contained 300% more divorced people than the general population. More than half of the sample reported a significant period of unemployment preceding their filings. See Elizabeth Warren, *Consumer Bankruptcy: Issues Summary*, 2 (April 2, 1998)(Summarizing Elizabeth Warren, *The Bankruptcy Crisis*, 73 Indiana L.J. 1079 (forthcoming, April 1998)).

average income of persons filing for bankruptcy has declined from the 1980's, further contradicting assertions of increasing bankruptcy abuse by high income individuals.<sup>12</sup>

## II. THE CONSUMER PROVISIONS ARE ARBITRARY AND UNFAIR, AND WILL HARM WOMEN AND CHILDREN AND OTHER VULNERABLE SEGMENTS OF SOCIETY

### Current Law and Proposed Changes

Under current law, individuals facing financial difficulty may seek a variety of forms of relief under the bankruptcy laws, with chapter 7 (liquidation) being by far the most common form of relief sought. Under this chapter debtors are required to forfeit all of their property that is "exempt" (*i.e.*, deemed necessary for the debtor's maintenance, as determined under federal or state law, at the state's option) in exchange for receiving a discharge of their unsecured debts. Creditors are entitled to receive any net proceeds from the sale of the debtor's property, subject to the statutory priority schedule.<sup>13</sup> The Bankruptcy Code does not permit the discharge of certain debts whose payments are considered to be important to society. Some of this debt is of the same nature as priority debt (*e.g.*, family support obligations and taxes), but the law also excepts from discharge debts incurred through the debtor's misconduct, such as debts arising from fraud and intentional injuries.

While there are no strict financial criteria for seeking chapter 7 relief, section 707(b) of the Bankruptcy Code grants the court the discretion to deny relief where the filing is found to be a "substantial abuse."<sup>14</sup> This stems in part from the costs and potential hardships associated with developing specific criteria for chapter 7 eligibility, the belief that all honest, hard-working individuals are entitled to a "fresh start," and the importance of encouraging risk-taking and entrepreneurship and avoiding situations akin to "debtors prisons" where it is impossible for individuals to escape aggressive creditor collection tactics.<sup>15</sup>

A separate bankruptcy alternative available to individual debtors is chapter 13 (wage earners plan). Under chapter 13, a debtor is permitted to retain his or her property, but is required to pay to creditors over a 3–5 year period out of future wages at least as

<sup>12</sup>Most significantly, the drop in the median family income of chapter 7 individual debtors has fallen in constant 1997 dollars from \$23,254 in 1981 to \$17,652 in 1997. By comparison, the national median family income of all families in 1997 was \$42,769. See *Hearing on Pending Bankruptcy Legislation Before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee*, 105th Congress, 3 (March 26, 1998) (statement of the American Federation of Labor—Congress of Industrial Organizations).

<sup>13</sup>For example, the costs of administering the estate are entitled to the first priority, and payments of alimony, child support, and taxes are entitled to later priorities, with general unsecured debt entitled to any residual assets left over. Secured creditors, such as mortgage holders are entitled to be paid at least the value of their collateral.

<sup>14</sup>The Fourth Circuit has held that the court should apply the following factors in determining whether a chapter 7 case should be dismissed for "substantial abuse": (1) whether the petition was filed because of sudden illness, calamity, disability, or unemployment; (2) whether the debtor incurred cash advances and made consumer purchases far in excess of his ability to pay; (3) whether the debtor's proposed family budget is unreasonable or excessive; (4) whether the debtor's schedules and statement of current income and expenses reasonably and accurately reflect his financial condition; and (5) whether the petition was filed in good faith. See *In re Green*, 934 F. 2d 568, 572–73 (4th Cir. 1991).

<sup>15</sup>There are a number of disincentives to filing for bankruptcy, such as the fact that a person filed for a chapter 7 bankruptcy will be disclosed on a debtor's credit report, and the law's prohibitions on repeat chapter 7 filings for six years.

much as the creditors would have received under a chapter 7 liquidation, and is also required to pay all priority debts in full. To accomplish this, the debtor must propose a plan, administered by a trustee, that pays creditors in full or that devotes the debtor's "disposable income" after accounting for necessary support of the debtor and his or her family. In order to encourage the use of chapter 13 plans, which are currently voluntary to the debtor, Congress determined that persons who meet their chapter 13 obligations are entitled to a broader discharge of their unpaid debts than is available under chapter 7. This "superdischarge" results in the discharge of several types of debt (such as those for fraud) that are not discharged by chapter 7. In addition, debtors are permitted to retain property whether or not the property is encumbered by liens and the debtor is in default, so long as the chapter 13 plan cures any arrearages. In this manner, debtors can use chapter 13 to save their homes from foreclosure.<sup>16</sup> Also, Chapter 13 debtors can also propose that they pay off their priority debts, such as taxes and family support obligations, before they commence payment on their regular unsecured debts.

H.R. 3150 would institute a number of major changes to consumer bankruptcy in general and chapters 7 and 13 in particular that will reduce the number of bankruptcy filings (but not the number of cases of financial hardship) and increase pay-outs to nonpriority unsecured creditors, particularly credit card companies. The most far-reaching change, set forth in sections 101–103, would institute a so-called "means testing" approach to consumer bankruptcy. This new standard would deny chapter 7 relief to debtors with income above the national median (based on the most recent six months of income) who can pay at least \$50 to unsecured creditors per month and 20% of their unsecured debts within 5–7 years, after allowing for deductions for pro-rated portions of their secured and priority debts and their projected living expenses, based on Internal Revenue Service collection standards.<sup>17</sup> Debtors fitting this profile would be forced to utilize chapter 13 of the Bankruptcy Code if they wished to obtain bankruptcy relief. As chapter 13 is reconstituted by H.R. 3150, debtors would generally be required to dedicate all of their available income to unsecured debt, again after allowing deductions for secured and priority debts and living expenses per the IRS collection standards. Although H.R. 3150 allows for adjustments for "extraordinary circumstances," this requires the debtor to file a motion with the court, which may be challenged by trustee or any creditor, with the burden of proof lying with the debtor.

