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**BANKRUPTCY REFORM ACT OF 1999—S. 625**

MAY 11, 1999.—Ordered to be printed

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

**REPORT**

together with

**ADDITIONAL AND MINORITY VIEWS**

[To accompany S. 625]

The Committee on the Judiciary, to which was referred the bill (S. 625) to amend title 11, of the United States Code, to provide for reform of the bankruptcy laws, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

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## I. BACKGROUND AND NEED FOR THE LEGISLATION

The bankruptcy system is currently in a state of crisis. In recent years, America has witnessed a dramatic explosion in the number of bankruptcy filings. According to the Administrative Office of the U.S. Courts, there were 1,442,182 bankruptcy filings in 1998, of which 1,398,182 were consumer bankruptcies. Moreover, this record high number of bankruptcies follows three consecutive years of increases in bankruptcies. Surprisingly, the explosion in bankruptcy comes at a time of unprecedented prosperity, with low unemployment and high wages. For March 1999, unemployment was at its lowest point since 1970. Consumer confidence is high and the stock market has recently risen above the 10,000 mark. Thus, the bankruptcy crisis is not due to recession, depression, inflation or high unemployment.

This state of crisis has a significant negative impact on the American economy. According to the Department of Justice, creditors lose 3.22 billion dollars annually as a result chapter 7 bankruptcies filed by individuals who could repay their debts. Obviously, the existence of multibillion dollar losses attributable to bankrupts who could repay their debts requires Congress to act.

Given the strong performance of the economy, many feel that the recent explosion in personal bankruptcy filings is at least partly attributable to the decreased moral stigma associated with declaring bankruptcy. See testimony of Professor Todd Zywicki, joint hearing of the Subcommittee on Administrative Oversight and the Courts and the Subcommittee on Commercial and Administrative Law, March 11, 1999; Testimony of Tahira Hira, Subcommittee on Administrative Oversight and the Courts Hearing, "S.1301, The Consumer Bankruptcy Reform Act: Seeking Fair and Practical Solutions to the Consumer Bankruptcy Crisis" (March 11, 1998); Testimony of Kenneth R. Crone, Subcommittee on Administrative Oversight and the Courts Hearing, "The Increase in Personal Bankruptcy and the Crisis in Consumer Credit," (April 11, 1997); Lee Flint, "Bankruptcy Policy: Toward a Moral Justification for Financial Rehabilitation of Consumer Debt," 48 Wash. & Lee L. Rev. 515 (1991); David Gross and Nicholas Souleses, "Explaining the Increase in Bankruptcy and Delinquency: Stigma Versus Risk-Competition" (Preliminary, 1998); F.H. Buckley and Margaret F. Brinig, "The Bankruptcy Puzzle," 27 J. Legal Stud. (1998); Scott Fay et al., "The Bankruptcy Decision: Does Stigma Matter?" (Jan. 1998)(working paper). A decreased moral stigma associated with bankruptcy means that filing for bankruptcy is not viewed as a last resort for financially troubled Americans who need debt forgiveness.<sup>1</sup> As bankruptcy filings have become a more common part of

<sup>1</sup> While some opponents of bankruptcy blame the explosion of bankruptcies on too much credit, the Committee has strong reservations about the detrimental effect on poor and minority communities of reducing the availability of credit. If credit lending practices are restricted as these opponents suggest, the result will be less credit available to women, minorities, and others who

American life, individuals seem more willing to use bankruptcy to solve their debt problems than ever before. Individuals who would have struggled to meet their financial obligations in the past are filing bankruptcy today in record numbers. See Judge Edith H. Jones and Todd J. Zywicki, "It's Time for Means Testing," 1999 B.Y.U. L. Rev. 177. For example, two recent studies suggest that almost half of filers learned about their option to file for bankruptcy from friends or family. See Vern McKinley, "Ballooning Bankruptcies: Issuing Blame for the Explosive Growth," Regulation, Fall 1997, at 38. At the same time, there have been strong expressions of concern from the Federal Trade Commission that attorney advertising is leading consumers to file bankruptcy unnecessarily.

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

S. 625 responds to the bankruptcy crisis by amending section 707(b) of the bankruptcy code to require bankruptcy judges to dismiss a chapter 7 case, or convert a chapter 7 case to chapter 13 if a bankrupt has a demonstrable capacity to repay his or her debts. Under S. 625, a presumption arises that a chapter 7 bankrupt should be dismissed from bankruptcy or converted to chapter 13 if, after taking into account secured debts and priority debts like child support as well as living expenses, the bankrupt can repay 25 percent or more of his or her general unsecured debts, or \$15,000, over a 5-year period. The bankrupt can rebut this presumption by demonstrating "special circumstances" which would show that the bankrupt in fact does not have a meaningful ability to repay his or her debts. The Committee notes that, in the prior Congress, the Department of Justice supported a substantially similar judicially administered means-test. See Letter to the Hon. Orrin G. Hatch, Chairman, Committee on the Judiciary, May 7, 1998 (on file with the Committee). In advance of Committee consideration of S. 625, the Department of Justice, by letter dated April 9, 1999, reiterated the support of the Clinton Administration for strengthening section 707(b) as a way to means-test chapter 7 debtors. See Letter to the Honorable Orrin G. Hatch, Chairman, Committee on the Judiciary, April 9, 1999 (on file with the Committee).

As discussed below in greater detail, the concept of "means testing" bankruptcy filers so that higher income filers are steered into repayment plans is the culmination of many Congressional efforts, by Republicans and Democrats, over 5 decades. Most recently, during the 105th Congress, the Committee reported S. 1301, a bill which means-tested chapter 7 bankrupts. Also during the 105th Congress, the full Senate passed S. 1301.

The Committee recommends S. 625, which will steer individuals with repayment ability to Chapter 13, and promote balanced reform of the bankruptcy laws while providing important new protections against abusive or deceptive creditor practices.

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need to borrow money to pay tax various necessities and emergencies. The proper venue for such considerations is the Banking Committee.

## II. GENERAL OVERVIEW OF THE CURRENT BANKRUPTCY SYSTEM

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

Individuals may also declare bankruptcy under chapter 13 of the bankruptcy code. Chapter 13 provides for the development of a repayment plan that allows a debtor to repay some portion of his or her debts. At the end of the repayment period, the unpaid portion of debt is erased, and a debtor cannot be required to repay the unpaid portion of the discharged debt. Unlike chapter 7, the purpose of chapter 13 is to rehabilitate financially-troubled consumers by using future earnings to repay debts in exchange for a discharge of the unpaid portions of those debts.

## III. THE HISTORY OF "MEANS-TESTING" IN BANKRUPTCY

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

The general structure of the present Federal bankruptcy code is the result of the Bankruptcy Reform Act of 1978, Pub. L. 95-598.<sup>2</sup> The 1978 Act was the first major overhaul and attempt to update comprehensively the bankruptcy law since passage of the Chandler Act in 1938. 52 Stat. 840 (1938). Prior to the Chandler Act, individuals in serious financial trouble had no choice but to file for "straight bankruptcy" under chapter VII.<sup>3</sup> However, the Chandler Act contained a new, alternative procedure, the Chapter XIII Wage Earner's Plan, which allowed an individual to retain nonexempt assets by proposing a plan to pay his or her existing debts from future income, after which the wage earner would receive a discharge of any unpaid balances of his debts. See generally, Dvoret, *Federal Legislation, Bankruptcy Under the Chandler Act: Background*, 27 *Geo. L.J.* 194 (1938).

The debate over chapter XIII occurred years earlier in joint hearings before the House and Senate Judiciary Committees in 1932,

<sup>2</sup>The Constitution gives Congress the authority to enact "uniform laws on the subject of bankruptcies throughout the United States." Art. I, § 8, cl. 4 (1787). Since 1898, bankruptcy protections have been a permanent part of Federal law. Prior to 1898, Congress either declined to enact bankruptcy laws or enacted temporary laws which were allowed to lapse.

<sup>3</sup>One feature of the 1978 revision of bankruptcy laws redesignated the bankruptcy chapters so that they are now identified by Arabic, rather than Roman, numerals.

during the 77th Congress. By the time it was enacted in 1938, Chapter XIII codified informal practices which had developed without explicit statutory authorization. In the mid 1930's in Birmingham, AL a former special referee in bankruptcy, Valentine Nesbitt, first developed a "repayment option" which was the model for Chapter XIII. See Weinstein, *The Bankruptcy Law of 1938* (1938).

In 1932, Congress conducted hearings on S. 3866. Section 75 of this bill would have established a repayment plan for wage earners. Section 75 would have provided a method for an indebted wage earner to come into court without being labeled "a bankrupt," and get the benefit of a court injunction to fend off creditors while the wage earner arranged to repay his pre-bankruptcy debts in installments.<sup>4</sup>

Proponents of the 1932 amendment believed that most Americans were making enormous efforts to avoid bankruptcy, and that most wage earners who were deeply in debt genuinely wanted to pay their debts, if given time, and if they were not harassed by their creditors.

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

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

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

Cong. Rec. 905, January 19, 1965. Given the current bankruptcy crisis, Senator Gore's words from over 30 years ago seem prescient.

Following the 1978 amendments, in the early 1980's, Senator Dole introduced S. 2000 during in the 97th Congress. In the House

<sup>4</sup>During the consideration of the 1932 proposal, Congress received testimony on bankruptcy practices in England. In 1888, an English bankruptcy statute gave the power to the bankruptcy judges to condition debt forgiveness on the repayment of some debts. Douglas Boshkoff, *Limited, Conditional, and Suspended Discharges in Anglo-American Bankruptcy Proceedings*, U. Pa. L. Rev. 69 (1982). With the conditional or suspended discharge, English courts are given broad discretion to condition debt-forgiveness on the making of payments to creditors from future earnings or other post-bankruptcy acquisitions, or to suspend the discharge while such payments are being made. The British experience shows that bankruptcy courts can, with proper guidance, play an important role in limiting bankruptcy relief to those who truly need it.

of Representatives, Congressman Evans introduced H.R. 4786, which eventually garnered 269 co-sponsors. Congress did not pass either proposal in the 97th Congress, so these measures were re-introduced in the 98th Congress as H.R. 1169 and S. 445. As a result of these efforts, Congress created Section 707(b) of the Bankruptcy Code in 1984 to allow judges to dismiss chapter 7 cases if granting relief would constitute a “substantial abuse” of the bankruptcy code. The focus of the effort was to require bankrupts who had the ability to pay a significant percentage of their debts “without difficulty” to proceed under chapter 13 instead of chapter 7. However, the term “substantial abuse” was not defined and creditors and trustees were expressly forbidden from presenting evidence to a judge that granting relief in a particular case would result in a “substantial abuse.” Further, Section 707(b) specifies that courts must presume that substantial abuse does not exist. Under a minority view, the debtor’s “ability to pay” debts out of future income, standing alone, can qualify as substantial abuse. See *In Re Koch*, 109 F. 3d 1285 (8th Cir. 1997). The prevailing view, however, is “ability to pay” is but one factor a court may consider in assessing whether there is a substantial abuse. See *In Re Green*, 934 F.2d 568 (4th Cir. 1991). Some courts even take the position that “substantial abuse” is not demonstrated when a debtor has the clear ability to pay, but there is no additional showing that the debtor acted dishonestly or in bad faith. *In re Adams*, 209 B.R. 874 (Bankr. N.D. Tenn. 1997); *In re Braley*, 103 B.R. 758 (Bankr. E.D. Va. 1989).

In sum, from its inception, section 707(b) was designed with serious defects which have rendered the section unusable.

#### IV. THE CURRENT LEGISLATION

S. 625 amends section 707(b) to cure the defects which have made it unusable. Section 102 of S. 625 provides that a chapter 7 case will be presumed to be an “abuse” of chapter 7 if the debtor has the ability to repay, in a 5-year repayment plan, 25 percent of the debtor’s nonpriority unsecured claims, or \$15,000, whichever is less. For purposes of determining the debtor’s repayment ability, section 102 provides that the debtor’s monthly expenses shall be the applicable monthly (excluding payments for debts) expenses under Internal Revenue Service (“IRS”) standards issued for the area in which the debtor resides. The IRS standards applicable under section 102 are the IRS “National Standards,” “Local Standards,” and “Other Necessary Expenses.” These Internal Revenue Service standards are currently used to determine appropriate living expenses for taxpayers who are required to repay delinquent taxes. These standards have been developed by the Treasury Department and can be revised from time to time, as needed. These expense categories allow expenses for housing, food, transportation, and “other necessary expenses.” The “other necessary expenses” category is broad and makes the means-test responsive and flexible to the individual circumstances of each debtor.

In order to protect debtors from rigid and arbitrary application of a means-test, section 102 also provides that in some cases where the presumption applies the debtor may be able to demonstrate “special circumstances” that justify additional expenses or an ad-

justment to the debtor's income. The Committee adopted the "special circumstances" standard, rather than the "extraordinary circumstances" standard included in the Conference Report to accompany H.R. 3150 to provide a different standard of when a debtor may overcome the presumption of abuse.

In applying the "special circumstances" test, it is important to note that a debtor who requests a special circumstances adjustment is requesting preferential treatment when compared to other consumers, and it is those other consumers who, by paying their debts, must assume the cost of the debts discharged by the debtors seeking the preferential treatment. In order to ensure fairness with respect to the consumers who must pay the cost when others discharge debts in bankruptcy, it is essential that the "special circumstances" test establish a significant, meaningful threshold which a debtor must satisfy in order to receive the preferential treatment. The debtor's ability to overcome the presumption of abuse must be based solely on financial considerations (i.e., adjustments to income or expenses required by special circumstances) and not on factors unrelated to a chapter 7 debtor's ability to repay his or her debts. The Committee believes that the relief sought by a debtor who files for bankruptcy is financial in nature and the debtor's right to obtain preferential relief under the special circumstances provision should be assessed based on financial considerations only. In addition, special circumstances adjustments must not be used as a convenient way for debtors to choose a more expensive lifestyle. The special circumstances provision must be reserved only for those debtors whose special circumstances require adjustments to income or expenses that place them in dire need of chapter 7 relief.

Under S. 625, a legal presumption arises that a chapter 7 bankrupt should be dismissed from bankruptcy or converted to chapter 13 if, after taking into account secured debts and priority debts like child support as well as living expenses, the bankrupt can repay 25 percent or more of his general unsecured debts, or \$15,000, over a 5-year period.<sup>5</sup> The bankrupt can rebut this presumption by demonstrating "special circumstances" which would show that the bankrupt in fact does not have a meaningful ability to repay his or her debts.

Under S. 625, the Office of U.S. Trustee is required to file a motion to dismiss or convert a chapter 7 case if the bankrupt's income for the year prior to declaring bankruptcy equaled or exceeded the higher of the state or national median income and the presumption of abuse applies. If the Office of U.S. Trustee believes that such a motion is not warranted, then it must file an explanatory statement with the bankruptcy court explaining why a motion to dismiss or convert is not appropriate. However, to protect low-income filers, creditors are prohibited from filing such motions if the filer's income is below the national or state median.

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<sup>5</sup>Under S. 625, someone considering bankruptcy can enter a 3 year repayment plan if a debtor simply files directly in chapter 13, rather than filing under chapter 7 and being converted to chapter 13 or dismissed from bankruptcy as a result of the means-test. It is hoped that this will encourage debtors with repayment capacity to bypass chapter 7 entirely and to file under chapter 13.

Importantly, under S. 625, creditors and private trustees are now explicitly given the power to present evidence of abuse to the bankruptcy judge. Moreover, S. 625 gives trustees important new financial incentives for ferreting out bankrupts who have repayment capacity and provides for appropriate penalties for bankruptcy attorneys who recklessly steer individuals with repayment capacity to chapter 7 bankruptcy. S. 625 contains penalties for creditors who attempt to harass or intimidate bankrupts by filing, or threatening to file, motions under section 707(b). Thus, contrary to the assertions of some, there are real and meaningful reasons why creditors will not use their right to file 707(b) motions to harass or coerce debtors.

Once a motion to dismiss or convert has been filed under the new section 707(b), the bankrupt is given the opportunity to rebut the presumption by demonstrating that there are “special circumstances” which reveal that the bankrupt does not, in fact, have the ability repay his or her debts. If the presumption is rebutted, the bankrupt may obtain a full discharge under chapter 7. If the presumption is not rebutted, the bankrupt must either convert his or her case to chapter 13 or leave the bankruptcy system entirely.

The new section 707(b) thus contains a tightly-focused mechanism for identifying bankrupts who have repayment capacity and sorting them out of chapter 7. At the same time, the new section 707(b) contains numerous procedural safeguards in order to ensure that the individual circumstances of each bankrupt will be considered before he or she is dismissed or converted to chapter 13.

S. 625 also adds clarifying language in section 707(b) to make clear that, among the considerations in applying the “totality of the circumstances” test for “abuse” is whether an individual debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor. This is intended to remedy problems brought to the attention of Congress involving bankruptcy filings that were motivated in material part in order to reject executory contracts for personal services so that the debtor could negotiate a new and better contract with a different company. This problem was initially addressed in the 105th Congress in section 212 of H.R. 3150, and the solution contained in that provision was targeted at this particular form of abuse of the bankruptcy process. With the new standard for “abuse” in section 707(b)(2)(C). The Committee has determined that the specific provisions of section 212 are no longer necessary, as the bankruptcy court will now have the authority to identify and remedy such abuses. Under the “totality of the circumstances” test an “abuse” of chapter 7 exists when rejection of the personal services contract was a material reason for commencing the bankruptcy case, and economic rehabilitation of the debtor’s finances can be achieved absent rejection of the contract. The committee also intends that application of the the existing judicially-determined “bad faith” standard now be used in these circumstances in chapter 7 cases and chapter 11 and chapter 13 cases, in which the debtor or debtors are parties to a single personal services contract.



## V. ENHANCED CONSUMER PROTECTIONS

In addition to the “means testing” provisions discussed earlier, S. 625 contains several important reforms which will protect individuals who face unnecessary and unfair harassment from creditors. Much attention has been paid to the practices of some retailers in seeking reaffirmations of otherwise dischargeable debts. See *In Re Latanawich*, 207 BR 326 (Bankr. D. Mass. 1987); Sears Will Repay Bankrupt Patrons; Consumers: It Agrees to \$273-Million Settlement in Class Action Filed by Cardholders Pressured to Continue Paying Bills, *Los Angeles Times* D-3. (October 29, 1997); General Electric Capital Corp.; Company to Pay \$70 Million Towards Credit Card Holders, *Chicago Tribune* N-2 (August 8, 1998). S. 625 requires the Attorney General to designate prosecutors and investigators to enforce current criminal statutes designed to protect debtors in bankruptcy court from deceptive or coercive collection practices. Surprisingly, the Department of Justice opposes committing new resources to the enforcement of current laws to protect consumers from abusive or deceptive reaffirmation practices while instead arguing that “existing protections” against such reaffirmation practices are “inadequate.” See Letter to The Hon. Orrin G. Hatch, Chairman, Committee on the Judiciary, April 9, 1999. The Committee is of the view that the Department of Justice should vigorously enforce current laws, as it did with regard to one retailer, before concluding that existing laws are not adequate. When enforced, current laws have proven highly effective in punishing illegal creditor conduct. By committing substantial new resources to fighting abusive creditor practices, the Committee intends for the Department of Justice to step up enforcement of these under-used statutes. S. 625 (section 203) also makes it a violation of the automatic stay when creditors engage in such extreme conduct as threatening debtors in bad faith with motions they don’t intend to file or as to which they have no reasonable expectation of success just to coerce a reaffirmation, as opposed to normal communications or negotiations. Section 204 permits a bankruptcy court to refuse to approve a reaffirmation if it is the result of a threat of action the creditor could not take or did not intend to take.

S. 625 also provides that State law enforcement officials can enforce State consumer protection laws. This provision is necessary as some State law enforcement officials have voiced concern that the remedies provided in the bankruptcy code could be construed to preempt these State laws.

S. 625 contains a provision (section 201) which penalizes creditors who refuse to negotiate reasonable repayment schedules outside of bankruptcy. Under this provision, the amount that a creditor may collect in bankruptcy can be reduced if a debtor makes a reasonable offer of repayment at least 60 days prior to declaring bankruptcy and the creditor rejects this offer. Interestingly, the Department of Justice supports promoting alternative dispute resolution in this way but suggests that the 60 day requirement is “too restrictive” while at the same time suggesting that the provision be “clarified” in such a way that it will not apply to governmental creditors. See Letter to The Hon. Orrin G. Hatch, Chairman, Committee on the Judiciary, April 9, 1999. Thus, if the Committee were

to accept the suggestions of the Department of Justice, nongovernmental creditors would be subject to a tougher standard than currently contained in S. 625, but the Internal Revenue Service would be free to avoid alternative dispute resolution. Given its checkered history in dealing with taxpayers, the Committee cannot support a special exemption for the Internal Revenue Service.

In sum, S. 625 contains tough new penalties to punish and deter unethical or illegal collection activities.

#### VI. REDUCING ABUSIVE USES OF THE BANKRUPTCY CODE

As the National Bankruptcy Review Commission correctly noted, many of the worst abuses of the bankruptcy system involve individuals who repeatedly file for bankruptcy with the sole intention of using the automatic stay (i.e., a court injunction which arises whenever a bankruptcy case is filed). National Bankruptcy Rev. Comm. Rep., *Bankruptcy the Next Twenty Years*, October 20, 1997 vol. 1, at 262. Accordingly, S. 625 contains restrictions on repeat filers. Under S. 625, if a bankrupt has filed for bankruptcy before, and that case was dismissed, the bankrupt will not get the benefit of the automatic stay. The Committee feels that this change will dramatically reduce the number of frivolous bankruptcy cases.

S. 625 also contains new protections for secured lenders such as forbidding “ride throughs”, and requires random audits of bankruptcy petitions to verify the accuracy of information contained in bankruptcy petitions. The Committee is concerned that there is little incentive for individuals to list all of their assets or fully disclose their financial affairs, including their income and living expenses, when they file for bankruptcy. Of course, such laxity fosters an environment in which the overall financial condition of the bankrupt is likely to be inaccurate, with the result that creditors may receive less than they could when a bankrupt’s financial affairs are accurately disclosed. Accordingly, the random audit procedures will restore some integrity to the system, since all material misstatements are required to be reported to the appropriate authorities.

#### VII. ENHANCED PROTECTIONS FOR CHILD SUPPORT

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

S. 625 contains all of the provisions of the H.R. 3150 Conference Report which enhanced the position of child support and alimony claimants in bankruptcy proceedings. In addition, S. 625 contains a new provision in section 219 which requires bankruptcy trustees to notify child support creditors of their right to use State child support enforcement agencies to collect outstanding amounts due. Section 219 also permits general creditors to disclose the last known billing address of bankrupt who owes child support or alimony to child support claimants. In response to concerns that a

new category of nondischargeable debts could pit child support and alimony (both of which are not dischargeable under current law) against aggressive creditors in a post-bankruptcy environment, section 314 provides that the new category will not apply to bankrupts who owe child support or alimony.

Last year, Senator Hatch offered an amendment during Committee consideration of S. 1301 to assure that certain child support creditors would always be paid before other creditors. The Hatch amendment then was adopted by the Conference Committee on H.R. 3150. During this year's markup of S. 625, Senator Torricelli offered an amendment that complemented Senator Hatch's previous amendment by extending similar protections to families with court-ordered child support or other child support arrangements where the State is not the collector. This is an important improvement as many families, perhaps as many as half, do not have their child support orders enforced by a State child support agency. At the same time, the Committee recognizes that enforcement of child support by the State agency is often the cheapest and most effective means of collecting essential support for families who do not qualify for welfare but are still dependent on child support for basic needs.

Some argue that requiring State agencies be paid in full may have the unintended consequence of injuring the family because such a requirement may make it more difficult to complete a chapter 13 repayment plan and receive a discharge of other debts. The amendment adopted in Committee would elevate the family above the State agencies, but still leave the State agencies in a better position than under current law. It would require that a plan provide for full payment of all amounts owed to both the State and family that become payable after the petition is filed. This would put both families and States in a better position than they are under current law. In addition, the amendment adopted in Committee would ensure full payment of arrears to the family unless the family agrees otherwise (this would permit the family as noted above to let the plan be completed if that was in their best interest). The State would still have a nondischargeable claim for child support arrearages that it could collect at the conclusion of the plan.

Taken together, the Committee believes that child support and alimony claimants are in a far better position under S. 625 than under current law.

### VIII. BUSINESS PROVISIONS

S. 625 largely retains the business provisions contained in the H.R. 3150 Conference Report. Although business bankruptcy filings are low at this time, the Committee feels that several changes to chapter 11 should be made. S. 625 will speed up chapter 11 for small business debtors, enact recommendations of the United Nations Commission on Internal Trade Law regarding transnational bankruptcy and clarify the treatment of tax claims in bankruptcy.

## IX. ADDITIONAL BANKRUPTCY JUDGESHIPS AND MISCELLANEOUS PROVISIONS

S. 625 requires the Administrative Office of the U.S. Courts to provide special procedures and safeguards to ensure the confidentiality of tax information which bankrupts are required to file with their court papers.

Furthermore, S. 625 authorizes 18 new temporary bankruptcy judgeships around the country, and extends five other ones. In considering whether to create new bankruptcy judgeships, the Committee has emphasized that the judiciary bears the burden of demonstrating the need for new judgeships. Although not satisfied that this burden has been completely met, the Committee is willing to agree to most of the Judicial Conference's request at this time with the understanding that future requests will be subject to more thorough scrutiny.

The Subcommittee on Administrative Oversight and the Courts held a hearing on this matter on September 22, 1997. Following the hearing, the Judicial Conference took many months to supply information requested by the Subcommittee. In fact, to date, some of the requested material has never been provided. For instance, the Subcommittee requested documents related to special task forces the Judicial Conference dispatched to districts requesting new judgeships to evaluate these districts and make recommendations regarding the effective use of resources. The Subcommittee was initially informed that no written documents existed. The Subcommittee then requested that the observations and recommendations be put in writing and submitted to the Subcommittee for review. The Judicial Conference responded that if this information was given to Congress, judges would be less candid and open about their respective district's shortfalls and needs. See letter from Senator Grassley to the Hon. David Thompson (requesting information on the actions taken to avoid adding new judgeships), October 23, 1997, (on file with the Subcommittee on Administrative Oversight and the Courts); Letter from the Hon. David Thompson to Senator Grassley, November 6, 1997, (on file with the Subcommittee on Administrative Oversight and the Courts). The Committee views access to such information necessary in order for Congress to determine judgeship needs.

The Judicial Conference, and supporters of its judgeship request, have argued for their case by referring to the overall rise in bankruptcy filings. The Committee feels that focusing merely on increased filings misses the mark.

Importantly, the Judicial Conference uses a weighting system to determine when new bankruptcy judgeships are needed. This means that since not all bankruptcy cases require the same amount of judge time and effort, some cases are weighted more than others, with the more complex cases being given a much greater weight than the simpler cases. The recent increase in bankruptcy filings has been due almost entirely to consumer bankruptcy cases—in particular consumer cases filed under chapter 7 of the bankruptcy code. Laura Castaneda, "Issuers of Credit Cards Get Tougher," San Francisco Chronicle, Sept. 15 1997. Unlike complex corporate reorganizations under chapter 11, these cases require lit-

tle effort from a bankruptcy judge. As a result, they are not weighted heavily in the formula used to assess the need for new judges. In most of the districts which are requesting new judgeships, the weighted case-filings, relied upon in making judgeship requests, have either decreased or remained about the same since 1993. Ed Flynn, "Chapter 7 Case Processing Speed", American Bankruptcy Institute Journal (1994). Thus, the Committee questions the pressing need for new judgeships since the weighted case filings appear either to have remained stable or decreased in most requesting districts.

The amendment includes a modest reporting requirement for noncaseload related travel. In recent years, a troubling question has arisen regarding the amount of noncase related travel engaged in by bankruptcy judges in those districts which are requesting new judgeships.

The Committee has been very reluctant to create new judgeships unless the need for such judgeships are fully justified. Moreover, the reforms contained in S. 625 should further control the need for more bankruptcy judges. Means testing will likely reduce administrative costs and court time, and by reducing the incentives to file bankruptcy, the rapid escalation in consumer bankruptcies we have witnessed in the last 5 years should slow significantly. At the request of Subcommittee Chairman Grassley, the General Accounting Office examined the noncaseload related travel of bankruptcy judges in districts which are requesting new judgeships. GAO Rep., Federal Judiciary: Information on Noncase-Related Travel of Bankruptcy Judges in 14 Bankruptcy Districts, GGD-97-166R at 1, Aug. 8, 1997. The nonpartisan GAO study raised certain questions regarding noncase related travel.

The Committee agrees that bankruptcy judges should engage in some noncase related travel. However, the Committee is of the view that bankruptcy judges should give first priority to their caseloads. In the 14 districts requesting new judgeships, there were 416 noncase related trips taken in 1995 and 406 taken in 1996, GAO Report at 4.

#### X. MAJOR DIFFERENCES BETWEEN S. 625 AND THE H.R. 3150 CONFERENCE REPORT

As noted earlier, the Senate passed a bankruptcy reform bill (S. 1301) in the 105th Congress. Prior to Senate passage of S. 1301, the House of Representatives passed H.R. 3150, a similar reform bill. A House-Senate Conference Committee reported a Conference Report, which was passed by the House of Representatives but was never voted on in the Senate.

As the Justice Department noted in its letter to the Committee regarding S. 625, S. 625 differs from the H.R. 3150 Conference Report in several significant respects. See Letter to the Hon. Orrin G. Hatch, Chairman, Committee on the Judiciary, April 9, 1999 (on file with the Committee). Under the means-test in S. 625, judges are given more flexibility in considering the individual circumstances of each debtor by requiring a showing of "special circumstances," rather than "extraordinary circumstances," for chapter 7 debtors with apparent repayment ability to avoid dismissal or transfer to chapter 13. Additionally, S. 625 raises the minimum

dollar amount in the means-test from \$5,000 to \$15,000, with the effect that debtors without significant repayment capacity will not be affected by the means test.

S. 625 also greatly expands the number of consumer protections. Under the bill, the Attorney General and FBI Director are required to designate one prosecutor and one agent in every district to investigate reaffirmation practices which violate current Federal criminal laws. Abusive or deceptive reaffirmation practices violate current laws, and the Committee strongly believes that the Department of Justice has an obligation to enforce current laws designed to protect consumers. S. 625 also specifically authorizes State attorneys general to enforce State criminal laws against abusive reaffirmation practices and State unfair trade practices laws which govern credit collection practices. The prohibition in the Conference Report on class action lawsuits arising from reaffirmation violations is not included in S. 625. S. 625 contains a provision making it a violation of the automatic stay to threaten to file motions for the specific purpose of coercing reaffirmations. S. 625 contains a provision penalizing creditors who refuse to acknowledge payments received in chapter 13 plans and thereafter seek a "double payment." In sum, S. 625 contains numerous provisions which will protect consumers from abusive or deceptive creditor practices.

S. 625 also expands on the considerable child support protections contained in the H.R. 3150 Conference Report. Under the bill, bankruptcy trustees are required to notify appropriate State agencies of a debtor's address and location if the debtor owes child support, effectively turning bankruptcy courts into locator services which will help to track down "deadbeat parents." Additionally, S. 625 permits State agencies which enforce payment of child support obligations to request that creditors who hold reaffirmed or nondischarged debts provide the last known address and phone number of the debtor, again, effectively turning bankruptcy courts into locator services which will help to track down "deadbeat parents." The bill also requires bankruptcy trustees to notify child support claimants of their right to enforce payment through an appropriate State agency. Finally, S. 625 provides that debts incurred to pay nondischargeable debts will continue to be dischargeable if the debtor owes child support or alimony.

#### XI. COMMITTEE CONSIDERATION IN THE 106TH CONGRESS

During the 106th Congress, the Subcommittee on Administrative Oversight and the Courts conducted an unprecedented joint hearing on bankruptcy reform with the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee on March 11, 1999. At this hearing the following witnesses testified: Dean Sheaffer, vice president and director of credit, Boscov's Department Store, Inc., Laurel Dale, PA, representing the National Retail Federation; Bruce L. Hammonds, senior vice chairman and chief operating officer, MBNA America Bank, N.A., Wilmington, DE, the Hon. Judge Carol J. Kenner, U.S. Bankruptcy Judge, District of Massachusetts, Boston, MA; Larry Nuss, chief executive officer, Cedar Falls Community Credit Union, Cedar Falls, IA, representing Credit Union National Association, Inc.; Gary Klein, Esquire, senior attorney National Consumer Law Center, Boston, MA.

As noted earlier, the Committee reported legislation substantially similar to S. 625 in the 105th Congress. In addition to the joint hearing House-Senate hearing conducted in 1999, the Committee has at its disposal the extensive hearing record established in the 105th Congress regarding bankruptcy reform. Thus, the Committee record on bankruptcy reform consists of nine hearings involving 78 witnesses.

## XII. COMMITTEE MARKUP

On April 15, 1999, at 10 a.m., with a quorum present, the Judiciary Committee met in executive session to consider S. 625. At that time the Committee only considered opening statements.

On April 22, 1999, at 10 a.m., with a quorum present, the Committee began consideration of amendments to S. 625. Four amendments were acted on, and discussion was held on an additional five amendments for which votes were stacked until the next executive business meeting of the Committee.

Senator Grassley offered an amendment to make technical changes. The amendment was agreed to by unanimous consent.

Senator Sessions offered an amendment to modify the judicial discretion allowed under the Needs-Based Test. The amendment was defeated by a rollcall vote of 5 yeas to 13 nays.

Yeas	Nays
Kyl	Thurmond (by proxy)
Ashcroft	Grassley
Abraham (by proxy)	Specter (by proxy)
Sessions	DeWine
Smith (by proxy)	Leahy (by proxy)
	Kennedy
	Biden
	Kohl (by proxy)
	Feinstein
	Feingold
	Torricelli
	Schumer
	Hatch

Senator Sessions offered an amendment to provide special procedures for assurances of payment of utility service for cases filed under chapter 11 of title 11. The amendment was agreed to by a rollcall vote of 9 yeas to 8 nays.

Yeas	Nays
Thurmond (by proxy)	Leahy (by proxy)
Grassley	Kennedy
Kyl	Biden
DeWine	Kohl (by proxy)
Ashcroft	Feinstein
Abraham (by proxy)	Feingold
Sessions	Torricelli
Smith (by proxy)	Schumer
Hatch	

Senator Feingold, for himself and Mr. Specter, offered an amendment to modify a provision relating to the payment of a panel

trustee. The amendment was defeated by a rollcall vote of 9 yeas to 9 nays.

Yeas	Nays
Specter (by proxy)	Thurmond (by proxy)
Leahy (by proxy)	Grassley
Kennedy (by proxy)	Kyl
Biden	DeWine
Kohl (by proxy)	Ashcroft
Feinstein (by proxy)	Abraham (by proxy)
Feingold	Sessions
Torricelli	Smith (by proxy)
Schumer	Hatch

Senator Feingold offered an amendment to amend certain provisions relating to credit counseling. The vote was stacked until the next executive business meeting.

Senator Hatch offered an amendment to amend subtitle B of title II. Senator Hatch agreed to accept a second degree amendment by Senator Torricelli. The vote on the Hatch amendment, as amended, was stacked until the next executive business meeting.

Senator Hatch offered an amendment to provide for the protection of retirement savings in bankruptcy. The amendment was withheld, pending further discussion.

Senator Sessions offered an amendment to make amendments with respect to discouraging abuse of reaffirmation practices. The vote was stacked until the next executive business meeting.

Senator Schumer offered an amendment to provide for the dismissal or conversion of a case under chapter 7 of title 11, United States Code, for abuse or ability to repay creditors. The vote was stacked until the next executive business meeting.

On April 27, 1999, at 10 a.m., with a quorum present, the Committee resumed consideration of amendments to S. 625.

The following amendments were agreed to, en bloc, by unanimous consent:

Senator Feinstein's amendment to modify the period during which a debtor is required to receive credit counseling;

Senator Hatch's amendment to subtitle B of title II (Domestic Support Protection), as amended by Senator Torricelli's amendment;

Senator Hatch's amendment to provide for the protection of retirement savings in bankruptcy;

Senator Feinstein's amendment to section 110, to discourage abusive bankruptcy filings;

Senator Sessions' amendment to title 11, United States Code, to prevent double payments to secured creditors in chapter 13 cases; and

Senator Feinstein's amendment to strike section 416.

Senator Feingold's amendment to effectively remove provisions relating to credit counseling was defeated by a rollcall vote of 9 yeas to 9 nays.

Yeas	Nays
Specter (by proxy)	Thurmond (by proxy)
Leahy (by proxy)	Grassley



Kennedy (by proxy)	Kyl
Biden	DeWine (by proxy)
Kohl (by proxy)	Ashcroft (by proxy)
Feinstein	Abraham
Feingold	Sessions
Torricelli	Smith
Schumer	Hatch

Senator Sessions withdrew his amendment to make amendments with respect to discouraging abuse of reaffirmation practices.

Senator Schumer offered an amendment at the last meeting, to provide for the dismissal or conversion of a case under chapter 7 of title 11, United States Code, for abuse or ability to repay creditors. The amendment was defeated by a rollcall vote of 7 yeas to 11 nays.

Yeas	Nays
Specter (by proxy)	Thurmond (by proxy)
Leahy (by proxy)	Grassley
Kennedy (by proxy)	Kyl
Kohl	DeWine (by proxy)
Feinstein	Ashcroft (by proxy)
Feingold	Abraham
Schumer	Sessions
	Smith
	Biden
	Torricelli
	Hatch

Senator Grassley offered an amendment to require that certain earnings of an individual who files a voluntary case under chapter 11 of title 11, United States Code, be considered to be property of the estate of that individual. The amendment was agreed to by a rollcall vote of 12 yeas to 5 nays.

Yeas	Nays
Thurmond (by proxy)	Leahy (by proxy)
Grassley	Kennedy (by proxy)
Kyl	Biden
DeWine (by proxy)	Kohl (by proxy)
Ashcroft (by proxy)	Feingold
Abraham	
Sessions	
Smith	
Feinstein	
Torricelli	
Schumer	
Hatch	

Senator Feingold offered an amendment to provide for an exception to a limitation on an automatic stay under section 362(b) of title 11, United States Code, relating to evictions and similar proceedings to provide for the payment of rent that becomes due after the petition of a debtor is filed. The amendment was withdrawn, to be worked on further.

Senator Schumer offered an amendment to amend the Truth in Lending Act to provide for disclosures to consumers relating to late

payment deadlines and penalties, “teaser rates,” and Internet-based solicitations. The amendment was withdrawn, to be worked on further.

Senator Feingold offered an amendment, on behalf of Senator Specter and himself, to provide for a waiver of filing fees in certain bankruptcy cases, and for other purposes. The amendment was defeated by a rollcall vote of 9 yeas to 9 nays.

Yeas	Nays
Specter (by proxy)	Thurmond (by proxy)
Leahy (by proxy)	Grassley
Kennedy (by proxy)	Kyl
Biden	DeWine
Kohl (by proxy)	Ashcroft (by proxy)
Feinstein	Abraham (by proxy)
Feingold	Sessions
Torricelli	Smith
Schumer	Hatch

Senator Schumer offered an amendment to ensure that debts incurred as a result of clinic violence are nondischargeable. The amendment was defeated by a rollcall vote of 9 yeas to 9 nays.

Yeas	Nays
Specter (by proxy)	Thurmond (by proxy)
Leahy (by proxy)	Grassley
Kennedy (by proxy)	Kyl
Biden	DeWine
Kohl (by proxy)	Ashcroft
Feinstein (by proxy)	Abraham (by proxy)
Feingold	Sessions
Torricelli (by proxy)	Smith
Schumer	Hatch

The following amendments were discussed, but withheld, to be worked on further:

Senator Feinstein’s amendment to provide for the treatment of high risk loans;

Senator Torricelli’s amendment to ensure that the creditor has the burden of proving allegations that a debt was incurred by fraud; and

Senator Feinstein’s amendment to make an improvement to audit requirements.