Even if a debtor is not barred from chapter 7 by virtue of having income below the national median, or having sufficient debts or expenses such that he or she cannot meet the means testing payment requirements, H.R. 3150 provides another, independent grounds for dismissal. Under section 103 of the bill, a case may be dismissed under section 707(b) if the filing is found to be an "inappropriate

<sup>16</sup>In addition, except for certain home mortgages, a debtor in chapter 13 may be able to pay to a secured creditor the value of the collateral, even if it is less than the full amount of the loan. This is known as a "cramdown."

<sup>17</sup>The consumer provisions were considered so one-sided, that the principal sponsor of a predecessor version setting forth these changes (H.R. 2500) received a "Golden Leash" special interest "award" from Public Campaign.

use” of bankruptcy based on “the totality of the circumstances.” Rather than being discretionary to the court, as under current law, such dismissal is mandatory. Also, under H.R. 3150, dismissal motions may be brought by creditors, rather than only the court or the U.S. Trustee (as under current law).

H.R. 3150 would also make significant new additions to additions to the types of debts that may not be discharged under chapters 7 and 13 of the Bankruptcy Code. Section 141 would grant any debt incurred to pay a non-dischargeable debt priority and non-dischargeable status under chapter 7. This means, for example, that if a debtor writes a credit card cash advance to pay a child support debt, that debt would no longer be dischargeable in bankruptcy. Section 142 presumes that any person incurring debt within 90 days before bankruptcy is committing fraud, even if the debt is used to pay for necessities (such as food and clothing), rather than luxury goods or items (as is the case under current law). Section 145 presumes that a debtor is committing fraud by using a credit card when he or she “did not have a reasonable ability to repay,” unless the debtor can prove that he did not apply for the credit or that the lender did not reasonably evaluate the debtor’s repayment ability. Section 143 then goes on to extend the exceptions to the superdischarge in chapter 13 to apply to these newly-defined cases of credit card “fraud.”

#### Principal Problems with Proposed Changes

##### 1. THE MEANS TESTING APPROACH IS ARBITRARY AND UNWORKABLE IN PRACTICE

The rigid one-size fits all test taken by H.R. 3150 will often operate in an arbitrary fashion. For example, the principal safety valve in the operation of the means test—the ability to deduct secured and priority debts and other living expenses—will be highly problematic in practice. First, H.R. 3150 appears to only permit debtors to pay back a prorated amount which may be owed on these items (e.g., 1/60 each month over five years). Unlike current law,<sup>18</sup> the debtor may no longer be able to use chapter 13 as a means of quickly catching up on any arrearages which may be owed on home mortgage arrearages or past due family obligations. Secured lenders and support recipients may have to wait 5 years to get paid what they are owed. The result will be a far greater likelihood of losing one’s home or defaulting in alimony and child support.

Secondly, the bill lays out no comprehensive or specific standards for the deduction of living expenses. Unless it is clear which of these expenses can be deducted from monthly income, it will be very difficult to determine if the individuals that are being denied access to chapter 7 actually could be able to meet their payment obligations in chapter 13. This problem was highlighted by Judge Newsome when he explained the results of his efforts to apply the means test to a batch of chapter 7 cases: “I encountered significant problems in [applying the proposed means testing formula to a sample of cases and] a few unpleasant surprises in the results.

<sup>18</sup> 11 U.S.C. § 1322(a)(2).

\* \* \* I believe the [bill's standards] are fatally flawed and demonstrably unfair."<sup>19</sup>

Part of the problem arises from the fact that the IRS standards referenced by the bill are not automatic in many cases.<sup>20</sup> Although the IRS does set forth national standards for some expenses, such as food and clothing,<sup>21</sup> and local standards for expenses such as housing and transportation,<sup>22</sup> it leaves the determination of "other necessary expenses" to the discretion of the relevant IRS employee.<sup>23</sup> This means that H.R. 3150 provides no specific guidance concerning the appropriateness of deducting all or any of the funds a debtor may expend for items such as health care (both medical expenses and health insurance), taxes, and accounting and legal fees, among other items. Even more dangerously, the IRS collection standards specify that it is generally inappropriate to allow expense allowances for such important items as school tuition and charitable contributions<sup>24</sup>, and generally discourage payment for expenses relating to care for the elderly, invalid, or handicapped.<sup>25</sup> As a result, H.R. 3150 may have the effect of requiring the payment of unsecured debt before allowing for payment of health needs and childrens' education. (Efforts to add these items to the statutory list of permitted expenses were summarily rejected by the Republicans at the markup.<sup>26</sup>)

Moreover, where the IRS has specific local expense standards—such as for housing and transportation—the standards allow for wide variations between debtors, leading to inequitable results. For example, the current IRS local standard for the District of Columbia allows monthly housing expenses for a family of four in the amount of \$1,397, while a household of two in rural Illinois is allowed less than \$500.<sup>27</sup> The permitted automobile expense in the San Francisco Bay area for two cars is only \$373/month, even though, as Judge Newsome points out, most families could barely cover the cost of automobile insurance, let alone car payments, gasoline, tolls, and insurance under this amount.<sup>28</sup>

The seemingly arbitrary allowances for transportation and housing expenses points to another problem with the means test under H.R. 3150—its bias against debtors without secured debts. This is because the bill allows all secured debt payments to be deducted from monthly income, but limits rental and lease payments to the amount permitted by the IRS standards. This means that persons renting apartments and leasing cars may not be able to deduct the

<sup>19</sup> *Hearing on Business Bankruptcy Issues before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee* 105th Congress (Mar. 10, 1998) (statement of Judge Randall J. Newsome).

<sup>20</sup> A number of these problems are noted by Judge Wedoff in his testimony before the Subcommittee as a Member of the American Bankruptcy Institute. [cite]

<sup>21</sup> IRS Manual § 5323.432.

<sup>22</sup> IRS Manual § 5323.433.

<sup>23</sup> IRS Manual § 5323.12.

<sup>24</sup> See IRS Manual page 5300-14.3, section 5323.434(4)(a) requiring a taxpayer's charitable contributions to provide for the taxpayer's or his family's health and welfare or to be a condition of employment; and (b) requiring education expenses to be a condition of employment or for a physically or mentally handicapped dependent where the education is not otherwise provided by public schools.

<sup>25</sup> IRS Manual, Exhibit 5300-46.