By a rollcall vote of 14–4, the Committee favorably reported S. 625, as amended.

Yeas	Nays
Thurmond (by proxy)	Leahy (by proxy)
Grassley	Kennedy (by proxy)
Specter (by proxy)	Feingold
Kyl	Schumer
DeWine	
Ashcroft (by proxy)	
Abraham	
Sessions	
Smith	

Biden  
 Kohl (by proxy)  
 Feinstein  
 Torricelli  
 Hatch

### XIII. COMMITTEE AND SUBCOMMITTEE CONSIDERATION OF S. 1301 IN THE 105TH CONGRESS

As noted earlier, the work of the Committee in the 106th Congress built upon the foundations established by the work of prior Congresses, especially the passage of S. 1301 during the 105th Congress. During the 105th Congress, the Subcommittee on Administrative Oversight and the Courts held the following hearings.

### XIV. SUBCOMMITTEE HEARINGS

On May 19, 1998, the Subcommittee held a hearing to review business bankruptcy issues. The witnesses consisted of three panels. The first included Linda E. Stanley, U.S. Trustee for region 17; Philip J. Hendel, Hendel, Collins, and Newton, P.C., on behalf of the Commercial Law League of America; Jere W. Glover, Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration; and Stephen H. Case, Davis, Polk, and Wardwell, former Senior Advisor, National Bankruptcy Review Commission. The second panel consisted of Ann C. Stern, chairman and chief executive officer, Financial Guarantee Insurance Corporation, on behalf of the Association of Financial Guaranty Insurers; David Warren, managing director, Mortgage Department, Morgan Stanley Dean Witter and Company, on behalf of the Bond Market Association; and Randal C. Picker, National Bankruptcy Conference; H. Elizabeth Baird, senior counsel, Nationsbank, on behalf of the American Bankers Association; Joyce Kuhns, Weinberg and Green, on behalf of the International Council of Shopping Centers; Grant W. Newton, professor of accounting, Pepperdine University, on behalf of the Association of Insolvency Accountants; Kathleen J. Cahill, assistant chief, Tax and Bankruptcy Division, Office of the Corporation Counsel, National League of Cities; James D. Newbold, assistant attorney general, Office of the Illinois Attorneys General; and Damon Silvers, associate general counsel, American Federation of Labor and Congress of Industrial Organizations. A fourth panel was heard on June 1, 1998 consisting of Thomas R. Prince, professor of health services management and accounting and information systems, J.L. Kellogg Graduate School of Management Northwestern University; Keith J. Shapiro, Holleb and Coff, American Bankruptcy Institute; Deborah L. Fish, Allard and Fish, P.C.; Charles N. Kahn, III, chief operating officer and president-designate, Health Insurance Association of America.

On December 7, 1997 a hearing regarding international bankruptcy laws in Washington, DC. The first panel consisted of Harold S. Burman, Executive Director, Advisory Committee on Private International Law, State Department; Tina L. Brozman, chief judge, Bankruptcy Court for the Southern District of New York; Jonathan L. Flaxer, Winick and Rich, P.C.; Edward G. Moran, banking consultant; and Jay Lawrence Westbrook, Benno C.

Schmidt, chair of business law, University of Texas School of Law. The second panel included David Narigon, senior vice president of claims, EMC Insurance Companies; Stephen P. Cane, chief operating officer, Zurich Reinsurance Limited, International Insurance and Reinsurance Market Association; Franklin W. Nutter, president, Reinsurance Association of America.

On October 21, 1997, the Subcommittee held a hearing in Washington, DC to review the recommendations of the National Bankruptcy Review Commission. The witnesses testifying on behalf of the Commission included Brady C. Williamson, chair; Hon. Robert E. Ginsberg, vice-chair, U.S. Bankruptcy Judge; M. Caldwell Butler; Jim Sheppard; Hon. Edith Hollan Jones; John Gose; Babette Ceccotti; and Jay Alix.

On September 22, 1997 the Subcommittee held a hearing on the bankruptcy code's effect on religious freedom and a review of the need for additional bankruptcy judgeships. The first panel of witnesses included Stephen Paul Goold, senior pastor, Crystal Evangelical Free Church; Richard E. Flint, attorney at law, Pearson & Price, PLC; Steven T. McFarland, director, Center for Law and Religious Freedom, Christian Legal Society; Douglas Laycock, University Of Texas Law School; Todd J. Zywick, Mississippi College of Law; Donald S. Bernstein, Esq., Davis, Polk & Wardwell; and Kenneth D. Whitehead, Board Member, Catholic League for Religious and Civil Rights. The second panel consisted of Hon. David R. Thompson, circuit judge, ninth circuit, chairman, Committee on the Administration of the Bankruptcy System, Judicial Conference of the United States; and Richard M. Stana, Acting Associate Director, Administration of Justice Issues, Government Accounting Office.

On August 8, 1997 the Subcommittee held a hearing regarding bankruptcy laws for family farmers. The Subcommittee heard from two panels of witnesses. The first panel included Joseph A Peiffer, attorney at law; Ross River, owner and operator of River Family Farm; Steven P. Wandro, attorney at law, Wandro & Gibson, P.C.; Lyle and Lila Alfred, farmers; David Losure and Mary Schaeffer, livestock farmers. The second panel included Michael L. Thompson, attorney at law; Prof. Patrick B. Bauer, University of Iowa College of Law; Carol F. Dunbar, standing chapter 12 trustee.

On August 1, 1997 a hearing was held by the Subcommittee to review the negative impact of bankruptcy on educational funding. The witnesses on the first of two panels included Jayne Morrell, tax assessor/collector, Dallas Independent School District; Elizabeth Weller, bankruptcy attorney, Blair, Goggan, Sampson & Meeks; Donald R. Boehm, tax assessor/collector, Houston Independent School District; Michael Deeds, attorney at law, regional managing attorney, Heard, Goggan, Blair & Williams; Lawrence A. Friedman, bankruptcy trustee. The second panel consisted of Kent Scroggins, president, Board of Trustees of Lakeworth Independent School District; Barbara M. Williams, bankruptcy attorney, Rohne, Hoodenpyle, Lobert, Myers & Scott; Joan E. Pilver, assistant attorney general; Dorothy J. Conrad, St. Lucie County tax collector; Sandy Hume, National Association of County Treasury and Finance Officers; Fred Anderson, Roanoke county treasurer.

The Subcommittee on Administrative Oversight and the Courts of the Committee on the Judiciary held a hearing on April 11, 1997 on the increase in personal bankruptcies and the crisis in consumer credit. Witnesses included Michael E. Staten, director of the Credit Research Center, Purdue University; Ian Domowitz, Department of Economics, Professor at Northwestern University; Edward Bankole, vice-president, Moody's Investors Service; Kim Kowalewski, Chief, Financial and General Macroeconomic Analysis Division, Congressional Budget Office; and Michael McEneney, Morrison and Foerster, on behalf of the National Consumer Bankruptcy Coalition.

On March 11, 1998, the Subcommittee held a hearing on S. 1301, entitled "The Consumer Bankruptcy Reform Act: Seeking Fair and Practical Solutions to the Consumer Bankruptcy Crisis." The Subcommittee heard witnesses from three panels. The first panel of witnesses included Lawrence A. Friedman, secretary, National Association of Bankruptcy Trustees; Hon. A. Thomas Small, chief bankruptcy judge; Tahira K. Hira, professor at Iowa State University; George J. Wallace, attorney at Eckert, Seamans, Cherin, and Melott, LLC; William E. Brewer, Jr., National Association of Consumer Bankruptcy Attorneys; Stan Bluestone, National Retail Federation. Witnesses on the second panel were Richard Stana, General Accounting Office; Michael Staten, director of Credit Research Center; Stephen Brobeck, executive director, Consumer Federation of America; Brian McDonnell, National Association of Federal Credit Unions; and Robert Elliot, Household International. Witnesses on the third panel consisted of Douglas Boshkoff, professor at Indiana University School of Law; Randy Picker, National Bankruptcy Conference; Deborah D. Williamson, American Bankruptcy Institute; and Matthew Mason, United Auto Workers.

#### XV. COMMITTEE AND SUBCOMMITTEE MARKUP<sup>6</sup>

On April 2, 1998, the Subcommittee on Administrative Oversight and the Courts met reported S. 1301, as amended, on a rollcall vote of 6 yeas and 1 nay.

Yeas	Nays
Thurmond (by proxy)	Feingold
Kyl	
Sessions	
Durbin	
Kohl (by proxy)	
Grassley	

On May 21, 1998, the Senate Committee on the Judiciary reported S. 1301, as amended, on a rollcall vote of 16-2.

Yeas	Nays
Thurmond	Kennedy
Grassley	Feingold
Specter (by proxy)	
Thompson (by proxy)	

<sup>6</sup>Details of the amendments offered to S. 1301 during Committee and Subcommittee consideration can be found in S. Rep. No. 105-253, 105th Cong. 2d Sess.

Kyl  
 DeWine  
 Ashcroft  
 Abraham  
 Sessions  
 Leahy  
 Biden  
 Kohl (by proxy)  
 Durbin  
 Torricelli  
 Hatch

## XVI. SECTION-BY-SECTION ANALYSIS

### TITLE I—NEEDS BASED BANKRUPTCY

This title of this new bill changes section 707(b) of the bankruptcy code to allow for a chapter 7 case to be dismissed or converted to chapter 13.

#### *Section 101. Conversion*

This section amends section 706(C) of title 11 of the United States Code to provide that a court may convert a chapter 7 case to a chapter 12 or 13 case if the debtor consents.

#### *Section 102. Dismissal or Conversion*

Section 102 deletes the current section heading and inserts the following: “707. Dismissal of a case or conversion to a case under chapter 13.” This section provides a mechanism for means-testing a debtor’s eligibility for relief under chapter 7. The standards appear as requirements for dismissal or conversion of a chapter 7 case to a chapter 13 case. For example, this section replaces the current standard for dismissal of “substantial abuse” and provides that a chapter 7 petition must be dismissed for “abuse” if it is filed by a debtor who satisfies a flexible test which gauges whether he or she has the means to repay a substantial part of the debt outstanding under a plan funded with future income. Individuals who have the ability to pay their debts under the income and expense formula will be ineligible for bankruptcy under chapter 7 but have the option of filing under other chapters, such as chapter 13.

More specifically, S. 625 would establish a presumption that a chapter 7 proceeding should be dismissed or converted to chapter 13 if the debtor has sufficient “monthly net income” to repay at least 25 percent (or \$15,000, whichever is less) of unsecured, non-priority debts over 5 years. Monthly net income is calculated as the average of the debtor’s income for the last 6 months minus: (I) allowable expenses set by the IRS; (ii) monthly payments for secured debts; and (iii) monthly payments for priority unsecured debts. The presumption can be rebutted if the debtor demonstrates “special circumstances” that require an adjustment of income or expenses that causes the debtor’s repayment capacity to fall below the 25 percent (or \$15,000, whichever is less) level. The Committee does not intend the “special circumstances” contained in S. 625 to encompass expenses for goods or services which are not necessary living expenses.

Subsection (b)(2) charges the U.S. trustee with the responsibility of reviewing financial disclosure documents and all other materials filed by the debtor. Also, the U.S. trustee must file a statement at least 10 days before the first meeting of the creditors as to whether the debtor is eligible for relief under chapter 7. If the debtor's case is presumed to be an abuse, the U.S. trustee would be *required* to file a 707(b) dismissal or conversion motion within 30 days or, instead, file a statement setting forth the reasons the trustee does not believe that such motion would be appropriate. This would not apply, however, if the debtor's income is less than the highest national or applicable State median family income for a family of equal or lesser size, or in the case of a household of one person, the national or applicable State median household income for one earner.

If a motion is brought by a chapter 7 trustee, and the court determines that the debtor's case should be dismissed or converted, the court must order the debtor's counsel to reimburse the trustee for all reasonable costs associated with prosecuting the motion for dismissal or conversion if the motion was granted and the action of the counsel was not substantially justified. The court must further order fines against the debtor's attorney if the court finds that the debtor's attorney violated rule 9011. The Committee intends these fines to serve as financial incentive for chapter 7 trustees to discover and eliminate abusive chapter 7 cases.

This section also provides that the court may award a debtor all reasonable costs in contesting a creditor's motion to convert or dismiss, including attorneys' fees, if the court does not grant the motion and the creditor's position was not substantially justified or the motion was brought solely to coerce the debtor into waiving a guaranteed right. The section also addresses the problems associated with small business creditors by providing that a party in interest filing an aggregate claim of less than \$1,000 is not subject to any liability for any costs, fees or penalties or any other amounts under subparagraph (A).

Finally, the section prohibits §707(b) motions by creditors if the debtor and the debtor's spouse combined have current monthly total income equal to or less than the national or State median family monthly income for a family of equal size.

### *Section 103. Notice of Alternatives*

This section amends section 342 of title 11 of the United States Code. Under the amended section, an individual whose debts are primarily consumer debts shall receive a written notice prescribed by the U.S. trustee for the district in which the petition is filed. The section provides that the notice shall contain the following:

- (1) Brief descriptions of chapters 7, 11, 12 and 13 of title 11 outlining the general purpose, benefits and costs of proceeding under each chapter; and
- (2) Brief descriptions of services available from an independent, nonprofit credit counseling service that is approved by the U.S. trustee for that district.

*Section 104. Debtor Financial Management Training Test Program*

Section 104 establishes a 1-year pilot program on financial management education for debtors under the auspices of the Executive Office for U.S. Trustees. 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. Upon the conclusion of the pilot program, the Director of the Executive Office for U.S. Trustees is required to submit a report to Congress 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.

*Section 105. Credit Counseling*

The section amends section 109 of title 11 of the United States Code. This section adds a new subsection (h) which provides that in the 180 days prior to a filing, a potential debtor must attempt to make a repayment plan outside the bankruptcy system through an approved credit counseling program.

The section also amends section 727(a) of title 11 of the United States Code. The section adds a new subsection (11) which adds the failure to complete a personal financial management course to the list of actions for which a court shall not grant a discharge.

The section also amends section 1328 of title 11 of the United States Code. The section adds a new subsection (g) which adds the failure to complete a personal financial management course to the list of actions for which a court shall not grant a discharge.

The section also amends section 521 of title 11 of the United States Code. This section adds a new subsection (b) which requires a debtor to file a certificate from a credit counseling service or other evidence of a good faith attempt to create a debt repayment plan. In addition, the debtor must file a copy of the debt repayment plan.

The section also amends Chapter 1 of title 11 of the United States Code to add a new section 111. The new section provides that the clerk of each district shall maintain a list of credit counseling services. The list of programs is to be approved by the U.S. trustee or the bankruptcy administrator for the district.

TITLE II—ENHANCED CONSUMER PROTECTIONS

*Subtitle A—Penalties for Abusive Creditor Practices*

*Section 201. Promotion of Alternative Dispute Resolution*

This section will promote out-of-court settlements between potential debtors and their creditors by penalizing creditors who refuse to negotiate in good faith prior to declaring bankruptcy. If, prior to bankruptcy, a debtor has proposed a reasonable alternative repayment schedule and the creditor unreasonably rejected such an offer, the bankruptcy judge may reduce the dollar amount of that creditor's claim by up to 20 percent.



*Section 202. Effect of Discharge*

This section will protect debtors by imposing penalties on creditors for the willful failure to properly credit payments made by the debtor in a chapter 13 plan.

*Section 203. Violations of the Automatic Stay*

This section provides for new penalties against creditors who threaten to file 707(b) motions in order to coerce a reaffirmation when they have no reasonable justification for doing so. This provision is not intended to prevent normal, good faith negotiations and communications between debtor and creditor.

*Section 204. Discouraging Abuse of Reaffirmation Practices*

This section gives every debtor who intends to reaffirm a wholly unsecured debt a right to a fairness hearing. Debtors represented by counsel may waive this hearing if they so choose.

This section also amends chapter 9 with a new section 158 entitled “Designation of U.S. attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt.” The Attorney General is required to designate a U.S. attorney for each district and an agent of the FBI for each field office to carry out enforcement activities with respect to abusive reaffirmations.

This section also amends section 523 explaining that creditors are still subject to State unfair trade practices law with respect to section 523 and 524. Also, the attorney general of a State or other designated official may bring suit on behalf of residents to recover under section 524(C) and may bring suit in State court to enforce State criminal law similar to sections 152 or 157.

*Subtitle B—Priority Child Support**Section 211. Definition of Domestic Support Obligation*

This section amends section 101 of title 11 by defining “domestic support obligation” to mean any debt in the nature of alimony, maintenance, or support (including government assistance) owed to or recoverable by any spouse, former spouse, child, that’s child legal guardian, or governmental unit.

The debt must have been established or subject to establishment before or after entry of an entry of an order for relief under this title and must not have been assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the affected party solely for the purpose of collecting the debt.

*Section 212. Priorities for Claims for Domestic Support Obligations*

This section amends section 507(a) of title 11, United States Code. Section 507 establishes priorities for payment of certain unsecured claims. The amendment moves claims for domestic support obligations from seventh in the list of priorities to first.

*Section 213. Requirements to Obtain Confirmation and Discharge in Cases Involving Domestic Support Obligations*

This section amends section 1325(a) of title 11 of the United States Code. The amended section provides that the debtor is gen-

erally required to pay alimony and child support obligations in full in order to obtain debt forgiveness in chapter 13.

*Section 214. Exceptions to Automatic Stay in Domestic Support Obligation Proceedings*

This section amends section 362(b) of title 11, United States Code, by creating an exception to the automatic stay provision wherein debtors who declare bankruptcy will face the possibility of the withholding, suspension, or restriction of drivers licenses, professional, occupational, and/or recreational licenses if the debtor defaults on any domestic support obligation.

*Section 215. Nondischargeability of Certain Debts for Alimony, Maintenance, and Support*

The section amends section 523 of title 11 of the United States Code. After technical amendments, the section adds that certain debts incurred for actual alimony and child support are automatically nondischargeable. This provision will make it unnecessary for an expouse seeking to enforce these obligations to incur the legal expenses of litigation, as required by present law.

*Section 216. Continued Liability of Property*

This section amends section 522 of Title 11 of the United States Code. The section allows those who are owed domestic support obligations to obtain satisfaction of those obligations by accessing property that is otherwise exempt from other creditors' claims.

*Section 217. Protection of Domestic Support Claims Against Preferential Transfer Motions*

This section amends section 547(c)(7) of title 11 of the United States Code by substituting the phrase "domestic support obligation" for "spouse, former spouse, or child of the debtor \* \* \*

*Section 218. Disposable Income Defined*

This section excludes child support and alimony income from the disposable income test used in bankruptcy cases. It is intended that expenses that are reasonably expected will be paid by such child support or alimony will not be double counted in determining disposable income.

*Section 219. Collection of Child Support*

This section specifies the duties of the trustee with respect to notification requirements under chapter 7 and 13.

*Subtitle C—Other Consumer Protections*

*Section 221. Amendments to Discourage Abusive Bankruptcy Filings*

This section imposes penalties on bankruptcy petition preparers who misled potential debtors regarding bankruptcy.

*Section 222. Sense of Congress*

Section 225 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 223. Additional Amendments to Title 11, United States Code*

This section amends section 507(a) of title 11 of the United States Code by adding certain claims for motor vehicle related death or personal injuries to the list of priorities of payment. Such claims are tenth on the list of priorities.

*Section 224. Protection of Retirement Savings in Bankruptcy*

This section provides that retirement plans sponsored by government and nonprofit employers are exempted from a bankruptcy estate. The section also provides that individual retirement accounts are also exempt from a bankruptcy estate.

## TITLE III—DISCOURAGING BANKRUPTCY ABUSE

*Section 301. Reinforcement of the Fresh Start*

This section 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.

*Section 302. Discouraging Bad Faith Repeat Filings*

This section will greatly reduce abuses of the bankruptcy system by reducing the incentive to file for bankruptcy repeatedly without completing the bankruptcy process. After technical amendments, the amended section adds that with respect to any action taken on a debt or property securing a debt, or any lease, the automatic stay shall terminate with respect to the property or debtor on the 30th day after the filing of the later case if: (A) A single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13; and (B) A single or joint case of that debtor was pending during the preceding year but was dismissed (other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) of this title).

This section provides that the court may extend the stay in a particular case with respect to 1 or more creditors, if a party in interest so requests, after providing notice and a hearing before the expiration of the 30-day period in paragraph (2). The stay will be extended only if the party in interest demonstrates that the filing of the later case is in good faith with respect to the creditors to be stayed.

The section provides that a case shall be presumed to have not been filed in good faith if:

(A) More than one previous case under chapter 7, 11, or 13 of this title in which the individual was a debtor was pending during the 1-year period described in paragraph (1) or;

(B) A previous case under chapter 7, 11, or 13 in which the individual was a debtor was dismissed after the debtor failed to file or amend the petition or other documents as required (after having received from the court a request to do so), or the

debtor failed to perform the terms of a plan that was confirmed by the court (without substantial excuse) or;

(C) If, (1) during the period commencing with the dismissal of the next most previous case under chapter 7, 11, or 13 there has not been a substantial change in the financial or personal affairs of the debtor, (2) the case is a chapter 7 case and there is no other reason to conclude that the later case will be concluded with a discharge, or (3) the case is a chapter 11 or 13 case and there is not a confirmed plan that will be fully performed.

*Section 303. Curbing Abusive Filings*

This section responds to the abuse that occurs when 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. The section allows bankruptcy courts to grant prospective in rem relief for a period of 2 years from the automatic stay with respect to real property in future bankruptcy cases filed by the debtor. 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. A debtor in a subsequent case may move for relief from such order based on changed circumstances or for showing good cause, after notice and a hearing or if the debtor is ineligible under section 109(g) to be a debtor or if the case was filed in violation of a court order prohibiting the debtor from being a debtor.

*Section 304. Debtor Retention of Personal Property Security*

Section 304 provides that the chapter 7 debtor may not retain personal property subject to a lien securing dischargeable debt unless he agrees to reaffirm a debt that is otherwise dischargeable or he redeems the personal property by paying the lienholder the amount allowed under the secured claim. If the debtor fails to do either within 45 days after the first meeting of the creditors under section 341(a), 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. This section is intended to reject those cases which have held that a debtor may retain property subject to a security interest when the creditor does not consent to the retention.

*Section 305. Relief From the Automatic Stay When the Debtor Does not Complete Intended Surrender of Consumer Debt Collateral*

This section amends section 362 of title 11 of the United States Code. The section provides that the automatic stay is terminated as to property securing a claim or subject to an unexpired lease, if within the proscribed time the debtor fails to timely file the required statements of intention or to indicate whether the property will be surrendered or retained. The stay may also be terminated if the debtor intends to retain the property and fails to meet the

requirement to redeem the property or reaffirm the debt, or assume the unexpired lease. The stay may additionally be terminated if the debtor fails to timely take the action specified in a statement of intention, unless the statement specifies reaffirmation and the creditor refuses to reaffirm the debt on the original contract terms. This section is intended to reject those cases which have held that a debtor may retain property subject to a security interest when the creditor does not consent to the retention.

Section 305 also amends section 521(a)(2) to make it apply to all debts, not just consumer debts. Second, a debtor must fulfill his intention within 30 days after the first date set for the meeting of creditors under section 341 of the Bankruptcy Code. With respect to property that has been leased or bailed to a debtor or in which a creditor holds a security interest, subsection (2)(c) 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 of filing for bankruptcy relief.

*Section 306. 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 306 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. The section also limits certain "cram down" rights to preserve a fair balance.

*Section 307. Exemptions*

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 preceding the filing applies "or for a longer portion of such 180-day period than in any other place." Section 307 amends section 522 and requires a debtor to be domiciled in the State for 2 years before he or she can assert that State's exemption scheme.

*Section 308. Residency Requirement for Homestead Exemption*

Section 308 amends section 522 and reduces the value of real or personal property used as a residence which the debtor can claim is exempt by the extent to which such value is attributable to any portion of any property that the debtor disposed of in the 2 year period before filing with the intent to hinder, delay or defraud a creditor.

*Section 309. Protecting Secured Creditors in Chapter 13 Cases*

Under current law, a trustee may assume, reject or assign the interest that the bankruptcy estate has in a lease of personal property. Upon the trustee's rejection or failure to timely assume a lease of personal property, section 309 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 309 allows a chap-

ter 7 debtor to notify the lessor of his 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 313. Further, if the such lease is rejected, neither the automatic stay nor the co-debtor stay, which applies in chapter 13 cases, applies.

This section also adds a new section 1308 to assure that creditors holding purchase money security interests and lessors of personal property continue to receive meaningful payments from the time a chapter 13 bankruptcy is filed until a plan is confirmed and payments to the creditor begin under the plan. Debtors whose plans filed with the court propose to pay their secured debts or personal property leases as part of the plan are required by present law to commence their payments within 30 days of filing their petition. This provision requires that the trustee, in turn, commence payments to the secured creditor or lessor in the amount of the payment provided by the plan to that creditor within 40 days of the filing of the petition. Debtors whose plan does not propose to pay the creditor under the plan are required to pay to the trustee, in addition to their plan payments, the scheduled contractual amount of the debtor's payment to the secured creditor or the lessor. The trustee, in turn, is required to pay such amount to the creditor or lessor.

The provision also requires debtor's plans to provide for payments to secured creditors that are equal monthly installments, and adequate to provide adequate protection to the creditor or lessor.

This section amends section 348(f)(1) of title 11 of the United States Code. The first change deletes "in the converted case, with allowed secured claims" of subparagraph (B) and inserts in its place, "only in a case converted to chapter 11 or 12 but not in a case converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12.

The amended section also provides that with respect to cases converted from chapter 13, the claim of a creditor holding security as of the date of the petition shall continue to be secured unless the full amount of the claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion. This is true notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the chapter 13 proceeding. Thus, if a "cram down" occurs in chapter 13, the debtor could not benefit from this "cram down" if the case is converted to chapter 7.

#### *Section 310. Limitation on Luxury Goods*

This section provides that consumer debts owed to a single creditor aggregating more than \$250 for luxury goods or services purchased within 90 days before the order for relief are presumed to be nondischargeable. Cash advances that are extensions of credit

under an open end credit plan aggregating more than \$750 to all creditors within 70 days are also presumed nondischargeable.

*Section 311. Automatic Stay*

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. Section 311 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.

*Section 312. Extension of 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 6 years of when the debtor obtained a discharge in the prior case. Section 312 extends the current 6-year period to 8 years.

With only limited exception, no refiling bar currently applies to successively filed chapter 13 cases. Section 312 institutes a 5-year bar.

*Section 313. Definition of Household Goods and Antiques*

This section amends section 101 of title 11 of the United States Code. The section provides that the term “household goods” has essentially the same meaning as the same term used by the Federal Trade Commission in section 444.1(I) of CFR title 16. This section lists the items included in the Federal Trade Commission Rule and also certain other property, such as a VCR, children’s toys and hobby equipment, and the like.

*Section 314. Debt incurred to pay Non-dischargeable Debts*

To discourage pre-bankruptcy planning, this section provides that debts incurred within 70 days of filing bankruptcy to pay nondischargeable debts are themselves nondischargeable. In addition, a debt incurred outside of that 70-day period to pay a nondischargeable debt is itself nondischargeable, if the debtor incurred the newly-created debt with the intent to discharge it in bankruptcy. Moreover, this section provides that debts incurred to pay nondischargeable debts will continue to be dischargeable if the debtor owes child support or alimony.

*Section 315. Giving Creditors Fair Notice in Chapters 7 and 13 Cases*

This section amends section 342 of title 11 of the United States Code.

A creditor, in a case of an individual under chapter 7 or 13, may file at any time with the court a notice of the address to be used to notify the creditor. This notice shall be served on the debtor. If the court or the debtor is required to give the creditor notice, 5 days after receipt of the notice under paragraph (1), the notice shall be given at that address.

An entity may file a statement indicating its address for notice in cases under chapter 7 or 13. After 30 days following the state-

ment, any notice in a case filed under chapter 7 or 13 given by the court shall be to that address. Notice given to a creditor other than as provided in this section shall not be effective notice until that notice has been brought to the attention of the creditor.

The section also provides that if the creditor has designated a person or department to be responsible for receiving notices and has established reasonable procedures to ensure bankruptcy notices will be delivered to that department or person, notice shall not be brought to the attention of the creditor until that notice is received by that department or person.

Section 315 requires the debtor to file the following 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. Should a creditor request a copy of the debtor's petition, schedules, or statement of financial affairs, the court is required to supply such to the creditor. This requirement also applies to requests for copies of a chapter 13 debtor's plan which is due within 5 days of the request.

In addition to these requirements, an individual chapter 7 or 13 debtor must provide to the court copies of all Federal tax returns 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 case is pending as well as to any amendments to his tax returns. These tax returns shall be available to any party in interest upon request for inspection and copying.

Additional requirements apply to chapter 13 debtors. 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 45 days before each anniversary of the plan's confirmation date until the case is closed.

*Section 316. Dismissal for Failure to Timely File Schedules or Provide Required Information*

This section provides that bankruptcy cases will be dismissed if an individual debtor in a case under chapter 7 or 13 fails to file all of the information required under section 521(a)(1) of this title within 45 days after the filing for bankruptcy. Under this section, any party in interest may request the court to enter an order dismissing the case. The court shall enter an order of dismissal not later than 5 days after that request except, upon request of the debtor made within 45 days after the filing for bankruptcy, the court may allow the debtor an additional period not to exceed 45 days to file the information required under section 521(a)(1) of this title, if the court finds justification for extending the period.



*Section 317. Adequate Time to Prepare for Hearing on Confirmation of the Plan*

This section amends section 1324 of title 11 of the United States Code. It requires the confirmation hearing in a chapter 13 case to be held not later than 45 days from this date. This section also provides that the debtor should file a plan within 90 days of the order for relief unless an extension is given by the court.

*Section 318. Chapter 13 Plans to Have a 5-Year Duration in Certain Cases*

Under the present law, the duration of a chapter 13 plan is 3 years unless the court, for cause, extends it to a maximum of 5 years. This section requires 5 year plans for cases converted from chapter 7.

*Section 319. 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 319 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. This requirement applies to signed as well as unsigned documents.

*Section 320. Prompt Relief from Stay in Individual Cases*

This section amends section 362(e) of title 11 of the United States Code. The amended section provides that in the case of an individual filing under chapter 7, 11, or 13, the automatic stay under subsection (a) shall terminate 60 days after a request is made by a party in interest under subsection (d), unless a final decision is rendered by the court during the 60-day period (beginning on the date of the request), or the 60-day period is extended by agreement of all parties in interest or by the court for such time as the court finds is required for good cause.

*Section 321. Treatment of Certain Earnings of an Individual Debtor who files a Voluntary Case under Chapter 11*

This section provides that post-petition income will become property of the bankruptcy estate in individual consumer cases under chapter 11.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

*Subtitle A—General Business Bankruptcy Provisions*

*Section 401. Rolling Stock Equipment*

This section amends sections 1168 and 1110 of title 11 of the United States Code. The amended section makes clear that aircraft leases and railroad leases are dealt with in this section and this section only of the bankruptcy code.

*Section 402. Adequate Protection for Investors*

Section 402 creates an exception to the automatic stay provisions of section 362 of the Bankruptcy Code for nonmonetary enforce-

ment actions by “securities self regulatory organizations.” Such actions include the delisting or refusal to permit quotation of any stock that does not meet applicable regulatory requirements. Such organizations, as defined under this section 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.

*Section 403. 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 U.S. Trustee, creditors, and other parties in interest to assess the debtor’s financial condition.

Section 403 allows the bankruptcy court to dispense with this requirement for cause where the debtor solicited prepetition acceptances of its plan of reorganization. This provision particularly applies to “prepackaged chapter 11 plans,” where the debtor, before filing for bankruptcy relief, obtained the acceptance of creditors and interest holders in its plan of reorganization. Section 403 requires notice and hearing as a prerequisite to dispensing with the requirement for a meeting of creditors and equity security holders.

*Section 404. Protection of Refinance of Security Interest*

Section 547(e)(2), subparagraphs (A), (B), and (C) are amended by replacing 10 with the number 30.

*Section 405. Executory Contracts and Unexpired Leases*

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.

This section amends section 365 of United States Code title 11. Under this provision, the trustee shall immediately surrender non-residential real property under which the debtor is the lessee to the lessor if the trustee does not assume or reject the unexpired lease by the earlier of 120 days after the date of the order for relief or the date of plan confirmation. The section also allows the court to extend the time, but only upon motion of the lessor.

*Section 406. Creditors and Equity Security Holders Committees*

This section amends section 1102 of United States Code title 11. It allows the court on its own motion, or by request of a party in interest, to order a change in committee membership if it determines the change is necessary to ensure adequate representation of creditors or equity security holders. This can only be done after notice and hearing.

*Section 407. Amendment to Section 546 of Title 11, United States Code*

This section amends section 546 of title 11, United States Code. The amendment provides that notwithstanding other sections of the title, trustees may not avoid a warehouseman’s lien for storage, transportation or other incidental storage and handling costs.

*Section 408. Limitation*

This section amends section 546(c)(1)(B) of title 11 of the United States Code. The amendment extends the reclamation period from 20 to 45 days.

*Section 409. Amendment to Section 330(a) of Title 11, United States Code*

This section amends section 330(a) of title 11 of the United States Code by clarifying to whom the court is allowed to award reasonable attorney's fees. The amendment also adds that courts are to treat compensation awarded trustees as a commission based on the results achieved.

*Section 410. Postpetition Disclosure and Solicitation*

Section 1125 of title 11 is amended by providing that an acceptance of the plan may be solicited from a holder of a claim or interest if the solicitation complies with nonbankruptcy law and the holder was properly solicited before the commencement of the case.

*Section 411. Preferences*

Section 411 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. Presently, the Bankruptcy Code requires both of these grounds to be established in order to sustain a defense to a preferential transfer action.

Section 411 also establishes a threshold amount for a preferential transfer action. 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 412. Venue of Certain Proceedings*

Section 412 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.

*Section 413. Period for Filing Plan under Chapter 11*

Section 413 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 414. Fees Arising from Certain Ownership Interests*

This section amends section 523(a)(16) of title 11 of the United States Code. The amendment adds "a lot in a homeowners association" to the debtor's interests which are not discharged when other debts are discharged under section 727, 1141, 1228(a), 1228(b), or 1328(b).

*Section 415. Creditor Representation at First Meeting of Creditors*

This section amends section 341(c) of title 11 of the United States Code. The amended section provides that notwithstanding

any local or State law requiring that representation be by an attorney in a meeting of creditors under subsection (a), a creditor holding a consumer debt or any representative of the 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. Nothing in the subsection should be construed to require any creditor to be represented by an attorney at any meeting of creditors.

This section will reduce costs for small businesses in bankruptcy, which often cannot afford to pay an attorney to appear at the creditor's meeting.

*Section 416. Definition of Disinterested Person*

Section 417 amends the definition of a disinterested person under section 101(14) of the Bankruptcy Code by eliminating its references to investment bankers.

*Section 417. Factors for Compensation of Professional Persons*

This section permits a bankruptcy court to consider whether a professional retained by a trustee for bankruptcy-related services is certified as an expert in bankruptcy when setting the amount of compensation for the professional.

*Section 418. Appointment of Elected Trustee*

This section refines existing law by clarifying the procedure for giving effect to the election of a private trustee in a chapter 11 reorganization case. Section 702(b) of the Bankruptcy Code permits creditors at the meeting of creditors to elect one person to serve as trustee in the case, provided certain conditions are met. Section 1104(b) of the Bankruptcy Code relates to the convening of the meeting of creditors for this purpose and the conduct of the election. In addition the section would renumber section 1104(b) as Section 1104(b)(1) and would add a new subsection 1104(b)(2) requiring the U.S. trustee to file a report certifying the election when an eligible, disinterested trustee is elected under paragraph (1). The effect of such filing would be to consider such elected trustee as selected and appointed for purposes of Section 1104 and to terminate the service of any trustee appointed under subsection (d), which provides for the appointment of a trustee or examiner by the U.S. trustee, subject to court approval.

*Section 419. Utility Services*

This section requires certain debtors in bankruptcy to provide adequate assurances of future payment to utility providers. The change made by this section prevents a mere promise coupled with administrative expense priority from constituting adequate assurance.

*Subtitle B—Small Business Bankruptcy Provisions*

*Section 421. Flexible Rules for Disclosure Statement and Plan*

Section 421 authorizes a bankruptcy court, in determining whether a disclosure statement provides adequate information, to 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 422. Definitions; Effect of Discharge*

Section 422 amends section 101 of title 11 and provides that a small business case is a case filed in which the debtor is a "small business debtor." A "small business debtor" is an entity that has aggregate noncontingent, liquidated secured and unsecured debts in the amount of \$4 million or less as of the commencement of the case.

*Section 423. Standard Form Disclosure Statement and Plan*

This section requires the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the U.S. 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 424. Uniform National Reporting Requirements*

The U.S. Trustee Guidelines generally requires 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 U.S. 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 424 mandates that a small business debtor file periodic financial reports containing specified information.

*Section 425. Uniform Reporting Rules and Forms for Small Business Cases*

Section 425 provides that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption uniform reporting rules and Official Bankruptcy Forms to be used by small business debtors.

*Section 426. Duties in Small Business Cases*

To implement greater administrative controls over small business chapter 11 debtors, section 426 institutes additional duties that these debtors must perform. First, the small business debtor must include with the bankruptcy petition its most recent financial statements, including a balance sheet, statement of operations, cash flow statement and federal income tax return. If the debtor

lacks such information, then it must file a statement under penalty of perjury verifying this fact.

Second, the small business debtor is required to attend, through its senior management, meetings scheduled by the bankruptcy court or the U.S. 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 U.S. Trustee also include “initial debtor interviews,” where the U.S. 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 meeting of creditors,” provide an opportunity for the debtor to be examined under oath by the U.S. 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 426 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. 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 426 permits the U.S. Trustee to inspect the debtor’s books and records and business premises at reasonable hours with proper notice.

#### *Section 427. Plan Filing and Confirmation Deadlines*

Section 427 further reduces the time periods for filing plans and achieving confrontation 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 this time period on request of a party in interest for cause. Section 427 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 427 requires that the time period may be extended only if the debtor, after providing notice, demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time.

#### *Section 428. Plan Confirmation Deadline*

Section 428 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 429. Prohibition Against Extension of Time*

To ensure that the strict time frames are not eviscerated, section 429 of this bill limits a court's authority to avoid the impact of these provisions.

*Section 430. Duties of the U.S. Trustee*

Section 430 mandates that the U.S. 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 U.S. Trustee to investigate the debtor's viability and business plan. It also provides an opportunity for the U.S. Trustee to explain the debtor's obligation to file monthly operating reports and other requirements. During the course of the interview, the U.S. 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 430 also authorizes the U.S. Trustee to inspect the debtor's premises, review its books and records, and verify that the debtor has filed its tax returns. The U.S. 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 U.S. Trustee discover material grounds for warranting either dismissal or conversion of the chapter 11 case to one under chapter 7 for liquidation, section 430 requires the U.S. Trustee to apply promptly for such relief.

*Section 431. Scheduling Conferences*

Section 431 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 432. Serial Filer Provisions*

Under this section, 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 2 years from the filing of the second case; (3) The second case was filed within 2 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. These exceptions do not apply if the debtor can prove 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 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 433. Expanded Grounds for Dismissal or Conversion and Appointment of Trustee*

Section 433 requires the conversion or dismissal of a chapter 11 case if the movant establishes cause. An exception to this mandate is specified in this section. This section lists 16 items as examples of cause warranting either mandatory conversion or dismissal of a chapter 11 case. Section 433 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 in the best interests of the creditors and the bankruptcy estate.

*Section 434. Study of Operation of Title 11 of the United States Code, With Respect To Small Businesses*

This section provides that, within 2 years after enactment of this Act, the Small Business Administration shall conduct a study to determine the internal and external factors that cause small businesses to become title 11 debtors and how federal laws may be made more effective and efficient in assisting small businesses to remain viable.

*Section 435. Payment of Interest*

Section 435 permits a debtor to make the requisite interest payments out of rents or other proceeds generated by the real property. It, however, changes the amounts of these payments. Under section 435, 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 estate.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

*Section 501. Petition and Proceedings Related to Petition*

Chapter 9 is a form of bankruptcy relief that is only available to municipalities. Section 501 clarifies that a court must enter the order for relief for those cases.

*Section 502. Applicability of other Sections to Chapter 9*

Insert 555, 556 after 553 and 559, 560 after 557 in Section 901.

TITLE VI—IMPROVED BANKRUPTCY STATISTICS AND DATA

*Section 601. Audit Procedures*

This section amends section 586 of title 28 of the United States Code. This section provides that 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 of title 11 (and when applicable section 111 of title 11) in cases filed under chapter 7 or 13. The procedures shall be reasonably designed in light of ac-



cepted auditing techniques to determine the accuracy and completeness of the information in the audited debtor provided to support the claim for relief.

The audit procedures shall:

(1) Establish a method of selecting appropriate qualified persons to contract with the United States trustee to perform those audits;

(2) Establish a method of randomly selecting cases to be audited (not less than 1 out of every 250 cases in each Federal judicial district shall be selected);

(3) Require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district where the schedules were filed if variances due to higher income or expenses than the district norm; and

(4) Establish procedures for providing, at least annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

The section also provides that the U.S. trustee for each district is authorized to contract with auditors to perform audits in cases designated by the U.S. trustee in accordance with the above procedures.

Upon request of a duly appointed auditor, the debtor shall cause the accounts, papers, documents, financial records, files and all other things that the auditor requests and that are reasonably necessary to facilitate the audit to be made available for inspection.

The report of each audit conducted under this subsection shall be filed with the court, the Attorney General, and the U.S. Attorney, under the procedures established in paragraph (1).

If a material misstatement of income or expenditures or of assets is reported under subparagraph (A), a statement specifying that misstatement shall be filed with the court and the U.S. trustee and shall give notice thereof to the creditors and the U.S. Attorney for the district (in an appropriate case in the opinion of the U.S. trustee).

The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

#### *Section 602. Improved Bankruptcy Statistics*

This section amends chapter 6 of part I of title 28 of the United States Code by adding a new section. This new section provides that the clerk of each district shall compile statistics regarding debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. The Director of the Administrative Office of the United States shall prescribe the form for the statistics, compile the statistics, and make them available to the public. In addition, the director shall prepare annually and submit to Congress a report concerning the statistics compiled and an analysis of the information.

The compilation required of the Director shall be itemized by chapter with respect to title 11, presented both in the aggregate and for each district, and include information concerning the following: (A) Total assets and liabilities of the debtors and each cat-

egory of assets and liabilities reported by those debtors in the schedules prescribed pursuant to section 2075; (B) Current total monthly income, projected monthly net income, and average income and expenses as filed by the debtors under sections 111, 521, and 1322 of title 11; (C) The aggregate amount of debt discharged in the reporting period (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 predominantly nondischargeable categories); (D) Average time period between filing of the petition and the closing of the case; (E) For the reporting period, the number of cases in which a reaffirmation was filed, total number of reaffirmations filed, number of reaffirmation cases where the debtor was not represented by an attorney, and of those cases the number approved by the court; (F) With respect to cases filed under chapter 13 of title 11, the number of cases where the final order determined the value of property securing a claim to be less than the amount of the claim, the number of final orders determining the value of property securing a claim issued, the number of cases dismissed for failure to make payments, and the number of cases where the debtor filed another case within the 6 years previous to the filing, and (G) The extent of creditor misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and (H) The number of cases in which sanctions under rule 9011 were imposed.

The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

*Section 603. Uniform Rules for the Collection of Bankruptcy Data*

To implement the data gathering provisions of section 601, section 603 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 possession. It also specifies the information that should be contained in these reports.

*Section 604. Sense of Congress Regarding Availability of Bankruptcy Data*

Section 604 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 the bankruptcy cases should be released in a useable form in bulk to the public subject to appropriate privacy safeguards.

TITLE VII—BANKRUPTCY TAX PROVISIONS

*Section 701. Treatment of Certain Liens*

Section 701 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 701 does not permit subordination for the purpose of paying chapter 11 administrative expenses. Also,

section 701 requires the chapter 7 trustee to utilize all other estate assets before he could resort to section 724 to subordinate liens on personal and real property of the estate.

Section 701 also prevents a bankruptcy court from determining the amount of 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 702. 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 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 702 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 702, 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.

#### *Section 703. Notice of Request for a Determination of Taxes*

Section 703 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. This amendment comports with section 702 requiring adequate notice to governmental entities.

#### *Section 704. Rate of Interest on Tax Claims*

Section 704 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 repetition unsecured tax claims to be paid under a plan of reorganization, section 704 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 705. Tolling of Priority of Tax Claim Time Periods*

Section 705 suspends applicable time periods under section 507(a)(8) of the Bankruptcy Code by 6 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 1 year. The amendment also tolls the period for 6 months with regard to collection actions pending within the 240-day period.

*Section 706. Priority Property Taxes Incurred*

Section 507 of title 11 is amended by replacing assessed with the word incurred.

*Section 707. Chapter 13 Discharge of Fraudulent and Other Taxes*

Insert (1) after “paragraph” in section 1328(a)(2) of title 11.

*Section 708. Chapter 11 Discharge of Fraudulent Taxes*

Section 708 amends the discharge provisions of chapter 11 to prevent the discharge of tax or customs duty tax claims resulting from a corporate debtor’s fraudulent tax returns. It also prevents the discharge of any unpaid tax obligations that resulted from a corporate chapter 11 debtor’s willful evasion of applicable tax laws.

*Section 709. Stay of Tax Proceedings*

Upon the filing of a bankruptcy case, a broad stay of most creditor collection actions immediately and automatically goes into effect. Section 709 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 709 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 710. 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 6 years from the date of assessment of such claims. Section 710 specifies that these payments must be made paid in regular cash installments not longer than 3 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 709 specifically prohibits balloon payments. The 6-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 710.

*Section 711. Avoidance of Statutory Tax Liens Prohibited*

Section 711 prevents the avoidance of unperfected liens against a bona fide purchaser, if the purchaser qualifies as such under section 6323 of the Internal Revenue Code or similar provision of either state or local law.

*Section 712. Payment of Taxes in the Conduct of Business*

Section 712 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, with only one limited exception. Section 712, 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 were 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 712 clarifies that certain secured and postpetition unsecured taxes incurred by a bankruptcy estate, including property taxes, are entitled to administrative expense priority.

Third, section 712 eliminates the need for a governmental unit to formally request payment of an administrative expense relating to a tax liability or tax penalty.

Four, section 712 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 712 adds a reference to "state statute" to extend this entitlement to state tax claimants.

Fifth, section 712 allows a trustee to recover from property securing a claim for the payment of all ad valorem property taxes relating to such property.

*Section 713. Tardily Filed Priority Tax Claims*

Section 713 permits a priority tax claim to be filed either before the trustee commences distribution or 10 days following the mailing to creditors of the summary of the trustee's final report, whichever is earlier.

*Section 714. 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 714 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 715. 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 gov-

ernment unit for a determination of such liability. Section 715 extends the applicability of section 505(b) to bankruptcy estates.

*Section 716. Requirement to File Tax Returns to Confirm Chapter 13 Plans*

Section 716 requires chapter 13 debtors to file tax returns and institute enforcement mechanisms to ensure compliance. First, section 517 creates an additional requirement for plan confirmation. Namely, the debtor must file all prepetition tax returns for the 6-year period ending prior to the filing of the chapter 13 case. 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 his failure to file the returns was due to circumstances beyond his control. Third, the failure to comply with this provision constitutes cause warranting dismissal or conversion of the chapter 13 case. Fourth, section 716 extends the applicable time periods pertaining to the allowance and disallowance of tax claims that are the subject of tax returns.

*Section 717. Standards for Tax Disclosure*

Section 717 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 as its principal place of business.

*Section 718. Setoff of Tax Refunds*

Section 718 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.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

*Section 801. Amendment to Add a Chapter 15 to Title 11, United States Code*

This section adds a new chapter to title 11 of the United States Code. This new chapter, chapter 15, contains a number of sections and subsections. They are as follows:

*Section 1501. Purpose and Scope of Application*

The new chapter is designed to incorporate the Model Law on Cross-Border Insolvency to provide effective mechanisms for dealing with cases of cross-border insolvency. This section lays out the following chapter objectives: cooperation between the United States and foreign countries, legal certainty in trade investment, fair and efficient administration of cross-border insolvency cases, protection and maximization of the value of debtor's assets, and helping the rescue of troubled businesses. The section also lays out the circumstances when the chapter does and does not apply.

## SUBCHAPTER I—GENERAL PROVISIONS

*Section 1502. Definitions*

This section provides definitions of “debtor,” “establishment,” “foreign court,” “foreign main proceeding,” “foreign nonmain proceeding,” “trustee” and “within the territorial jurisdiction of the United States.”

*Section 1503. International Obligations of the United States*

This section provides that treaties in which the United States is a party will prevail to the extent they are in conflict with provisions of this chapter.

*Section 1504. Commencement of Ancillary Case*

The section provides that a case is commenced by filing a petition for recognition of a foreign proceeding under section 1515.

*Section 1505. Authorization to Act in a Foreign Country*

This section gives authority to the court to appoint a trustee or other entity to act on behalf of an estate created under section 541 of this act in a foreign country. Entities authorized to act may act as permitted by applicable foreign law.

*Section 1506. Public Policy Exception*

This section grants the court discretion not to act if action would be manifestly contrary to the public policy of the United States.

*Section 1507. Additional Assistance*

This section allows the court to provide assistance to foreign representatives. It provides that in determining whether to offer additional assistance the court shall consider whether such assistance will assure just treatment, protection of U.S. Claim holders, prevention of fraudulent use of property, distribution of proceeds and the concept of fresh start (if appropriate).

*Section 1508. Interpretation*

This section directs the court to take into account the international implications when interpreting provisions of the chapter.

## SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

*Section 1509. Right of Direct Access*

This section allows foreign representatives, after recognition through section 1515, to sue and be sued in Federal or State courts and commence a case under section 1504. Recognition under this chapter is a prerequisite to the granting of cooperation.

*Section 1510. Limited Jurisdiction*

The section provides that the filing of petitions under this chapter by a foreign representative does not subject the representative to the jurisdiction of U.S. courts for any other purposes.

*Section 1511. Commencement of Bankruptcy Case under Section 301 or 303*

The section provides that a foreign representative may commence either a voluntary or involuntary case upon filing a petition for recognition. The courts involved must receive notice of both the petition and intent to commence a case. The case will be dismissed unless recognition is granted.

*Section 1512. Participation of a Foreign Representative in a Case under this Title*

The section provides that upon recognition, the foreign representative may participate as a party in interest.

*Section 1513. Access of Foreign Creditors to a Case under this Title*

The section provides that foreign creditors shall have the same rights as domestic creditors. It also provides that allowance and priority of foreign tax claims or public laws shall be governed by applicable tax treaties.

*Section 1514. Notification to Foreign Creditors Concerning a Case under this Title*

The section provides that when notice is to be given to domestic creditors, it shall also be given to foreign creditors. Notification of foreign creditors may be individually unless the court determines another means more appropriate. The section also provides requirements for content of the notice.

SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

*Section 1515. Application for recognition of a Foreign Proceeding*

The section provides that application for recognition shall be by petition to the court. The petition must be accompanied by one of the following (1) Copy of the commencement decision in the foreign proceeding which appointed the foreign representative, (2) A certificate from a foreign court confirming the proceeding and representative, or (3) Other acceptable evidence proving the existence of the proceeding and representative. In addition a statement identifying all foreign proceedings involving the debtor must be filed. All documents in this section shall be filed in English. The section also gives the court the power to require English translations of any additional documents.

*Section 1516. Presumptions Concerning Recognition*

This section establishes presumptions the court is entitled to. The court may presume that foreign certificates or decisions are authentic and accurate. The court may also assume the debtor's registered office, or residence in the case of an individual, is the center of the debtor's main interests.

*Section 1517. Order Recognizing a Foreign Proceeding*

The section provides when a foreign proceeding shall be recognized and when an order recognizing a foreign proceeding shall be ordered. The petition and proceeding must meet the requirements



in this section as well as other referenced sections. The section also allows the modification or termination of recognition if the grounds for granting it did not exist or ceased to exist. Such a determination required to court to weigh possible prejudice to parties relying on the granting of recognition.

*Section 1518. Subsequent Information*

This section provides that the foreign representative must file with the court a notice of any change of status in the foreign proceeding or representative and any other proceeding which becomes known.

*Section 1519. Relief that may be Granted upon Petition for Recognition of a Foreign Proceeding*

This section allows the court to grant provisional relief while the petition for recognition is pending if relief is urgently needed to protect the assets of the debtor. This relief terminates when the petition for recognition is decided upon. The section also provides instances when relief shall not be granted.

*Section 1520. Effects of Recognition of a Foreign Main Proceeding*

The section provides sectional cross-references to other sections which become applicable upon recognition. In addition the section restrains the transfer, encumbrance or any other disposition of the debtor's property within the United States to the extent it is property of an estate under sections 363, 549 and 552. It also allows the foreign representative to operate the debtor's business and exercise the powers of a trustee.

*Section 1521. Relief that may be Granted upon Recognition of a Foreign Proceeding*

The section allows the court to grant relief, upon recognition, where necessary to effectuate the purpose of the chapter and to protect the assets of the debtor or the interests of the creditors. The relief includes stays, suspension of rights to dispose of assets, examining witnesses and gathering information on debtor's assets, entrusting the foreign representative or other court designee with the administration of the debtor's assets, and any additional relief that may be available. The section does not allow the court to enjoin a police or regulatory act, including a criminal action or proceeding.

*Section 1522. Protection of Creditors and other Interested Persons*

The section provides that the court must find that the interests of creditors and other interested persons are sufficiently protected when granting relief under sections 1519 and 1521. The court may condition its grant of relief or modify or terminate such relief once granted.

*Section 1523. Actions to Avoid Acts Detrimental to Creditors*

The section provides that, upon recognition, a foreign representative in a pending case has standing to initiate actions under other sections of this chapter. The section also provides that when the pending case is a nonmain proceeding, the court must be satisfied

that the action initiated relates to assets that should be administered in the foreign nonmain proceeding.

*Section 1524. Intervention by a Foreign Representative*

The section provides that, upon recognition, a foreign representative may intervene in any proceedings in which the debtor is a party.

SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

*Section 1525. Cooperation and Direct Communication between the Court and Foreign Courts or Foreign Representatives*

The section provides that the court shall cooperate to the maximum extent possible with foreign courts or representatives. The court may communicate directly with these courts and representatives.

*Section 1526. Cooperation and Direct Communication between the Trustee and Foreign Courts or Foreign Representatives*

The section provides that the trustee shall cooperate to the maximum extent possible with foreign courts or representatives. The trustee may communicate directly with these courts and representatives.

*Section 1527. Forms of Cooperation*

The section provides that the cooperation mentioned in sections 1525 and 1526 may be accomplished by any appropriate means including appointment of a person to act at the direction of the court, communication, coordination of administration and supervision of assets, approval and implementation of agreements and coordination of concurrent proceedings.

SUBCHAPTER V—CONCURRENT PROCEEDINGS

*Section 1528. Commencement of a Case under this Title after Recognition of a Foreign Main Proceeding*

The section provides that upon recognition of a foreign main proceeding, a case may be commenced under another chapter only if the debtor has assets in the United States. It further provides that the effects of the case shall be restricted to assets in the United States and other assets if necessary to accomplish coordination to the extent the other assets are not subject to the jurisdiction and control of a recognized foreign proceeding.

*Section 1529. Coordination of a Case under this Title and a Foreign Proceeding*

The section provides that when foreign and domestic proceedings regarding the same debtor are taking place concurrently the court shall seek cooperation and coordination. The section also provides for the applicability of relief under specific circumstances and discusses treatment of inconsistencies between cases in the United States and foreign jurisdictions.

*Section 1530. Coordination of more than One Foreign Proceeding*

This section provides that the court shall seek cooperation and coordination if the debtor is involved in more than one foreign proceeding. The section further provides that any relief granted must be consistent and that relief may be modified or terminated for the purpose of facilitating coordination of the proceedings.

*Section 1531. Presumption of Insolvency Based on Recognition of a Foreign Main Proceeding*

The section provides that for the purpose of commencing a proceeding under section 303, recognition of a foreign main proceeding is proof that the debtor is not paying his debts.

*Section 1532. Rule of Payment in Concurrent Proceedings*

The section provides that, without prejudice to secured claims or rights in rem, once a creditor receives payment of an insolvency claim in a foreign proceeding, the creditor may not receive another payment for the same claim if the payments made to other creditors in the same class are proportionately less than the payment received.

Section 1532 was the last section to be added under Title VIII.

*Section 802. Amendments to Other Chapters in Title 11, United States Code*

This section amends section 103 of United States Code title 11. The section identifies when chapter 15 applies.

The section also amends section 101 of United States Code title 11. The section changes the definitions of “foreign proceeding” and “foreign representative” in order to be consistent with the new chapter 15.

The section also amends section 157(b)(2) of United States Code title 28. This section changes the procedures section to recognize foreign proceedings under chapter 15.

The section also amends section 1334 of United States Code title 28. The section provides an exception for chapter 15 cases.

Lastly the section amends section 586 of United States Code title 28. The section adds chapter 15 to the duties of trustees section.

*Section 803. Claims Relating to Insurance Deposits in Cases Ancillary to Foreign Proceedings*

This section amends section 304 of United States Code title 11. The section adds a new subsection (a) which defines “domestic insurance company,” “foreign insurance company,” “U.S. claimant,” “U.S. creditor,” and “U.S. policyholder.” The section also provides instances in which the court may not grant relief against foreign insurance companies.

## TITLE IX—FINANCIAL CONTRACTS PROVISIONS

*Section 901. Bankruptcy Code Amendments*

Subsection (a)(1) amends the Bankruptcy Code definitions of “repurchase agreement” and “swap agreement” to conform with the amendments to the FDIA contained in sections 901(e) and 901(f) of the Act.

In connection with the definition of “repurchase agreement,” the term “qualified foreign government securities” is defined to include securities that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development (OECD). This language reflects developments in the repurchase agreement markets, which increasingly use foreign government securities as the underlying asset. The securities are limited to those issued by or guaranteed by full members of the OECD, as well as countries that have concluded special lending arrangements with the International Monetary Fund associated with the Fund’s General Arrangements to Borrow.

Subsection (a)(1) also amends the definition of “repurchase agreement” to include those on mortgage-related securities, mortgage loans and interests therein, and expressly to include principal and interest-only U.S. Government and agency securities as securities that can be the subject of a “repurchase agreement.” The reference in the definition to U.S. Government and agency securities is intended to include all obligations eligible for purchase by Federal Reserve banks under the similar language of section 14(b) of the Federal Reserve Act, such as those issued by Fannie Mae and Freddie Mac.

This amendment is not intended to affect the status of repos involving securities or commodities as securities contracts, commodity contracts, or forward contracts, and their consequent eligibility for similar treatment under other provisions of the Bankruptcy Code. In particular, a repurchase agreement as defined in the Bankruptcy Code, insofar as it applies to a security, would continue to be a securities contract as defined in the Bankruptcy Code and thus also would be subject to the Bankruptcy Code provisions pertaining to securities contracts. Similarly, insofar as a repurchase agreement as defined in the Bankruptcy Code applies to a commodity, it would continue to be a forward contract for purposes of the Bankruptcy Code and would be subject to the Bankruptcy Code provisions pertaining to forward contracts.

Subsection (a)(1) specifies that repurchase obligations under a participation in an commercial mortgage loan do not make the participation agreement a “repurchase agreement.” Such repurchase obligations embedded in participation in commercial loans (such as recourse obligations) do not constitute a “repurchase agreement.” However, a repurchase agreement involving the transfer of participations in commercial mortgage loans with a simultaneous agreement to repurchase the participation on demand or at a date certain 1 year or less after such transfer would constitute a “repurchase agreement.”

The definition of “swap agreement” is amended to include an “interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement.” As

amended, the definition of “swap agreement” will achieve contractual netting across economically similar over-the-counter products that can be terminated and closed out on a mark-to-market basis.

The definition of “swap agreement” originally was intended to provide sufficient flexibility to avoid the need to amend the definition as the nature and uses of swap transactions matured. To that end, the phrase “or any other similar agreement” was included in the definition. To clarify this, subsection (a)(1) expands the definition of “swap agreement” to include “any agreement or transactions similar to any other agreement or transaction referred to in [subsection (a)(1)] that is presently, or in the future becomes, regularly entered into in the swap market [ . . . ] and is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value.”

The definition of “swap agreement” in this subsection should not be interpreted to permit parties to document non-swaps as swap transactions. Traditional commercial arrangements, such as supply agreements, or other non-financial market transactions, such as commercial, residential or consumer loans, cannot be treated as “swaps” under either the FDIA or the Bankruptcy Code because the parties purport to document or label the transactions as “swap agreements.” Subsection (a)(1)(C) specifies that this definition of swap agreement applies only for purposes of the Bankruptcy Code and is inapplicable to the other statutes, rules and regulations enumerated in that subsection.

The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement. This ensures that any such agreement, arrangement or enhancement is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the Bankruptcy Code and the FDIA. Similar changes are made in the definitions of “forward contract,” “commodity contract” and “repurchase agreement.” An example of a security arrangement is a right of set off; examples of other credit enhancements are letters of credit, guarantees, reimbursement obligations and other similar agreements.

Subsections (a)(2) and (a)(3) amend the Bankruptcy Code definitions of “securities contract” and “forward contract,” respectively, to conform them to the definitions in the FDIA, and also to include any security agreements or arrangements or other credit enhancements related to one or more such contracts.

Subsection (a)(2), like the amendments to the FDIA, amends the definition of “securities contract” expressly to encompass margin loans and to clarify the coverage of securities options. The inclusion of “margin loans” in the definition is intended to encompass only those loans commonly known in the securities industry as “margin loans,” such as arrangements where a securities broker or dealer extends credit to a customer in connection with the purchase, sale or trading of securities, and does not include loans that are not commonly referred to as “margin loans,” however documented. The reference in subsection (b) to a “guarantee” by or to a “securities

clearing agency” is intended to cover other arrangements, such as novation, that have an effect similar to a guarantee.

Subsection (a)(2) also specifies that purchase, sale and repurchase obligations under a participation in a commercial mortgage loan do not constitute “securities contracts.” While a contract for the purchase or sale or a participation may constitute a “securities contract,” the purchase, sale or repurchase obligation embedded in a participation agreement does not make that agreement a “securities contract.”

Subsection (b) amends the Bankruptcy Code definitions of “financial institution” and “forward contract merchant.” The definition for “financial institution” includes Federal Reserve Banks and the receivers or conservators of insolvent depository institutions. With respect only to securities contracts, the definition of “financial institution” also includes investment companies registered under the Investment Company Act of 1940.

Subsection (b) also adds a new definition of “financial participant” to limit the potential impact of insolvencies upon other major market participants. This definition will allow such market participants to close-out and net agreements with insolvent entities under sections 362(b)(6), 546, 548, 555, and 556 even if the creditor could not qualify as, for example, a commodity broker. The new subsection preserves the limitations of the right to close-out and net such contracts, in most cases, to entities who qualify under the Bankruptcy Code’s counterparty limitations. However, where the counterparty has transactions with a total gross dollar value of at least \$1 billion in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least \$100 million (aggregated across counterparties) in one or more agreements or transactions on any day during the previous 15-month period, the new subsection and corresponding amendments would permit it to exercise netting and related rights irrespective of its inability otherwise to satisfy those counterparty limitations. This change will help prevent systemic impacts upon the markets from a single failure, and is derived from threshold tests contained in Regulation EE promulgated by the Federal Reserve in implementing the netting amendments contained in the Federal Deposit Insurance Corporation Improvement Act.

Subsection (C) adds to the Bankruptcy Code new definitions for the terms “master netting agreement” and “master netting agreement participant.”

The definition of “master netting agreement” is designed to protect the termination and close-out netting provisions of cross-product master agreements between parties. Such an agreement may be used (i) to document a wide variety of securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements or (ii) as an umbrella agreement for separate master agreements between the same parties, each of which is used to document a discrete type of transaction. The definition includes security agreements or arrangements or other credit enhancements related to one or more such agreements and clarifies that a master netting agreement will be treated as such even if it documents transactions that are not within the enumerated cat-

egories of qualifying transactions (but the provisions of the Bankruptcy Code relating to master netting agreements and the other categories of transactions will not apply to such other transactions).

A “master netting agreement participant” is any entity that is a party to an outstanding master netting agreement with a debtor before the filing of a bankruptcy petition.

Subsection (d) amends section 362(b) of the Bankruptcy Code to protect enforcement, free from the automatic stay, of setoff or netting provisions in swap agreements and in master netting agreements and security agreements or arrangements related to one or more swap agreements or master netting agreements. This provision parallels the other provisions of the Bankruptcy Code that protect netting provisions of securities contracts, commodity contracts, forward contracts, and repurchase agreements. Because the relevant definitions include related security agreements, the references to “setoff” in these provisions, as well as in section 362(b)(6) and (7) of the Bankruptcy Code, are intended to refer also to rights to foreclose on, and to set off against obligations to return collateral securing swap agreements, master netting arrangements, repurchase agreements, securities contracts, commodity contracts, or forward contracts. Collateral may be pledged to cover the cost of replacing the defaulted transactions in the relevant market, as well as other costs and expenses incurred or estimated to be incurred for the purpose of hedging or reducing the risks arising out of such termination. Enforcement of these agreements and arrangements is consistent with the policy goal of minimizing systemic risk.

Subsection (d) also clarifies that the provisions protecting setoff and foreclosure in relation to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, and master netting agreements free from the automatic stay apply to collateral pledged by the debtor that is under the control of the creditor but that cannot technically be “held by” the creditor, such as receivables and book-entry securities, and to collateral that has been repledged by the creditor and securities resold pursuant to repurchase agreements.

Subsection (e) amends section 546 of the Bankruptcy Code to provide that transfers made under or in connection with a master netting agreement or an individual contract covered thereby may not be avoided by a trustee except where such transfer is made with actual intent to hinder, delay or defraud or except to the extent a transfer under an individual contract is otherwise avoidable. For example, if a transfer under a master netting agreement relates both to a securities contract and a swap agreement and the transferee is a swap participant but not a commodity broker, forward contract merchant, stockbroker, financial institution or participant, or a securities clearing agency, the transfer would benefit from Section 546(h) to the extent allocable to the swap agreement. This Section of the Act also clarifies the limitations on a trustee’s power to avoid transfers made under swap agreements.

The current codification of section 546 of the Bankruptcy Code contains two subsections designated as “(g)”; subsection (e) corrects this error.

Subsection (f) amends section 548(d) of the Bankruptcy Code to provide that transfers made under or in connection with a master netting agreement may not be avoided by a trustee except where such transfer is made with actual intent to hinder, delay or defraud. This amendment provides the same protections for transfers made under, or in connection with, master netting agreements as currently is provided for margin payments and settlement payments received by commodity brokers, forward contract merchants, stockbrokers, financial institutions, securities clearing agencies, repo participants, and swap participants under paragraphs (B), (C) and (D) of section 548(d), even if the transfer is not directly allocable to an individual contract covered by the master netting agreement.

Subsections (g), (h), (i) and (j) clarify that the provisions of the Bankruptcy Code that protect (i) rights of liquidation under securities contracts, commodity contracts, forward contracts and repurchase agreements also protect rights of termination or acceleration under such contracts, and (ii) rights to terminate under swap agreements also protect rights of liquidation and acceleration.

Subsection (k) adds a new section 561 to the Bankruptcy Code to protect the contractual right of a master netting agreement participant to enforce any rights of termination, liquidation, acceleration, offset or netting under a master netting agreement. Such rights include rights arising (i) from the rules of a securities exchange or clearing organization, (ii) under common law, law merchant or (iii) by reason of normal business practice. This is consistent with the current treatment of rights under swap agreements under section 560 of the Bankruptcy Code.

Subsections (b)(2)(A) and (b)(2)(B) of new Section 561 limit the exercise of contractual rights to net or to offset obligations where the debtor is a commodity broker and one leg of the obligations sought to be netted relates to commodity contracts. Under subsection (b)(2)(A) netting or offsetting is not permitted in these circumstances if the party seeking to net or to offset has no positive net equity in the commodity account at the debtor. Subsection (b)(2)(B) applies only if the debtor is a commodity broker, acting on behalf of its own customer, and is in turn a customer of another commodity broker. In that case, the latter commodity broker may not net or offset futures obligations with non-futures claims against its customer, the debtor. Subsections (b)(2)(A) and (b)(2)(B) limit the depletion of assets available for distribution to customers of commodity brokers. This is consistent with the principle of subchapter IV of chapter 7 of title 11 that gives priority to customer claims in the bankruptcy of a commodity broker.

For the purposes of Bankruptcy Code sections 555, 556, 559, 560 and 561, it is intended that the normal business practice in the event of a default of a party based on bankruptcy or insolvency is to terminate, liquidate or accelerate securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements with the bankrupt or insolvent party.

The protection of netting and offset rights in sections 560 and 561 is in addition to the protections afforded in sections 362(b)(6), (b)(7), (b)(17) and (b)(19).



Under title IX, the termination, liquidation or acceleration rights of a master netting agreement participant are subject to limitations contained in other provisions of the Bankruptcy Code relating to securities contracts and repurchase agreements. In particular, if a securities contract or repurchase agreement is documented under a master netting agreement, a party's termination, liquidation and acceleration rights would be subject to the provisions of the Bankruptcy Code relating to orders authorized under the provisions of SIPA or any statute administered by the SEC. In addition, the netting rights of a party to a master netting agreement would be subject to any contractual terms between the parties limiting or waiving netting or set off rights. Similarly, a waiver by a bank or a counterparty of netting or set off rights in connection with QFCs would be enforceable under the FDIA.

Subsection (l) clarifies that, with respect to municipal bankruptcies, all the provisions of the Bankruptcy Code relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements (which by their terms are intended to apply in all proceedings under title 11) will apply in a chapter 9 proceeding for a municipality. Although sections 555, 556, 559 and 560 provide that they apply in any proceeding under the Bankruptcy Code, this subsection makes a technical amendment in chapter 9 to clarify the applicability of these provisions.

Subsection (m) clarifies that the provisions of the Bankruptcy Code related to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements apply in a proceeding ancillary to a foreign insolvency proceeding.

Subsections (n) and (o) clarify that the exercise of termination and netting rights will not otherwise affect the priority of the creditor's claim after the exercise of netting, foreclosure and related rights.

Subsection (o) amends section 553 of the Bankruptcy Code to clarify that the acquisition by a creditor of setoff rights in connection with swap agreements, repurchase agreements, securities contracts, forward contracts, commodity contracts and master netting agreements cannot be avoided as a preference.

This subsection also adds setoff of the kinds described in sections 555, 556, 559, 560, of the Bankruptcy Code to the types of setoff excepted from section 553(b).

#### *Section 902. Damage Measure*

Section 902 adds a new section 562 to the Bankruptcy Code providing that damages under any swap agreement, securities contract, forward contract, commodity contract, repurchase agreement or master netting agreement will be calculated as of the earlier of (I) the date of rejection of such agreement by a trustee or (ii) the date of liquidation, termination or acceleration of such contract or agreement.

New section 562 provides important legal certainty and makes the Bankruptcy Code consistent with the current provisions related to the timing of the calculation of damages under QFC's in the FDIA.

*Section 903. Asset-backed Securitizations*

Section 903 generally protects asset-backed securitization transactions from legal uncertainties and disruptions related to the bankruptcies of certain parties and allows for the further development of structured finance. Asset securitization involves the issuance of securities supported by assets having an ascertainable cash flow or market value. Securitization of receivables, such as small-business loans, commercial and multifamily mortgages, and car loans, allows for the funding of such loans from capital market sources. The process generally enlarges the pool of capital available and reduces financing costs for vital lending purposes such as the financing of small-business operations and home ownership.

Through a number of definitions designed to ensure that the exclusion from property of the estate applies only to the intended type of transaction, new section 541(b)(5) of the Bankruptcy Code excludes from the property of a debtor's estate any "eligible asset" (and proceeds thereof) to the extent that such eligible asset was "transferred" by the debtor, before the date of commencement of the case, to an "eligible entity" in connection with an "asset-backed securitization." Each term is explicitly defined to reflect its specific role or application in the securitization process to ensure that only bona fide securitizations are eligible for the safe harbor exclusion. All defined elements of a securitization must be present for the safe harbor to apply. Other commercial transactions lacking any of the defined elements, such as transactions documented and structured as collateralized lending arrangements and other commercial asset sales or financings that are unrelated to securitization transactions, would be ineligible for the safe harbor provided by section 541(b)(5).

The phrase "to the extent" in new section 541(b)(5) makes clear that a portion of the eligible asset may remain part of the debtor's estate, for example, where the eligible entity obtains the right to receive only interest payments on the first 10 percent of payments due on a receivable in connection with an asset-backed securitization. In addition, the reference to section 548(a) in new section 541(b)(5) will make clear that the safe harbor does not supersede a trustee's power to avoid fraudulent transfers.

New section 541(b)(5) is not intended to override state law requirements, if any, regarding "perfection" of an asset sale. However, regardless of strict compliance with such state law requirements, new section 541(b)(5) is intended to provide an exclusion of the debtor's interest in eligible assets (and proceeds thereof) from the debtor's estate, upon compliance with section 541(b)(5). Thus, despite an eligible entity's failure to have properly perfected a sale for state law purposes, the eligible assets in question would remain excluded from the debtor's estate. In such event, however, a third party creditor with an interest in such eligible assets under state law would not be precluded from asserting, outside of the bankruptcy proceedings, such interest against the issuer or any other party purporting to have an interest in those assets. In other words, the amendments do not purport to extinguish any party's interest in the securitized assets other than the debtor's interest to the extent transferred by the debtor to the securitization vehicle. In order to provide certainty to participants in the asset-backed se-

curities market (including both issuers and purchasers of such securities), it is noted that the “strong-arm” provisions of section 544 of the Bankruptcy Code are not intended to override the general rule set forth in new section 541(b)(5) so as to bring such assets back into the debtor’s estate.

Frequently, asset securitizations involve the issuance of more than one class of securities with differing payment priorities, subordination provisions and other characteristics. The definition of “asset-backed securitization” contained in new section 541(e)(1) requires that the most senior asset-backed securities backed by the eligible assets in question be rated investment grade, thereby requiring that each asset-backed securitization as to which eligible assets are excluded from the debtor’s estate be a carefully reviewed transaction subjected to third party scrutiny by a nationally recognized statistical rating organization. In view of the cost and time associated with obtaining an investment-grade rating, such ratings are generally not pursued for smaller transactions. These and other burdens of the rating process add further protection against potential abuse of the safe harbor for sham transactions and ensure its application for its intended purpose—to preserve payments on asset-backed securities issued in the public and private markets.

New section 541(e)(2) defines the term “eligible asset.” This definition is based upon the definition provided in rule 3a-7 under the Investment Company Act of 1940, which provides an exemption from registration under the Investment Company Act for issuers of asset-backed securities (i.e., issuers in the business of purchasing, or otherwise acquiring, and holding eligible assets). The phrase “or other assets” is intended to cover assets often conveyed in connection with securitization transactions such as letters of credit, guarantees, cash collateral accounts, and other assets that are provided as additional credit support. This phrase would also cover other assets, such as swaps, hedge agreements, etc., that are provided to protect bondholders against interest rate, currency and other market risks. The inclusion of cash and securities as eligible assets allows so-called market-value based securitizations of equity and other non-amortizing securities to fall within the purview of the amendment, although securitizations of such securities are not included under rule 3a-7 and therefore would be subject to regulation under the Investment Company Act if another exemption therefrom were not available.

New sections 541(e)(3) and (4) define the terms “eligible entity” and “issuer,” respectively. The definitions exclude operating companies by encompassing only single purpose entities. Because securitization transactions often involve intermediary transferees, an eligible entity can be either an issuer or an entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer.

New section 541(e)(5) defines the term “transferred.” In order for the eligible assets to be excluded from the debtor’s estate under section 541, the debtor must represent and warrant in a written agreement that such eligible assets were sold, contributed or otherwise conveyed with the intention of removing them from the debtor’s estate pursuant to section 541. The definition makes clear that the debtor’s written intention as to the exclusion of the eligible as-

sets will be honored, regardless of the state law characterization of the transfer as a sale, contribution or other conveyance, and regardless of any other aspect of the transaction (such as the debtor's holding an interest in the issuer or any securities issued by the issuer, the ongoing servicing obligation of the debtor; the tax and accounting characterization; or any recourse to the debtor, whether relating to a breach of a representation, warranty or covenant, or otherwise) which may affect a state law analysis as to the true sale.

*Section 904. Effective date; Application of Amendments*

Subsection (a) provides that the amendments made under title IX take effect on the date of enactment.

Subsection (b) provides that the amendments made under title IX shall not apply with respect to cases commenced, or to conservator/receiver appointments made, before the date of enactment.

TITLE X—PROTECTION OF FAMILY FARMERS

*Section 1001. Reenactment of Chapter 12*

Chapter 12 is reenacted on April 1, 1999.

*Section 1002. Debt limit Increase*

This section amends section 104(b) of title 11 of the United States Code. This provision provides, beginning April 1, 2001, for annual or biannual adjustments of the debt limit for family farmers.

*Section 1003. Elimination of Requirement that Family Farmer and Spouse Receive Over 50 Percent of Income From Farming and Operation in Year Prior to Bankruptcy*

This section amends section 101(18)(A) of title 11 of the United States Code by requiring that persons engaged in farming operations must have received more than 50 percent of his/her/their gross income from farming in at least one of the three calendar years preceding the year in which their case was filed. Previously, those persons must have received over 50 percent of their income in the year immediately preceding the bankruptcy filing.

*Section 1004. Certain Claims Owed to Governmental Units*

Section 1004 provides for payment in full of all claims entitled to section 507 priority unless the claim is owed to a governmental unit arising from the sale or exchange of any farm asset. In that case the claim is treated as an unsecured claim and the underlying debt is treated the same if the debtor receives a discharge or the holder of a claim agrees to a different treatment of that claim.

TITLE XI—TECHNICAL AMENDMENTS

In general, the changes in this title of S. 625 mirror provisions of H.R. 764, which passed the House of Representatives in the 105th Congress.

*Section 1101. Definitions*

This section amends the definitions contained in section 101 of title 11 of the United States Code. Paragraphs (1), (2), (4), (5)(B), (7), and (8) of section 401 make technical changes to section 101 to convert each definition into a sentence (thereby facilitating future amendments to the separate paragraphs) and to redesignate the definitions in correct and completely numerical sequence. Paragraph (8) of this section makes the necessary conforming amendment to cross references to the newly redesignated definitions and simplifies these references to avoid future reference errors. Paragraph (5)(A) of the section excludes family farms from the definition of single asset real estate.

In general terms, single asset real estate is a single piece of real estate which generates substantially all of the gross income of the debtor, on which no other substantial business is being conducted, and which as presently defined is encumbered by no more than \$4 million in outstanding debt. Section 362 of the Bankruptcy Code effectively provides a secured creditor with relief from the automatic stay's bar to foreclosure on such property unless, within 90 days of the order for relief, the debtor has filed a plan of reorganization which stands a reasonable possibility of being confirmed, or unless the debtor has commenced making monthly payments to each secured creditor in an amount equal to interest at the current fair market rate on the value of the creditor's interest in the real estate.

The present \$4 million cap prevents the use of the expedited relief procedure in many commercial property reorganizations, and effectively provides an opportunity for a number of debtors to abusively file for bankruptcy in order to obtain the protection of the automatic stay against their creditors. The section removes the ceiling.