<sup>26</sup> See Amendments offered by Ms. Jackson-Lee, Mr. Scott and Mr. Nadler.

<sup>27</sup> See website listings at [http://www.irs.ustreas.gov/prod/ind\\_info/coll\\_stds/cfs-dc.html](http://www.irs.ustreas.gov/prod/ind_info/coll_stds/cfs-dc.html) and [http://www.irs.ustreas.gov/prod/ind\\_info/coll\\_stds/cfs-il.html](http://www.irs.ustreas.gov/prod/ind_info/coll_stds/cfs-il.html).

<sup>28</sup> Newsome testimony, *supra* note 19.

full amount of their housing and transportation costs in bankruptcy, while persons with mortgages and automobile debt will be able to do so. There is no legitimate policy rationale for this discrepancy.

It is no answer to assert, as the legislation's proponents have done, that these "glitches" can be resolved through the bill's allowance for "extraordinary circumstances." Establishing that a particular expense is "extraordinary" is not simple or cost or risk-free. Extraordinary circumstances may be established only on motion to the court prepared by legal counsel. The motion must be heavily detailed and documented, and is subject to creditor challenge. Any statement of extraordinary circumstances must also be refiled, no less than annually during the duration of the bankruptcy plan. Moreover, the burden of proof lies with the debtor in establishing extraordinary circumstances, and, if the debtor's motion fails, he or she is subject to paying the creditor's fees and costs. And all of this is to say nothing of the legal costs the debtor himself is required to pay to bring the motion (which must be sworn to by his lawyer) and the fact that H.R. 3150 does not specifically provide for the deduction of these legal expenses.

It is also somewhat unrealistic to expect many chapter 13 cases to reach a successful conclusion as this chapter will be reconstituted by H.R. 3150. The current completion rate is less than one-third,<sup>29</sup> and this is at a time when chapter 13 is voluntary and the disposable income tests are far less strict. Making chapter 13 mandatory and imposing bill's strict income and expense tests will undoubtedly result in an even smaller proportion of successful chapter 13 plans. A majority of the bipartisan National Bankruptcy Review Commission focused on this concern, among others, in rejecting the sort of inflexible "means testing" approach taken by H.R. 3150: "with a completion rate of only 32% for *voluntary* chapter 13 plans today, forcing unwilling debtors into chapter 13 would only burden the system, decreasing both the overall repayment to creditors and the successful rehabilitation of debtors."<sup>30</sup>

## 2. MEANS TESTING WILL BE COSTLY AND BUREAUCRATIC

The bill's attempt to impose rigid financial criteria on debtors' eligibility for chapter 7 and the operation of chapter 13 will impose substantial new costs on the bankruptcy system—both the portions paid for by the federal government (through the bankruptcy courts and the U.S. Trustees Program) and the debtors (through payment for private chapter 7 and chapter 13 trustees and higher attorneys' fees).

Some of these costs would be borne by debtors through increased opportunities for litigation, by allowing creditors to bring motions for dismissal for "inappropriate use" under an expanded section 707(b), as well as new opportunity for creditors to challenge the dischargeability of certain consumer debts, and the right to challenge a debtor's petition to have assertion that extraordinary circumstances require an allowance for additional expenses or adjustment of current monthly income or monthly net income for the pur-

<sup>29</sup> *Bankruptcy: The Next Twenty Years*, National Bankruptcy Review Commission Final Report, 90-91 (U.S. Government Printing Office, Oct. 20, 1997).

<sup>30</sup> *Id.*

poses of the means test or for calculating the amount to be dedicated to repayment of unsecured nonpriority debts in chapter 13.<sup>31</sup> Other costs to the debtor would include increased paperwork and filing requirements.<sup>32</sup> As Bankruptcy Judge Eugene R. Wedoff testified on behalf of the American Bankruptcy Institute, “the proposal requires debtors’ counsel to swear to the accuracy of any extraordinary expenses claimed by a chapter 7 debtor \* \* \* this requirement would impose on debtors’ counsel the obligation of independently verifying all of the extraordinary expenses claimed by the debtor, thus increasing the cost of the bankruptcy and the time required for the case.”<sup>33</sup>

Increased administration duties imposed on panel and standing trustees would also raise the overall cost of this legislation. Judge Wedoff, in his testimony, observed that,

The proposal requires chapter 7 trustees to investigate and report on the debtor’s net income in each chapter 7 case. The vast majority of chapter 7 cases involve no assets for distribution to creditors, and hence only a nominal fee for the trustee. The new investigation and report will substantially add to the work required of trustees in no-asset cases, with no provision for additional compensation. (The investigation and reporting requirements for chapter 13 would increase the costs of the chapter 13 trustee, reducing the portion of plan contributions available to creditors.)<sup>34</sup>

Henry E. Hildebrand, Chair of the Legislative Committee of the National Association of Chapter Thirteen Trustees estimates that:

\* \* \* [i]f the investigation by a [chapter 7] trustee required about an hour and the preparation of the report required on half hour, then the time required would total about 1.5 million hours of time (assuming a bankruptcy filing rate of one million petitions filed in a year which would be a reduction of about 25%). If the value of that time were calculated at \$150 per hour, the costs would be \$225 million in time. \* \* \* Assuming that one out of nine cases filing for chapter 7 relief would be contested and further assuming that the contest would require about two hours of pretrial preparation and one hour of court time, the litigation would require 276,000 additional hours, about 90,000 of which would occupy the court.<sup>35</sup>

Another chapter 13 trustee, Devin Deham-Burk, attempted to calculate the cost of performing duties imposed on a standing trustee by H.R. 3150, based on her own case-load. In that study, she estimated that the costs to administer the San Jose trusteeship would increase by nearly \$1.5 million, an almost 50% increase. As

<sup>31</sup> H.R. 3150, sections 103, 141, 142, 145, 101 and 102.

<sup>32</sup> H.R. 3150, section 405 and 406.

<sup>33</sup> *Hearing on Pending Bankruptcy Legislation Before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee*, 105th Congress 9 (March 18, 1998)(Statement of Hon. Eugene R. Wedoff for the American Bankruptcy Institute).

<sup>34</sup> *Id.*

<sup>35</sup> Henry E. Hildebrand, *The Hidden Costs of Bankruptcy Reform 2* (1998)(unpublished manuscript on file with the Committee on the Judiciary, minority staff).

a result of the increased costs and concomitant increased fees, she estimated a net annual amount lost to creditors of \$1,525,200.00.<sup>36</sup>

Other costs would be charged to the taxpayers. For example, the requirement in section 404 that “audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants at a rate of “no less than 1 out of every 100 cases in each Federal judicial district” will likely be prohibitive. In 1997, individual bankruptcies exceeded 1.3 million cases, which, under this section would have required in excess of 26,000 audits. According to the Department of Justice, which would have to administer this mandate, “implementing the audit program contemplated by this section could cost from \$45 million to more than \$174 million over five years. This cost is in large part a function of the number audited and the use of independent CPAs. *The cost of the audits could easily exceed the total sum appropriated to fund the entire United States Trustee program in Fiscal Year 1998. Moreover, the bill provides no funding mechanism to cover these costs.*”<sup>37</sup>

In a preliminary estimate of the costs to the government of H.R. 3150, the Congressional Budget Office estimated that “between 20–30 additional bankruptcy judges would be required to meet the increased workload requirements that would be imposed on the courts under H.R. 3150. Costs for the salaries and benefits of judges would be between \$4 million and \$5 million annually, and costs for support personnel and other administrative expenses would be between \$9 million and \$12 million annually.”<sup>38</sup> An additional \$5 million annually would be required by the U.S. Trustees for increased litigation.<sup>39</sup> Overall, CBO estimates that to implement the means testing provisions alone “would most likely cost \$16 million to \$20 million annually.”<sup>40</sup>

Significantly, it is our understanding that the Majority plans to file the report and take H.R. 3150 to the floor without a final CBO estimate. This is significant because of the potentially major costs of the legislation, which were compounded by amendments offered at Committee whose cost and scope has never been assessed.<sup>41</sup>

In many cases, the cost of administering the chapter 13 case will not even approach the payoff to unsecured creditors. Consider the fact that under H.R. 3150, families with a mere \$50 in projected net monthly income could be subjected to a mandatory repayment plan under chapter 13 to obtain any bankruptcy relief. The estimated supervisory costs would be approximately \$1,000 in administrative costs and trustees fees,<sup>42</sup> but the collections would be only \$600 per year in credit card and other general unsecured debt—a loss of \$400 per year. And this calculation does not even take into

<sup>36</sup> Devin Derham-Burk, *Report on Cost to Administer Chapter 13 Cases Under H.R. 3150* at 34 (March 5, 1998) (unpublished manuscript on file with the Committee on the Judiciary).

<sup>37</sup> Letter from Ann M. Harkins, Acting Assistant Attorney General, to Honorable Henry J. Hyde, Chairman, House Committee on the Judiciary 15 (May 7, 1998) (emphasis added).

<sup>38</sup> Congressional Budget Office, *Comparison of the Means-Testing Provisions in S. 1301, as reported by the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts on April 2, 1998, and in H.R. 3150, as introduced on February 3, 1998* 5 (May 8, 1998).

<sup>39</sup> *Id.* at 4.

<sup>40</sup> *Id.* a 1.

<sup>41</sup> For example, an amendment was approved that was offered by Mr. Goodlate that reduces chapter 11 fees.

<sup>42</sup> Letter from Ralph R. Mabey to Hon. Orrin G. Hatch (Apr. 28, 1998).

account the cost of additional judicial and trustee time and resources and private legal fees to implement the new proposals.

3. MEANS TESTING AND THE OTHER CONSUMER PROVISIONS WILL  
UNFAIRLY HARM POOR AND MIDDLE INCOME PEOPLE

It is incorrect to assume that the effect of H.R. 3150's harmful provisions would be limited to individuals seeking bankruptcy relief who earn more than the median income. First, there are numerous, significant flaws in the manner in which median income is calculated. For example, the median income figure required under H.R. 3150 will inevitably be outdated and understated. This is because the bill states that household income is to be based on the most recent Census Bureau figures available as of January 1. But as of January 1, the Census has information available for only the second year prior to the date. Accordingly, during this year, 1998, census figures are only available for 1996. At times of inflation, this two-year lag could result in a significant increase in the number of individuals denied chapter 7 because they may earn more than the median income figure being used. In addition, the starting point for the calculation of income may be overstated. Averaging one's income during the six month period prior to the bankruptcy filing may not accurately reflect the debtor's ability to pay debts due to recent drop-offs or declines in income stemming from job loss, or new job status.<sup>43</sup>

Another serious flaw in H.R. 3150 is that the means test is not the only ground for exclusion from chapter 7. Under the revised section 707(b), debtors must be denied chapter 7 relief based on the "totality of the circumstances." This means that individuals who earn far less than national median income will be subject to exclusion—in essence providing a second "bite at the apple" for creditors wanting to deny individuals bankruptcy relief. And the bill provides no safe harbor whatsoever, so the totality of the circumstances test can apply to even the most impoverished and hard-pressed debtors.

The problems caused by the "totality of the circumstances" test is aggravated by the fact that H.R. 3150 will permit creditors and other parties in interest to bring section 707b motions unlike current law that permits only the court and U.S. Trustees to do so. This means that aggressive creditors will have extremely wide latitude to use such motions as a tool for making bankruptcy an expensive, protracted and contentious process for honest debtors. Such creditor motions could easily be used as leverage by creditors to obtain reaffirmation agreements so that their unsecured debts survive bankruptcy.

The fact that H.R. 3150 seeks to introduce such an open ended and subjective test on top of the statutory means test belies claims by the bill's supporters that they are attempting to develop a "bright line" test for chapter 7 eligibility. And the fact that the totality of the circumstances test can only operate to the debtor's disadvantage further highlights the one-sided nature of the bill.

<sup>43</sup>A useful and comprehensive critique of the problems involved in the determination of income is also set forth in Judge Wedoff's testimony before the Subcommittee.