*Section 1102. Adjustment of Dollar Amounts*

This section corrects an omission in section 104(b) of title 11 of the United States Code, as added by Public Law 103-894, by adding references to section 522(f)(3) so that the triennial adjustment required by section 104(b) extends to the figure representing an aggregate value of certain implements, professional books, tools of the trade, farm animals, and crops which the debtor may exempt from the property of the estate and so protect from creditors' liens. Section 522(f)(3) now sets the total permissible value of such property at \$5,000.

*Section 1103. Extension of Time*

The section makes a technical amendment by striking "922" and all that follows and inserting "922, 1201, or." To correct a reference error described in amendment notes contained in the United States Code.

*Section 1104. Technical Amendments*

This section of the bill makes a technical amendment by striking subsection "(c) or (d) of" in section 109(b)(2). Additionally, it adds "or" to section 541(b)(4) and inserts "products" for "product" in section 552(b)(1).

*Section 1105. Penalty for Persons Who Negligently or Fraudulently Prepare Bankruptcy Petitions*

This section of the bill makes a technical correction to change from the singular possessive to the plural possessive in reference to the fees payable to attorneys. This section amends section 110(j)(3) of title 11, of the United States Code.

*Section 1106. Limitation on Compensation of Professional Persons*

This section amends 328(a) of title 11 of the United States Code to provide that a trustee or a creditors' and equity security holders' committee may, with court approval, employ a professional person on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. This section amends section 328(a) to include compensation "on a fixed or percentage fee basis" in addition to the other specified forms of reimbursement.

*Section 1107. Special Tax Provisions*

The section of the bill makes a technical correction in section 346(g)(1)(C) of title 11 of the United States Code to remove language referring to a repealed section of the Internal Revenue Code of 1986. Additional information regarding the repealed section is indicated in the appropriate footnote, and contained in the notes under the heading "References in Text," found in the United States Code.

*Section 1108. Effect of Conversion*

The section makes a technical correction in section 348(f)(2) of title 11 of the United States Code to clarify that the first reference to property, like the subsequent reference to property, is a reference to property of the estate.

*Section 1109. Allowance of Administrative Expenses*

This section provides that 503(b)(4) of title 11 of the United States Code, limits the types of compensable professional services rendered by an attorney or accountant that can qualify as administrative expenses in a bankruptcy case. Expenses for attorneys or accountants incurred by individual members of creditors' and equity security holders' committees would not be recoverable, but expenses incurred for such professional services by the committees themselves would be.

*Section 1110. Exceptions to Discharge*

This section makes technical and conforming changes to accommodate drafting errors in changes made to title 11 from the Bankruptcy Reform Act of 1994 and the Omnibus Consolidated Rescissions and Appropriation Act of 1996.

*Section 1111. Effect of Discharge*

Section 1214 of the bill makes technical amendments to correct errors in section 524(a)(3) of title 11 of the United States Code.

*Section 1112. Protection Against Discriminatory Treatment*

The section amends section 525(C) of title 11 of the United States Code by making a technical amendment to conform a reference to its antecedent reference. The omission of “student” before “grant” in the second place it appears in section 525(C) made possible the interpretation that a broader limitation on lender discretion was intended, so that no loan could be denied because of a prior bankruptcy if the lending institution was in the business of making student loans. The section is intended to make clear that lenders involved in making government guaranteed or insured student loans are not barred by this Bankruptcy Code provision from denying other types of loans based on an applicant’s bankruptcy history; only student loans and grants, therefore, cannot be denied under section 525(C) because of a prior bankruptcy.

*Section 1113. Property of the Estate*

The section makes technical changes to section 541 of the Bankruptcy Code to clarify the original Congressional intent to generally exclude production payments from the debtor’s estate.

*Section 1114. Preferences*

Technical amendment reaffirms the position that innocent lenders should not be subject to the insider preference provision. In 1994, the Congress first attempted to clarify the situation by amending section 550 of the Code. The section by section analysis placed in the Congressional Record stated: “This section by section overrules the DePrizio line of cases and clarifies that non-insider transferees should not be subject to the preference provisions of the Bankruptcy Code beyond the 90 day statutory period.” Courts ignored the amendments and the legislative history that is why this is here.

*Section 1115. Postpetition Transactions*

The section amends section 549(C) to clarify its application to an interest in real property.

*Section 1116. Disposition of Property of the Estate*

The section amends section 726(b) of title 11 of the United States Code, by striking “1009”.

*Section 1117. General Provisions*

The section amends section 901(a) of title 11 of the United States Code to correct an omission in a list of sections applicable to cases under chapter 9 of title 11.

*Section 1118. Abandonment of Railroad Line*

The section redesignates section “11347” as section “11326(a).”

*Section 1119. Contents of Plan*

The section redesignates section “11347” as section “11326(a).”

*Section 1120. Discharge Under Chapter 12*

The section amends section 1228 of title 11 of the United States Code, replacing each reference of “1222(b)(10)” with “1222(b)(9)”.

*Section 1121. Bankruptcy Cases and Proceedings*

This section makes a technical change to correct an incomplete cross-reference.

*Section 1122. Knowing Disregard of Bankruptcy Law or Rule*

This section amends section 156(a) of title 18 of the United States Code, which defined “bankruptcy petition preparer” and “document for filing,” by making stylistic changes and correcting a reference to title 11 of the United States Code.

*Section 1123. Transfers Made by Nonprofit Charitable Corporations*

This section amends section 363(d) of title 11 of the United States Code. This section is Specter’s amendment concerning the distribution of nonprofit corporations’ assets.

*Section 1124. Protection of Valid Purchase Money Security Interests*

Section 547(c)(3)(B) of title 11 is amended by replacing 20 with 30.

*Section 1125. Extensions*

Section 302(d)(3) of the Bankruptcy, Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986 is amended by striking out all references to October 1, 2002, whichever occurs first and October 1, 2003 and whichever occurs first.

*Section 1126. Bankruptcy Judgeships*

This section amends title 28 of the United States Code. It authorizes the appointment of additional temporary bankruptcy judgeships in the districts that follow:

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

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

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

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

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

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

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

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

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

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

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

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



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

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

The section provides that judgeship vacancies in the above districts resulting from death, retirement, resignation, or removal of a bankruptcy judge which occur 5 years or more after the appointment date shall not be filled.

The section also adds that temporary bankruptcy judgeships authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, the district of South Carolina, and the eastern district of Tennessee under the Bankruptcy Judgeship Act of 1992 are extended until the first vacancy resulting from the death, retirement, resignation, or removal occurs:

(A) 8 years or more after November 8, 1993, in the northern district of Alabama.

(B) 10 years or more after October 28, 1993, in the district of Delaware.

(C) 8 years or more after August 29, 1994, in the district of Puerto Rico.

(D) 8 years or more after June 27, 1994, in the district of South Carolina.

(E) 8 years or more after November 23, 1993, in the district of Tennessee.

The section also amends section 152(a)(1) of title 28 of the United States Code. It adds that each judge shall be appointed by the U.S. Court of Appeals for the circuit in which such a district is located.

The section also amends section 156 of title 28 of the U.S. Code to require post-travel reports for non-cases related travel by bankruptcy judges. The section defines the term travel expenses to include expenses incurred by a bankruptcy judge that are not directly related to any case, and excludes expenses incurred by the judge paid from personal funds and where no payment or reimbursement is made to the judge by the government or any other person or entity. Each bankruptcy judge will submit an annual report to the Chief Bankruptcy Judge. The Chief Bankruptcy Judge will submit an annual report to the Director of the Administrative Office of the U.S. Courts on the travel expenses of each bankruptcy judge. The annual report shall include: the travel expenses and the name of each judge, the description of the subject matter of the travel expenses, the number of days that the judge traveled.

The section also requires that the Director of Administrative Office of the United States consolidate the reports received into one report and submit it to Congress.

## TITLE XII—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

### *Section 1201. Effective Date; Application of Amendments*

This section provides that this title and the amendments made take effect on the date of enactment and apply only with respect to cases commenced on or after the date of enactment of the act.

## XVII. COST ESTIMATE

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, May 10, 1999.

Hon. ORRIN G. HATCH,  
 Chairman, Committee on the Judiciary,  
 U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 625, the Bankruptcy Reform act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for Federal costs), Lisa Cash Driskill (for the State and local impact), and John Harris (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON  
 (For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

*S. 625—Bankruptcy Reform Act of 1999*

*Summary*

S. 625 would make many changes and additions to the laws relating to bankruptcy, including establishing a system of means-testing for determining eligibility for relief under chapter 7 of the U.S. bankruptcy code. CBO estimates that implementing S. 625 would cost \$218 million over the 2000–2004 period—\$207 million is discretionary spending, subject to appropriation of the necessary funds, and \$11 million in mandatory spending. CBO also estimates that enacting this bill would increase receipts by about \$2 million over the next 5 years. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply. Provisions in title VII also would affect receipts, but the Joint Committee on Taxation (JCT) has not completed an estimate of such changes at this time.

S. 625 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). Overall, CBO expects that enacting this bill would benefit State and local governments by enhancing their ability to collect outstanding obligations in bankruptcy cases. S. 625 would impose new private-sector mandates, as defined in UMRA, on bankruptcy attorney's, creditors, and credit and charge-card companies. CBO estimates that the costs of these mandates would exceed the \$100 million (in 1996 dollars) threshold established in UMRA.

*Description of the bill's major provisions*

In addition to establishing means-testing for determining eligibility for chapter 7 bankruptcy relief, S. 625 would:

Require the Executive Office for the United States Trustees (U.S. Trustees) to establish a test program to educate debtors on financial management;

Require the Administrative Office of the United States Courts (AOUSC) to receive and maintain tax returns for all chapter 7 and chapter 13 debtors; and

Require that at least one out of every 250 bankruptcy cases under chapter 13 or chapter 7 be audited;

Require the AOUSC and the U.S. Trustees to collect and publish certain statistics on bankruptcy cases; and

Authorize 18 new temporary judgeships and extend five existing judgeships in 19 federal districts.

Other provisions would make various changes affecting the bankruptcy provisions for municipalities and the treatment of tax liabilities in bankruptcy cases.

#### *Estimated cost to the Federal Government*

As shown in the following table, CBO estimates that implementing S. 625 would cost the courts, the AOUSC, and the U.S. Trustees \$12 million in fiscal year 2000 and \$207 million over the 2000–2004 period, subject to appropriation of the necessary funds. In addition, we estimate that mandatory spending for the salaries and benefits of bankruptcy judges would increase by less than \$500,000 in 2000 and \$11 million over the 2000–2004 period. Enacting the means-testing provisions in title I would result in a net increase in revenues of about \$2 million over the next 5 years. The costs of this legislation fall within budget function 750 (administration of justice).

#### *Basis of estimate*

For purposes of this estimate, CBO assumes that S. 625 will be enacted by October 1, 1999, and that all estimated authorization amounts will be approved for each fiscal year

#### Spending Subject to Appropriation

Most of the estimated increases in discretionary spending would be required to fund the additional workload that would be imposed on the U.S. Trustees, which are currently funded through the bankruptcy-related fees collected by the courts. Without additional statutory authority, those fees cannot be increased to cover any expenditures that would occur under the bill. Because the legislation does not provide for such increases in fees, any additional costs would be subject to the availability of appropriated funds.

	By fiscal year in millions of dollars—				
	2000	2001	2002	2003	2004
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Means-Testing (Section 102):					
Estimated Authorization Level .....	5	10	9	9	8
Estimated Outlays .....	5	10	9	9	8
Debtor Financial Management Training (Section 104):					
Estimated Authorization Level .....	2	0	0	0	0
Estimated Outlays .....	1	1	0	0	0
Credit Counseling Certification (Section 105):					
Estimated Authorization Level .....	4	3	3	4	4
Estimated Outlays .....	2	4	3	4	4
Maintenance of Tax Returns (Section 315):					
Estimated Authorization Level .....	3	6	7	9	9
Estimated Outlays .....	3	6	7	9	9

	By fiscal year in millions of dollars—				
	2000	2001	2002	2003	2004
U.S. Trustee Site Visits (Section 430):					
Estimated Authorization Level .....	3	2	2	2	3
Estimated Outlays .....	1	4	2	2	3
Audit Procedures (Section 601):					
Estimated Authorization Level .....	0	3	8	10	10
Estimated Outlays .....	0	3	8	10	10
Compiling and Publishing Data (Sections 602–603):					
Estimated Authorization Level .....	0	5	9	8	8
Estimated Outlays .....	0	5	9	8	8
Additional Judgeships—Support Costs (Section 1228):					
Estimated Authorization Level .....	( <sup>1</sup> )	6	11	11	12
Estimated Outlays .....	( <sup>1</sup> )	6	11	11	12
Total Discretionary Changes:					
Estimated Authorization Level .....	17	35	49	53	54
Estimated Outlays .....	12	39	49	53	54
CHANGES IN DIRECT SPENDING					
Additional Judgeships (Section 1228):					
Estimated Budget Authority .....	( <sup>1</sup> )	2	3	3	3
Estimated Outlays .....	( <sup>1</sup> )	2	3	3	3
CHANGES IN REVENUES <sup>2</sup>					
Changes in Filing Fees (Section 102):					
Estimated Revenues .....	0	0	( <sup>1</sup> )	1	1

<sup>1</sup> Less than \$500,000.

<sup>2</sup> The Joint Committee on Taxation has not yet completed its review of tax provisions in title VII.

*Means-Testing (Section 102).* This section would establish a system of means-testing for determining a debtor's eligibility for relief under chapter 7. Under the means test, if the debtor is expected to have income (after certain expenses) to pay at least \$15,000 or 25 percent of general outstanding unsecured claims over five years, the debtor would be presumed ineligible for chapter 7 relief. A debtor who could not demonstrate "special circumstances," which would cause expected disposable income to fall below the threshold, could file under other chapters of the bankruptcy code. The U.S. Trustees would be responsible for conducting the initial review of a debtor's income and expenses, filing the majority of motions for dismissal or conversion, and taking part in additional litigation that is expected to occur as the courts and debtors debate allowable expenses and other related issues.

Although CBO cannot predict the amount of such litigation, we expect that the amount of litigation could be significant during the first few years, as parties test the new law's standards. In subsequent years, litigation could begin to subside as precedents are established. Based on information from the U.S. Trustees, CBO estimates that the U.S. Trustees would require about 85 additional attorneys, paralegals, and analysts to address the increased workload. As a result, CBO estimates that appropriations of \$41 million would be required over the next 5 years.

*Debtor Financial Management Test Training Program (Section 104).* This section would require the U.S. Trustees to establish a test training program in three judicial districts to educate debtor on financial management. Based on information from the U.S. Trustees, CBO estimates that about 45,000 debtor would participate in the program, which we expect would be carried out over fiscal years 2000 and 2001. At a projected cost of about \$40 per debt-

or, CBO estimates that the U.S. Trustees would require an appropriation of about \$2 million in fiscal year 2000 to administer the program.

*Credit Counseling Certification (Section 105).* This section would require the U.S. Trustees to certify, on an annual basis, that certain credit counseling services could provide adequate services to potential debtors. Based on information from the U.S. Trustees, CBO estimates that the U.S. Trustees would require additional attorneys and analysts to handle the additional workload associated with certification. CBO estimates that enacting this provision would require appropriations of \$18 million over the next 5 years.

*Maintenance of Tax Returns (Section 315).* This section would require the AOUSC to receive and return tax returns for the three most recent years preceding the commencement of the bankruptcy case for all chapter 7 and 13 debtor (about 8 million debtors over the 2000–2004 period). CBO estimates that appropriations of \$34 million over the next 5 years would be required to store and provide access to over 20 million tax returns.

*U.S. Trustee Site Visits in Chapter 11 Cases (Section 430).* This section would expand the responsibilities of the U.S. Trustees in small business bankruptcy cases to include site visits to inspect the debtor's premises, review records, and verify that the debtor has filed tax returns. Based on information from the U.S. Trustees, CBO estimates that implementing section 430 would require about 20 additional analysts to conduct over 2,300 site visits each year. CBO estimates that the U.S. Trustees would require appropriations of about \$12 million over the next 5 years for the salaries, benefits, and travel expenses associated with these additional personnel.

*Audit Procedures (Section 601).* Beginning 18 months after enactment, S. 625 would require that at least 1 out of every 250 bankruptcy cases under chapter 7 and chapter 13, plus other selected cases under those chapters, be audited by qualified persons, as determined by the Attorney General. Based on information from the U.S. Trustees, CBO estimates that about 1.3 million cases would be subject to audits in fiscal year 2001, increasing to about 1.8 million in fiscal year 2004. CBO assumes that about 0.8 percent of all cases would be audited and that each audit would cost about \$500 (in 2000 dollars). CBO also expects that the U.S. Trustees would need about 10 additional analysts and attorneys to support the follow-up work associated with the audits. Thus, we estimate that implementing this provision would require appropriations of \$3 million in fiscal year 2001 and \$31 million over the 2000–2004 period.

*Compiling and Publishing of Data on Bankruptcy (Section 602–603).* S. 625 would require the AOUSC to collect data on chapters 7, 11, and chapter 13 cases and the U.S. Trustees to make such information available to the public. CBO estimates that appropriations of about \$30 million would be required over the 2000–2004 period to meet these requirements. Of the total estimated cost, about \$24 million would be required for additional legal clerks, analysts, and data base support. The remainder would be incurred by the U.S. Trustees for compiling data and providing Internet access to records pertaining to bankruptcy cases.

*Additional Judgeships—Support Costs (Section 1228).* This provision would extend five temporary bankruptcy judgeships and au-

authorize 18 new temporary bankruptcy judgeships for 19 Federal judicial district. Based on information from the AOUSC, CBO assumes that one-half of the 18 new positions would be filed by the beginning of fiscal year 2001 and the other half would be filled by the start of fiscal year 2002. Also, we anticipate that all five temporary judgeships would be filled by fiscal year 2002. We expect that discretionary expenditures associated with each judgeship would average about \$450,000 (in 2000 dollars), after initial costs of about \$50,000. Therefore, CBO estimates that the administrative support of additional bankruptcy judges would require an appropriation of less than \$500,000 in fiscal year 2000 and about \$40 million over the 2000–2004 period. (Salaries and benefits for the judges are classified as direct spending, and those costs are described below.)

#### Direct Spending and Revenues

*Additional Judgeships (Section 1228).* CBO estimates that enacting the means-testing provision (section 102) would impose some additional workload on the courts. Section 1228 would authorize 18 new temporary bankruptcy judgeships and extend five existing temporary judgeships. Based on information from the AOUSC and other bankruptcy experts, CBO expects that the increase in the number of bankruptcy judges would be sufficient to meet the increased workload. Assuming that the salary and benefits of a bankruptcy judge would average about \$150,000 a year, CBO estimates that the mandatory costs associated with the salaries and benefits of these additional judgeships would be less than \$500,000 in fiscal year 2000 and about \$11 million over the 2000–2004 period.

*Changes in Filing Fees (Section 102).* The means-testing provision also could affect the government's income from bankruptcy filing fees because it would cause changes in the number and type of bankruptcy filings. CBO projects that about 5 to 10 percent of all chapter 7 debtors (about 50,000 to 100,000 cases each year) could be subject to the means test proposed under this bill. CBO expects that those debtors who are not successful in proving "special circumstances" will either convert their cases to chapter 13 cases or withdraw their petitions for bankruptcy relief. Under either of these options, CBO estimates that there would be no significant effect on the Federal budget because there is no fee for converting a case from chapter 7 to chapter 13, and filing fees are not refunded to debtors who withdraw their petitions for bankruptcy relief. Over the long term, CBO estimates that the Federal government could collect additional revenues as more debtors file directly under chapter 13. (The government collects an additional \$45 for each case filed under chapter 13 instead of chapter 7.) This increase could be partly offset by those debtors who might refrain from filing for any type of bankruptcy relief. On balance, CBO estimates that the means-testing provision would increase revenues by about \$1 million a year beginning in 2003.

*Tax Provisions (Title VII).* The provisions in title VII of the bill are currently under review by the Joint Committee on Taxation, and estimates of their effects on revenues will be provided when they are completed.

*Pay-as-you-go considerations*

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Because this bill would affect both, pay-as-you-go procedures would apply. The net changes in outlays and governmental receipts are shown in the following table. (JCT is reviewing title VII and has not yet completed an estimate of its effects on receipts.) For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays .....	0	0	2	3	3	3	3	3	3	2	2
Changes in receipts <sup>1</sup> .....	0	0	0	0	1	1	1	1	1	1	1

<sup>1</sup> Estimated impact of means-testing. JCT has not completed an estimate of changes in receipts for title VII.

*Estimated impact on State, local, and tribal governments*

S. 625 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). Overall, CBO expects that enacting this bill would benefit State and local governments by enhancing their ability to collect outstanding obligations in bankruptcy cases. The changes to bankruptcy law in the bill would affect State and local governments primarily as creditors and holders of claims for taxes or child support. In addition, it would change the applicability of some State statutes that govern which of a debtor's assets are protected from creditors in a bankruptcy proceeding.

In 1996, a survey of the 50 states conducted by the Federation of Tax Administrators and the State's Association of Bankruptcy Attorneys, indicated that more than 360,000 taxpayers in bankruptcy owed claims to States totaling about \$4 billion. Of these claims, States reported collecting only about \$234 million. While CBO cannot predict how much more money might be collected, it is likely that States and local governments would collect a greater share of future claims than they would have under current law.

*Exemptions*

Although bankruptcy is regulated according to Federal statute, States are allowed to provide debtors with certain exemptions for property, insurance, and other items that are different from those allowed under the Federal bankruptcy code. (Exempt property remains in possession of the debtor and is not available to pay off creditors). In some States debtors can chose the Federal or State exemption; other States require a debtor to use only the State exemptions. This bill would restrict homestead exemptions, create a new exemption for certain retirement funds, and define which household goods would be eligible for exemption. These standards would apply regardless of the State policy on exemptions. The new restrictions on homestead exemptions would make more money available to creditors in some cases, while the exemptions on retirement savings generally would make less money available.

### Domestic Support Obligations

The bill would significantly enhance a State's ability to collect domestic support obligations, including child support. Domestic support obligations owed to State or local governments would be given priority over all other claims, except those same obligations owed to individuals. This bill also would require that filers under chapters 11 and 13 pay in full all domestic support obligations owed to government agencies or individuals, in order to receive a discharge of outstanding debts. In addition, the automatic stay that is triggered by filing for bankruptcy would not apply to domestic support obligations. Last, the bill would require bankruptcy trustees to notify individuals with domestic support claims of their right to use the services of a State child support enforcement agency and notify the agency that they have done so. The last known address of the debtor would be a part of the notification.

### Utility Service

The bill would enhance the ability of a utility provider, including State and local utilities, to collect debts by clarifying the definition of adequate assurance of payment. Currently, a utility must continue to provide service to a business that files for bankruptcy if adequate assurance that payment will be provided is received. The bill would clarify that adequate assurance means a cash deposit, or other verifiable forms of payments, rather than a verbal assurance.

### Tax Payment Plans

The bill would require that payment plans for tax liabilities be limited to 6 years and that payment amounts be regular and proportionate to payments for other obligations. Under current law, taxing authorities sometimes face payment plans that include a series of small payments over time followed by a large balloon payment near the end of the planned payment stream. At that point, the debtors often fail to complete their claims. This provision would require that taxes be paid at a rate proportionate to those of other debts. It also would establish interest rates to be applied to outstanding tax liabilities. Under current law, interest charges on outstanding tax liabilities are determined at the discretion of the bankruptcy judge.

### Time Limits on Tax Collection

Under some circumstances, a tax claim can qualify for priority status, and thus a State and local government would be more likely to collect the debt. However, this status is granted only if a tax assessed within a specific period of time from the date of the filing for bankruptcy. If that filing is subsequently dismissed and a new filing is made, the tax claim may lose its priority status. The bill would allow more time to pass in some circumstances, thus increasing the likelihood that state or local tax claims would maintain their priority status.

### Taxes and Administrative Expenses

Under current law, certain expenses can be paid out of funds that would otherwise be available to pay tax liens on property. The bill would restrict the use of funds for administrative expenses to



a limited number of circumstances, thereby making it more likely that funds would remain available to cover tax obligations.

#### Tax Return Filing and Government Notification

A number of provisions in the bill would require debtors to have filed tax returns, and in some cases to be current in their tax payments, before a bankruptcy case may continue. Also, debtors would be required to provide notice to State authorities in a specific manner when they pursue relief under bankruptcy law. These provisions would help States identify potential claims in bankruptcy cases where they may be owed delinquent taxes.

#### Priority of Payments

In some circumstances, debtors have borrowed money or incurred some new obligation that is dischargeable (able to be written off at the end of bankruptcy) to pay for an obligation would not be dischargeable. This bill would give a new debt the same priority as the underlying debt. If the underlying debt had a priority higher than that of State or local tax liabilities, State and local governments could lose access to some funds. However, it is possible that the underlying debt could be for a tax claim, in which case the taxing authority would face no loss. Because it is unclear what types of nondischargeable debts are covered by new debt and the degree to which this new provision would discourage such activity, CBO can estimate neither the direction nor the magnitude of the provision's impact on States and localities.

#### Single Asset Cases

One provision of the bill would allow expedited bankruptcy proceedings in certain single asset cases (usually involving a large office building). State and local governments could benefit to the extent that real property is returned to the tax rolls earlier.

#### Municipal Bankruptcy

The bill would clarify regulations governing municipal bankruptcy actions and allow municipalities that have filed for bankruptcy to liquidate certain financial contracts.

#### *Estimated impact on the private sector*

S. 625 would impose new private-sector mandates on bankruptcy attorneys, creditors, and preparers of bankruptcy petitions. Bankruptcy attorneys would be required to make reasonable inquiries to confirm that the information in documents they submit to courts or bankruptcy trustees is well grounded in fact. Creditors would be required to make disclosures in reaffirmation agreements with debtors, to refrain from certain communications with debtors, and to provide notices to the court and to debtors. Preparers of bankruptcy petitions would be required to make disclosures to debtors and may face additional costs due to regulation of fees. CBO estimates that the costs of these mandates would exceed the \$100 million (in 1996 dollars) threshold established in UMRA.

Sections 102 and 319 would make bankruptcy attorneys liable for misleading statements and inaccuracies in schedules and documents submitted to courts or trustees. To avoid sanctions and po-

tential civil penalties, attorneys would need to verify the information given to them by their clients regarding the list of creditors, assets and liabilities, and income and expenditures. Based on 1,286,000 projected filings under chapter 7 and chapter 13 and an estimated increase in attorneys' costs of \$150 to \$500 per case, CBO estimates that the costs to attorneys of complying with this requirement would be between \$190 million and \$640 million in fiscal year 2000. With the rise in projected filings over the next 5 years, annual costs would be \$280 million to \$940 million for fiscal year 2004. CBO expects bankruptcy attorneys to pass some of the cost on to debtors, reducing the pool of funds available to creditors.

S. 625 would regulate communications between creditors and debtors. Section 203 would require any creditor with an unsecured consumer debt seeking a reaffirmation agreement with the debtor to notify the debtor of his right to a hearing to determine whether the agreement is an undue hardship, is in the debtor's best interest, or is the result of an illegal threat by the creditor. Section 204 would prohibit creditors seeking reaffirmation agreements from threatening to file motions to determine dischargeability or to dismiss and from threatening to repossess collateral protected by the automatic stay created by filing for bankruptcy. The bill would also require creditors to specify to the court and to the debtor the person designated to receive notices. The requirements in section 204 would diminish creditors' ability to obtain reaffirmation agreements and recover debts, but CBO cannot estimate the costs of these requirements because of a lack of data on reaffirmation agreements. The costs of the other requirements would be small.

CBO cannot estimate the total costs to nonattorney preparers of bankruptcy petitions. Section 221 would require preparers of petitions to provide debtors with written notice that they are not attorneys and cannot provide legal advice. Section 221 also would authorize the Supreme Court and the Judicial Conference of the United States to set limits on the fees charged by preparers of bankruptcy petitions but does not suggest an appropriate limit. As a result, CBO cannot estimate the costs of limiting fees.

*Previous CBO estimate*

On May 5, 1999, CBO transmitted a cost estimate for H.R. 833, as reported by the House Committee on the Judiciary on April 28, 1999. Both H.R. 833 and S. 625 would authorize additional bankruptcy judges; thus, enacting either bill would affect direct spending. S. 625, unlike H.R. 833, however, would not waive chapter 7 filing fees for certain debtors. As a result, enacting S. 625 would result in a net increase in revenues of about \$2 million over the next 5 years. Differences in discretionary spending estimates between S. 625 and H.R. 833 reflect differences in the provisions of the two bills. The major differences in discretionary provisions between the two bills involve the debtor of financial management test program and the audit requirement. Under S. 625, the U.S. Trustees must administer a test program in three judicial districts, while under H.R. 833, they must administer the program in six judicial districts. With regard to the audit requirement, S. 625, unlike H.R. 833, does not require that an independent certified public accountant conduct the audits.

*Estimate prepared by*

Federal Costs: Susanne S. Mehlman; impact on State, local, and tribal governments: Lisa Cash Driskill; impact on the private sector: John Harris.

*Estimate approved by*

Paul N. Van de Water, Assistant Director for Budget Analysis.

XVIII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that S. 625 will not have a significant regulatory impact.

## XIX. ADDITIONAL VIEWS OF SENATOR KOHL

While this bill still needs significant improvement, I supported it in Committee, in part because of the continuing efforts of Senators Grassley and Torricelli to make this a better bill and in part because we need to sharply reduce the growing number of personal bankruptcies—and encourage more personal responsibility.

The dramatic rise in bankruptcies is very, very troubling, regardless of whether the blame lies with credit card companies, a culture that disparages personal responsibility, the bankruptcy code itself or, most probably, all of the above. While none of us wants to return to the era of “debtors’ prison,” we need to do something to reverse this trend. I don’t believe this bill is as balanced as the measure the Senate passed by a 97–1 vote last year, but I am hopeful that we will move in the right direction on the floor.

Let me give a few examples of how this bill can and should be improved. First, and most importantly, we cannot call this true “reform” or truly restore the stigma to bankruptcy unless we stop the most egregious abuses. That means terminating the unlimited “homestead exemption,” which allows millionaire deadbeats to shield their assets in luxury homes in states like Florida and Texas, while writing off millions of dollars they owe to honest creditors.

For example, the owner of a failed Ohio S&L paid off only a fraction of \$300 million in bankruptcy claims, but still held on to the multimillion-dollar ranch he bought in Florida. A New Jersey couple moved to Florida when their business was about to fail, and then used bankruptcy to protect their half-million-dollar home, yet at the same time writing off most of the nearly \$2 million they owed to creditors. And a convicted Wall Street financier filed bankruptcy while owing at least \$50 million in debts and fines, but still kept his \$5 million Florida mansion with 11 bedrooms and 21 bathrooms. The list goes on and on.

This is not only wrong, it is unacceptable, and it is unfair to residents in the 43 States with exemptions equal to or less than \$100,000. We need to send the message that bankruptcy is a tool of last resort, not just another tool for financial planning. Besides, it’s hard to take reform seriously if we place new burdens on poor debtors, but leave open big loopholes for wealthy ones.

Last year the Senate unanimously supported a \$100,000 cap that Senator Sessions and I offered, and it also went on record saying that “meaningful bankruptcy reform cannot be achieved without capping the homestead exemption.” But this year’s version only has a 2-year residency requirement to qualify for a State exemption. While that’s a first step, it won’t deter a savvy debtor who plans ahead for bankruptcy and it won’t do anything about in-State abusers.

Second, real reform requires a balanced approach that not only targets abuses by debtors, but also curbs abuses by creditors. The credit card industry has played no small role in the explosion of consumer debt and consumer bankruptcies. Mass credit card solicitations do more than overload our mail boxes and pile up on our kitchen tables. With “teaser” rates and other potentially deceptive practices, they also tempt many individuals to try to borrow their way out of financial distress, often leaving them worse off and with little choice other than bankruptcy. As an incentive to creditors, perhaps the benefits of this measure should be denied to credit card companies who deliberately extend credit to those who are clearly too irresponsible to use it wisely. On the floor, I hope we can address these abuses, or, at the very least, ensure that consumers have the information they need to make intelligent choices.

And third, I am very concerned about the restriction on the use of “cramdowns” for car loans in chapter 13. As a former businessman, my sense is that this provision turns the idea of a “secured” interest on its head. In the everyday world, if you make a \$10,000 loan to help someone buy a car, your “secured” interest is the value of that car. That’s generally less than the value of the loan, because once a car moves off the lot, it falls in value. So if the lender defaults on a loan, the creditor is only certain to get his “secured” interest back—the car—and perhaps no more. Thus, if the car is worth \$7,000, that \$7,000 is all the creditor is guaranteed. He can pursue the remaining \$3,000 by filing a lawsuit or hiring a collection agency, but he stands in the same shoes with respect to that debt as any other unsecured creditor.

Comparably, in chapter 13 repayment plans, where secured creditors get priority, they currently get guaranteed payment of their “secured” interest—that is the \$7,000 car value. But that creditor stands the same chance of recovering the remaining \$3,000 as other unsecured creditors.

This bill, however, says that in chapter 13, the “secured” interest should be \$10,000, the full value of the loan. That defies common sense. Why should a “secured” creditor have more powerful rights inside of bankruptcy than outside? And why should car loans get better treatment than loans to purchase washing machines, farm equipment or boats? Even worse, increasing the amount of “secured” debts will only make it harder for debtors to successfully complete chapter 13 plans, which already fail at an abysmal 67 percent rate. Indeed, one of the main goals of this bill is to direct more people to chapter 13 in order to recover debts that otherwise would be discharged under Chapter 7. Yet this provision makes it more likely that 13’s will fail—and that the promise of more repayments will go unfulfilled. Creditors who don’t get repaid would lose out, and so would debtors who are left with no recourse. I am very concerned about this provision—so are many of my colleagues—and I may offer an amendment to strike it when this bill comes to the floor.

HERB KOHL.

## XX. ADDITIONAL VIEWS OF SENATOR DIANNE FEINSTEIN

I write in concurrence with the majority views supporting passage of S. 625, the Bankruptcy Reform Act of 1999. Our country faces a crisis of bankruptcy filings. In 1998, the Administrative Office of U.S. Courts determined there were 1,444,812 bankruptcy filings, the fourth consecutive year of record filings. More than one in a hundred households will file a bankruptcy case this year.

This growth in bankruptcies is especially alarming as the U.S. economy moves into its eighth year of expansion. While our country is enjoying this unprecedented prosperity, it seems counterintuitive that so many families are filing for bankruptcy. The majority attributes part of this surge in filings to a lessening of the moral stigma attached to bankruptcy and notes that “the bankruptcy code’s generous, no-questions-asked policy of providing complete debt forgiveness under chapter 7” encourages a lack of personal responsibility. I agree that people who can pay back their debts should pay back their debts. Moreover, bankruptcy should be a last-resort legal option, and not a vehicle for avoiding personal responsibility.

However, I am writing additional views because I am concerned that this bill does not address a root cause of many bankruptcies—the explosion of consumer credit.

It’s a simple matter of arithmetic. The typical family filing for bankruptcy in 1998 owed more than one-and-a-half times its annual income in short-term, high-interest debt. This means that the average family in bankruptcy, with a median income of just over \$17,500, had \$28,955 in credit card and other short-term high interest debt.

Studies by the Congressional Budget Office, the FDIC, and independent economists all link the rise in personal bankruptcies directly to the rise in consumer debt. As consumer debt has risen to an all-time high, so has consumer bankruptcies.

Any meaningful bankruptcy reform must address the irresponsible actions of certain segments of the credit card industry. Last year, the credit card industry sent out a record 3.45 billion unsolicited offers. That’s over 30 solicitations to every household in America. The number of solicitations jumped by 15 percent last year alone.

There are well over a billion cards in circulation—a dozen credit cards for every household in the country. Three-quarters of all households have at least one credit card. Not surprisingly, credit card debt has increased with the flood of solicitations. Credit card debt doubled between 1993 and 1997: The amount of credit card debt outstanding at the end of 1997 was \$422 billion, twice as much as the amount in 1993.

I am particularly concerned that the credit card solicitations are growing fastest among debtors with the lowest incomes. From 1997 to 1998, the two populations with the highest growth in credit card

solicitations were college students and those with incomes of less than \$10,000 per year. The result is not surprising: 27 percent of the under-\$10,000 families have consumer debt that is more than 40 percent of their income.

During this 2-year debate on bankruptcy, my staff has contacted numerous credit card issuers. The overwhelming majority of these companies do not check the income of the consumers being solicited. In other words, credit card issuers have no idea whether persons to whom they issue credit cards have the means to pay their bills each month.

Because credit card issuers are failing to screen their clients, credit cards are being offered to persons who are unable to afford them. I would like to offer just a few examples of these inappropriate solicitations. A constituent from San Ramon, CA, wrote that her 7-year-old son received a "charter membership offer" for a Visa Signature Card. Both sons of a staff member who works in my San Francisco office received credit offers—and they were 12 and 15 years old.

A constituent from Lakewood, CA, describes the situation aptly: "What really bugs me about this is that credit card companies send out these solicitations for their plastic cards and then when they get burned, they start crying foul. They want all kinds of laws passed to protect them from taking hits when it's their own practices that caused the problem."

If bankruptcy reform is to address the wishes of the American people, Congress must place reasonable restrictions in the bankruptcy process on irresponsible creditors. In an April 1999 survey by Opinion Research Corporation International, 74 percent of the public said that credit card companies share responsibility for the increase of personal bankruptcies.

When S. 625 comes to the floor, I intend to propose an amendment to put reasonable restrictions on those irresponsible lenders who have pushed vulnerable borrowers over the edge into bankruptcy. This amendment would limit the ability of credit card issuers to file motions in bankruptcy against debtors if the original loan was of high-interest or made to a highly-indebted consumer.

I am hopeful we can make this simple reform to this legislation. The underlying message of S. 625 is that our bankruptcy laws should reward responsibility. This maxim should apply to both creditors and debtors. While it is clear that our bankruptcy system needs reform, our laws should not give irresponsible issuers of credit the means to use the bankruptcy laws as a collection agency for loans they never should have offered.

DIANNE FEINSTEIN.

## XXI. ADDITIONAL VIEWS OF SENATORS TORRICELLI AND KOHL

While we believe that S. 625 is significantly improved over last year's Conference Report, we still have concerns about the bill as it is reported from Committee. We believe that S. 625 does not take necessary steps to prevent the over 1 million personal bankruptcies filed each year and may, in some important respects, fail to strike an equitable balance between debtors and creditors.

There are genuine concerns that unscrupulous individuals are abusing the current bankruptcy system and some debtors are being allowed to erase debt that they have the financial ability to repay. We must ensure, however, that as we make it more difficult for the unscrupulous to manipulate and abuse the bankruptcy system, we do not penalize the many families who legitimately need a fresh start. The majority of people who file for bankruptcy are low to middle income working class families. They turn to the consumer bankruptcy system for help in managing overwhelming financial problems. They are honest, hardworking Americans who have fallen into financial trouble as a result of unexpected life events, such as a divorce, a medical crisis, or the loss of a job.

Last year, the Senate voted 97-1 to pass a balanced, comprehensive bankruptcy bill. Unfortunately last year's Conference Report abandoned many of those principles. We support the goals of bankruptcy reform because of the importance of preventing and catching abuse, but believe that the principles found in last year's Senate bankruptcy bill must once again be adequately addressed.

### THE BANKRUPTCY PROBLEM

In recent years, bankruptcy filings have increased to record levels. In 1997, 1.4 million persons filed for bankruptcy, representing an increase of 18.7 percent from 1996 and an increase of more than 350 percent since 1980. Some of these filings were made by those seeking to abuse the bankruptcy system, but far more were made by people and families who encountered legitimate, catastrophic financial difficulties.

A few facts will help to put this incredible number of filings into perspective. In 1975, total household debt was 24 percent of aggregate household income. Today, household debt is more than 100 percent of aggregate household income.<sup>1</sup> Thus, in the last 23 years, the average debt burden of the average American family has quadrupled. Not surprisingly, this higher debt burden has made more and more American families vulnerable to financial catastrophe. A job loss, layoff, or income decline can result in debts spinning out

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<sup>1</sup> See Statistical Abstract of the United States.



of control very quickly. A divorce, a car crash, a health emergency, a sick parent, or a lawsuit can lead to a financial emergency.

The evidence indicates that most personal bankruptcies filed are not for abusive purposes. Several facts illuminate this case: According to the National Bankruptcy Review Commission, in 1977 there were 0.74 bankruptcies for every million dollars of consumer debt; in 1997, there were 0.73 bankruptcies for every million dollars of consumer debt.<sup>2</sup> Studies prepared by the Congressional Budget Office indicate that personal bankruptcy filings increase almost in lockstep with increases in household debt-to-income ratios.<sup>3</sup>

These facts persuade us of two things. First, most people are going into bankruptcy because of debt, not because they are lazy, shiftless, and morally corrupt. Second, any effort to address the bankruptcy problem must not only deal with the personal responsibility of the debtor but must also deal with the corporate responsibility of the creditor.

#### THE CREDIT CARD INDUSTRY

Even as we debated bankruptcy reform in Congress, credit card solicitations increased by 15 percent last year, totaling 3.45 billion. That is more than one solicitation per month for every man, woman and child in the United States. In a little over 4 years, the credit card companies offered about \$1 million of credit to every household in the United States.<sup>4</sup> Today, 55 to 60 million households carry a credit card balance from month-to-month. They have an average balance of \$7000 and pay more than \$1000 a year in interest and fees. It should be no surprise that in the last 4 years, outstanding credit card debt has doubled so that by the end of 1997 \$422 billion in credit card loans were outstanding.<sup>5</sup>

Direct solicitations of both college and high school students reached unprecedented heights. In New York, nearly every member of a group living house for people with learning disabilities received credit card applications. One of them, who could sign his name but could not add or subtract, had 13 credit cards with more than \$11,000 in debt outstanding. His only income is \$7,000 a year from Social Security disability benefits.<sup>6</sup>

Credit card usage has grown fastest in recent years among debtors with the lowest incomes. Since the early 1990's, Americans with incomes below the poverty line nearly doubled their credit card usage, and those in the \$10,000 to \$25,000 income bracket came in a close second in the rise in debt. The result is not surprising: 27 percent of the under \$10,000 families have consumer debt that is

<sup>2</sup> Report of the National Bankruptcy Review Commission (1997) at 85.

<sup>3</sup> Statement of Kim Kowalewski, Chief, Financial and General Macroeconomic Analysis Unit, Congressional Budget Office, before the Subcommittee on Administrative Oversight and the Courts, Committee on the Judiciary, U.S. Senate at 4 (April 1997). See also Diane Ellis, 'The Effect of Consumer Interest Rate Deregulation on Credit Card Volumes, Charge-offs, and the Personal Bankruptcy Rate,' Bank Trends 98-05 (Division of Insurance, FDIC February 1998).

<sup>4</sup> George M. Salem and Aaron C. Clark, GKM Banking Industry Report, Bank Credit Cards: Loan Loss Risks are Growing, 5 (June 11, 1996).

<sup>5</sup> OCC Advisory Letter 96-7, September 26, 1996, (96-7.txt at www.occ.treas.gov); FDIC quarterly Banking Profile Graph Book, Fourth Quarter 1997.

<sup>6</sup> Dan Herbeck, "Where Credit Isn't Due Developmentally Disabled Become Victims," BuffaloNews, April 7, 1998.

more than 40 percent of their income. Nearly 1 in 10 has at least one debt that is more than 60 days past due.<sup>7</sup>

At the same time, some in the credit card industry have instituted practices that effectively push overextended borrowers into deeper and deeper trouble. Late fees, over-limit fees, teaser rates, and other hidden charges and dramatic jumps in interest rates mean that a person who suffers a minor financial setback can quickly find himself speeding toward financial catastrophe. Banks often almost double the interest rate they charge for a consumer who misses two payments. Getting behind on your credit cards today is not just a small problem that can be cured easily with a new job at the same salary or with a small loan from a friend willing to help. Moreover, evidence indicates that creditors are unwilling to help people who find themselves in financial trouble. A survey of people who declared bankruptcy prepared by Visa in 1996 found that two-thirds of the people surveyed reported that creditors did not try to work with them to help them avoid filing for bankruptcy.<sup>8</sup>

Consumers are very often unaware of the obligations they are undertaking—needed disclosures are lacking and solicitations and bills are virtually incomprehensible. For example, credit card companies do not indicate how long it would take to pay off your debt by paying only your minimum payments. Industry analysts estimate that using a typical minimum monthly payment rate on a credit card it would take 34 years to pay off a \$2,500 loan and total payments would exceed 300 percent of the original principal.<sup>9</sup> Other examples include the terms on low introductory teaser rates and late fees.

Too many Americans pay only the monthly minimum without knowing that at that rate it will take them years to pay off the full amount. They transfer balances to cards with low introductory rates only to be surprised by higher interest rates on other purchases. Not surprisingly, consumer confusion mixed with tantalizing offers and aggressive solicitation from credit card companies is a recipe for financial trouble.

While we recognize the jurisdictional issues raised in the Committee report, we believe that true bankruptcy reform must assure that consumers have clear and comprehensive information about credit card debt and that the institutions that engage in risky and predatory lending are neither encouraged nor protected by the bankruptcy law.

#### MEANS TESTING

A level of discretion for bankruptcy judge to determine which debtors truly have the ability to repay a sufficient portion of their debts is a necessary ingredient in the bill's means test mechanism. Although the bill includes more discretion than last year's Conference Report Committee, we believe that still more discretion

<sup>7</sup>Federal Reserve Bulletin, Family Finances in the United States: Recent Evidence from the Survey of Consumer Finances, Table 14 Aggregate and median ratios of debt payments to family incomes, and shares of debtors with ratios above 40 percent and those with any payment 60 days or more past due, by selected family characteristics, 1989, 1992, and 1995.

<sup>8</sup>Visa, "Consumer Bankruptcy: Bankruptcy Debtor Survey," 10 (July 1996).

<sup>9</sup>Salem & Clark, *supra* note 4, at 25.

should be provided. The system gains nothing by forcing debtors who lack the ability to pay into repayment plans. It virtually guarantees the failure of that plan, injuring not only the debtor, but each of his creditors in the process.

For example, the current means test in S. 625 uses IRS standards, otherwise used in determining a taxpayer's ability to pay a delinquent tax liability. We believe that the IRS standards are inappropriate as a basis for determining a debtor's living expenses in bankruptcy. The standards were not formulated with bankruptcy in mind and provide virtually no flexibility to account for the debtor's actual expenses. Senators Grassley and Torricelli have asked Attorney General Reno and Secretary of the Treasury Rubin to either modify the IRS standards to reflect the needs of debtors in bankruptcy or to draft alternative bankruptcy appropriate standards.

We will continue to work with the Majority and the Administration to craft a plan that will provide for a reasonable level of judicial discretion and bankruptcy appropriate standards for means testing.

#### LIABILITY OF THE DEBTOR'S ATTORNEY

S. 625 currently includes a provision which would make a debtor's attorney liable if he or she was not substantially justified in filing the petition in chapter 7. We believe that this would have a chilling effect on the system of justice in our nation. A debtor's attorney should not be faced with a financial disincentive to file in chapter 7 unless in so doing they violate rule 11 standards of attorney conduct. To require a penalty in any other case is not only unjust, but will force attorneys to run afoul of their ethical obligations to act in their client's best interest. In Committee, an amendment was offered by Senator Feingold to eliminate this provision from the bill. The Feingold amendment was narrowly defeated by a vote of 9-9. We will continue to support efforts to drop this provision from the S. 625.

#### NON-DISCHARGEABILITY OF DEBTS

In crafting a fair and balanced bankruptcy bill, we have sought to ensure that we do not so limit those debts that can be discharged at the close of chapter 13 repayment plan, that we effectively deny the debtor a fresh start—the principle which is at the very heart of the bankruptcy system. In some respects, S. 625 achieves this goal, but in others it falls short. For example, the bill requires that when a creditor alleges that a debt has been fraudulently incurred and is therefore non-dischargeable, the debtor bears the burden of disproving that allegation. To require that the debtor assume this burden is both unworkable and unfair. Moreover, it flies in the face of a principle that is at the heart of our legal tradition and is reflected in both civil and criminal court—the accused is innocent until proven otherwise. We believe that in order for S. 625 to strike the proper balance between debtors and creditor, the burden of proof in such matters as this, must rest on the proper party.

## REAFFIRMATIONS

Reaffirmations are one of the tools on which debtors can rely in getting back on their feet. They are also, however, an area of current law in which debtors are afforded insufficient protection from coercion by a creditor and may ultimately end up reaffirming a debt that they are unable to afford. The provisions in S. 625 are an improvement on both last year's Conference Report and on current law, but they do not go far enough. We believe that stronger penalties against creditors who attempt to coerce the debtor into signing a reaffirmation are also needed to deter abusive reaffirmations and protect the debtor from the often disproportionate resources at the creditors disposal.

## CONCLUSION

We offer these additional views in an effort to ensure that any eventual legislation is both fair and balanced, ends the abuses of the system, protects those who truly need the protection of the bankruptcy code, and works to reduce the troubling level of bankruptcy in America.

ROBERT TORICELLI.  
HERB KOHL.

## XXII. MINORITY VIEWS OF SENATORS LEAHY, KENNEDY, FEINGOLD, AND SCHUMER

### INTRODUCTION

There is no doubt that a substantial number of American families are turning to the consumer bankruptcy system and the financial protections it offers. Addressing the high number of consumer bankruptcies should have several components. Where there is fraud and abuse we must take steps to reduce and eliminate it. However, even by the accounts of the strongest proponents of reform, the percentage of bankruptcy cases involving debtor abuse is relatively small. Thus, even if this legislation were 100 percent successful in deterring debtor abuse, the filing rate would still be high. If our goal is to reduce the bankruptcy filing rate more significantly, steps must be taken to reduce the number of individuals and families who find themselves in need of bankruptcy protection and debt relief. Taking this step requires an understanding of the underlying causes of bankruptcy in the vast majority of cases that involve no debtor abuse of any kind.

In 1997, more than 1.3 million families filed for bankruptcy; more than 1.4 million filed in 1998. Although 1997 filings were over than 19 percent higher than 1996 filings, the growth in filings between 1997 and 1998 was 2.7 percent, far lower than predicted. While bankruptcy filings did not reach the expected 15 percent increase over 1997, we saw that increase elsewhere—in the number of credit card solicitations.<sup>1</sup>

The smaller increase in bankruptcy filings has prompted economist Lawrence Ausubel to declare that the bankruptcy “crisis”—if there was one—is over.<sup>2</sup> Whether or not Professor Ausubel’s declaration proves to be correct, the significant decrease in the growth of bankruptcy filings should serve as a reminder that we cannot overreact to “emergency” requests, primarily from one industry, to overhaul the system, especially when we are dealing with a system as collective and complex as bankruptcy. If we are going to address abuses in the system, we must approach our task with care.

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<sup>1</sup>Press Release of the National Consumer Law Center, Consumers Union, Consumer Federation of America, and U.S. PIRG (Apr. 19, 1999); Miriam Kreinin Souccar, “Postal Solicitations For Credit Cards Again Set Record,” *AMERICAN BANKER* (April 8, 1999).

<sup>2</sup>Lawrence M. Ausubel, A Self-Correcting “Crisis”: The Status of Personal Bankruptcy In 1999, University College London Working Paper (March 10, 1999) (personal bankruptcy filing rate per thousand population grew at an annual rate of only 1.5 percent in the last year, and at seasonally adjusted annual rate of 1 percent in last quarter; credit card chargeoffs are flat or improving); Lawrence M. Ausubel, Personal Bankruptcies Begin Precipitous Drop: 1999 Data Update, University of Maryland Department of Economics Working Paper (May 3, 1999) (early indications are that per capita personal bankruptcy rate has declined approximately 7 percent from last year; default rates on credit cards are also now declining).

## SHORTCOMINGS IN THE DELIBERATIVE PROCESS

In September of last year, many members of the Senate worked hard to improve the Consumer Bankruptcy Reform Act of 1997, which began as an imbalanced piece of legislation. After serious negotiations, the result was a bill that was significantly more balanced in its approach.<sup>3</sup> That bill garnered nearly unanimous support, passing by a vote of 97 to 1. Rather than using that more balanced product as the starting point for reform this year, bankruptcy reform unfortunately regressed. In producing the Conference Report on H.R. 3150 last year, the conference committee excluded all Senate Democrats and discarded or altered beyond recognition the provisions that were the product of our earnest negotiations and compromise. S. 625 is based largely on that Conference Report, which has been roundly criticized for its hard line approach, arbitrariness, sloppy drafting, and special interest flavor.

S. 625 also goes much farther in overhauling the bankruptcy system than last year's Senate bill by venturing into complex areas of business bankruptcy. At a time when the business community predicts a host of workouts and reorganizations in a variety of industries, this bill forges ahead with untested and undebated changes to the business bankruptcy system. This approach is especially troublesome in light of two new studies—conducted on behalf of the nonpartisan American Bankruptcy Institute and the Executive Office for U.S. Trustees, a division of the Department of Justice—that have been released since the production of the Conference Report on H.R. 3150, on which S. 625 is based. In addition, in the months between the Conference Report and the introduction of S. 625, we have received additional information regarding systematic creditor abuse. At the very least, all of this new information should prompt us to take a second look.

Last year, there were only two days of subcommittee hearings on the issue of consumer bankruptcy and one hearing on the proposed bill before the Committee passed legislation embodying the most ambitious changes in the bankruptcy law in the 100 years of the modern bankruptcy system. This already was a dramatic departure from the attention Congress historically has given to major bankruptcy reform legislation. This year, however, there has been virtually no deliberative process, notwithstanding the fact that the bill is markedly different than last year's Senate bill and tackles entirely new sets of issues. Although the Subcommittee on Administrative Oversight scheduled one hearing to be held jointly with the House Subcommittee on Commercial and Administrative Law, voting prevented Senators from attending during the witness' testimony. Even worse, there were no hearings in the Senate and no Subcommittee mark up sessions.

By comparison, in 1978, the last time Congress reformed the bankruptcy laws in such a significant fashion, the Subcommittee on Improvements in Judicial Machinery held 21 days of hearings, and

<sup>3</sup>See also Letter from Acting Assistant Attorney General Dennis K. Burke to Senate Judiciary Chairman Orrin Hatch (Apr. 9, 1999) (discussing the Bankruptcy Reform Act of 1999) ("Last year the Administration expressed its support for the bankruptcy reform legislation that passed the Senate with a virtually unanimous vote \* \* \* Although we thought that the Senate bill could be further improved, we believed that the extraordinary bipartisan support for the Senate bill was an endorsement of balance and moderation").

the Full Committee held three more hearings on the bill. Similarly, the House Subcommittee on Civil and Constitutional Rights held 35 days of hearings. The House Subcommittee spent 42 hours debating the Bankruptcy Reform Act of 1978 in 22 separate markup sessions, during which the legislation was reviewed line-by-line. Over 120 amendments were offered and over 100 were adopted. With the use of a 700-page briefing book, the full Committee markup took 3 days, and 6 amendments were adopted on the unanimous, bipartisan Subcommittee bill. If this was the high water mark for careful deliberation, we very well may have set the low water mark this year.

The Committee also gave little consideration to the report of the bi-partisan National Bankruptcy Review Commission, created by Congress to study the bankruptcy system and make recommendations for change, that sent its findings and recommendations to Congress in October 1997. When the Commission was authorized in 1994, Congress specifically pronounced itself "generally satisfied with the basic framework established in the current Bankruptcy Code," and counseled the Commission "not [to] disturb the fundamental tenets of current law." While the Commission did not reach unanimous agreement in some areas of consumer bankruptcy, the legislation diverges sharply from the recommendations of both the majority and the four-person minority. Although S. 625 adopts some of the Commission's recommendations, it primarily consists of proposals that were specifically rejected or not acted upon by the Commission.

Keeping in mind its mandate, the Commission held 21 public meetings, which were attended by 2600 people and entailed 602 participants. The Commission adopted 172 proposals, which were forwarded to Congress. Even if we choose to reject the findings of the Commission, we have done ourselves a disservice by failing to take advantage of the rich record they created of views expressed by a range of parties throughout the country. Our failure to take heed of the near unanimous disapproval of this bill by nonpartisan experts, bankruptcy judges, and bankruptcy trustees is equally troubling.

#### STUDIES ON ABILITY TO PAY, CAUSES AND EFFECTS OF BANKRUPTCY

Many proponents of the legislation argue that consumer abuses have precipitated the rise in filings. Accordingly, they believe sweeping legislative reform is necessary to curb abuses and eliminate so-called, "bankruptcies of convenience," which we are told impose a bankruptcy tax on each American family of several hundred dollars per year. In assessing the extent to which these are accurate statements, it is important to review some of the relevant data.

Supporters of a bankruptcy overhaul initially relied on an October 1997 Credit Research Center report entitled Personal Bankruptcy: A Report on Petitioners Ability to Pay as a foundation for the claim that most debtors could repay a significant amount of their debts. In fact, the study estimated that 30 percent of chapter 7 debtors in the sample could pay at least 21 percent of "non-housing, nonpriority" debts (which is not limited to unsecured debts and therefore includes items such as car loans). But the Gen-

eral Accounting Office (GAO) found that the Center's report had several methodological flaws that make both its validity and its reliability suspect. The GAO concluded that "[t]he methods used in the Center's analysis do not provide a sound basis for generalizing the Center report's findings to the annual 1996 filings in each of the 13 locations nor to the national population of personal bankruptcy filings."

Thereafter, VISA U.S.A. and MasterCard International funded several additional studies, including one by the WEFA Group. The WEFA Group determined that losses due to 1997 personal bankruptcies totaled more than \$44 billion, more than 90 percent of which resulted from chapter 7 filings. This figure apparently is the source of the statistic that bankruptcy imposes a hidden tax on each American family of \$400 per year, which recently has increased to \$550 a year.<sup>4</sup> Assuming that the filing rate grew 15 percent over the following 3 years, WEFA concluded that "the American economy would have to absorb a cumulative cost of \$221.2 billion." In a letter to Rep. Martin Meehan, Richard Stana, Associate Director for Administration of Justice Issues for the General Accounting Office stated that he could not determine the validity of the WEFA report's conclusion and that "we believe the report's estimates of creditor losses and bankruptcy system costs should be interpreted with caution."<sup>5</sup> Whether or not these predictions have a sound basis, the 1998 filing rate was only a 2.7 percent increase over the 1997 filing rate and therefore we cannot rely on these figures without further calculation and adjustment.

VISA U.S.A. and MasterCard International also funded two studies by Ernst & Young LLP. The assumptions used to calculate debtors' ability to pay in the Ernst & Young studies differed from the earlier Credit Research Center report, and also yielded different results. The most recent Ernst & Young study of a nationally representative sample predicted that about 10 percent of chapter 7 debtors would be caught by a means test for ability to pay 25 percent or more of unsecured debts or \$5,000 over 5 years—but only if they remained in payment plans for 5 full years, if their incomes did not decline, and if their expenses did not increase, among other assumptions. All of their assumptions also would have to come true in order to re-coup the estimated \$3 billion in debt over 5 years.

Professors Marianne Culhane and Michaela White, who also conducted a study of debtors' ability to pay for the nonpartisan American Bankruptcy Institute, refer to the Ernst & Young recovery estimates as "impossible dreams." Taking a slightly different approach in their calculations,<sup>6</sup> Culhane and White reported in House Subcommittee testimony that they estimate the percentage of can-pay chapter 7 debtors to be 3.6 percent and debt recovery likely would be \$450 million over 5 years. Even using the assumptions used by Ernst & Young, Culhane and White nonetheless found that creditors would recoup far less than the amount predicted by Ernst

<sup>4</sup> Creditor advocates make this claim without corresponding support.

<sup>5</sup> See GAO/GGD-98-116R, *The Financial Costs of Personal Bankruptcy*, at p.6.

<sup>6</sup> The General Accounting Office, which had previously audited and raised issues regarding the Ernst & Young ability to pay studies, found that the differences in the conclusions between Ernst & Young and Culhane and White were at least partially attributable to varying methodological approaches, in addition to sampling differences.



& Young from the can-pay debtors who otherwise would file for chapter 7 in any given year.<sup>7</sup>

The most recent ability to pay study is a nationwide study of chapter 7 debtors undertaken by the Executive Office for United States Trustees, which is a division of the Department of Justice. The EOUST concluded that “only a small percentage of current chapter 7 debtors have the ability to pay any portion of their unsecured debts.”<sup>8</sup> It further concluded that “the means tests contained in the Conference bill would result in less than \$1 billion annually being returned to unsecured creditors.” The EOUST also noted that the currently low chapter 13 completion rate suggests that a 5 year repayment schedule may lead to overly optimistic estimates of repayment. In addition, the administrative costs of the new chapter 13 regime would have to be taken into consideration to gain an accurate assessment of the costs and benefits of the proposed system.

Even if we accepted the most optimistic estimates of ability to pay offered by the credit industry study, it remains the case that the overwhelming majority of chapter 7 debtors cannot pay their debts. Those numbers suggest that a decline in social stigma associated with bankruptcy cannot be the sole cause of increased bankruptcy filings.<sup>9</sup> Much of the increase in bankruptcy filings can be attributed to job loss, divorce, increasing health care costs, and declining real wages,<sup>10</sup> all of which affect the lives of millions of fami-

<sup>7</sup> Culhane and White also noted that the recent change to the Bankruptcy Code permitting charitable contributions will permit sophisticated filers to avoid can-pay status.

<sup>8</sup> Executive Office for United States Trustees, incomes, debts, and repayment capacities of recently discharged chapter 7 debtors, p. 10 (January 1999).

<sup>9</sup> Some researchers identify decreasing stigma as at least partially responsible for the increase in filings, see, e.g., David B. Gross and Nicholas S. Souleses, Explaining the Increase in Bankruptcy and Delinquency: Stigma Versus Risk-Competition (Preliminary draft 1998) (analyzing account information provided by credit card issuers and determining that other factors explain only small changes in default rates, and thus higher defaults must be due to decline in stigma); F.H. Buckley & Margaret F. Brinig, The Bankruptcy Puzzle, 27 J. Leg. Stud. 187 (1998). Economist Michelle White has argued that at least 15 percent of American households would benefit financially by discharging their debts in bankruptcy, and this figure would be higher if households acted strategically, Michelle White, Why Don't More Households File for Bankruptcy, University of Michigan Department of Economics Working Paper 98-03 (March 25, 1998), and yet only a fraction of those families actually use the bankruptcy system. Some economists and scholars not only are skeptical of the stigma argument, but perhaps more significantly are concerned that restricting bankruptcy laws to heighten stigma or for other purposes may very well lead to a higher consumer default rate. See, e.g., David A. Moss and Gibbs A. Johnson, The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both?, Harvard Business School Division of Research Working Paper 98-104 (Rev'd Oct. 1998); Lawrence M. Ausubel, Personal Bankruptcies Begin Precipitous Drop: 1999 Data Update, University of Maryland Department of Economics Working Paper (May 3, 1999); Letter from Douglas Baird, Harry A. Bigelow Distinguished Service Professor, University of Chicago Law School, Vice Chair of the National Bankruptcy Conference, to Speaker Dennis Hastert (April 30, 1999) (“By limiting the scope of bankruptcy relief (through means testing and other devices), we do discourage any given individual in bad financial straits from filing for relief, but these same measures will (for the same reasons) give lenders a greater incentive to lend in the first instance. In the abstract, one cannot say which effect will be greater, and this issue was given virtually no attention during any of the hearings on H.R. 833 or its predecessor in the last Congress.”); Mark M. Zandi, Easy Credit, Profligate Borrowing, Tough Lessons, Regional Financial Review (January 1997). One also might question how this legislation will heighten the stigma of bankruptcy, particularly if the credit industry continues to offer postbankruptcy credit. See Michael Staten, The Impact of Post-Bankruptcy Credit on the Number of Personal Bankruptcies Credit Research Center, Krannert School of Management, Purdue University, Working Paper No. 58, (January 1993); Letter from Robert Mitch, American Bankruptcy Service, re: Fresh Start Visa Distributorship (December 18, 1998) (offering \$10 to debtors' lawyer for every client who applies for this credit card).

<sup>10</sup> See, e.g., Report of the National Bankruptcy Review Commission, Vol. 1, pp. 84-86 (Oct. 20, 1997); Teresa A. Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook, Consumer Debtors Ten Years Later; A Financial Comparison of Consumer Bankrupts 1981-1991, 68 Am. Bank. L. J. 121 (1994); Teresa A. Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook, From Golden Years to Bankrupt Years, Norton Bank. L. Adviser, p. 4 (July 1998) (finding that job and medical problems are the reasons most frequently by bankrupt debtors over 50 as the rea-

Continued

lies notwithstanding the stock market and this period of prosperity.<sup>11</sup>

Perhaps more significantly, financially overburdened consumers, particularly those in bankruptcy, are carrying more short-term, high interest debt, and, as a result, they are more susceptible to financial failure. Independent academic studies and government studies of the increase in bankruptcy demonstrate that the rise in bankruptcy filings follows equally sharp rises in the amount of consumer debt per household. Harvard Business School Professor David Moss and his co-author Gibbs Johnson note that “the evidence suggests that shifts in the volume of and distribution of consumer credit—rather than declining stigma—are the most likely sources of the recent surge in consumer filings.” They add that another explanation for the surge of filings that began in the late 1980s “is that consumer creditors began reaching substantially further down into the income distribution beginning in the mid 1980s.”<sup>12</sup> Professor Moss’ conclusions are consistent with those of Diane Ellis at the FDIC Division of Insurance, who has argued that the functional deregulation of consumer credit “fundamentally altered the market for credit card loans in a way that significantly expanded the availability of credit and increased the average risk profile of borrowers. \* \* \* The result was a substantial expansion in credit card availability, a reduction in average credit quality, and an increase in personal bankruptcies.”<sup>13</sup> Ellis further states that “by marketing high-risk debt to customers who are at substantial risk for non-payment, credit card issuers have contributed to the rise in consumer bankruptcies.”

In light of this information, one can draw several conclusions. First, only a small percentage of chapter 7 debtors can pay a sig-

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son they filed); SMR Research Corp., *The Personal Bankruptcy Crisis* (1997) (Finding, among other things, that bankruptcy rates tend to rise with divorce rates when evaluated at county level); Ian Domowitz and Robert L. Sartain, *Determinants of the Consumer Bankruptcy Decision*, *J. Fin. Vol. Liv, No. 1* (1999) (Using 1983 random sample compiled by General Accounting Office, finding medical and credit card debt to be strongest contributors to bankruptcy). Credit industry papers and studies have acknowledged that bankruptcies are not entirely explained by lack of personal responsibility and declines in stigma. See, e.g., Lawrence Chimerine, *Americans in Debt: The Reality*, p. 24 (MasterCard International 1997) (“Stagnation in real wages during the last 20 years and the growing disparity in income and wealth, \* \* \* have almost certainly contributed to the rise in personal bankruptcies. Declines in income caused by job loss make it more difficult for those affected to service previously accumulated debt.”); Bankruptcy Petition Study, Executive Summary, VISA Consumer Bankruptcy Reports (April 1997) (“The single most important factor affecting an individual’s decision to file for bankruptcy appears to be a decline in income, coupled with an inability to adjust lifestyles sufficiently to accommodate the reduced level of income); Consumer Bankruptcies: Causes and Implications, VISA Consumer Bankruptcy Reports (July 1996) (multiple regression analysis study finding that bankruptcy filings significantly correlated with following factors: changes in employment growth rates; increases in the share of population aged 25–44; increases in the divorce rate; declines in median existing home prices; social factors trends; number of bank credit cards accounts per adult; and ratio of consumer installment debt service to personal disposable income).

<sup>11</sup>Hearing on Consumer Debt and Bankruptcy, Subcommittee on Administrative Oversight and the Courts, Committee on the Judiciary, United States Senate (April 11, 1997) (Statement of Kim J. Kowalewski, Chief, Financial and General Macroeconomic Analysis Unit, Macroeconomic Analysis Division, Congressional Budget Office) (Although bankruptcies increase during recessions, data on bankruptcies throughout the 20th century show that nonbusiness bankruptcies “have tended to increase even more dramatically during economic expansions. Indeed \* \* \* most of the rise in nonbusiness bankruptcies during the postwar period occurred apart from recessions”).

<sup>12</sup>David A. Moss and Gibbs A. Johnson, *The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both?*, Harvard Business School Division of Research Working Paper 98–104 (Rev’d Oct. 1998).

<sup>13</sup>Diane Ellis, Division of Insurance, FDIC, *The Effect of Consumer Interest Rate Deregulation on Credit Card Volumes, Charge-offs, and the Personal Bankruptcy Rate*, Bank Trends 98–05, at pg. 3, ( March 1998).

nificant amount of their unsecured debts. We therefore must be realistic when determining the costs and benefits to the proposed structural changes. Second, it would be foolish for us to believe that changing the rules of the bankruptcy system, alone, will lower the bankruptcy filing rate in any significant respect; instead, we must consider bankruptcy in tandem with the root causes of financial distress, such as shortcomings in health insurance and the need for a higher minimum wage, along with a careful revisitation of our policies regarding consumer credit.

#### CREDIT INDUSTRY PRACTICES

As stated above, the growth of the consumer credit industry was precipitated in large part by the deregulation of consumer credit interest rates in the late 1970's, which gave states greater flexibility to raise interest rates.<sup>14</sup> Credit card issuers and some states capitalized on the new environment created by these decisions and deregulation. Lenders then began to broaden their customer base by extending credit to those further down the spectrum of credit quality.<sup>15</sup> The result is aggressive marketing and a loosening of underwriting standards in an effort to attract more credit card customers and increase profits.

According to the FDIC Division of Insurance, "credit card lending was dubbed the Wild West of consumer credit. This title was earned, in part, by lenders' aggressive marketing and solicitation of their cards and consumers' willingness to push their holdings of credit card debt to record high levels."<sup>16</sup> Because of the high profitability of consumer credit lending, consumer lenders are using many tools to increase their customer base and encourage families to carry large card balances.

In addition to the aggressive solicitation of new customers, consumer lenders engage in a variety of practices that increase the likelihood that borrowers will file for bankruptcy relief. Some of these practices include, encouraging debtors to make minimum payments which will not decrease the loan principal, offering "teaser" interest rates designed to encourage customers to increase debt, switching credit rates with no advance notification to customers, using confusing and sometimes misleading descriptions of interest calculations, failing to disclose how long or how expensive repayment will be if consumers make only the minimum monthly payments and increasing credit limits for customers who carry large debt balances without further credit investigation or even a request from the customer.

The offers of credit extensions do not seem to be in abatement, even at a time of high bankruptcy filings. The all-time high in credit card mail solicitations in 1997 (3.1 billion) has been surpassed by a new all-time high: according to the American Banker and the New York Times, 1998 credit card solicitations reached 3.45 billion.

<sup>14</sup> See *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299 (1978) (National Banking Act permits national banks to charge out of state customers maximum interest rate allowable in that state); *Smiley v. Citibank (South Dakota), N.A.*, 116 S. Ct. 1730 (1996) (national banks may export late-payment fees, annual fees, cash advance fees, and other fees related to extension of credit).

<sup>15</sup> Ellis, *supra* note 12, at 5.

<sup>16</sup> See Diane Ellis, FDIC Division of Insurance, *High Loan-to-Value Lending: A New Frontier in Home Equity Lending*, Regional Outlook (1st Quarter 1999).

Mail is only one way to market consumer credit; in 1996, for example, credit card companies logged 24.1 million telemarketing hours. Credit card manufacturers also increased their advertising 14 percent between 1995 and 1996.

Credit is available to almost any college student—no income, no credit history, and no parental signature required.<sup>17</sup> The National Bankruptcy Review Commission received an advertisement for a two-day workshop for creditors entitled, “Competing in the Sub Prime Credit Card Market,” including a presentation entitled, “Targeting College Students: Real Life 101,” with tips on how to “target the money makers of tomorrow.”<sup>18</sup>

Even people who have declared bankruptcy receive unsolicited credit card applications for unsecured credit cards. While the consumer credit industry is lobbying lawmakers to overhaul the bankruptcy system to compensate for the alleged lack of stigma in bankruptcy, the American Bankruptcy Service, which has indicated support for the legislation in testimony before Congress, is soliciting debtors’ lawyers and offering them \$10 for every bankrupt client they encourage to enroll for a “Fresh Start VISA Card” from First Consumers National Bank. Bankrupt debtors are attractive be-

<sup>17</sup>See also Report of the National Bankruptcy Review Commission 93 (October 20, 1997); George M. Salem and Aaron C. Clark, GKM Banking Industry Report, Bank Credit Cards: Loan Loss Risks are Growing, pg. 9 (June 11, 1996). Although humorous, the following example makes it clear that credit card issuers will solicit the business of almost anyone—or anything. Barbara Fazio of Windsor, Connecticut received a credit card solicitation for her 9-year-old cat, Daisy. Fazio had answered a television advertisement for free insulation and used her cat’s name as a joke. Six weeks later, Visa offered Daisy a Gold Card with a \$2,500 line of credit.

<sup>18</sup>An administrator at Indiana University tells parents at freshman orientation that Indiana “lose[s] more students to credit card debt than academic failure.” Bonnie Miller Rubin, College students charge right into valley of debt, Chicago Tribune (Aug 16, 1998). According to a Nellie Mae study, 2 out of 3 undergrads have at least one credit card and 27 percent have 4 or more cards. The average credit card balance for undergrads, according to accounts of that study, is \$1,879. Nancy Lloyd, Should your teenagers have a credit card? What every parent should know, Family Circle (February 1, 1999) (Providing real examples of teens who got themselves in trouble with credit, including junior high school age teens who are getting credit card applications in the mail). Simmons Market Research found that the number of full time undergrads who carry a balance is around 39 percent, and the number who make only the minimum monthly payment is up to 16 percent. Credit card crackdowns; Colleges curb sales pitches, Chicago Sun-Times (March 14, 1999) (“college students are a prized target for the card industry. One reason: consumers a loyal to their first credit card \* \* \* and even though college students have little or no income, they are not considered high risk borrowers because parents generally bail them out if they get into trouble \* \* \* Students are bombarded with credit card offers from the moment they step on campus as freshmen. They often find applications slipped into their bags at college book stores. Card marketers offer them gifts if they fill out an application \* \* \* If marketers are banned from campus, they don’t give up. They often just move to other locations frequented by students, such as spring break vacation hotspots”). “A 1996 University of Minnesota study suggests that credit card debt often goes hand in hand with stress and depression. The study found that two-thirds of students who said they were taking medication for depression had more than \$1,000 in credit card debt. \* \* \* The study also found that as credit card debt increased, the students’ grade point averages went down. Students with high credit card balances also worked more hours and were more likely to drop classes.” Christine Dugas, Lead us not into temptation; Colleges target card solicitors, USA Today (March 12, 1999) (“College administrators complain that marketers entice students to apply for cards and take on debt with free T-shirts, music CDs and promises of an easy way to pay for spring break vacations. They say some marketers yell at students to get their attention and follow them through hallways to make a sale. Marketers have shown up on campuses unannounced and without permission to hawk cards in dormitories and other areas. ‘Many times card marketers get student organizations to work for them. \* \* \* Then you have friends pressuring friends.’”). “On many campuses, credit card use is a growing concern for administrators, who worry that excessive debt can wreck students’ credit ratings and hurt academic performance.” The magic of plastic; College students increasingly lured into world of debt, Tulsa World (December 6, 1998) (reporting on students who were given several credit cards and used them improvidently). See also Card-carrying kids; More young people are taking the plunge into plastic, diving deep into debt, Fort Worth Star-Telegram (January 1, 1999) (estimating that 7 out of 10 college students have their own credit cards today, and 81 percent got them during their freshman year of college or in high school).

cause they have proven that they will take on credit and, by law, they cannot seek a bankruptcy discharge for another six years.<sup>19</sup>

Some credit card issuers argue that solicitations should be compared to fast food advertising and “[j]ust as consumers ought not go have a Big Mac every time they see a McDonald’s ad, they probably ought not avail themselves of every credit card solicitation they receive.”<sup>20</sup> Credit card issuers suggest that a credit product is no more difficult to understand than a Big Mac and requires no more sophisticated analysis than whether to buy one with cheese or one without.

Americans thankfully have sufficient restraint to say “no” to some of the solicitations they receive, which has led to a slowdown in the growth of credit card debt outstanding. However, they have not ignored the billions of dollars in advertising that have urged them to buy on credit without considering either the long-term consequences or how high-cost, short-term debt increases their economic vulnerability to some other economic shock. The 55 to 60 million households that carry a credit card balance from month-to-month have an average balance of \$7,000 and pay more than \$1,000 per year in interest and fees.<sup>21</sup> As the bankruptcy files amply demonstrate, the long-term effects of credit that outstrips income can be catastrophic.

As unsecured debt overwhelms some American families, some of them look to home equity loans. Once obtained to enhance the value of one’s assets for investments such as home improvements, a survey in 1997 found that 40 percent of home equity loan borrowers give up their home equity and put their homes at risk to consolidate their out-of-control credit card debt.<sup>22</sup> In fact, origination of home equity loans has surpassed origination of credit card loans in 1997 and 1998. Often these home equity loans exceed the amount of the equity or the value of the property, hence the terms 125 percent loan to value mortgages or high LTV loans. According to the FDIC, the risks of this relatively new lending practice—both on the credit industry and on consumers—are unknown.

Although the credit industry calls for “personal responsibility in the bankruptcy context, its behavior shows a preference for less responsible consumers outside of bankruptcy. Several companies charge fees or cancel cards if customers pay in full every month.<sup>23</sup> For example, Beneficial National Bank of Delaware canceled 12,000 customers’ MasterCard because the customers paid their balances every month. NationsBank and GE Rewards MasterCard have imposed fees or canceled cards for customers who pay their bills in full. Credit card issuers that earn most of their revenues from the interest paid by borrowers who do not pay in full every

<sup>19</sup>Dr. Michael Staten, Director, Credit Research Center, Krannert School of Management, Purdue University, Working Paper No. 58, *The Impact of Post-Bankruptcy Credit on the Number of Personal Bankruptcies* (January 1993).

<sup>20</sup>Shenk, *Bankrupt Policy*, *The New Republic*, May 18, 1998, at 16, 17 (quoting William Binzel, a spokesperson for MasterCard).

<sup>21</sup>See Consumer Federation of America, “Recent Trends in Credit Card Marketing and Indebtedness” (July, 1998) at p.1.

<sup>22</sup>See Diane Ellis, FDIC Division of Insurance, *High Loan-to-Value Lending: A New Frontier in Home Equity Lending*, *Regional Outlook* (1st Quarter 1999).

<sup>23</sup>David S. Evans & Richard L. Schmalensee, *The Economics of the Payment Card Industry*, Fig. 3 (1993).

month are not motivated or required to consider the best interests of their potential customers.

Truth in Lending laws require different disclosures for open end credit, such as credit cards, than they do for closed end credit, such as mortgages and car loans. For this reason, credit card companies are currently not required to disclose how long it would take and how much it would cost if a borrower makes only the minimum monthly payment based on the terms and current balance of the borrower. If those and other disclosures were required, the sticker shock might help consumers make more responsible credit decisions. Credit card industry analysts estimated several years ago that if an individual made typical monthly payments at an average interest rate, it would take 34 years to eliminate a \$2,500 credit card debt.<sup>24</sup> Total payments would exceed 300 percent of the original principal. Most borrowers are not aware of this fact, and, unlike mortgage loans and car loans, credit card statements do not disclose the amortization rates or the total interest that will be paid if the cardholder makes only the minimum monthly payment.