Several other consumer provisions will exact significant hardships on all debtors, regardless of their income level or degree of culpability. As noted above, sections 141, 142, 143, and 145 would create broad new classes of nondischargeability for debt (1) used to pay other non-dischargeable debt; and presumptions of nondischargeability for debt (2) incurred within 90 days of filing for bankruptcy, and (3) credit card debt incurred without a "reasonable ability to repay." These new exceptions from discharge obviate many of the benefits that debtors may realize from filing for bankruptcy, under chapter 7 or 13. The proposed new fraud presumptions will also increase the opportunity for creditor abuse. Consumer bankruptcy expert Henry Sommer has explained that these provisions:

\* \* \* increase the opportunity for creditors to file the types of abusive fraud complaints which have been found by many courts to be baseless and unjustified attempts to coerce reaffirmations by debtors who cannot afford to defend them. The new presumptions of nondischargeability will fall mainly on low income debtors who are unsophisticated, do not have the time, budget flexibility, or attorney advice to plan their bankruptcy cases carefully, have to file on short notice to prevent utility shutoffs or other impending creditor actions and will not have the funds to defend dischargeability complaints.<sup>44</sup>

4. THE CONSUMER PROVISIONS WILL HAVE A SIGNIFICANT, ADVERSE IMPACT ON WOMEN AND CHILDREN AS WELL AS VICTIMS OF CRIMES AND SEVERE TORTS

In addition to the overall impact of H.R. 3150 on women struggling to raise families and make ends meet,<sup>45</sup> the bill will have a particularly adverse impact on the payment of alimony and child support. The basic problem arises from the fact that bankruptcy and insolvency are by definition a zero-sum game. There is only so much money available to be divided among the creditors. By design, H.R. 3150 will increase the amount of funds being paid to unsecured creditors, and it therefore should come as no surprise that such payments will often come at the expense of other, less-aggressive creditors, such as women and children owed alimony and child support. This problem is by no means insignificant given that an estimated 243,000–325,000 bankruptcy cases involved child support and alimony orders during the most recent years.<sup>46</sup>

<sup>44</sup>Hearing on *Business Bankruptcy Issues before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee*, 105th Congress, (Mar. 10, 1998) (statement of Henry J. Sommer).

<sup>45</sup>See Elizabeth Warren, *Bankruptcy and Single Parents*, (Apr. 27, 1998) (Summarizing Elizabeth Warren, Teresa Sullivan, and Jay Westbrook, *The Bankruptcy Crisis*, 73 *Indiana L.J.* 1079 (forthcoming, Apr. 1998).

<sup>46</sup>The reported data are from the Consumer Bankruptcy Project, Phase II. Principal researchers are Dr. Teresa Sullivan, Vice-President of the University of Texas, Professor Jay Westbrook, Benno Schmidt Chair in Business Law, University of Texas, and Elizabeth Warren, Leo Gottlieb Professor of Law, Harvard Law School. These estimates are based on data collected in 1991 in sixteen judicial districts around the country. For more details about the study, see Sullivan, Warren and Westbrook, *Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankruptcy 1981-91*, 68 *AMERICAN BANKRUPTCY LAW JOURNAL* 121 (1994).

Under current law, alimony and child support are treated as priority debt that is not subject to discharge.<sup>47</sup> This preferential treatment dates from as early as 1903,<sup>48</sup> and is based on Congress' determination that the payment of these debts is so important to society that it should come ahead of more general creditors. Although H.R. 3150 does not revoke this special treatment, it will have the effect of diminishing the likelihood of full payment of alimony and child support. This arises as a result of several features of the bill—its creation of significant new categories of non-dischargeable debt; the likely stretch out of payments of priority debt in chapter 13 and the extension of the length of chapter 13 plans, and the bill's limitations on the availability of chapter 7 relief.

Each one of these changes will make it less likely that a former spouse will be able to make his required alimony and child support payments. First, by making significant amounts of credit card debt non-dischargeable, more of these debts will survive bankruptcy. Since most chapter 7 and 13 debtors do not have the ability to repay most of their unsecured debts, financial pressure on the debtor will continue after bankruptcy, decreasing his ability to handle important support obligations.

Second, by extending chapter 13 priority payment schedules and the length of plans, the legislation will make support recipients wait longer to receive their past due payments. Under the bill, it will be far more difficult for the debtor to provide for accelerated payment of alimony and child support arrearages, since the bill still provides that priority debts are required to be paid on a pro-rated basis over sixty or more months. Also, by extending the length of the plans by at least two years—from at least three to five or even seven years—the bill further delays the period over which child care and alimony arrearages are to be paid.

The third factor at work against women and children is the bill's limitation on bankruptcy as a remedy. Clearly, application of the proposed means test and the totality of the circumstances test will have the effect of making chapter 7 less available to the average debtor. The proportion of successful chapter 13 cases can be expected to decline also under the bill's chapter 13 formula. Financially-troubled individuals will be less likely to reorder their financial affairs to ensure they can meet their support obligations.

Collectively considered, these changes will help foster an environment where unsecured and credit card debt is far more likely to compete against alimony and child support obligations in the state law collection process. As a recent Congressional Research Service Memorandum analyzing H.R. 3150 concluded, under the bill "child support and credit card obligations could be 'pitted against' one another.\* \* \* Both the domestic creditor and the commercial credit card creditor could pursue the debtor and attempt to collect from postpetition assets, but not in the bankruptcy court."<sup>49</sup>

Of course, outside of the bankruptcy court is precisely the arena where sophisticated credit card companies have the greatest advan-

<sup>47</sup> 11 U.S.C. §§ 507(a)(7) & 523(a)(5).

<sup>48</sup> Dodd Statement on Bankruptcy Reform and Child Support (May 5, 1998) (Statement of Sen. Dodd).