Even in the face of mounting evidence that aggressive consumer lending to low income and marginal borrowers has contributed to increased bankruptcy filings, this bill declines to recognize or address the realities of the consumer credit world today and how that affects bankruptcy and insolvency. Notwithstanding several thoughtful proposals to make modest reforms to the Truth in Lending laws, the bill demands no new disclosures from the credit card industry or consumer protections. Instead, we are expected to take a leap of faith and turn a blind eye to lending practices that encourage borrowing by people who cannot afford it, while we sharply limit the safety valve for honest but troubled American families. No one is suggesting that credit card debt, or the availability of credit generally, is the sole factor responsible for consumer bankruptcies. However, we cannot ignore lending practices, which contribute to financial instability, while charging ahead with this bankruptcy overhaul.

Credit industry representatives have referred to freely flowing credit offered to those who cannot afford it as the “democratization of credit,” and have suggested that credit might dry up if the bankruptcy laws are not changed. Fair access to credit should not be confused with overly aggressive solicitation of customers who are clearly unable to accommodate additional debt and the failure to inform customers about the full risks of the products they use. Eliminating discriminatory lending practices is one issue, but the relaxation of industry standards is quite a different matter. Although risky lending can be extremely profitable, consumer defaults—and consequently bankruptcies—will not subside unless consumer lenders consider the credit worthiness of their potential customers when making a lending decision. Indeed, Professor Moss of Harvard Business School and Professor Ausubel of the University of Maryland Department of Economics have opined that restricting bankruptcy laws will increase the flow of risky credit. Re-

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<sup>24</sup> George M. Salem and Aaron C. Clark, GKM Banking Industry Report, Bank Credit Cards: Loan Loss Risks are Growing, p. 25 (June 11, 1996).

ducing the risk of default and loss through bankruptcy will only encourage the credit industry to continue on its current course.

#### PROBLEMS WITH THE BILL

Notwithstanding our belief that bankruptcy reform should not occur in a vacuum, we nonetheless wish to clearly state specific and substantive concerns about the bankruptcy amendments and to debunk several myths about the details of the legislation.

##### *A. The Arbitrary Means Test*

We support bolstering the Bankruptcy Code so that improper bankruptcy cases are more easily removed from the system. However, any such mechanism should be carefully crafted so that, at a minimum, the means test identifies the abusive filers without creating other distortions in the system and so that the costs of this enterprise do not outweigh the benefits. The current means test in section 102 of S. 625 unfortunately fails on both counts.

When a formulaic means test was first introduced in the House last year, it applied only to debtors with income that exceeded the national median. Section 102 of S. 625 requires that every single chapter 7 debtor, even those earning less than the poverty level, engage in a complex certification process within the first few days of the case involving the means testing formula and extensive verification. It simply does not make sense to conduct an extensive review of low income chapter 7 filers, which will impose considerable costs on the taxpayers and the legal costs to the debtor, given that there will be only a remote likelihood that any low income filers will be able to repay their debts under the means test. Doing so foists the burden and expense of these additional procedures on a substantial group of low income filers who are appropriate candidates for chapter 7, even by credit industry accounts.

The details of the means test itself are troublesome. The proposed formula relies heavily on the use of the Internal Revenue Collection standards to determine whether a debtor's expenses are appropriate. These are the same standards that were called into question by the Internal Revenue Service Restructuring and Reform Act of 1998 that directed the IRS to reconsider whether those expenses were adequate and realistic. In analyzing the extent to which debtors have the ability to pay, the recent study by the Executive Office for United States Trustees explains the use of these standards, which highlights their significant logistical problems and the biases produced by the means test. In evaluating the IRS allowance for food, clothing, housekeeping supplies, personal care products and services, the EOUST observed that the amount of the allowance is based not only on family size, but also on gross family income. The resulting allowances permit a single high income person to set aside a higher amount of money than a low income family of 6. Whether or not this is acceptable in the IRS context, it is not acceptable when used as a mandatory measure to determine access to debt relief in bankruptcy.<sup>25</sup>

<sup>25</sup>The EOUST report also observes that there appears to be little rhyme or reason to the IRS food allowances, noting that a "middle income family receives an allowance of \$537 for the first

The legislation permits homeowners to deduct their mortgage payments as secured debt, regardless of the amount of the mortgage payments, in addition to the portion of the IRS housing allowance that is not attributable to the mortgage payment. However, the means test does not make clear how much of the IRS housing allowance may be claimed by homeowners for housing-related costs that are not included in the mortgage payment. Perhaps more troublesome is the fact that this portion of the test favors homeowners with high mortgage payments over homeowners with low mortgage payments, and gives least favored status to families who rent their dwellings.

The transportation allowance is based on the number of cars owned and the debtor's location. The EOUST notes that "the allowances vary from a low of \$126 for an individual without a car in Buffalo, New York, to a high of \$983 for an individual in Dallas, Texas who is making payments on two cars." This approach also disfavors people without a car who save costs by using public transportation; the EOUST concludes that "the allowance is generally about \$700 per month higher for people making payments on two cars than for people who have no car" before even considering any car loan payments, which also can be deducted. This approach creates perverse incentives by benefitting high income debtors who buy 2 new cars before filing for bankruptcy. Surely this is not "needs based" bankruptcy.

Other expenses are allowable if covered under the "other necessary expense" category of the IRS standards. This category is intended to include items such as taxes, health care, court ordered payments, involuntary payroll deductions, secured debt payments, child and dependent care, life insurance, charitable contributions, educational costs, union and professional dues. The means test fails to mention, however, that the IRS regulations establish no preset allowances and instead the IRS considers these expenses one at a time, on a case by case basis, in conjunction with other factors that must be considered. Not surprisingly, it was difficult for the EOUST to deal with these expenses; "We do not know whether the bankruptcy courts will apply this or a similar criterion for allowing expenses in proposed chapter 13 plans. The situation may well promote considerable litigation. As local standards evolve for each expense in this category, more debtors are likely to claim the maximum allowable amount on their monthly expenses."

This discussion has focused on only a fraction of the issues raised by the means test in section 102 of S. 625.<sup>26</sup> Whether or not there should be a set formula to determine access to bankruptcy, this test fails to meet even the most basic criteria of fairness and clarity. The Committee was presented with a compromise amendment by Senator Schumer that addressed many of these problems by rejecting the use of the IRS expense standards, but that amendment was

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person, \$207 for the second, \$91 for the third, \$61 for the fourth, and \$165 each for each person over four. The applicability of these tables to families in a bankruptcy context is not intuitively clear."

<sup>26</sup>Other problems include the fact that the means test is based on a 5 year repayment schedule when 3 year repayment schedules already have a high failure rate, the calculation of monthly income that leads to a higher estimate of the ability to pay and the presumption that all payments will be made uniformly over a period of 5 years when in reality the payments are concentrated in a shorter period in a higher amount.



defeated. We witnessed a similar event with respect to the House bill; Chairman Henry Hyde sought to eliminate the use of the IRS expense standards and make other helpful changes that would have improved the operation and the fairness of the means test. Although Chairman Hyde's amendments originally passed by a narrow margin, they were later defeated after cries of "legicide" by principal sponsor Rep. Gekas. Chairman Hyde made one more attempt on the House floor but his reasonable amendment was defeated. The resulting means test in S. 625 hardly can be said to promote personal responsibility when it favors higher income individuals with more property and debts over lower income families with a more modest set of property and debts.

#### *B. Provisions Favoring Particular Interests*

Most discussions of bankruptcy reform have centered on the means test, and yet that provision is merely the tip of the iceberg of this bill, which contains dozens of provisions requested by the consumer credit industry. Looking only at the first few titles of the bill, House Judiciary Committee Chairman Henry Hyde noted at the markup of the substantially similar bill, H.R. 833, that the bill contains at least 25 provisions favorable to creditors. On the floor, Chairman Hyde's estimate grew to at least 75 provisions.

There certainly is nothing wrong with ensuring that creditors receive fair and just treatment in bankruptcy. However, the bankruptcy system has had a long tradition of promoting equitable treatment of creditors in accordance with a carefully considered priority scheme. This bill turns that approach on its head by adding provisions to aid certain types of creditors without fully considering how this will affect other creditors or the underlying goals of this bill. As Senator Feingold noted, the bill seems to be at war with itself.

Thus, notwithstanding the intention to increase unsecured creditor distributions through imposing a means test (section 102) and extending the duration of chapter 13 repayment plans to 5 years if a case was converted from chapter 7 to further increase those distributions (section 318), the bill counters the benefits for unsecured creditors by inflating the amount of claims secured only partially by collateral (section 306),<sup>27</sup> and expands the universe of interests secured by homes that cannot be modified. Because secured creditors generally have priority over unsecured creditors when plan payments are determined, these new provisions will expand the proportion of income that must be committed to secured claims and likely will consume any extra amounts that otherwise would have been committed to unsecured creditors—leading either to "zero percent" plans that pay nothing to unsecured creditors or the inability to confirm a repayment plan at all.

The bill increases postbankruptcy competition as well. The bill excepts from discharge a wider range of credit card debts and retail

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<sup>27</sup> Among other changes, section 306 provides that debts secured by cars incurred within 5 years before bankruptcy shall be treated as fully secured, regardless of the value of the car. Debts secured by other any other items incurred within 6 months before bankruptcy shall be treated as fully secured, regardless of the value of the collateral.

charge card debts (sections 310, 314)<sup>28</sup> and may increase unsecured creditors' leverage for obtaining reaffirmations of debt without imposing any meaningful change in reaffirmation approval procedures (section 204). However, the enhanced treatment for secured creditors extends to postbankruptcy as well (e.g., sections 304, 305,<sup>29</sup> 313<sup>30</sup>), and protects retailers and finance companies with claims secured by low value household goods. These provisions are likely to lead to increased reaffirmations of nominally secured debt, which arguably have greater collection rights than unsecured creditors.

Section 311 provides four new automatic stay exceptions for residential landlords that basically eliminate the injunction against creditor action and breathing spell for renters, exacerbating the differential treatment for renters and homeowners. Although it may be appropriate to offer an expedited procedure for residential landlords when debtors are not paying their rent postbankruptcy, some of us believe that the existing carveout may undermine the purpose of the automatic stay to the detriment of families in bankruptcy and their other creditors.

### *C. Destructive Impact On Chapter 13*

As a result of some of the amendments discussed above, the bill may violate its own directive of increasing distributions in chapter 13. This was emphasized by Henry Hildebrand, who testified before the House Judiciary Subcommittee on Commercial and Administrative Law on behalf of the National Association of Chapter 13 Trustees on March 17, 1999:

I wish to make this point extremely clear. In its current form, H.R. 833 will discourage the Chapter 13 option for debtors seeking bankruptcy relief, will impose significant hardships and costs on debtors and creditors who are involved in the bankruptcy process, will impose significant unfunded costs on the system, and will result in the inequitable and reduced distribution of any dividend to

<sup>28</sup>Under section 310, credit card cash advances aggregating more than \$750 within 70 days before bankruptcy are presumed nondischargeable. Debts to a single creditor aggregating more than \$250 for "luxury goods or services" incurred within 90 days before bankruptcy are presumed nondischargeable. Section 314 adds another exception to discharge when the "debtor incurred the debt to pay such a nondischargeable debt with the intent to discharge in bankruptcy the newly-created debt." Any debts incurred to pay nondischargeable debts within 70 days prior to filing are nondischargeable (except in cases with filed claims for domestic support obligations). Under subsection (b) of section 314, a debtor who completes a 3 to 5 year chapter 13 plan is prevented from discharging a wider range of debts and will remain liable for remaining debts that are nondischargeable on account of a false representation, including credit card debts. These provisions have been the subject of considerable criticism and yet have not been substantially modified.

<sup>29</sup>Sections 304 and 305 prohibit the "ridethrough" of secured debt obligations in chapter 7. If a debtor does not redeem or reaffirm a debt secured by personal property, the creditor may take action against the property without running afoul of the automatic stay unless the court determines on the motion of a trustee that the property is of consequential value to the bankruptcy estate. Aside from the technical problems with this amendment, it codifies the law of some circuit courts and overrules the law of other circuit courts.

<sup>30</sup>Section 313 defines "household goods" for purposes of section 522(f) of the Bankruptcy Code by delineating an exclusive list of items that fit the term. This definition not only diverges from the approach ultimately taken in the Senate last year, but likely departs from the prevailing current interpretations of "household goods" in section 522(f) and probably will increase litigation. See, e.g., *In re McGreevy*, 955 F.2d 957 (4th Cir. 1992) (defining household goods as items of personal property typically found in or around home and used by debtor or his dependents to support and facilitate day-to-day living within the home, including maintenance and upkeep of the home). The list also smacks of arbitrariness in what it includes and excludes. It certainly doesn't appear to be based on the needs of diverse American middle class families.

creditors. \* \* \* For purposes of this testimony today, however, we would like to sound the clarion bell of warning that the current draft of the bill will decimate many Chapter 13 programs across the country. The tragic thing about this fact is that the policies sought to be addressed by Congress can be achieved without such a destructive impact.”<sup>31</sup>

Hildebrand’s comments are, for the most part, transferable to S. 625, which contains three out of four of the provisions in the House bill that decrease the success of chapter 13: the “no stripdown” provision (section 306), narrowing of the chapter 13 superdischarge (sections 315, 707), and the prebankruptcy credit counseling requirement that continues to be applicable to chapter 13 and may delay filings until debtors no longer can work out their problems in chapter 13 (section 105).

*D. Absence of provisions addressing coercive creditor practices and providing consumer protections*

One of the best attributes of the bankruptcy bill that passed the Senate last year was its balanced approach. Although it contained scores of provisions requested by the consumer credit industry, it also recognized the problems created by creditor overreaching and abuse. None of our work in this regard can be found in S. 625.

The solicitation and enforcement of reaffirmation agreements are a critical component of this debate. A reaffirmation is an agreement made between a debtor and creditor such that the debtor remains legally liable for a debt after bankruptcy that otherwise would have been discharged. Reaffirmation agreements almost were not a part of the new bankruptcy laws in 1978. Now, they have a pervasive effect on the law and significantly affect the extent to which debt relief is achieved in bankruptcy.

Reaffirmations that are technically legal but are the product of coercive practices undercut bankruptcy’s fresh start. Each reaffirmed debt competes for the debtor’s scarce income with other debts that survive bankruptcy—such as, child support, alimony, taxes, student loans, mortgages and car payments. Although reaffirmations may be prudent in some cases, they defy logic in others. Experience has shown that debtors’ attorneys have not been able to perform the requisite screening of these agreements.

Some reaffirmation agreements are illegal because they are not filed with the court. Most recently, Sears Roebuck admitted to criminal fraud, agreeing to pay \$60 million—the largest ever bankruptcy fraud criminal fine. This fine was in addition to the several hundred million dollars already committed by Sears upon settlement with Attorneys General and in a private class action suit.<sup>32</sup> Sears is not alone. Federated Department stores—which includes Bloomingdale’s, Macy’s, and Sterns—agreed to pay \$14.64 million in settlement of several state suits. Montgomery Ward, GE Capital Corp, Discover Card, May Department Stores, AT&T, Circuit City,

<sup>31</sup> <http://www.house.gov/judiciary/106-hild.htm>

<sup>32</sup> Susan Chandler, Sears fraud fine is \$60 million, Chicago Tribune (Feb. 10, 1999) (reporting that Sears agreed to plead guilty to count of criminal bankruptcy fraud and pay \$60 million fine, based on admission that Sears had been illegally collecting discharged debt since mid-1980s); John McCormick, The Sorry Side of Sears, Newsweek (Feb. 22, 1999).

J.C. Penney, Beneficial National Bank, and Greenwood Trust, among others have faced similar problems.

Proponents of this legislation assert that these lawsuits demonstrate that “the system works” as it is. Even if it was accurate to say that current law sufficiently addresses creditor abuse, that position does not take into account the new leverage acquired by creditors in this bill. By allowing creditors to threaten section 707(b) motions, increasing the ability of creditors to threaten to repossess household goods, expanding credit card nondischargeability in several respects, and heightening the entitlements of any creditor that takes a security interest in worthless items, S. 625 bolsters the leverage of aggressive creditors to coerce reaffirmations without significantly improving the protections afforded by reaffirmation review.

Section 204 of S. 625 entitles a debtor to a hearing regarding a reaffirmation of an unsecured debt, but makes the requirement waivable by debtors represented by counsel. The provision also authorizes greater law enforcement on the state and federal levels to address illegal reaffirmation agreements. This provision may represent a good step in the right direction, but is not likely to have an appreciable effect on current reaffirmation practices, nor are the other provisions in title II that on their surface could pass for consumer protections. Unfortunately, many people reaffirm debts simply because the creditor asked them to do so, whether or not they can afford to pay the debts that led them to bankruptcy in the first place, and will waive their review rights without realizing the implications. Reaffirmations are solicited in the hallways of the court house after the section 341 meeting of creditors or by phone at night. The threats of nondischargeability or repossession that lead to reaffirmation are implied or sometimes overt. Whether or not a creditor’s threat of repossession of nondischargeability is viable, in the real world, bankrupt debtors with an average income of under \$20,000 per year cannot afford to fight. This inequality of bargaining power will only be heightened by the special interest provisions of S. 625. Last year’s Senate bill would have been far more effective in ensuring proper review of reaffirmation agreements of unsecured and nominally secured debts. Reaffirmations, like other extensions of credit, also should be accompanied by disclosures so that the debtor can understand the new legal commitment and the total cost.

S. 625, like other bankruptcy reform bills, has been premised on the need to restore personal responsibility. Regardless of our doubts that this bill properly rewards personal responsibility in its approach to bankruptcy reform, the time to instill personal responsibility is not when a family is in the thick of financial trouble. Rather, the personally responsible consumer is one who is educated about the various consumer credit products that she is offered, often unsolicited. To the extent that bankruptcy is a symptom of a problem—overuse of credit that makes consumers more vulnerable to other financial shocks caused by divorce, layoffs, and medical problems—rather than the problem in and of itself, we will never solve a bankruptcy crisis if we do not look beyond the Bankruptcy Code. As previously noted, even if S. 625 prevented the filing of the most aggressive estimates of abusers, the filing rate will

not drop appreciably. History teaches us that trends in the bankruptcy filing rate has followed trends in the debt-income ratio of American families. Default rates are unlikely to decline if we do not look at debt generally.

Credit cards, debit cards, retail charge cards, "live checks," high loan to value home equity loans can be productive tools for American families, but they also can attribute to the consumers' downfall if consumers do not understand the terms and the financial impact. We can hardly blame consumers for sometimes misunderstanding the consequences of credit usage. Unlike home mortgages and car loans, which disclose the total cost and how long it will take to pay, open end lines of credit are more mysterious because the Truth in Lending Act does not require the same types of disclosures. The consumer may understand that making smaller payments will produce finance charges, but she may not understand that a manageable debt can turn into an unmanageable debt in a very short period if the debtor pays the 2.5 percent minimum balance or even a bit more. These concerns are heightened by the expansion of credit availability to teenagers and other groups that may be less likely to fully understand the consequences. The problem is further exacerbated by the frequent changes in terms on open end credit and the sales of accounts; even if the consumer closely studied the terms when she first received a credit card, those terms may have changed with little or no notification.<sup>33</sup>

With these concerns in mind, we worked hard last year to promote personal responsibility on several fronts. We agreed to support a bill that held consumers to a higher standard when they attempted to obtain bankruptcy relief, but insisted that this be coupled by reasonable attempts to ensure that consumers have better tools to help themselves stay out of trouble. The result was a series of compromise provisions that ask consumer credit issuers to give potential borrowers and their customers just a bit more information about the product they are using. Although there may be a cost to consumer lenders to implement these additional disclosures, the benefits could be found in lower default rates and fewer bankruptcies.

However, once the bill got to the conference committee, Senate Democrats were excluded from deliberations. The resulting Conference Report on H.R. 3150 took an even more aggressive approach to restricting bankruptcy access in a variety of ways, but made a mockery of our concerns about consumer credit. The Conference Report stripped away our carefully crafted compromise provisions and substituted them with a series of much weaker provisions. This year's House bill, H.R. 833, continues to include those Conference Report provisions.

S. 625 is devoid of any consumer credit provisions. In light of our very significant concerns, this is hardly a minor omission. We have heard several times that such provisions were omitted to avoid a sequential referral to the Banking Committee, but this explanation provides us with little solace, particularly because the majority was unwilling to commit to supporting these provisions on the floor.

<sup>33</sup>See, e.g., Robert D. Hershey, Sales of Credit Accounts Are Hurting Many Consumers, the New York Times (March 2, 1999) (citing R.K. Hammer Investment Bankers statistic that 32 million people had their credit card accounts sold in 1998).

To facilitate consumers' understanding of the actual cost of credit, section 209 of last year's Senate bill, as passed by the Senate by a vote of 97 to 1, amended the Truth in Lending Act to implement additional disclosure requirements for open end credit plans (e.g., credit cards) similar to those applicable to closed end credit plans (e.g., car loans or mortgages). In particular, this provision would require a credit card lender to disclose (1) the required minimum monthly payment on the borrower's balance in dollar amount and as a percentage of the balance; (2) the number of months it would take to pay the entire balance if only borrower makes the minimum monthly payments and incurs no additional debt; and (3) the total cost to the consumer of paying the balance in full if the consumer makes only the minimum monthly payments and incurs no additional debt. In addition, when sending a credit solicitation, lenders would have to include (1) a worksheet to aid consumers in determining their ability to assume more debt; (2) a statement that "preapproval for this credit card does not mean that we have reviewed your individual financial circumstances. You should review your own budget before accepting this offer of credit;" and (3) notification that the consumer is entitled to a copy of his credit report. The Federal Reserve would be required to publish model forms within 180 days after the date of enactment. This provision goes to the heart of many Senators' concerns. If we are going to limit the safety valves available to assist indebted consumers, we—and the credit industry—will be remiss if we fail to help consumers understand the true cost of credit card borrowing.

Section 207 of last year's bill amended the Truth in Lending Act to require additional tax-related disclosures by lenders who extend credit when the loan exceeds the fair value of the collateral (so-called high loan to value mortgages). The lender would have to disclose in credit applications and advertisements that the interest on the portion of the credit extension that is greater than fair market value of the dwelling is not tax deductible. Most American families do not have the luxury to speak with a tax accountant or financial advisor every time they borrow money. It is remarkable that there could be any objection to this provision, which merely requests a restatement of the law that may prevent confusion among some consumers.

Section 405 of last year's bill amended the Truth in Lending Act to prohibit creditors from refusing to renew, continuing to offer credit, or charging a fee solely because a consumer has not incurred finance charges in connection with an extension of credit. If responsible behavior is the goal, then this provision is consistent with that message insofar as it prevents creditors from penalizing their most responsible borrowers who pay their credit card bills in full each month.

Section 208 of last year's bill amended the Electronic Fund Transfer Act to delineate the circumstances in which consumers are liable for unauthorized electronic fund transfers. Another element of personal responsibility is taking care to prevent unauthorized use of debit cards, which have a wider range of risks.

Section 206 of last year's bill amended 11 U.S.C. § 502(b) to disallow secured claims that violate sections 129(a)–(i) of the Truth in Lending Act, so that lenders who comply with TILA are not forced

to take a smaller distribution in bankruptcy on account of lenders who violate TILA.

Section 213 of last year's bill expressed the sense of Congress that some lenders may be offering credit indiscriminately without determining whether consumers are reasonably able to repay such debt, which leads to higher levels of insolvency among consumers. The provision then directed the Federal Reserve to conduct a study of consumer credit industry practices of soliciting and extending credit indiscriminately and the effects of these practices on the aggregate consumer debt level and insolvency. A report on this study was due not later than 24 months after the enactment of this Act, and the report may be accompanied by regulations requiring additional disclosures to consumers and other actions necessary to ensure responsible industry-wide practices.

Section 214 of last year's bill directed the Federal Reserve, in consultation with the Department of the Treasury, credit industry, and consumer groups, to prepare a study regarding the adequacy of information received by consumers regarding the creation of security interests in connection with credit cards and retail charge cards. The study was to include findings regarding whether consumers understand that items purchased may constitute collateral and the legal consequences of that situation. The study also shall include findings on whether creditors holding these security interests use such interests to coerce reaffirmations. The Federal Reserve would be asked to make recommendations regarding the practicality and efficacy of additional disclosures. The Federal Reserve would have to prepare this study within 180 days after enactment of this act. Unlike other secured credit, retail credit is no cheaper than general credit cards; in fact, often it is more expensive. These retail security interests were at issue in the illegal reaffirmation cases. This study would confirm the suspicions of many observers that consumers are often unaware that they have granted security interests in the items that they purchase, including gifts that they will give to others.

As noted elsewhere, economists have warned that restrictions of the nature that are contained in S. 625 will increase, not decrease, consumer lending to lower income and marginal borrowers. That factor heightens the need for these provisions. With these types of provisions, last year's bill went from being imbalanced to a far more sensible and effective piece of legislation that we could support. We believe that S. 625 needs a lot more work in several respects, but it is unlikely to pass muster if it fails to address this very significant issue in a serious and straightforward manner.

#### *E. Lack of Privacy Safeguards*

The right to privacy is a personal and fundamental right protected by the Constitution of the United States. Unfortunately, S. 625 does nothing to safeguard personal privacy in bankruptcy or consumer credit transactions. In fact, this bill adds to the growing privacy concerns of Americans by encroaching on the right to keep personal tax, financial and medical information confidential.

Section 315 of S. 625 requires debtors to file with the court copies of their tax returns for the three years preceding their bankruptcy filings as well as tax returns filed while the bankruptcy was

pending. Creditors and other parties in interest would be free to copy any part of the debtor's personal tax returns without any showing of need or justification. Indeed, the copies of each debtor's personal tax returns would be kept in court records open to the public.

Tax returns are generally entitled to confidential treatment. These government-mandated filings often contain detailed personal information that may not be relevant in a bankruptcy proceeding. Creditor representatives could easily use salient facts in these personal tax returns for direct marketing, sale to outside parties or other non-bankruptcy related purposes.

People who have fallen on hard times or who have suffered a devastating medical crisis should not have to sacrifice their dignity and privacy. We should not enact a scheme that requires the loss of personal privacy as an automatic consequence of a bankruptcy filing.

Moreover, we have serious questions about the practical consequences of the mandatory filing of copies of past personal tax returns as a requirement for bankruptcy filing. If this requirement was in effect last year, the 1.4 million Americans who filed for bankruptcy would have produced at least 4.2 million copies of their tax returns.

Keeping millions of tax returns in public court files will be burdensome and of dubious value. Some have estimated that it will cost about \$8 million annually to pay for the clerical help to maintain all these tax returns and take up 20 miles of shelf space to store all these tax returns. Like other parts of this bill, the tax return filing requirement will prove to be unworkable in the real world. There are alternatives for verifying debtor income that are more workable, less costly and still protect personal privacy.

As with coercive creditor practices, this bill also ignores the abuses of some financial institutions that invade the personal privacy of debtors and consumers to sell or share their personal financial and medical information.<sup>34</sup>

Our right of privacy has become one of the most vulnerable rights in the information age. The digitalization of information and the explosion in the growth of computing and electronic networking offer tremendous potential benefits to the way Americans live, work, conduct commerce, and interact with their government. But the new technology also presents new threats to our individual privacy and security, in particular, our ability to control the terms under which our personal information is acquired, disclosed, and used.

Financial conglomerates, for example, are offering a wide variety of services, each of which requires a customer to provide financial, medical or other personal information. But nothing in the law prevents subsidiaries within the conglomerate from sharing this information for uses other than the use the customer thought he or she was providing it for. In fact, under current Federal law, a financial

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<sup>34</sup>Abuses arising from sharing information without a consumer's knowledge or permission have already taken place. For example, the Securities and Exchange Commission in May 1998 took enforcement action against a large national bank (Nations Bank) that gave an affiliated stock broker (Nations Securities) lists of customers with maturing CDs. The broker made misrepresentations selling securities to customers, many of whom were elderly and novice investors. More abuses are easy to imagine.



institution may sell, share, or publish savings account balances, certificates of deposit maturity dates and balances, stock and mutual fund purchases and sales, life insurance payments and health insurance claims.

As President Clinton recently warned: "Although consumers put a great value on privacy of their financial records, our laws have not caught up to technological developments that make it possible and potentially profitable for companies to share financial data in new ways. Consumers who undergo physical exams to obtain insurance, for example, should not have to fear the information will be used to lower their credit card limits or deny them mortgages." We agree.

S. 625, however, does not provide for any privacy protection for consumer account information held by financial institutions and other creditors. We believe that consumers deserve the basic privacy rights of notice and choice about the use of their personal financial information. Financial institutions should be required to inform consumers of plans to share or sell their financial information and consumers should have control over using and sharing of all their financial information.

An area of particular concern to us is safeguarding medical information. Medical records contain the most intimate, sensitive information about a person and must be safeguarded. Yet, cross-industry mergers and consolidations have given banks and other financial institutions unprecedented access to consumers' medical records. We support legislation requiring medical information, such as that gathered from life insurance records, not be shared within financial services conglomerates.

We were disappointed that the majority dropped title XI, Health Care and Employee Benefits, from S. 625 during Committee consideration of the bill. That section of the original bill protected patient privacy when a hospital, nursing home, HMO or other institution holding medical records is involved in a bankruptcy proceeding that leads to liquidation. Senators Grassley, Torricelli and Leahy have introduced these same provisions as separate legislation, S. 840, and we hope that these important privacy protections will be returned to S. 625 during Senate consideration of bankruptcy reform legislation.

We believe that Congress must update our bankruptcy and banking laws to provide for fundamental privacy protection of the personal tax, financial and medical information of all Americans.

#### *F. Business Bankruptcy Issues*

The consumer provisions of S. 625 have attracted most of the attention, but we cannot forget that this bill, unlike last year's Senate bankruptcy bill, contains dozens of provisions affecting business bankruptcy cases. The business bankruptcy provisions change the law and the leverage among parties and will have profound effects on whether and how struggling businesses reorganize. Business bankruptcy amendments must be adopted prudently because the effects of business bankruptcy reform do not stop at the door of the bankruptcy courthouse. They pervade out of court workouts and all commercial lending transactions.

Some of the nation's largest businesses have reorganized using the bankruptcy system, and the success rate for chapter 11 has increased since the early days of the Bankruptcy Reform Act of 1978. A growing number of businesses in various industries and across the country are likely to restructure obligations or file for chapter 11 over the next few years. It may be sensible to make modest improvements to business bankruptcy law, but now is not the time to make radical shifts that substantially alter the dynamic of plan negotiations or seriously undermine the opportunity for reorganization.<sup>35</sup>

For example, section 404, "Protection of refinancing of security interest," amends 11 U.S.C. § 547(e)(2) so that a transfer is deemed to be made at the time such transfer takes effect between the transferor and the transferee if the transferee perfects its security interest within 30 days thereafter, rather than 10 days. This provision will harm the interests of and unfairly trap creditors who extend credit in reliance of the lack of a perfected security interest in specified collateral.<sup>36</sup>

Section 405, "Executory contracts and unexpired leases," replaces a flexible 60-day period with a rigid 120-day period to assume or reject a nonresidential real property lease. It provides that the court may extend the deadline past 120 days only on the motion of the nondebtor-lessor, unlike current law that permits the court to extend the deadline for cause on the motion of any party. This provision will be particularly troublesome for seasonal businesses, will preclude the reorganization of some businesses, and will force some debtors in possession to make premature decisions regarding their leases, to the potential detriment of other creditors. If a debtor in possession is required to assume the lease within 120 days and later cannot confirm a plan and must liquidate, the lessor will be entitled to be paid 100 cents on the dollar while other creditors receive much less.

Section 408, "Limitation," extends the period for reclamation of goods under 11 U.S.C. § 546(c)(1)(B) from 20 to 45 days. This amendment is an unwarranted expansion of reclamation rights that is prejudicial to the interests of other creditors. Trade creditors would be better served to lobby state legislatures, not Congress, for expansion of reclamation rights because reclamation rights are a matter of state law, not federal law.

Section 413, "Period for filing plan under chapter 11," limits the ability of a chapter 11 debtor in possession to obtain extensions of its exclusive right to file a chapter 11 plan to 18 or 20 months, respectively. This provision may lead to more nonconsensual plans, which require costly litigation and often are not in the best interest of creditors. Some of the largest chapter 11 cases have taken sev-

<sup>35</sup>Just this week, the United States Supreme Court issued a ruling regarding the requirements for a nonconsensual plan of reorganization that will have a substantial impact on business bankruptcy reorganization and that changes the law—and the leverage among the parties—in at least the 7th and 9th Circuits and in many other courts around the country. See *Bank of America National Trust and Savings Ass'n*,—S. Ct. —, 1999 WL 25731 (May 3, 1999) ("We do not decide whether the statute includes a new value corollary or exception, but hold that on any reading respondent's proposed plan fails to satisfy the statute, and accordingly reverse"). One should consider the effects of the significant amendments in this bill with this new decision in mind.

<sup>36</sup>See generally Hearing Regarding the Bankruptcy Reform Act of 1999 (H.R. 833), United States House of Representatives, Committee on the Judiciary, Subcommittee on Commercial and Administrative Law (March 17, 1999) (statement of the National Bankruptcy Conference).

eral years for reorganization, particularly if the case involves mass tort or contract liabilities or complex operational problems, but ultimately work to the benefit of all parties. To amend the law in this fashion, when workouts and reorganizations are on the rise and the Supreme Court just ruled on nonconsensual plan requirements, would be a grave mistake.

Section 903, "Asset-backed securitizations," explicitly excludes from "property of the estate" cash, receivables, securities, and other financial assets transferred by the debtor in connection with an asset securitization under which investment grade rated securities have been issued. Under this provision, the debtor is considered to have transferred assets prepetition if the assets were transferred pursuant to a written agreement that states that the assets were conveyed with the intention of removing them from the estate of the debtor, regardless of whether the debtor holds an interest in the issuer or securities held by the issuer, whether the debtor has continuing obligations to repurchase, service, or supervise the servicing of eligible assets, or the characterization of the transfer for other purposes. This provision hurts creditors and decrease the likelihood that a business can reorganize because the business will have no cash collateral to fund operations. Rating agencies and private parties should not be authorized to make the legal determination of whether an asset is property of a bankruptcy estate. This provision also impedes on states' rights. Transactions that are not sales under state law should not be treated as sales by federal bankruptcy law to the detriment of the estate and unsecured creditors.

Section 1101, "Definitions," includes a change in the definition of a "single asset real estate" debtor which eliminates an important limitation on the operation of the rules applicable to these debtors: the requirement that only businesses with debts up to \$4 million be subject to special rules limiting the automatic stay. This amendment removes the \$4 million cap. Although the amendment is in the "technical corrections" title, it is hardly a technical change.

In 1994, the Bankruptcy Code was amended to add special rules for "single asset real estate" ("SARE") debtors in response to a trend that developed during the decline in the real estate market. Real estate development projects, such as office buildings and apartment complexes, in default on their mortgage obligations due to poor market conditions, would file chapter 11 bankruptcy cases in order to forestall foreclosure by the primary secured creditor, rather than to engage in a bona fide business reorganization.

In response to these cases, Congress added the SARE definition to the Bankruptcy Code along with a special limitation on the automatic stay. Under these rules, a secured creditor can move to lift the automatic stay (and take the property back) if the SARE debtor either has not filed a realistic reorganization plan within 90 days of the bankruptcy filing or commenced monthly interest payments on their mortgage loans. This specially crafted remedy is in addition to the secured creditor's other remedies under the Bankruptcy Code.

The definition of "single asset real estate" was not well drafted. Notwithstanding the widely recognized prototype SARE debtor, businesses with significant real estate components, such as hotels,

casinos, shopping centers, nursing homes, and office complexes of all types are fair game under the current definition, even where they have none of the attributes of the classic SARE.<sup>37</sup> A sudden takeover of the property by the secured creditor places those working at the site (either employed by the debtor; employed by a management company hired by the debtor, or employed by tenants of the debtor) at risk of losing their jobs.<sup>38</sup>

The significant limiting factor in the application of these rules has been the \$4 million cap. The “technical” change to eliminate the cap would place a wide variety of properties—large and small—at risk of foreclosure and threaten jobs at these properties. Absent a definitional or other change that specifically excludes properties housing significant business enterprises, whether or not related to the real estate business, there should be no expansion in the SARE definition and the \$4 million cap should remain intact. Where true single asset cases are being filed, the courts have determined how to deal with them, using either the “bad faith” rules or other Code provisions for lifting the automatic stay. Expanding the scope of businesses subject to the “fast track” pay-or-lose-the-property rules unfairly expands the leverage of the secured creditor at the expense of all other parties in the case.

In addition, the bill contains provisions drafted with the intent to eject nonviable “small business” cases from chapter 11 and to minimize creditors’ costs, particularly in chapter 11 cases lacking active creditor participation. In an effort to create an early detection system to identify and dispense with small businesses not worth saving, the small business provisions may foreclose the possibility of reorganization of small businesses that deserve to be reorganized. The contemplated changes could deny tens of thousands of businesses meaningful opportunities to restructure their obligations and to continue operations through effective reorganization under chapter 11 to the detriment of suppliers, employees, communities, and the economy at large.

The provisions of the small business proposal impose more onerous and costly requirements on small businesses than they do on big businesses. Under the bill, small business debtors<sup>39</sup> have 90 days to file a plan, and can get extensions only by proving by a preponderance of the evidence that it is more likely than not that they will confirm a plan of reorganization (section 427), and they must confirm the plan in 150 days with extensions granted on same standard (section 428), with no court discretion to override for extenuating circumstances (section 429). Large business debtors have the exclusive right to file a plan for 120 days and may obtain ex-

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<sup>37</sup> Some courts have looked to the type of enterprise and have ruled that obvious non-real estate businesses, such as manufacturing operations, are not “SARE” debtors because they are conducting a business activity on land and not holding real estate for income. The closer cases are enterprises such as hotels, shopping centers, and office buildings, because they can be single projects or parcels and generate their income through the collection of rents.

<sup>38</sup> For example, the lender may attempt to lower the costs of operating the building by replacing the building employees. Tenants may be displaced (and employees terminated) absent “non-disturbance” clauses that are not affected by bankruptcy or foreclosure.

<sup>39</sup> A small business is defined in section 422 of the bill as one with \$4 million or less in total debt, excluding cases with active creditors’ committees. Data from several sources suggest that this definition is likely to incorporate 85 percent of all chapter 11 cases, and closer to 100 percent in districts that rarely or never get big cases.

tensions “for cause,” a more flexible standard that requires less proof.<sup>40</sup>

The bill requires that small business debtors comply with a host of new bureaucratic filing requirement and periodic reports (section 424). Large businesses are not subject to these requirements. Senior management of small business debtors must attend a variety of meetings at the U.S. trustee’s discretion (section 426). Senior management of large businesses does not.

Under this bill, small business debtors are subject to extra layer of scrutiny by the U.S. trustee (section 427), who must assess whether the debtor lacks business viability and should be dismissed out of bankruptcy. Large business debtors are not. Moreover, small business debtors are subject to repeat filing restrictions (section 432). Large business debtors are not. We are not suggesting that large businesses should be subject to all of these provisions. We are suggesting, however, that these provisions should be reconsidered. With some careful redrafting, it may be possible to accomplish the original intent of these provisions—in their current form, they do not.

In addition, the bill contains an entire title dedicated entirely to tax provisions. Some are the product of compromises made by the ad hoc tax group that advised the National Bankruptcy Review Commission. Others are, without question, special interest provisions that go much farther than necessary to favor taxing authorities over private creditors.

These hardly are the type of amendments that should be tagging along with other legislation. They are significant, controversial, and deserve to be considered independently. If we do not take a step back to reconsider the effects of these provisions and how they would work collectively, we may regret our actions.