<sup>49</sup> Memorandum from the Congressional Research Service on *Impact of consumer bankruptcy reform proposals on child support obligations* (May 13, 1998).

tages. While federal bankruptcy court provides a strict set of priority and payment rule, State law collection is far more akin to “survival of the fittest.” Whichever creditor engages in the most aggressive tactic—be it through repeated collection demands and letters, the ability to cut off access to future credit, garnish wages or foreclose on assets—is most likely to be repaid. As Marshall Wolf has written on behalf of the Governing Counsel of the Family Law Section of the American Bar Association, “if credit card debt is added to the current list of items that are now not dischargeable after a bankruptcy of a support payer, the alimony and child support recipient will be forced to compete with the well organized, well financed, and obscenely profitable credit card companies to receive payments from the limited income of the poor guy who just went through a bankruptcy. It is not a fair fight and it is one that women and children who rely on support will lose.”<sup>50</sup>

It is for these reasons that groups concerned about the payment of alimony and child support have expressed their strong opposition to the bill. The California Women’s Law Center has written that, “our own analysis and that of experts in bankruptcy law indicates that women who are both creditors and debtors in bankruptcy will be particularly harmed if [H.R. 3150 is] allowed to become law.”<sup>51</sup> Similarly, the Association for Children and Enforcement of Support has observed, “placing credit card debt in the same category as child support would cause single parents to have to compete with credit card companies for the debtor’s available cash.”<sup>52</sup> And the National Organization of Women has written that “an analysis of the proposed legislation shows that \* \* \* many women will be seriously disadvantaged by [the bill]. The central problem is that H.R. 3150 would place credit card debt on an equal footing with child support and alimony obligations in bankruptcy.”<sup>53</sup> The First Lady has also highlighted H.R. 3150’s impact on women and children, writing, “I do quarrel with aspects of the bill that would force single parents to compete for their child support payments with bank banks trying to collect credit card debt.”<sup>54</sup>

Assertions by the legislation’s supporters that any disadvantages to women and children under H.R. 3150 are offset by amendments approved at the Subcommittee and Full Committee are not persuasive. First off, the bill’s proponents adamantly denied that the bill created any problems with regard to alimony and child support.<sup>55</sup> When proponents finally acknowledged there was a problem, the amendments offered did not respond to the provisions in the bill causing the problem—namely the provisions providing for non-dischargeability of credit card debt, delaying and stretching out chapter 13 payments, and denying access to bankruptcy generally.

<sup>50</sup> Statement of Marshall J. Wolf (May 13, 1998) (on file with the House Committee on The Judiciary).

<sup>51</sup> Letter from Abby J. Leiber, Executive Director, *California Women’s Law Center*, to Hon. Dianne Feinstein (Apr. 27, 1998).

<sup>52</sup> Letter from Geraldine Jensen, President, *Association for Children for Enforcement of Support, Inc.*, to Rep. Nadler (May 7, 1998).

<sup>53</sup> Letter from Kim Gandy, Executive Vice President, *National Organization for Women, Inc.*, to Rep. Nadler (May 6, 1998).

<sup>54</sup> Hillary Rodham Clinton, *Bankruptcy shouldn’t let parents off the hook*, *Washington Times*, May 7, 1998.

<sup>55</sup> Letter from Rep. Gekas, Rep. Boucher, Rep. McCollum, and Rep. Moran to their Congressional Colleagues (Apr. 29, 1998).

Sections added at Subcommittee creating a new exception for discharge for debts owed to the states (§ 146) would increase the ability of the government to compete for debt repayment with innocent spouses and children. And making property settlement obligations non-dischargeable (§ 147) could have the unintended consequence of forcing an ex-spouse who is owed alimony and child support to compete against another ex-spouse who may be owed significant assets from a rich property settlement which has nothing to do with basic living expenses. Again, the net result is the needy spouse and child could be placed at a relative disadvantage by these changes.

With regard to the Full Committee amendments, new section 150 purports to preserve the priority of support obligations after the debtor has emerged from bankruptcy. Putting aside the very questionable constitutional foundation for this provision, this amendment is not likely to provide any substantial benefits to support recipients. Collection activities often proceed informally. The fact that one unsecured debt has legal "priority" over another debt is irrelevant if no legal process is ever invoked. Thus, if one creditor has greater resources to exercise more leverage than another, the well-financed aggressive creditor may get paid first without ever having to resort to judicial process and is perfectly entitled to do so in the state law collection system. In addition, unless two creditors actively are seeking to attach, garnish, or execute on the same property, it is unclear how state courts will be able to ensure that a priority debt gets paid ahead of another debt unless a complex noticing system for unsecured claims is developed, which would be ineffective if support recipients did not know that they had to record their claims.

Another amendment appended language to the end of section 102 stating that nothing shall prevent the payment of obligations with priority under 11 U.S.C. § 507 and that the plan shall specify how payments to other creditors will be accordingly adjusted. However, this admonition does not seem to alter the other requirements of this subsection dictating the calculation of all plan payments, each of which is dependent partially on the others and the proration of secured and priority debt over the length of the chapter 13 plan. Corresponding adjustments to the plan will likely make the plan unconfirmable, or, at the very least, infeasible. In addition, this provision does not resolve the exclusion of current support obligations in the Chapter 13 budget, notwithstanding the precatory language in section 146 of the bill.

A third amendment, offered by Chairman Hyde to section 141 and 146, purported to fix the problem caused by provisions in H.R. 3150 which would require custodial parents seeking to recover child support arrears to compete with credit card companies both in bankruptcy and post discharge. Although the amendment purports to give a higher "priority" in the distribution of the debtor's funds to child support, the amendment continues to allow a credit card debt to receive a higher priority if the credit card was used to pay certain other debts. Moreover, since credit card debts continue to be added to the list of "priority debts," the bill still requires that these debts must be *paid in full* as part of a chapter 13 payment plan. If the debtor cannot pay both, he cannot move

forward with a payment plan to repay past due child support and other priority debts.

These reasons also explain why victim groups are so strongly opposed to H.R. 3150. Current law does not discharge debts from willful or malicious injury, death or personal injury caused by the operation of a motor vehicle, or criminal restitution payments.<sup>56</sup> Making more credit card debt nondischargeable and forcing more financially-troubled individuals outside of bankruptcy will place these individuals at a relative disadvantage as well.

As the National Organization for Victim Assistance has written, "more exempted creditors with rights to the same finite amount of resources means lower payments to all. Inevitably, for victim-creditors, that means either a smaller return on the restitution owed, or a longer period of repayment, or both."<sup>57</sup> The National Victim Center has similarly observed, "to equate contractual losses of a commercial creditor with personal obligations [for victim claims as H.R. 3150 does] is to belittle their importance and to reduce directly the likelihood that crime victims will ever be financially restored despite obtaining an order of restitution or a civil judgment from a court."<sup>58</sup> The Mothers Against Drunk Driving (MADD) has also complained that if "individuals whose lives have been shattered financially and emotionally by the death or serious injury of their family members \* \* \* have to compete with credit card companies for the limited post-discharge income of debtors available [as H.R. 3150 requires], they may themselves end up in bankruptcy."<sup>59</sup> MADD also noted that in contrast to crash victims, "lending institutions have the ability to provide some degree of protection to themselves when they issue credit cards to individuals and they are in a better financial position to absorb losses, which to them is a cost of doing business."<sup>60</sup>

### III. THE SMALL BUSINESS AND REAL ESTATE PROVISIONS OF THE BILL WILL LEAD TO PREMATURE LIQUIDATION AND COST JOBS

Businesses may use chapter 11 of the Bankruptcy Code in an effort to obtain relief from the creditors while they seek to develop a plan to reorder their affairs and pay as much of their debts as their operations will allow. Under this chapter, businesses obtain an "automatic stay," which forestalls creditor collection efforts. During this time period, debtors have an opportunity to examine their contracts and leases and determine which ones to assume and which ones to reject (with rejection leading to a claim for damages). Debtors are subject to a number of requirements during this period, such as the formation of creditor committees and various ongoing financial disclosures. Presently, only 69% of all bankruptcy filings are business related reorganizations under chapter 11. Busi-

<sup>56</sup> 11 U.S.C. §§ 523(a)(6), (9), & (13).

<sup>57</sup> Letter from Marlene A. Young, Executive Director, *National Organization for Victim Assistance*, to Rep. Hyde (May 15, 1998).

<sup>58</sup> Letter from David Beatty, Director of Public Policy, *National Victim Center*, to Rep. Nadler (May 11, 1998).

<sup>59</sup> Letter from Robert C. Shearouse, Director of Public Policy, *Mothers Against Drunk Driving*, to Rep. Gekas (May 11, 1998).

<sup>60</sup> *Id.*

ness-related bankruptcies declined by more than one-third between 1987 and 1997.<sup>61</sup>

The goal of chapter 11 is to determine whether there is any ongoing business value that can be preserved to pay off creditors while maintaining as many jobs and contractual relationships as possible. To this end, the debtor is given an exclusive 120-day period (unless lengthened or shortened for cause) in which to develop a reorganization plan and convince a majority of the creditors that the plan is in their best interests and is preferable to a liquidation "fire sale." As with chapter 7, any reorganization plan must provide for payments in order of statutory priority.

In 1994, Congress enacted two modest exceptions to the general rules of chapter 11. The first related to "small businesses," defined as entities engaged in commercial or business activities whose aggregate debts do not exceed \$2 million. Such designated small businesses are permitted (but not required) to dispense with creditor committees, receive only a 100-day plan exclusivity period, and are entitled to more liberal provisions for disclosure and solicitation for acceptances of their proposed reorganization plan. In 1994, Congress also developed a special set of rules applicable to "single asset real estate," generally defined as cases in which the principal asset is a single piece of real estate subject to debt of no more than \$4 million. In such cases, secured creditors are permitted to foreclose on their collateral unless the debtor files a reorganization plan which is likely to be confirmed or commences payment on the secured loan within a 90-day period. This exception to chapter 11 procedures was justified on the grounds that single asset real estate cases were seen as essentially private two-party loan disputes, which did not implicate ongoing businesses or jobs.

The business provisions of the bill would effectuate a number of changes in the manner in which corporations, partnerships and other business entities are permitted to reorganize their financial affairs. With respect to small business, H.R. 3150 would expand the definition of eligible small business to those companies having debts of less than \$5 million and would include all single asset real estate cases regardless of the amount of debt outstanding. It would also make the small business requirements mandatory (rather than optional) and mandate the operation of numerous additional requirements on debtors. For example, under H.R. 3150, small business debtors would be required to provide balance sheets, statements of operations, cash-flow statements, and income tax returns within three days after filing a bankruptcy petition, the time period the debtor has the exclusive right to file a plan of reorganization would be further shortened (to 90 days), and the standards for being able to seek an extension of this time period would be substantially narrowed. In addition, by striking section 1325(b)(2)(B) from chapter 13 of the Bankruptcy Code, section 102(6) of H.R. 3150 prevents sole proprietors and other small businesses from being able to use chapter 13 to reorganize their businesses.

It is for these reasons that both the AFL-CIO and the Small Business Administration are opposed to the small business provi-

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<sup>61</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, *U.S. Small Business Administration*, to Rep. Nadler (Apr. 22, 1998).

sions of the bill. The AFL–CIO has warned, “the potentially broad reach of [the small business provisions] and the manner in which they restrict the workings of a bankruptcy case for these businesses will likely place numerous jobs at risk.”<sup>62</sup> Similarly, the Small Business Administration has written that under H.R. 3150, “for small business debtors, the proposed changes would require such substantial additional costs for the reorganization process that many small businesses may forego reorganization and immediately file for liquidation proceedings under chapter 7 of the U.S. Bankruptcy Code, or in the alternative, just close their doors leaving all creditors without recourse.”<sup>63</sup>

This new bankruptcy mandate would impose substantial new costs on small businesses, both in terms of document production and legal fees, and limit the time frame that the business has to develop a reasonable reorganization plan. In turn, these changes will lead to the premature liquidation of small businesses with the attendant loss of jobs. The potential costs are significant, since it is estimated that the new provisions would apply to 85% of all business reorganizations, including virtually all the business cases in most districts outside of the major money center areas.<sup>64</sup>

A similar concern relates to single asset real estate cases. H.R. 3150 would significantly expand the definition of single asset real estate by eliminating the \$4 million debt cap.<sup>65</sup> It would also apply the restrictive small business provisions of the bill to single asset real estate (thereby incorporating the many new restrictions imposed under these provisions), and require that adequate protection payments measured by interest commence within 90 days of the bankruptcy filing. As a result of these changes, real estate operations would face significantly higher obstacles when they seek to reorganize. These barriers could apply to large operating entities such as Rockefeller Center as well as hotels and nursing homes. It would create also new incentives for lenders to require that all of their real estate borrowers place their holdings in the single asset form in order to avoid ordinary bankruptcy rules in the future.