#### THE EFFECT OF S. 625 ON VULNERABLE AMERICAN FAMILIES

By some accounts, S. 625 will lead to more financial hardship among American families, not less. Notwithstanding concerns about the bill’s provisions expressed by a countless number of commenters, including conservative economists, victims rights groups, bankruptcy experts, and the First Lady, the bill continues to provide special treatment for credit card debt and the consumer credit industry, generally, to the detriment of numerous vulnerable Americans. In general, this bill takes a good idea—reducing the number of bankruptcy filings—and twists it into a bad deal for some of our most vulnerable Americans.

##### A. *ExSpouses and Children*

S. 625, like the bankruptcy bills in the 105th Congress, has been criticized for its effects on single parents and children, both as debtors and as creditors trying to collect past-due support. The provisions producing these concerns do not explicitly mention ex-

<sup>40</sup> 11 U.S.C. § 1121. Section 413 of bill disallows extensions of a large business chapter 11 debtor’s exclusive right to file a chapter 11 plan of reorganization beyond 18 months. Although this undoubtedly is more generous than the timetable contemplated by the small business provisions, this absolute restriction does not take into consideration the fact that many large and successful cases today have longer exclusivity periods due to delays attributable to working through complex problems (e.g., mass tort liability), and that an absolute restriction will significantly alter the leverage among the parties.

spouses, children or support obligations. Some provisions increase dividends and collection rights for the consumer credit industry through unduly rigid repayment plans, additional exceptions to discharge, or provisions enhancing creditors' leverage to obtain reaffirmations of debt at the expense of priority creditors (such as child support recipients). Other provisions inflate the claims and entitlements of secured lenders, leaving a smaller proportion of income available for payment of other claims, including priority claims. In addition, numerous provisions complicate bankruptcy procedure or encourage unilateral action by particular creditors such that scarce resources will be consumed through litigation, administrative and legal costs, or through addressing the consequences of ejection from the system.

During the weeks preceding the Judiciary Committee markup of S. 1301 last session, several Members of Congress raised concerns about the bill's effect on the payment of spousal and child support obligations. Specifically, on May 5, 1998, 31 Senators wrote Chairman Hatch and Ranking Member Leahy that,

Under current law, outstanding spouse and child support, in addition to past taxes and educational loans, are debts that cannot be discharged in bankruptcy like other debts. Thus, for example, when a non-custodial parent files for bankruptcy and is able to discharge certain debts, the custodial parent is better able to retrieve child support without competing with commercial creditors for the limited resources available post-bankruptcy. This treatment is wholly appropriate: a child is not something one borrows, rather, he or she is someone to whom one has a moral and legal obligation \* \* \* [p]rovisions in S. 1301 and H.R. 3150 would dramatically alter the priority placed on this support. The legislation effectively places spousal and child support obligations on equal footing with some consumer debt. This means that custodial parents and ex-spouses may have to compete in bankruptcy and *post-bankruptcy courts* with the vast resources of these commercial lenders with little likelihood of success. (Emphasis added)

Instead of addressing the provisions producing these concerns, some proponents of a bankruptcy overhaul put forth a set of amendments that enhance the legal status of support obligations and, in particular, bolster the rights of state enforcement agencies. While those amendments include some well-intentioned proposals, they do not clear the way for women and children to collect past due and current support obligations and in some instances increase competition for scarce resources by expanding the rights of government creditors.

Subtitle B of title II of S. 625 is dedicated exclusively to providing legal enhancements for the collection of support obligations. To a large extent, these provisions build on the support amendments developed during the 105th Congress, with some further changes at the margins, with varying degrees of success in improving the provisions. At the outset, it is important to understand the scope of "domestic support obligations" under these amendments. Section 211 adds a broad definition of "domestic support obligation"

that includes any debt, whether accrued before or after the bankruptcy filing, and whether the debt is owed to the exspouse and child or to the government. There will be times when the government's interest in collecting past due support will conflict with the interest of an exspouse and child in collecting current support.

At the heart of the rhetoric surrounding the domestic support obligation provisions is section 212, which amends 11 U.S.C. § 507(a), the provision that determines priorities in distribution among expenses and debts. The amendment moves domestic support obligations from "seventh priority" to "first priority." Support obligations owed to the government are entitled to "first priority" as well under this bill, and recent amendments make it unclear whether the support recipient gets to take her share before the state, or vice versa. By moving domestic support obligations to first priority, the amendment displaces the expenses of administering the bankruptcy estate. See 11 U.S.C. §§ 507(a)(1), 503(b). The trustee administering the estate in a bankruptcy case must be able to incur expenses to liquidate property and make distributions to creditors, including support recipients. If a debtor has significant support obligations, and support is "first priority," the trustee will not be able to liquidate and distribute property. Instead, the trustee may have to "abandon"—give back to the debtor—the property instead of distributing the proceeds to support recipients or any other creditors. Thus, while it may be legally correct to say that this bill puts child support "first" under section 507(a) of the Bankruptcy Code, that statement is a bit misleading. It also is misleading to suggest that moving to "first priority" from "seventh priority" makes a significant difference: debts with second through sixth priorities almost never appear in consumer cases (e.g., grain storage facility operators, debts of fishermen, retail layaway claims). Even if this amendment were likely to be effective, it will affect only a fraction of 1 percent of all chapter 7 cases.

The bill also attempts to ensure that debtors in repayment plans satisfy all of their past and current support obligations by imposing extra requirements that explicitly provide for this payment. Although this goal is laudable, some of what the provision does is already accomplished by current law. Current law already requires 100 percent payment to priority claims, including prepetition support obligations, which must be paid in full under chapter 13 law unless the holder of the claim agrees to different treatment. 11 U.S.C. § 1322(a)(2). Nothing in current chapter 13 law excuses otherwise applicable requirements to pay postpetition child support, and other provisions of Subtitle B explicitly provide that wage orders remain in place, for those who have them or are in the process of obtaining them, notwithstanding the filing of a chapter 13 and the automatic stay. In addition, section 212 gives postpetition obligations priority claim status, and thus those must be paid in full even absent additional language. There has been some controversy about the treatment of obligations owed to a state enforcement agency that will not directly benefit the actual support recipients, as requiring full payment of those obligations and making those obligations entirely nondischargeable may prevent the debtor from receiving a discharge of other debts and also may make it more dif-

difficult for that debtor to make support payments going forward. That issue concerns us as well.

Section 215 amends 11 U.S.C. § 523(a)(15) to except from discharge all debts arising from property settlements. Since 1994, this provision has permitted a court to except from discharge a property settlement (not in the nature of support) unless the court finds (1) that the debtor is unable to pay the obligation or (2) that discharging the debt results in a benefit to the debtor that outweighs the detrimental consequences to the ex-spouse or children. The amendment eliminates these two conditions, making all non-support property settlements nondischargeable.

There will be times when this change to the treatment of property settlements works real hardship on spouses and children collecting support. Sometimes a custodial parent and child file for bankruptcy after they have difficulty collecting payments from a deadbeat spouse and thus cannot meet their day to day obligations. As a result of this amendment, some financially troubled spouses and children, who file for bankruptcy because they have not been receiving their support payments, will be unable to discharge debts they may owe to their wealthier spouses as a result of a property settlement. In addition, some exspouses do not receive support because they are financially independent or have remarried and joined financially stable households. In such a case, there may not be a public policy reason to make a property settlement debt nondischargeable to the remarried spouse when doing so would work extreme hardship on the debtor. Another scenario that reveals the odd effects of this amendment is when a debtor has been married and divorced twice. The first former spouse may need child support from the debtor. The second former spouse may be wealthy and remarried and does not receive support from the debtor but has a property settlement with the debtor. If this amendment becomes law, the support obligation to the first spouse and the property settlement to the second spouse would both be nondischargeable and have the same status after bankruptcy; if the debtor lacks sufficient funds to pay both, the support recipient, who has fewer resources to seek collection, may suffer.

Section 216 permits nondischargeable domestic support obligations to be collected from property—even if state law exempts that property—after bankruptcy. In light of the attention given to whether bankruptcy intrudes on states' rights in the homestead exemption context, it is puzzling that this provision seems to have escaped from controversy. This provision violates states' rights to govern the exemption of property after bankruptcy. It overrides wage exemptions, property exemptions, and state laws protecting tenancies by the entirety. It is unclear whether this provision actually will benefit families or whether it instead will benefit government agencies, particularly because overriding homestead exemptions may have the effect of removing families (e.g., a former debtor and his second wife and children) from their homes.

Although we commend some of these efforts to improve the legal rights of support recipients, these provisions are simply not responsive to the concerns that have been repeatedly identified as harmful to the interests of financially struggling women and children,



whether debtors or creditors. The few small amendments that have been made to other provisions have been largely illusory.<sup>41</sup>

### *B. Older Americans and Minorities*

A common fallacy of this bill is that it affects only high income or abusive debtors. The pages and pages of consumer bankruptcy amendments in this bill are not limited to high income debtors or abusive debtors. With all of the focus on means testing, there has been little or no discussion of how all of the new consumer provisions will work together and how they will affect current bankruptcy law and practice. Our interpretation is that when taken together, these provisions—whether intentionally or unintentionally—substantially increase the complexity of bankruptcy and decrease the debt relief available to honest but unfortunate individuals and families who are important to us and their communities. These changes may not be significant impediments for abusive debtors, who tend to have greater resources and can work the system to their advantage or who can access other methods of self-protection. Rather, the effects will be felt most by the most vulnerable sectors of the population, including older Americans, and African-American and Latino families who own homes.

This disproportionate effect is especially disturbing when one realizes that the bill specifically declines to address some high end abuses. The retention of unlimited homestead exemptions is one significant example. Debtors in some states are entitled to exemptions of only a few thousand dollars and must give up their homes if they have equity that exceeds this modest amount. In neighboring states, debtors with a million dollars of equity can discharge their debts and keep their homes. Sections 307 and 308 of the bill purport to address exemptions through targeting asset transfers and imposing longer domicile requirements, but savvy individuals can circumvent those provisions with relative ease. Indeed, the approach taken in those provisions not only is inadequate to curb high end abuse, but actually might result in the denial of exemptions altogether for low and middle income families, again an example of how the lack of precision in addressing abuses can have devastating and unintended effects on people that are rarely represented in this debate.<sup>42</sup> Even though there are few debtors with such substantial assets, this inequity is particularly disturbing as

<sup>41</sup>For example, section 314 adds another exception to discharge when the “debtor incurred the debt to pay such a nondischargeable debt with the intent to discharge in bankruptcy the newly-created debt,” and any debts incurred to pay nondischargeable debts within 70 days prior to filing are nondischargeable—except in cases with filed claims for domestic support obligations. In no-asset cases, claims do not have to be filed, so already this carveout for domestic support obligations is not likely to be helpful in over 95 percent of chapter 7 cases. Even if it does apply, it helps only with debts incurred within the 70 day presumptive period. Women and children in intact families receive no parallel protection, creating a questionable message. Critics of these types of provisions certainly never intended to suggest that there should be different rules regarding credit card debts for divorced families and intact families.

<sup>42</sup>Under section 307 of the bill, to be subject to the exemption laws of a State, a debtor must be domiciled in a State for the 730 days immediately preceding bankruptcy, not just the greater portion of that period. Extending the domicile requirement was intended to catch people who move to a State with more generous exemptions before filing for bankruptcy. However, the provision leaves ambiguous the rights of debtors who have not lived in a State for 730 days prior to filing for bankruptcy. Lower and middle class families, who may have moved due to a job transfer or to take care of elderly relatives, may be deprived of all property exemptions necessary to protect their most basic necessities, such as clothing, household goods, an old car for job transportation, and limited equity in a home.

this bill narrows access to meaningful debt relief for hardworking middle class families.<sup>43</sup>

### 1. Older Americans

#### a. Who is filing?

We may not be surprised that older Americans who file for bankruptcy often cite catastrophic medical problems as the cause of their financial distress, but perhaps more eye-opening is the fact that older Americans also cite employment problems as the reason they filed for bankruptcy.<sup>44</sup> Today, Americans work longer and harder into their senior years and a growing percentage of the population is over the age of 85, and predominantly female. Some, particularly those over 65, cannot find a replacement job. Others may be able to find alternative employment but at substantially lower wages or without the health and other benefits that become increasingly important with age. These circumstances do not show up in our low unemployment rates—which often are touted as proof that we should not be seeing so many bankruptcies—but they nonetheless may produce a severe financial shock.

Older Americans, particularly those who are under 65 and do not yet have access to the social safety nets of Social Security and Medicare, sometimes resort to short-term, high-interest credit when faced with unemployment because they assume that their unemployment will be temporary and their use will serve as a bridge to cover necessities until they start receiving paychecks again. Due to their age, however, many of these individuals never earn a salary comparable to that which they lost; thus, they find themselves unable to deal with the debt they have incurred. When they have nowhere else to turn, they sometimes turn to the safety valve of bankruptcy.

Older Americans are also more frequent victims of predatory lending practices. Although these practices should be addressed independently of bankruptcy, sometimes bankruptcy is the most viable avenue for an elderly person to address the financial consequences of being victimized by those practices. One in ten older Americans in one empirical study reported that they filed bankruptcy after unsuccessfully attempting to negotiate with their creditors.<sup>45</sup> Their creditors threatened them with seizure of property or placed harassing collection calls. Some of them explained that they had been the victims of credit scams previously mentioned and they were seeking relief in the bankruptcy courts.

#### b. Effects of S. 625

In a variety of ways, S. 625 makes the consumer bankruptcy system a less viable approach for rehabilitation. The most obvious ex-

<sup>43</sup> At the Judiciary Committee markup, Senator Grassley successfully introduced an amendment to include postpetition earnings for individual chapter 11 debtors as “property of the estate.” This so-called “super-rich” amendment, which would have been considered rather controversial had it been vetted among the bankruptcy community, is undoubtedly a significant change to bankruptcy law but is not the most direct or effective method of controlling higher income debtors and in any event is not responsive to our concerns regarding the disparate effects of this bill.

<sup>44</sup> Teresa A. Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook, *From Golden Years to Bankrupt Years*, Norton Bank. L. Adviser, p. 4 (July 1998) (finding that job and medical problems are the reasons for filing most frequently by bankrupt debtors over 50).

<sup>45</sup> *Id.*, at 8.

ample is the means test (section 102). The problem may not be the concept of means testing, but rather the complex mechanism that has been established for all debtors to prove ability to pay that is likely to produce troubles for senior citizens who file for bankruptcy. The definition of current monthly income provided by the bill not only is broad, but may make the debtor's income look higher than it actually is, creating an illusion of the ability to pay where there is no such ability. First, the definition requires that income be calculated by taking an average of monthly income over the past 6 months. This means that a senior who was working through November, lost his or her job in December, could not find alternative work and files for bankruptcy in February will have an average income that is higher than the amount that the senior actually receives and can use to pay debts in February. In addition, the definition is extremely broad and may require that payments for Medicare, or other Social Security Act payments, be included in the amounts assumed to be available to pay prebankruptcy creditors. The IRS expense standards tend to give smaller allowances to lower income people and therefore are likely to discriminate against seniors on fixed incomes, who then will have the burden to prove "special circumstances," a standard that sounds less onerous than "extraordinary circumstances" but in reality is not. Seniors also will have to validate each and every expense to be counted as "other necessary expenses," regardless of their income, because the ability to pay certification requirement has no safe harbors. All of these issues may arise even if the senior's case is never alleged to be abusive. The inevitable increase in legal costs alone may preclude the senior of attempting to obtain debt relief.

The means test is not the first hurdle for seniors in financial trouble. Under this bill, individuals are not eligible for bankruptcy, even chapter 13, unless they have attempted credit counseling within 180 days prior to bankruptcy (section 105). Some seniors do not drive or may live far away from these counseling facilities, but not so far that the U.S. trustee has deemed services to be unavailable. A senior may be facing an imminent collection action that cannot be addressed by consumer credit counseling, since she never considered bankruptcy, she did not know to get counseling in advance. The counseling requirement may be waived by the court if a debtor certifies the existence of exigent circumstances and the debtor requested counseling services but was unable to obtain services for a 5-day period, but the senior is not guaranteed to get this waiver even if she hires a lawyer to represent her to obtain the waiver, and the waiver expires 30 days after the bankruptcy filing. Senator Feingold attempted to ensure that the counseling requirement was sufficiently flexible to account for such circumstances, but the Judiciary Committee rejected those efforts.

For those seniors that make it through this eligibility maze imposed by the prebankruptcy counseling requirement and means testing, they have seen only the beginning. The bill establishes a host of new administrative requirements, including the submission of 3 years worth of tax returns (section 315). Failure to comply with these requirements may trigger automatic dismissal, and the new repeat filing restrictions may prevent the senior from obtaining relief in a subsequent case.

If the senior's case continues, she may not get the same protection from the automatic stay that current law would have provided. Failure to give notice to creditors in the precise format they requested may permit a creditor with actual knowledge of the bankruptcy case to take action against the senior notwithstanding the automatic stay (section 315). In addition, if the senior rents an apartment, she cannot be sure that bankruptcy will protect her against her landlord because section 311 of this bill expands the rights of residential landlords to commence or continue eviction actions against debtors without first seeking leave from the bankruptcy court, even if the senior is currently paying rent. Debtors who are homeowners are not deprived of this protection.

Even after the senior receives a discharge, she will continue to feel the effects of this bill because the new exceptions to discharge for credit card debts (sections 310, 314) are likely to encumber her limited fixed income, whether or not she incurred those debts with bad intent. The realities of bankruptcy practice and the inequality of resources have taught us that exceptions to discharge do not work in a mechanical fashion. The bankruptcy system does not run debtors through x-ray machines to determine which debtors incurred debts that fit the exceptions to discharge. Rather, exceptions to discharge often expand the leverage of creditors willing to be the most aggressive to push the law to its limits. Financially troubled seniors, like other consumers in financial trouble, are ill-equipped to fight an allegation that a debt is nondischargeable through a full blown trial, regardless of the merits, and instead will concede nondischargeability or reaffirm the debt. This already is the case today, but the problem will grow by the addition of these new provisions, particularly if there are not corresponding changes to impose much-needed mandatory court review of reaffirmations of partially secured debt and unsecured debt. We should not be surprised if more seniors emerge from the bankruptcy system saddled with high interest credit card debt as a result of this bill.

Given the interest in increasing chapter 13 success, one would think our seniors would fare better if they agree to undertake a chapter 13 repayment plan. Unfortunately, that probably will not be the case. First, section 318 requires that debtors whose cases are converted commit to 5 year plans even though so many 3 year plans fail.<sup>46</sup> Second, section 306 of the bill substantially alters the treatment of secured debt in a fashion that will require full payment of many debts even if the collateral is nearly worthless. This means that if a creditor convinces a senior to give the creditor a blanket lien on all of her possessions and small household goods in exchange for a loan, those debts are treated as fully secured; the senior then will have to pay in full or surrender her property. Section 306 also overrides some state laws in determining that creditors secured by mobile homes and trailers, whether or not affixed to property, are entitled to all of the special protections granted to mortgage lenders for brick and mortar homes. This means that the

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<sup>46</sup>Section 130 of the House bill, H.R. 833, requires that all chapter 13 plans be structured using the formula under the means test. Putting aside the logistical difficulties of this approach, it has the consequence of making all plans 5 years even for debtors who are permitted to confirm 3 year plans. Although this is not yet part of the Senate bill, the events of last year's conference process suggest that it would not be surprising if section 130 became part of the conference committee report.

senior will not be able to modify that loan at all, even though trailers are depreciating collateral and the loan was priced to reflect that risk.<sup>47</sup> Even if the senior makes it all the way through a chapter 13 payment plan, section 310 may prevent her from discharging the remaining credit card debt and the interest that accrued in the preceding 5 years.

Our contention is not that S. 625 systematically seeks out to harm the interest of seniors. However, we already are all too aware that Social Security and Medicare are often insufficient to allow seniors to maintain their financial stability and they clearly have less earning potential than younger Americans to make up the difference. This bill makes one of the few remaining safeguards, the bankruptcy system, less effective in protecting older Americans from financial ruin.<sup>48</sup>

Perhaps a legislative judgment has been made that bankruptcy relief is not the appropriate safety valve for seniors facing hard times. However, it is not clear that the proponents of the bill have considered what will happen to our growing population of seniors if this safety valve becomes too expensive and cumbersome to provide the necessary relief, but their age or physical condition impose practical impediments to obtaining gainful employment. If we are asking our seniors to turn elsewhere for help when they face financial disaster after a long life of hard work and contributions to their communities, we need to identify an alternative or we will have a crisis far more severe than the “bankruptcy crisis.”

## 2. *Minority homeowners*

### *a. Who is filing?*

Minority homeowners tend to commit a larger percentage of their take-home pay to their mortgages than the average homeowner; often, their homes represent virtually all of their family wealth. Thus, it should not be surprising that when faced with a period of unemployment or temporarily disabling illness, they are more vulnerable and likely to need bankruptcy protection to save their homes. By some estimates, African American and Latino families are 600 percent more likely to seek bankruptcy protection to prevent the loss of their homes. These families, who may have already faced discrimination in home mortgage lending and housing purchases, and who often face inequality in hiring opportunities, seek bankruptcy protection to stabilize their economic circumstances and protect the middle class lives they have struggled to achieve. Although bankruptcy may be unpleasant, it can be a homesaver for these families.

<sup>47</sup> See also Letter from AARP Executive Director Horace Deets to Conferees (Oct. 1, 1998) (discussing the Bankruptcy Reform Act of 1998) (“These amendments would be problematic for a large portion of low and moderate income elderly American homeowners whose primary residence is in manufactured housing. It is important to note that loans secured by manufactured homes are more like personal property loans than real property home mortgages. Manufactured home loans cost significantly more than real property mortgages (for on-site built homes), averaging 2 to 3 percent above conventional mortgage finance. Further, like personal property, manufactured homes rapidly depreciate in value.”).

<sup>48</sup> Even an amendment that previously was not controversial—the implementation of a uniform retirement fund exemption—is under attack. Although Chairman Hatch was successful adding it back into the bill, the provision is subject to proposals to scale back on this protection of a senior’s own personal safety valve.

*b. Effect of S. 625*

S. 625 will make bankruptcy less effective as a financial stabilization and home saving mechanism, which will fall especially hard on minority homeowners. This is attributable to several factors, some of which have been mentioned and cited previously, and goes well beyond the means test that so frequently has been the center of attention. The resulting complexity and cost of the bankruptcy system as a result of S. 625 makes bankruptcy a less viable alternative for these struggling families. In addition, mortgage lenders and homeowners currently fare better in chapter 7, in which the debtor obtains a discharge in relatively short order than in chapter 13 in which the debtor stretches disposable income as far as it will go and often fails but does not discharge any debts; by channeling more debtors into chapter 13, the likelihood of failure and repossession increases for minority homeowners. At the same time that the bill channels more debtors into chapter 13, amendments to chapter 13 decrease the likelihood of successful plan completion and property retention. Those who remain eligible for chapter 7 are likely to receive a narrower discharge and thus may face an increased struggle to keep paying their mortgages postbankruptcy due to heightened competition for limited funds.

As a general matter, S. 625 makes a zealous effort to increase everyone's share of a debtor's limited resources, and as a result, it tries to increase distributions for credit card companies, nominally secured retail creditors, nominally secured finance companies, car lenders, car lessors, rent-to-own companies, credit unions, tort victims, support recipients, and landlords, among others. The intentions to help some or all of these groups may be laudable, but a family in bankruptcy simply cannot pay its same limited income two, three or four times. Attempts to do so will be a recipe for disaster and inevitably will increase the proportion of financially vulnerable families that surrender their property or are subject to repossession because they cannot concentrate their postbankruptcy income on mortgage payments and other critical expenses.

By increasing the complexity of the system, channeling more debtors into a less workable chapter 13, and by making conflicting policy choices that stretch debtors' resources beyond the breaking point, the bill makes it more difficult to save a home in bankruptcy. Nothing in this bill is likely to change the fact that African-American and Latino families tend to dedicate a larger percentage of their income to their homes. Those who are "house poor" remain more financially vulnerable and some will still resort to bankruptcy. But bankruptcy may not help them. Others may not file if entry to the system is too costly and complicated and instead will be the subject of state debt collection actions. Although this may be consistent with the goal of lowering bankruptcy filing rates, consideration of the benefits—and costs—of this bill is incomplete without these issues in mind. Once these families lose their homes, the likelihood of future homeownership may be slim. In other areas of the law, we place a high premium on homeownership that sometimes outweighs other considerations. The bankruptcy system acts consistently with that view now, but S. 625 will make a considerable change.

### *C. Access to Justice For Low Income Debtors*

The people who use the bankruptcy system may be diverse in many ways, but most of them share several characteristics: they have low incomes and debts that exceed their ability to pay them. Some of these families may bear the attributes of the middle class in some respects, but others—perhaps as many as a quarter or third—are truly poor. Some observers believe that impoverished families do not need bankruptcy because they generally are judgment proof. This view does not take into account the variety of circumstances that explain why our poorest citizens need debt relief. For example, poor families carrying uncollectible debts may be prevented from obtaining access to public housing, or they may need assistance in regaining utility services. For the most part, these people do not have assets and do not have the ability to pay. The question not one of misuse of the system, but rather one of access.

#### *1. Disincentives to Represent Consumer Debtors*

From beginning to end, the bill is likely to increase costs that will fall the hardest on poorer families. Increased complexity as previously described, is not the only culprit. Rather, the bill will limit lower income debtor representation by imposing financial disincentives on professionals to represent debtors. For example, section 102 of the bill requires that a debtor's attorney reimburse the trustee if the debtor's case is converted or dismissed because the debtor is found to have the ability to pay a portion of her debts. This creates a conflict of interest between a debtor's attorney and his client.<sup>49</sup>

This provision marginally improved last year under the leadership of Senators Feingold and Specter. Their amendment permitted imposition of this penalty only if the attorney was not substantially justified in helping a client file under chapter 7. The provision, however, still takes an unprecedented and unwarranted step,<sup>50</sup> and because this bill creates entirely new requirements and standards, lawyers are not likely to know what will be considered not substantially justified. Every other fee-shifting provision in federal law that holds the attorney liable is premised on affirmative wrongdoing by the attorney, and there is no legitimate basis for different and more punitive standards for consumer bankruptcy attorneys. Our justice system recognizes that every one deserves representation, yet this provision undermines that basic principle.

This provision may achieve its goal of keeping some debtors from seeking access to the system altogether, but also will produce a greater number of pro se filings, some of whom will be given assistance by nonlawyer petition preparers. Pro se cases already are more likely to be dismissed for procedural mistakes, and the inher-

<sup>49</sup>The lawyer faces dubious incentives to counsel the client to file chapter 13, or not to file at all, in order to protect the attorney's financial interests. Rule 1.7(b) of the Rules of Professional Conduct specifically prohibits a lawyer from handling a case "if representation of that client may be materially limited by the lawyer's . . . own interests." Under this bill, debtors' attorneys would arguably be in violation of this Rule on a regular basis, setting the stage for extremely problematic attorney-client dynamics that will ultimately harm vulnerable consumers.

<sup>50</sup>The amendments originally offered by Senators Specter and Feingold were designed to ensure that the chapter 7 trustee was compensated for his or her efforts in seeking the dismissal or conversion of potentially abusive cases. However, Senator Grassley made clear last year that this provision was inserted not to ensure reimbursement of trustees, but rather to discourage lawyers from directing their clients to chapter 7.

ent disadvantages of filing pro se will be exacerbated by this bill due to the increase in the number of administrative rules and hair triggers for case dismissal. Many debtors who file for bankruptcy without lawyers will be denied debt relief due to administrative error and will have a difficult time re-entering the system due to the new repeat filing prohibitions.<sup>51</sup>

Deterring lawyers from representing debtors may have an effect on the filing rate, but it will not keep out the abusive cases and it will occur at a potentially steep cost. Preventing financially burdened families from having decent legal representation is an untenable policy.<sup>52</sup>

## 2. Filing Fee Waivers

Low income consumers' access to debt relief may be prohibitively expensive for another reason. Currently the filing fee for consumer bankruptcy is \$175, a considerable amount of money for low income filers in need of bankruptcy protection. Filing fees may be increased this year by another \$25 dollars, which does not account for the fee increase that this bill is likely to produce. Except in bankruptcy, indigent individuals may file civil actions in federal courts by obtaining a fee waiver.<sup>53</sup> "In enacting the federal in forma pauperis statute, Congress 'intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because \* \* \* poverty makes it impossible \* \* \* to pay or secure the costs' of litigation."<sup>54</sup> A debtor may be able to pay the bankruptcy filing fee in installments,<sup>55</sup> but even the installments can be too much for a poor person and failure to submit the installments in a timely fashion leads to dismissal of those cases.

In 1994, Congress authorized and directed the Judicial Conference of the United States to create a pilot program and study the effect of waiving the filing fee for individual Chapter 7 debtors.<sup>56</sup> The Judicial Conference Committee on the Administration of the Bankruptcy System oversaw the implementation of the 6-district program that lasted from October of 1994 through September of 1997 and submitted its final report to Congress on the program

<sup>51</sup>Although Senator Feinstein's amendment to revise section 110 of the Bankruptcy Code takes an important step toward preventing petition preparers from engaging in the unauthorized practice of law, it remains unfortunate that this bill seeks to limit the options for legal representation.

<sup>56</sup>The House Judiciary Committee amended H.R. 833 to provide that debtors' attorneys face sanctions for helping their clients file under chapter 7 only if the debtor's actions were sanctionable under Rule 9011 of the Federal Rules of Bankruptcy Procedure. This approach is much preferred. However, it remains troublesome that both bills continually single out attorneys who represent consumer debtors, when all attorneys should be subject to similar standards.

<sup>53</sup>28 U.S.C. §§ 1915, 1930. In *United States v. Kras*, 409 U.S. 434 (1973), the U.S. Supreme Court held that an individual does not have the fundamental right to file a bankruptcy petition. In a strong dissent, Justice Marshall stated that "I find nothing in the majority's opinion to convince me that due process is afforded a person who cannot receive a discharge in bankruptcy because he is too poor." *Id.* at 460 (Marshall, J., dissenting).

<sup>54</sup>*Denton v. Hernandez*, 112 S. Ct. 1728, 1733 (1992), citing *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 342 (1948).

<sup>55</sup>"An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments." 28 U.S.C. § 1930(a)(6). See also Fed. R. Bankr. P. 1006(b) (delineating procedure for accepting application to pay filing fee in installments).

<sup>56</sup>H.R. 2519, "Department of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1994," Pub. L. No. 103-121, 107 STAT. 1153.



last year.<sup>57</sup> The pilot program took place in the Southern District of Illinois, the District of Montana, the Eastern District of New York, the Eastern District of Pennsylvania, the Western District of Tennessee, and the District of Utah. This study showed that fee waivers enabled low income consumers to use the bankruptcy system, but did not change filing patterns or produce incentives for people to file who otherwise would not.<sup>58</sup>

Experiences with the fee waiver pilot program suggest that fee waivers may be especially helpful for low income women who have nowhere to turn for financial support for themselves and their children. The Committee on Bankruptcy Issues of the Third Circuit Task Force on Equal Treatment in the Courts found a higher single-female filing rate and fewer joint filings for fee waiver cases than non-fee waiver cases in the Eastern District of Pennsylvania and concluded that the fee waiver program may have enhanced womens' access to debt relief and a chance to start anew, a finding consistent with the views of a working committee of the Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in the Courts.<sup>59</sup>

Filing for bankruptcy may not be a fundamental right, but a "needs based" bankruptcy system should accommodate our most needy constituents who have few, if any, alternative safety valves to help them get back on their feet. Last year, the Senate approved an amendment on the floor that authorized fee waivers for indigent debtors, but that amendment did not survive the partisan conference committee process. The House Judiciary Committee voted to include a fee waiver provision in their bankruptcy bill, H.R. 833. Unfortunately, the Senate Judiciary Committee rejected the efforts of Senators Specter and Feingold to insert a similar provision into S. 625 by a tie vote of 9 to 9. If this bill will permit higher income debtors to use bankruptcy to keep fancy homes while they discharge substantial debts, at the very least we should establish access to the system for low income people to erase a few hundred or few thousand dollars of old and uncollectible debt that keeps them moving forward.

#### CONCLUSION

We would support reasonable bankruptcy reform. We have zero tolerance for abuse of the bankruptcy system. Unfortunately, S. 625 is not a bill that we can support in its current form. As a practical matter it will make bankruptcy unavailable for the honest but unfortunate families for whom the system was intended and who will never be able to repay their debts. Keeping those families in financial bondage will be a mistake in the long run. This bill also will distort the treatment of creditors, preferring those with the strongest lobby to those who deserve equal treatment. Bankruptcy reform must not favor those with political clout and extensive lobbying resources to the detriment of those with limited influence in

<sup>57</sup>Federal Judicial Center, *Implementing and Evaluating the Chapter 7 Filing Fee Waiver Program*; Report to the Committee on the Administration of the Bankruptcy System of the Judicial Conference of the United States (1998).

<sup>58</sup>"It is clear, however, that only a small fraction of the increased filings are due to the program. The percentage increase in chapter 7 filings and total consumer filings is basically the same in all pilot courts, including and excluding the fee-waiver cases." *Id.*

<sup>59</sup>*Id.*

the legislative process, including ex-spouses, children, tort victims, and employees. Bankruptcy reform must be coupled with a consideration of contemporary consumer credit practices, with enhanced disclosures to promote educated consumers of credit.

Regardless of the policies that Congress chooses to implement, legislation must be undertaken with care and precision. The ambiguities and unintended consequences produced by careless drafting fall hardest on our most vulnerable constituents, whether debtors or creditors in a bankruptcy case, who hardly can afford to litigate questions of Congressional intent. The ambiguities in S. 625 will make the system cumbersome and costly—hardly the model of progressive reform. Before legislation is signed into law, these problems should be resolved, and Congress should adopt measures that ensure balance and equity between debtors and creditors. It is only through efforts such as these that Congress can truly “reform” the bankruptcy system for the benefit of all Americans.

PATRICK LEAHY.  
RUSS FEINGOLD.  
TED KENNEDY.  
CHARLES E. SHUMER.

XXII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 625, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

\* \* \* \* \*

TITLE 11—BANKRUPTCY

Chapter Section
1. General Provision ..... 101
\* \* \* \* \*
15. Ancillary and Other Cross-Border Cases ..... 1501

CHARTER 1—GENERAL PROVISIONS

101. Definitions. Sec.
\* \* \* \* \*
111. Credit counseling services; financial management instructional courses.

§ 101. Definitions

[In this title —] In this title:

(1) The term “accountant” means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized[;].

(2) The term “affiliate” means—

(A) \* \* \*

\* \* \* \* \*

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement[;].

[(4)] (3) The term “attorney” means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law[;].

[(5)] (4) The term “claim” means—

(4) \* \* \*

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is re-

duced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured[;].

[(6)] (5) *The term “commodity broker” means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title[;].*

[(7)] (6) *The term “community claim” means claim that rose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case[;].*

[(8)] (7) *The term “consumer debt” means debt incurred by an individual primarily for a personal, family, or household purpose[;].*

[(9)] (8) *The term “corporation”—*

(A) includes—

\* \* \* \* \*

(B) does not include limited partnership[;].

[(10)] (9) *The term “creditor” means—*

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

\* \* \* \* \*

(C) entity that has a community claim[;].

(10) *The term “current monthly income”—*

(A) *means the average monthly income from all sources which the debtor, or in a joint case, the debtor and the debtor’s spouse, receive without regard to whether the income is taxable income, derived during the 180-day period preceding the date of determination; and*

(B) *includes any amount paid by an entity 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).*

(11) *The term “custodian” means—*

(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

\* \* \* \* \*

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor’s creditors[;].

(12) *The term “debt” means liability on a claim[;].*

[(12A)] *“debt for child support” means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor[;].*

(13) *The term “debtor” means person or municipality concerning which a case under this title has been commenced*【;】.

(13A) *“debtor’s principal residence”—*

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

*(B) includes an individual condominium or cooperative unit;*

【(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) had not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

【(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and

【(E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason;】

(14) *The term “disinterested person” means a person that—*

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

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

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

(15) *The term “domestic support obligation” means a debt that accrues before or after the entry of an order for relief under this title that is—*

*(A) owed to or recoverable by—*

*(i) a spouse, former spouse, or child of the debtor or such child’s parent or legal guardian; or*

*(ii) a governmental unit;*

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

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

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

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

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

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

[(15)] (16) The term “entity” includes person, estate, trust, governmental unit, and United States trustee[;].

[(16)] (17) The term “equity security” means—

(A) \* \* \*

\* \* \* \* \*

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph[;].

[(17)] (18) The term “equity security holder” means holder of an equity security of the debtor[;].

[(18)] (19) The term “family farmer” means—

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual’s or such individual and spouse’s gross income for [the taxable year preceding the taxable year] at least 1 of the 3 calendar years preceding the year in which the case concerning such individual or such individual and spouse was filed; or

\* \* \* \* \*

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

\* \* \* \* \*

(iii) if such corporation issues stock, such stock is not publicly traded[;].

[(19)] (20) The term “family farmer with regular annual income” means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title[;].

**[(20)] (21)** *The term “farmer” means (except when such term appears in the term “family farmer”) person that received more than 80 percent of such person’s gross income during the taxable year of such person’s gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such persons was commenced from a farming operation owned or operated by such person[;].*

**[(21)] (22)** *The term “farming operation” includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state[;].*

**[(21A)] (23)** *The term “farmout agreement” means a written agreement in which—*

(A) \* \* \*

\* \* \* \* \*

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property[;].

**[(21B)] (24)** *The term “Federal depository institutions regulatory agency” means—*

(A) \* \* \*

\* \* \* \* \*

(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation[;].

**[(22)]** *“financial institution” means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer;]*

**(25)** *The term “financial institution” means—*

(A)(i) *a Federal reserve bank, or an entity that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity; and*

(ii) *if such Federal reserve bank, receiver, or conservator or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741, such customer; or*

(B) *in connection with a securities contract, as defined in section 741 of this title, an investment company registered under the Investment Company Act of 1940.*

**(26)** *The term “financial participant” means an entity that is a party to a securities contract, commodity contract or forward contract, or on the date of the filing of the petition, has a commodity contract (as defined in section 761) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than \$1,000,000,000 in notional or actual prin-*

*principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of not less than \$100,000,000 (aggregated across counterparties) in any such agreement or transaction with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period.*

[(23) “foreign proceeding” means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor’s domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization;

(24) “foreign representative” means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding;]

(27) *The term “foreign proceeding” means a collective judicial or administrative proceeding in a foreign country, 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.*

(27A) *“incidental property” means, with respect to a debtor’s principal residence—*

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

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

*(C) all replacements or additions;*

(28) *The term “foreign representative” means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding.*

[(25)](29) *The term “forward contract” [means a contract] means—*

*(A) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction[, or any combination thereof or option thereon;] , or any other similar agreement.*

*(B) a combination of agreements or transactions referred to in subparagraphs (A) and (C);*

*(C) an option to enter into an agreement or transaction referred to in subparagraph (A) or (B);*



(D) a master netting agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to such master netting agreement, without regard to whether such master netting agreements provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master netting agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master netting agreement that is referred to in subparagraph (A), (B) or (C); or

(E) a security agreement or arrangement, or other credit enhancement, directly pertaining to a contract, option, agreement, or transaction referred to in subparagraph (A), (B), (C), or (D), but not to exceed the actual value of such contract, option, agreement, or transaction on the date of the filing of the petition.

[(26)] “forward contract merchant” means a person whose business consists in whole or in part of entering into forward contracts as or with merchants in a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;]

(30) *The term “forward contract merchant” means a Federal reserve bank, or an entity, the business of which consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761, or any similar good, article, service, right, or interest that is presently or in the future becomes the subject of dealing or in the forward contract trade.*

[(27)] (31) *The term “governmental unit” means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government[;].*

[(28)] (32) *The term “indenture” means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor’s property, or an equity security of the debtor[;].*

[(29)] (33) *The term “indenture trustee” means trustee under an indenture[;].*

[(30)] (34) *The term “individual with regular income” means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker[;].*

[(31)] (35) *The term “insider” includes—*  
 (A) if the debtor is an individual—

\* \* \* \* \*

(F) managing agent of the debtor[;].