By design, the single asset real estate changes will result in an increase in premature foreclosures and liquidations of businesses associated with real estate. This, in turn, would likely lead to significant job losses. Even if a hotel or nursing home remains in existence, the new owner would not necessarily be required to honor any previously negotiated collective bargaining agreements applicable to employees at the facility. In the case of a large real estate operation, premature foreclosure could also allow the new owner to terminate many leases, leading to further job losses to the extent the business is relying on these leases.

The AFL–CIO is very concerned about the potential that the single asset real estate changes would lead to increased job losses in bankruptcy. They have written that “the job preservation goals of

<sup>62</sup>Hearing on *Business Bankruptcy Issues before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee* 105th Congress, (Mar. 26, 1998) (statement of American Federation of Labor and Congress of Industrial Organizations).

<sup>63</sup>Small Business Administration testimony, *supra* note 60.

<sup>64</sup>*Bankruptcy: The Next Twenty Years*, National Bankruptcy Review Commission Final Report, *supra* note 28.

<sup>65</sup>H.R. 764, a bipartisan bankruptcy technical corrections bill approved by the Committee and the House last session would have increased the debt cap to only \$15 million.

chapter 11 require greater certainty about the kinds of entities that are subject to the current SARE [single asset real estate] rules before Congress considers expanding their scope. No urgent need to expand the SARE rules has been identified. Expanding the application of the SARE provisions without a more thorough review of the employment issues, and absent better rules for protecting jobs, is certain to undermine one of the most basic goals of chapter 11.”<sup>66</sup>

#### IV. THE TAX PROVISIONS RAISE NUMEROUS POLICY ISSUES

The current bankruptcy code seeks to effectuate a delicate balance between the rights of the Internal Revenue Service and State tax agencies to the repayment of any taxes, interest and penalties owed them, and the rights of other creditors and the ability of individuals and corporations to obtain a fresh start without being subject to burdensome debts. We are concerned that Title V, in seeking to make a number of supposedly technical changes may also effectuate a number of substantive changes to the Bankruptcy Code which favor the IRS and state taxing authorities and disadvantage other participants in the bankruptcy system. Concerns have been expressed that not only does H.R. 3150 generally enhance the rights and position of the IRS and state authorities in bankruptcy, but the bill grants the IRS certain rights in bankruptcy cases that it does not enjoy outside of bankruptcy, and vests the IRS with new enforcement powers that ordinary creditors do not possess.<sup>67</sup> We are particularly concerned that the Majority chose to vary in many significant respects from the nonpartisan recommendations of the Bankruptcy Commission and its Tax Advisory Committee.

For example, section 506 would result in increased periods during which an IRS claim is “tolled” (*i.e.*, placed on hold) in bankruptcy, effectively extending the statute of limitations to which many Americans are subject to for tax enforcement actions. And notwithstanding the fact that the Bankruptcy Code prevents ordinary creditors from offsetting amounts they may owe to debtors with debts owed by the debtors, section 519 grants tax agencies the rights to abrogate the automatic stay and “set off” taxes owed to them against any income tax refunds that may be owing to the debtor.

Another provision of H.R. 3150 raising concerns (section 508) grants the IRS the same rights to non-dischargeability in chapter 13 as persons owed payments for alimony, child support, criminal restitution, and payments for death or injury caused by the debtor’s operation of a motor vehicle. Like other provisions in the bill extending the rights and entitlements of credit card companies, this would have the effect of placing former spouses and other similarly protected creditors at a significant disadvantage as compared to their current position under bankruptcy law.

Another tax provision in H.R. 3150 that gives rise to concern is one that would allow the IRS to seize all of the debtor’s exempt property, even property that is otherwise immune from seizure under the Internal Revenue Code. At full committee markup, Mr.

<sup>66</sup> AFL-CIO testimony, *supra* note 61.

<sup>67</sup> *Hearing on Business Bankruptcy Issues before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee*, 105th Congress, (Mar. 18, 1998) (statement of Paul H. Asofsky).

Gekas proposed an amendment to section 502 entitled "Enforcement of Child and Spousal Support." The amendment was adopted and will provide for the enforcement of nondischargeable debts for alimony and spousal support. But the amendment appears to go much farther and grants State and Federal taxing agencies the right to collect nondischargeable tax debts from exempt property notwithstanding any other State or Federal law. This amendment nullifies exemptions in section 6334 of the Internal Revenue Code and comparable state laws that limit what taxing agencies can seize to satisfy a tax debt. Although the Internal Revenue Code would exempt wearing apparel and school books from levy to satisfy a tax debt, Mr. Gekas' amendment could allow the IRS to take the school books and sell them. Wage exemptions and federal wage garnishment laws would also be overridden. This amendment was also adopted without any hearing or meaningful debate.

#### V. OTHER PROVISIONS AND CONCERNS

In addition to the major problems we have outlined above, many of us have a number of additional concerns that are important to highlight. For example the legislation fails to provide any provision allowing for the waiver of bankruptcy fees by indigent individuals, even though debtors involved in complex reorganizations and force unnecessary liquidations and job losses.

Concerns have also been raised regarding section 163, which provides an exception to the automatic stay for residential landlords in cases where the lease had expired. This grants residential landlords a benefit other creditors are not entitled to under the Code. By extending the period permitted between chapter 7 filings from the current 6 years to 10 years, section 171 could prove a substantial hardship to families with unstable economic situations who might, through no fault of their own, find themselves in need of bankruptcy relief in less than a decade.

An amendment by Rep. Bryant to section 213 would require a landlord's consent to extend the time in which a debtor could assume or reject a nonresidential lease beyond 120 days, with an absolute cap of 270 days. This could result in the premature eviction of many businesses before they have the opportunity to reorganize, costing jobs, and compromising the ability of other creditors to receive payment on their debts. Concerns have also been raised about section 212, which provides that a no-compete clause or an exclusivity clause in an contract with a performing artist would always survive bankruptcy.

## VI. CONCLUSION

For nearly 100 years, Congress has carefully considered the bankruptcy laws and legislated on a deliberate and bipartisan basis. In the past, Congress has elected also to carefully preserve an insolvency system that provides for a fresh start for honest, hard-working debtors, protects ongoing businesses and jobs, and balances the rights of and between debtors and creditors. Because H.R. 3150 departs from these principles, we respectfully dissent.

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