[(32)] (36) *The term “insolvent” means—*

(A) \* \* \*

\* \* \* \* \*

(C) with reference to a municipality, financial condition such that the municipality is—

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due[;].

[(33)] (37) *The term “institution-affiliated party”*—

(A) \* \* \*

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act[;].

[(34)] (38) *The term “insured credit union”* has the meaning given it in section 101(7) of the Federal Credit Union Act[;].

[(35)] (39) *The term “insured depository institution”*—

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of [paragraphs (21B) and (33)(A)] *paragraphs (24) and (37)* of this subsection[;].

[(35A)] (40) *The term “intellectual property”* means—

(A) trade secret;

\* \* \* \* \*

(F) mask work protected under chapter 9 or title 17; to the extent protected by applicable nonbankruptcy law [; and].

[(36)] (41) *The term “judicial lien”* means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding[;].

[(37)] (42) *The term “lien”* means charge against or interest in property to secure payment of a debt or performance of an obligation[;].

[(38)] (43) *The term “margin payment”* means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments[; and].

(44) *The term “master netting agreement”*—

(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with 1 or more contracts that are described in any 1 or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to 1 or more of the foregoing; except that

(B) if a master netting agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), the master netting agreement shall be deemed to be a master netting agreement only with respect to those agreements

or transactions that are described in any 1 or more of the paragraphs (1) through (5) of section 561(a).

(45) The term “master netting agreement participant” means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor.

[(39)] (46) The term “mask work” has the meaning given it in section 901(a)(2) of title 17.

[(40)] (47) The term “municipality” means political subdivision or public agency or instrumentality of a State[;].

[(41)] (48) The term “person” includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) \* \* \*

\* \* \* \* \*

(C) is the legal or beneficial owner of an asset of—

(i) an employee \* \* \*

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit[;].

[(42)] (49) The term “petition” means petition, filed under section 301, 302, 303, or 304 of this title, as the case may be, commencing a case under this title[;].

[(42A)] (50) The term “production payment” means a term overriding royalty satisfiable in cash or in kind—

(A) \* \* \*

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs[;].

[(43)] (51) The term “purchaser” means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee[;].

[(44)] (52) The term “railroad” means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier[;].

[(45)] (53) The term “relative” means individuals related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree[;].

[(46)] (54) The term “repo participant” means an entity that, on any day during the period beginning 90 days before the date of the filing of the petition, has an outstanding repurchase agreement with the debtor[;].

[(47)] “repurchase agreement” (which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers’ acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of

the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds;】

(55) *The term "repurchase agreement" and "reverse repurchase agreement"—*

(A) *mean—*

(i) *an agreement, including related terms, which provides for the transfer of—*

(I) *a certificate of deposit, mortgage related security (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loan, interest in a mortgage related security or mortgage loan, eligible bankers' acceptance, or qualified foreign government security (defined for purposes of this paragraph to mean a security that is a direct obligation of, or that is fully guaranteed by the central government of a member of the Organization for Economic Cooperation and Development; or*

(II) *a security that is a direct obligation of, or that is fully guaranteed by, the United States or an agency of the United States against the transfer of funds by the transferee of such certificate of deposit, eligible bankers' acceptance, security, loan, or interest;*

*with a simultaneous agreement by such transferee to transfer to the transferor thereof a certificate of deposit, eligible bankers' acceptance, security, loan, or interest of the kind described in subclause (I) or (II), at a date certain that is not later than 1 year after the date of the transferor's transfer or on demand, against the transfer of funds;*

(ii) *a combination of agreements or transactions referred to in clauses (i) and (iii);*

(iii) *an option to enter into an agreement or transaction referred to in clause (i) or (ii); or*

(iv) *a master netting agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to such master netting agreement, without regard to whether such master netting agreement provides for an agreement or transaction that is not a repurchase agreement under this subparagraph, except that such master netting agreement shall be considered to be a repurchase agreement under this subparagraph only with respect to each agreement or transaction under such master netting agreement that is referred to in clause (i), (ii), or (iii); or*

(v) *a security agreement or arrangement, or other credit enhancement, directly pertaining to a contract referred to in clause (i), (ii), (iii), or (iv), but not to ex-*

*ceed the actual value of such contract on the date of the filing of the petition; and*

*(B) do not include a repurchase obligation under a participation in a commercial mortgage loan.*

**[(48)]** (56) *The term “securities clearing agency” means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934, or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission or whose business is confirmed to the performance of functions of a clearing agency with respect to exempted securities as defined in section 3(a)(12) of such Act for the purposes of such section 17A[;].*

*(57) The term “securities self regulatory organization” means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).*

**[(49)]** (58) *The term “security”—*

*(A) includes—*

*(i) note;*

\* \* \* \* \*

*(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but*

*(B) does not include—*

*(i) currency, check, draft, bill of exchange, or bank letter of credit;*

\* \* \* \* \*

*(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered[;].*

**[(50)]** (59) *The term “security agreement” means agreement that creates or provides for a security interest[;].*

**[(51)]** (60) *The term “security interest” means lien created by an agreement[;].*

**[(51A)]** (61) *The term “settlement payment” means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trades[;].*

**[(51B)]** (62) *The term “single asset real estate” means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor *who is not a family farmer* and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental [thereto having aggregate noncontingent, liquidated secured debts in an amount no more than \$4,000,000;].*

[(51C) “small business” means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed \$2,000,000;]

(63) *The term “small business case” means a case filed under chapter 11 of this title in which the debtor is a small business debtor.*

(64) *The term “small business debtor”—*

(A) *subject to subparagraph (B), means a person (including any affiliate of such person that is also a debtor under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than \$4,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has appointed under section 1102(a)(1) a committee of unsecured creditors that the court has determined is sufficiently active and representative to produce effective oversight of the debtor; and*

(B) *does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$4,000,000 (excluding debt owed to 1 or more affiliates or insiders).*

[(52)] (65) *The term “State” includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title[;].*

[(53)] (66) *The term “statutory lien” means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute[;].*

[(53A)] (67) *The term “stockbroker” means person—*

(A) *with respect to which there is a customer, as defined in section 741 of this title; and*

(B) *that is engaged in the business of effecting transactions in securities—*

(i) *for the account of others; or*

(ii) *which members of the general public, from or for such person’s own account[;].*

[(53B)] *“swap agreement” means—*

(A) *an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);*

(B) *any combination of the foregoing; or*

[(C) a master agreement for any of the foregoing together with all supplements;]

(68) The term “swap agreement”—

(A) means—

(i) an agreement, including the terms and conditions incorporated by reference in such agreement, that is—

(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

(III) a currency swap, option, future, or forward agreement;

(IV) an equity index or an equity swap, option, future, or forward agreement;

(V) a debt index or a debt swap, option, future, or forward agreement;

(VI) a credit spread or a credit swap, option, future, or forward agreement; or

(VII) a commodity index or a commodity swap, option, future, or forward agreement;

(ii) an agreement or transaction that is similar to an agreement or transaction referred to in clause (i) that—

(I) is currently, or in the future becomes, regularly entered into in the swap market including terms and conditions incorporated by reference therein; and

(II) is a forward, swap, future, or option on a rate, currency, commodity, equity security, or other equity instrument, on a debt security or other debt instrument, or on an economic index or measure of economic risk or value;

(iii) a combination of agreements or transactions referred to in clauses (i) and (ii);

(iv) an option to enter into an agreement or transaction referred to in this subparagraph;

(v) a master netting agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to such master netting agreement and without regard to whether such master netting agreement contains an agreement or transaction described in any such clause, but only with respect to each agreement or transaction referred to in any such clause that is under such master netting agreement; except that

(B) the definition under subparagraph (A) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture

*Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.*

[(53C)] (69) *The term “swap participant” means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor [;].*

[(53D)] (70) *The term “timeshare plan” means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A “timeshare interest” is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan[;].*

[(54) “stockbroker” means person—

[(A) with respect to which there is a customer, as defined in section 741(2) of this title; and

[(B) that is engaged in the business of effecting transactions in securities—

[(i) for the account of others; or

[(ii) with members of the general public, from or for such person’s own account;]

(71) *The term “transfer” means—*

(A) the creation of a lien;

(B) the retention of title as a security interest;

(C) the foreclosure of a debtor’s equity of redemption; or

(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

(i) property; or

(ii) an interest in property.

[(55)] (72) *The term “United States”, when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States[;].*

[(56)] (73) *The term “swap participant” means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor[;].*

[(56A)] (74) *The term “term overriding royalty” means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized[;].*

[(57)] (75) *The term “timeshare plan” means and shall include that interest purchased in any arrangement, plan,*



scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A “timeshare interest” is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

[(54)] (76) *The term* “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor’s equity of redemption[;].

[(55)] (77) *The term* “United States”, when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States[;].

[(56)] (78) *The term* “intellectual property” means—

(A) trade secret;

\* \* \* \* \*

(F) mask work protected under chapter 9 of title 17; to the extent protected by applicable nonbankruptcy law[; and].

(79) *The term* [(57)] “mask work” has the meaning given it in section 901(a)(2) of title 17.

\* \* \* \* \*

**§ 103. Applicability of chapters**

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title, and this chapter, sections 307, 304, 555 through 557, 559, and 560 apply in a case under chapter 15.

\* \* \* \* \*

(i) Chapter 12 of this title applies only in a case under such chapter.

(j) Chapter 15 applies only in a case under such chapter, except that—

(1) sections 1513 and 1514 apply in all cases under this title; and

(2) section 1505 applies to trustees and to any other entity (including an examiner) authorized by the court under chapter 7, 11, or 12, to debtors in possession under chapter 11 or 12, and to debtors under chapter 9 who are authorized to act under section 1505.

**§ 104. Adjustment of dollar amounts**

(a) The Judicial Conference of the United States shall transmit to the Congress and to the President before May 1, 1985, and before May 1 of every sixth year after May 1, 1985, a recommendation for the uniform percentage adjustment of each dollar amount in this title and in section 1930 of title 28.

(b)(1) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections 109(e), 303(b), 507(a), 522(d), 522(f)(3), and 523(a)(2)(C) immediately before such April 1 shall be adjusted—

\* \* \* \* \*

(3) Adjustments made in accordance with paragraph (1) shall not apply with respect to cases commenced before the date of such adjustments.

(4) *The dollar amount in section 101(18) shall be adjusted at the same times and in the same manner as the dollar amounts in paragraph (1) of this subsection, beginning with the adjustment to be made on April 1, 2001.*

**§ 105. Power of court**

(a) The court \* \* \*

\* \* \* \* \*

(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;*

**(2) [unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure,] 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) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;**

\* \* \* \* \*

**(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), except as provided in section 1121(e)(3).*

\* \* \* \* \*

**§ 108. Extension of time**

(a) If applicable \* \* \*

\* \* \* \* \*

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, [922, 1201, or] 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

**§ 109. Who may be a debtor**

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

(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

\* \* \* \* \*

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

(1) the case \* \* \*

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

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

*(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bank-*

ruptcy administrator of the bankruptcy court of that district determines that the approved nonprofit credit counseling services for that district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from those programs by reason of the requirements of paragraph (1).

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

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

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

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

(iii) is satisfactory to the court.

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

#### **§ 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions**

(a) In this section—

(1) “bankruptcy petition preparer” means a person, other than an attorney or an employee of an attorney, who, *under the direct supervision of an attorney*, prepares for compensation a document for filing; and

\* \* \* \* \*

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer’s name and address. *If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer shall be required to—*

(A) *sign the document for filing; and*

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

[(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.]

(2)(A) *Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice to debtors concerning bankruptcy petition preparers, which shall be on an official form issued by the Judicial Conference of the United States.*

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

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

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

(iii) shall—

(I) be signed by—

(aa) the debtor; and

(bb) the bankruptcy petition preparer, under penalty of perjury; and

(II) be filed with any document for filing.

(c)(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document.

[(2) For purposes] (2)(A) Subject to subparagraph (B), for purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

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

[(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.]

[(d)(1)] (d) A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

[(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.]

(e)(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

[(2) A bankruptcy petition preparer may be fined not more than \$500 for each document executed in violation of paragraph (1).]

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

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

(i) whether—

(I) to file a petition under this title, or

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

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

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

(iv) concerning—

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

(II) *the dischargeability of tax claims;*

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

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

(vii) *concerning bankruptcy procedures and rights.*

**[(f)(1)]**(f) *A bankruptcy petition preparer shall not use the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term.*

**[(2)]** *A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (a).]*

**[(g)(1)]**(g) *A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.*

**[(2)]** *A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).]*

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

**[(h)(1)]** (2) **[**Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a **]** *A declaration under penalty of perjury by the bankruptcy petition preparer shall be filed together with the petition, disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).*

**[(2)]** (3) *The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).]*

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

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

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

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

(C) *An individual may exempt any funds recovered under this paragraph under section 522(b).*

[(3)] (4) The debtor, the trustee, a creditor, [or the United States trustee] *the United States trustee, or the court, on the initiative of the court,* may file a motion for an order under paragraph (2).

[(4)] (5) A bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order,

[(i)(1) If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—]

*(i) If a bankruptcy petition preparer violates this section or commits any act that the courts finds to be fraudulent, unfair, or deceptive, on motion of the debtor, trustee, or United States trustee, and after the court holds a hearing with respect to that violation or act, the court shall order the bankruptcy petition preparer to pay to the debtor—*

\* \* \* \* \*

(j)(1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

(2)(A) In an action under paragraph (1), of the court finds that—

(i) a bankruptcy petition preparer has—

(I) engaged in conduct in violation of this section or of any provision of this title [a violation of which subjects a person to criminal penalty];

\* \* \* \* \*

(B) If the court, finds a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct that would not be sufficient to prevent such person's interference with the proper administration of this title, [or has not paid a penalty] *has not paid a penalty* imposed under this section, the court may enjoin the person from acting as a bankruptcy petition preparer.

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

**[(3)] (4)** The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable **[attorney's]** attorneys' fees and costs of the action, to be paid by the bankruptcy petition preparer.

(k) Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

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

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

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

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

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

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

*(3) The debtor, the trustee, a creditor, or the United States trustee may file a motion for an order imposing a fine on the bankruptcy petition preparer for each violation of this section.*

*(4) All fines imposed under this section shall be paid to the United States trustee, who shall deposit an amount equal to such fines in a special account of the United States Trustee System Fund referred to in section 586(e)(2) of title 28. Amounts deposited under this paragraph shall be available to fund the enforcement of this section on a national basis.*

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

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

*(1) the United States trustee; or*

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

\* \* \* \* \*

**CHAPTER 3—CASE ADMINISTRATION**

**Subchapter I—Commencement of a Case**

Sec.

301. Voluntary cases.

\* \* \* \* \*

**[304. Cases ancillary to foreign proceedings.]**

§304. *Cases ancillary to foreign proceedings.*

\* \* \* \* \*

307. United States trustee.

308. *Debtor reporting requirements.*



**§ 301. Voluntary cases**

(a) A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter. **【The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.】**

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

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

**【(a) A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of a petition under this section by a foreign representative.**

**【(b) Subject to the provisions of subsection (c) of this section, if a party in interest does not timely controvert the petition, or after trial, the court may—**

**【(1) enjoin the commencement or continuation of—**

**【(A) any action against—**

**【(i) a debtor with respect to property involved in such foreign proceeding; or**

**【(ii) such property; or**

**(B) the enforcement of any judgment against the debtor with respect to such property, or any act or the commencement or continuation of any judicial proceeding to create or enforce a lien against any judicial proceeding to create or enforce a lien against the property of such estate;**

**【(2) order turnover of the property of such estate, or the proceeds of such property, to such foreign representative; or**

**【(3) order other appropriate relief.**

**【(c) In determining whether to grant relief under subsection (b) of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with—**

**【(1) just treatment of all holders of claims against or interests in such estate;**

**【(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;**

**【(3) prevention of preferential or fraudulent dispositions of property of such estate;**

**【(4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;**

**【(5) comity; and**

**【(6) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.】**

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

(a) *For purposes of this section—*

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

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

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

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

(i) a United States claimant; or

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

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

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

\* \* \* \* \*

(d) Any provisions of this title resulting to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master meeting agreements shall apply in a case ancillary to a foreign proceeding under this section or any other section of this title, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms—

(1) shall not be stayed or otherwise limited by—

(A) operation of any provision of this title; or

(B) order of a court in any case under this title;

(2) shall limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11; and

(3) shall not be limited based on the presence or absence of assets of the debtor in the United States.

\* \* \* \* \*

**§ 308. Debtor reporting requirements**

(1) For purposes of this section, the term “profitability” means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

(2) A small business debtor shall file periodic financial and other reports containing information including—

(A) the debtor’s profitability;

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

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

(D)(i) whether the debtor is—

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

(II) timely filing tax returns and paying taxes and other administrative claims when due; and

(ii) if the debtor is not in compliance with the requirements referred to in clause (i)(I) or filing tax returns and making the payments referred to in clause (i)(II), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

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

**Subchapter II—Officers**

\* \* \* \* \*

**§ 328. Limitation on compensation of professional persons**

(a) The trustee, or a committee appointed under section 1102 of this title, with the court’s approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, *on a fixed or percentage fee basis*, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

\* \* \* \* \*

**§ 330. Compensation of officers**

(a)(1)\* \* \*

\* \* \* \* \*

(3)(A) In determining the amount of reasonable compensation to be awarded *to an examiner, trustee under chapter 11, or professional person*, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including

- [(A)] (i) the time spent on such services;
- [(B)] (ii) the rates charged for such services;
- [(C)] (iii) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- [(D)] (iv) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; [and]
- (v) *with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and*

[(E)] (vi) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

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

\* \* \* \* \*

### Subchapter III—Administration

#### § 341. Meetings of creditors and equity security holders

(a) \* \* \*

\* \* \* \* \*

(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors. Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than one creditor) shall be permitted to appear at and participate in the meeting of creditors 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) There \* \* \*

[(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, that individual shall be given or obtain (as required in section 521(a)(1), as part of the certification process under subchapter I of chapter 5) a written notice prescribed by the United States trustee for the district in which the petition is filed under section 586 of title 28.*

(2) *The notice shall contain the following:*

(A) *A brief description of chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters.*

(B) *A brief description of services that may be available to that individual from a credit counseling service that is approved by the United States trustee for that district.*

(c)(1) If notice is required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court, such notice shall contain the name, address, and taxpayer identification number of the debtor[, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice].

(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)(1) *Notice given a creditor other than as provided in this section shall not be effective notice until that notice has been brought to the attention of the creditor. If the creditor designates a person or department to be responsible for receiving notices concerning bankruptcy cases and establishes reasonable procedures so that bankruptcy notices received by the creditor are to be delivered to such department or person, notice shall not be considered to have been brought to the attention of the creditor until received by such person or department.*

(2) *No sanction under section 362(h) or any other sanction that a court may impose on account of violations of the stay under section 362(a) or failure to comply with section 542 or 543 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)(1) *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, applicable rule, other provision of law, or order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted.*

(2) *The debtor shall identify (with information such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, if applicable), and describe the underlying basis for the claim of the governmental unit.*

(3) *If the liability of the debtor 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 that individual, entity, organization, or name.*

(h) *The clerk shall keep and update on a quarterly basis, in such form and manner as the Director of the Administrative Office of the United States Courts prescribes, a register in which a governmental unit may designate or redesignate a mailing address for service of notice in cases pending in the district. The clerk shall make such register available to debtors.*

(i) *A notice that does not comply with subsections (d) and (e) shall not be effective unless the debtor demonstrates by clear and convincing evidence that—*

(1) *timely notice was given in a manner reasonably calculated to satisfy the requirements of this section; and*

(2) *either—*

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

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

\* \* \* \* \*

**§ 346. Special tax provisions**

(a) \* \* \*

\* \* \* \* \*

(g) (1) Neither gain nor loss shall be recognized on a transfer—  
 (A) \* \* \*

\* \* \* \* \*

(C) in a case under chapter 11 or 12 or this title concerning a corporation, of property from the estate to a corporation that is an affiliate participating in a joint plan with the debtor, or that is a successor to the debtor under the plan, except that gain or loss may be recognized to the same extent that such transfer results in the recognition of gain or loss under section 371 of the Internal Revenue Code of 1986].

\* \* \* \* \*

**§ 348. Effect of conversion**

(a) Conversion \* \* \*

\* \* \* \* \*

(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) valuation of property and of allowed secured claims in the chapter 13 case shall apply **[in the converted case, with allowed secured claims]** *only in a case converted to chapter 11 or 12 but not in a case converted to chapter 7, with allowed secured claims in cases under chapters 11 and 12 reduced to the extent that they have been paid in accordance with the chapter 13 plan; and*

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

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

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

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

\* \* \* \* \*

**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) the commencement \* \* \*

\* \* \* \* \*

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; **[and]**

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor**[.]**, with respect to a tax liability for a taxable period ending before the order for relief under section 301, 302, or 303; and

(9) any communication (other than a recitation of the creditor’s legal rights) threatening a debtor (for the purpose of coercing an agreement for the reaffirmation of debt), at any time after the commencement and before the granting of a discharge in a case under this title, of an intention to—

(A) file a motion to—

(i) determine the dischargeability of a debt; or

(ii) under section 707(b), dismiss or convert a case;

or

(B) repossess collateral from the debtor to which the stay applies.

(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) under \* \* \*

**[(2) under subsection (a) of this section—**

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

**[(i) the establishment of paternity; or**

**[(ii) the establishment or modification of an order for alimony, maintenance, or support; or**

**[(B) of the collection of alimony, maintenance, or support from property that is not property of the estate;]**

**(2) under subsection (a)—**

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

**(i) the establishment of paternity; or**

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

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

\* \* \* \* \*

(5) under subsection (a) with respect to the withholding of income—

(A) for payment of a domestic support obligation for amounts that initially become payable after the date the petition was filed; and

(B) for payment of a domestic support obligation for amounts payable before the date the petition was filed, and owed directly to the spouse, former spouse, or child of the debtor, or the parent or guardian of such child;

\* \* \* \* \*

(6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker, **[financial institutions,]** *financial institution, financial participant* or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761 of this title, forward contracts, or securities contracts, as defined in section 741 of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, arising out of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by, *pledged to, and under the control of,* or due from such commodity broker, forward contract merchant, stockbroker, **[financial institutions,]** *financial institution, financial participant* or securities clearing agency to margin, guarantee, secure, or settle commodity contracts, forward contracts, or securities contracts;

(7) under subsection (a) of this section, of the setoff by a repo participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, arising out of repurchase agreements against cash, securities, or other property held by, *pledged to, and under the control of,* or due from such repo participant to margin, guarantee, secure or settle repurchase agreements;

\* \* \* \* \*

(9) under subsection (a), of—

(A) an audit by a government unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; **[or]**

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor



that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor) **【.】**; or

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

\* \* \* \* \*

**【(17) under subsection (a) of this section, of the setoff by a swap participant, of any mutual debt and claim under or in connection with any swap agreement that constitutes the setoff of a claim against the debtor for any payment due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property of the debtor held by or due from such swap participant to guarantee, secure or settle any swap agreement; or】**

*(17) under subsection (a), of the setoff by a swap participant of a mutual debt and claim under or in connection with a swap agreement that constitutes the setoff of a claim against the debtor for a payment or transfer due from the debtor under or in connection with a swap agreement against a payment due to the debtor from the swap participant under or in connection with a swap agreement or against cash, securities, or other property held by, pledged to, and under the control of, or due from such swap participant to guarantee, secure, or settle a swap agreement;*

**(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax imposed by the District of Columbia, or a political subdivision of a State, if such tax comes due after the filing of the petition;**

**(19) under subsection (a) with respect to—**

*(A) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses under State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C. 666(a)(16));*

*(B) the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7));*

*(C) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)), if such tax refund is payable directly to a spouse, former spouse, or child of the debtor, or the parent or legal guardian of such child; or*

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

**(20) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, pursuant to the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414,**

457, or 501(a) of the Internal Revenue Code of 1986 that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

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

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

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

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

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

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

(23) under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement;

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

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

(26) under subsection (a), of—

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or

(C) 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;

(27) under subsection (a), of the setoff of an income tax refund, by a governmental unit, with respect to a taxable period

that ended before the order for relief against an income tax liability for a taxable period that also ended before the order for relief, unless—

(A) before that setoff, an action to determine the amount or legality of that tax liability under section 505(a) was commenced; or

(B) in any case in which 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, in which case the governmental unit may hold the refund pending the resolution of the action;

(28) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with 1 or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged or and under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue.

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989. Nothing in paragraph (20) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.

(c) Except as provided in subsections (d), [(e), and (f)] (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; [and]

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied[.],

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

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such

debt or with respect to any lease will terminate with respect to the debtor on the 30th day after the filing of the later case;

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

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

(i) as to all creditors, if—

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

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

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

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

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

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

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

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

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

(4)(A)(i) if a single or joint case is filed by or against an individual debtor under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b),

*the stay under subsection (a) shall not go into effect upon the filing of the later case; and*

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

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

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

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

*(i) as to all creditors if—*

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

*(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to 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 or the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or*

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

*(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—*

*(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;*

\* \* \* \* \*

*(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 that—

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before or after the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

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

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

(B) multiple bankruptcy filings affecting the real property.

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

(e)(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing

and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

*(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—*

*(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or*

*(B) that 60-day period is extended—*

*(i) by agreement of all parties in interest; or*

*(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.*

\* \* \* \* \*

*(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—*

*(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and*

*(2) the party opposing such relief has the burden of proof on all other issues.*

*(h)(1) Subject to paragraph (2), in an individual case under 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 period of time set by section 521(a)(2) to—*

*(A) file timely any statement of intention required under section 521(a) with respect to that property or to indicate therein that the debtor—*

*(i) will either surrender the property or retain the property; and*

*(ii) if retaining the property, will, as applicable—*

*(I) redeem the property under section 722;*

*(II) reaffirm the debt the property secures under section 524(c); or*

*(III) assume the unexpired lease under section 365(p) if the trustee does not do so; or*

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

(2) Paragraph (1) shall not apply if 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.

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

[(h) An] (j)(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 attorney's fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) against such entity shall be limited to actual damages.

(k)(1) Except as provided in paragraph (2), the filing of a petition under chapter 11 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—

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

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

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

(D) is an entity that has succeeded to substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C).

(2) Paragraph (1) does not apply to the filing of a petition if the debtor proves by a preponderance of the evidence that—

(A) the filing of that petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

(B) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(l) *LIMITATION.*—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), or (17) of subsection (b) shall not be stayed by an order of a court or administrative agency in any proceeding under this title.

### § 363. Use, sale, or lease of property

(a) In this \* \* \*

\* \* \* \* \*

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section [only to the extent not inconsistent with any relief granted under section 362(c), 362(d), 362(e), or 362(f) of this title.]—

(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that



*is not a moneyed, business, or commercial corporation or trust; and*

*(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.*

\* \* \* \* \*

**§ 365. Executory contracts and unexpired leases**

(a) Except \* \* \*

\* \* \* \* \*

(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

\* \* \* \* \*

[(4) Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.]

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

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

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

*(B) The court may extend the period determined under subparagraph (A) only upon a motion of the lessor.*

\* \* \* \* \*

(o) In a case under chapter 11 of this title, the trustee shall be deemed to have assumed (consistent with the debtor's other obligations under section 507), and shall immediately cure any deficit under, 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, and any claim for a subsequent breach of the obligations thereunder shall be entitled to priority under section 507. This subsection shall not extend any commitment that would otherwise be terminated by any act of such an agency.

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

*(2)(A) 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 contract.

(B) If within 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

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

### § 366. Utility service

(a) Except as provided in [subsection (b)] subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility \* \* \*

(c)(1)(A) For purposes of this subsection, the term “assurance of payment” means—

- (i) a cash deposit;
- (ii) a letter of credit;
- (iii) a certificate of deposit;
- (iv) a surety bond;
- (v) a prepayment of utility consumption; or
- (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

(2) Subject to paragraphs (3) through (5), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 20-day period beginning on the date of filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider—

- (i) the absence of security before the date of filing of the petition;
- (ii) the payment by the debtor of charges for utility service in a timely manner before the date of filing of the petition; or

(iii) the availability of an administrative expense priority.

(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of filing of the petition without notice or order of the court.

\* \* \* \* \*

**CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE**

SUBCHAPTER I—CREDITORS AND CLAIMS

Sec.

501. Filing of proofs of claims or interests.

\* \* \* \* \*

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

\* \* \* \* \*

**§ 502. Allowance of claims or interests**

(a) A claim \* \* \*

(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) such claim \* \* \*

\* \* \* \* \*

(9) proof of such claims is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide, and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1309 shall be timely if the claim is filed on or before that date that is 60 days after that return was filed in accordance with applicable requirements.

\* \* \* \* \*

(g)(1) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(2) A claim for damages calculated in accordance with section 561 shall be allowed under subsection (a), (b), or (c) of this section, or

*disallowed under subsection (d) or (e) of this section, as if such claim had arisen before the date of the filing of the petition.*

\* \* \* \* \*

(j) A claim \* \* \*

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

(A) *the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency acting on behalf of the debtor;*

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

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

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

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

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

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

(B) *the proposed alternative repayment schedule was made in the 60-day period specified in paragraph (1)(B)(i).*

**§ 503. Allowance of administrative expenses**

(a) An entity \* \* \*

(b) After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)(A) *the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case;*

(B) *any tax—*

(i) *incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or*

(ii) *attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case; [and]*

(C) *any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and*

(D) *notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of a claim described in subparagraph (B) or (C);*

\* \* \* \* \*

(4) *reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E)*

of paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

\* \* \* \* \*

**§ 505. Determination of tax liability**

(a)(1) \* \* \*

(2) The court may not so determine—

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title; **[or]**

(B) any right of the estate to a tax refund, before the earlier of—

(i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or

(ii) a determination by such governmental unit of such request~~[\.]~~; or

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

(b) A trustee may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax. **[Unless]** *If the request is made substantially in the manner designated by the governmental unit and unless such return is fraudulent, or contains a material misrepresentation, the estate, the trustee, the debtor, and any successor to the debtor are discharged from any liability for such tax—*

\* \* \* \* \*

**§ 506. Determination of secured status**

(a) An allowed \* \* \*

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or *State statute* under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit

to the holder of such claim , including the payment of all ad valorem property taxes with respect to the property.

\* \* \* \* \*

**§ 507. Priorities**

(a) The following expenses and claims have priority in the following order:

(1) *First, allowed unsecured claims for domestic support obligations to be paid in the following order on the condition that funds received under this paragraph by a governmental unit in a case under this title be applied and distributed in accordance with applicable nonbankruptcy law;*

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

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

[(1) First] (2) *Second, administrative expensive allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.*

[(2) Second] (3) *Third, unsecured claims allowed under section 502(f) of this title.*

[(3) Third] (4) *Fourth, allowed unsecured claims, but only to the extent of \$4,300 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor’s business, whichever occurs first, for—*

\* \* \* \* \*

[(4) Fourth] (5) *Fifth, allowed unsecured claims for contributions to an employee benefit plan—*

\* \* \* \* \*

[(5) Fifth] (6) *Sixth, allowed unsecured claims of persons—*

\* \* \* \* \*

[(6) Sixth] (7) *Seventh, allowed unsecured claims of individuals, to the extent of \$1,950 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental or property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.*

[(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or terri-

torial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

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

【(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.】

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts—

(i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition, *plus any time during which the stay of proceedings was in effect in a prior case under this title, plus 6 months;*

【(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition; or】

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

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

(II) *the lesser of—*

(aa) *any time during which an installment agreement with respect to that tax was pending or in effect during that 240-day period, plus 30 days; or*

(bb) *1 year; and*

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

\* \* \* \* \*

(9) Ninth, 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.

\* \* \* \* \*

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

\* \* \* \* \*

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

*If any provision of this title requires the payment of interest on a tax claim or the payment of interest to enable a creditor to receive*

*the present value of the allowed amount of a tax claim, the rate of interest shall be as follows:*

*(1) In the case of secured tax claims, unsecured ad valorem tax claims, other unsecured tax claims in which interest is required to be paid under section 726(a)(5), and administrative tax claims paid under section 503(b)(1), the rate shall be determined under applicable nonbankruptcy law.*

*(2)(A) In the case of any tax claim other than a claim described in paragraph (1), the minimum rate of interest shall be a percentage equal to the sum of—*

*(is) 3; plus*

*(ii) the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code of 1986.*

*(B) In the case of any claim for Federal income taxes, the minimum rate of interest shall be subject to any adjustment that may be required under section 6621(d) of the Internal Revenue Code of 1986.*

*(C) In the case of taxes paid under a confirmed plan or reorganization under this title, the minimum rate of interest shall be determined as of the calendar month in which the plan is confirmed.*

\* \* \* \* \*

**Subchapter II—Debtor’s Duties and Benefits**

\* \* \* \* \*

**§ 521. Debtor’s duties**

*(a) The debtor shall—*

**【(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of 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 and, if applicable, a certificate—*

*(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition under section 110(b)(1) indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b); or*

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



(iv) copies of any Federal tax returns, including any schedules or attachments, filed by the debtor for the 3-year period preceding the order for relief;

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

(vi) a statement of the amount of projected monthly net income, itemized to show how the amount is calculated; and

(vii) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;

(2) if an individual debtor's schedule of assets and liabilities includes [consumer] debts which are secured by property of the estate—

\* \* \* \* \*

(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 period] 30-day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title *except as provided in section 362(h)*;

\* \* \* \* \*

(3) if a trustee is *servicing in the case* or an auditor appointed under section 586 of title 28, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

\* \* \* \* \*

(4) if a trustee is [serving in the case], or an auditor appointed under section 586 of title 28 surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title; [and]

(5) appear at the hearing required under section 524(d) of this title.]; and

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

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

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

(6) in an individual case under chapter 7, 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 within 45 days after the first meeting of creditors under section 341(a)—

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

(B) redeems such property from the security interest under section 722.

(b) For purposes of subsection (a)(6), if the debtor fails to so act within the 45-day period specified in subsection (a)(6), 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.

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

*(d)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who requests those documents.*

*(2)(A) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case.*

*(B) The court shall make such plan available to the creditor who requests such plan—*

*(i) at a reasonable cost; and*

*(ii) not later than 5 days after such request.*

*(e) An individual debtor in a case under chapter 7 or 13 shall file with the court—*

*(1) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;*

*(2) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order for relief;*

*(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and*

(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's income and expenditures in the preceding tax year and monthly income, that shows how the amounts are calculated—

(A) beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and

(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.

(f)(1) A statement referred to in subsection (e)(4) shall disclose—

(A) the amount and sources of income of the debtor;

(B) The identity of any person responsible with the debtor for the support of any dependent of the debtor; and

(C) The identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

(2) The tax returns, amendments, and statement of income and expenditures described in paragraph (1) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (g).

(g)(1) Not later than 30 days after the date of enactment of the Bankruptcy Reform Act of 1999, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

(3) Not later than 1 year after the date of enactment of the Bankruptcy Reform Act of 1999, the Director of the Administrative Office of the United States Courts shall prepare and submit to Congress a report that—

(A) assesses the effectiveness of the procedures under paragraph (1); and

(B) if appropriate, includes proposed legislation to—

(i) further protect the confidentiality of tax information; and

(ii) provide penalties for the improper use by any person of the tax information required to be provided under this section.

(h) If requested by the United States trustee or a trustee serving in the case, the debtor shall provide—

(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; and

(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.

(i)(1) Notwithstanding section 707(a), and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the filing of the petition commencing the

case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.

## § 522. Exemptions

(a) In this section—

\* \* \* \* \*

[(b)] (b1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either [paragraph (1)] *paragraph (2)* or, in the alternative, [paragraph (2)] *paragraph 3* of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in [paragraph (1)] *paragraph (2)* and the other debtor elect to exempt property listed in [paragraph (2)] *paragraph 3* of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect [paragraph (1)] *paragraph (2)*, where such election is permitted under the law of the jurisdiction where the case is filed. [Such property is—]

[(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,]

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

[(2)(A) any property] (3) *Property listed in this paragraph is—*

(A) *subject to 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] 730 days immediately preceding the date of the filing of the petition[, or for a longer portion of such 180-day period than in any other place]; [and]*

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law[.]; and

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

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

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

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

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

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

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

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

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

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

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

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

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

【(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;】

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

\* \* \* \* \*

(d) The following property may be exempted under [subsection (b)(1)] *subsection (b)(2)* of this section:

(1) The debtor's aggregate interest, not to exceed \$16,150 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

\* \* \* \* \*

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

\* \* \* \* \*

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt [—] *of a kind that is specified in section 523(a)(5); or*

[(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

[(ii) to the extent that such debt—

[(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

[(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support; or]

\* \* \* \* \*

*(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term "Household goods" means—*

- (i) clothing;*
- (ii) furniture;*
- (iii) appliances;*
- (iv) 1 radio;*
- (v) 1 television;*
- (vi) 1 VCR;*
- (vii) linens;*
- (viii) china;*
- (ix) crockery;*
- (x) kitchenware;*

(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor, but only 1 personal computer only if used primarily for the education or entertainment of such minor children;

(xii) medical equipment and supplies;

(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor; and

(xiv) personal effects (including wedding rings and the toys and hobby equipment of minor dependent children) of the debtor and the dependents of the debtor.

(B) The term “household goods” does not include—

(i) works of art (unless by or of the debtor or the dependent of the debtor);

(ii) electronic entertainment equipment (except 1 television, 1 radio, and 1 VCR);

(iii) items acquired as antiques;

(iv) jewelry (except wedding rings); and

(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

\* \* \* \* \*

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

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

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

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

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

### § 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) of the kind and for the periods specified in section 507(a)(2) of 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(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]**

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

*For purposes of this subsection, the term “return” means a return that satisfies the requirements of applicable non-bankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment entered by a non-bankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.*

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

\* \* \* \* \*

**[(C)]** for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than \$1,075 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 \$1,075 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 60 days before the order for relief under this title, are presumed to be nondischargeable; “luxury goods or services” do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act; **]**

*(C)(i) for purposes of subparagraph (A)—*

*(I) consumer debts owed to a single creditor and aggregating more than \$250 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and*

*(II) cash advances aggregating more than \$750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and*

*(ii) for purposes of this subparagraph—*

*(I) the term “extension of credit under an open end credit plan” means an extension of credit under an open end credit plan, within the meaning of the Consumer Credit Protection Act (15 U.S.C 1601 et seq.);*

*(II) the term “open end credit plan” has the meaning given that term under section 103 of Consumer Credit Protection Act (15 U.S.C. 1602); and*

*(III) the term “luxury goods or services” does not include goods or services reasonably necessary for the*



*support or maintenance of the debtor or a dependent of the debtor.*

[(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—

[(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

[(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;]

*(5) for a domestic support obligation;*

\* \* \* \* \*

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

\* \* \* \* \*

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

*(14A)(A) incurred to pay a debt that is non-dischargeable by reason of section 727, 1141, 1228(a), 1228(b), or 1328(b), or any other provision of this subsection, if the debtor incurred the debt to pay such a nondischargeable debt with the intent to discharge in bankruptcy the newly created debt; except that*

*(B) all debts incurred to pay non-dischargeable debts shall be presumed to be nondischargeable debts if incurred within 70 days before the filing of the petition (except that, in any case in which there is an allowed claim under section 502 for child support or spousal support entitled to priority under section 507(a)(1) and that was filed in a timely manner, debts that would otherwise be presumed to be nondischargeable debts by reason of this subparagraph shall be treated as dischargeable debts);*

(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, or a determination made in accordance with State or territorial law by a governmental unit [unless—];

[(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

[(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor;]

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a [dwelling] unit that has condominium [ownership or] *ownership* in a share of a cooperative [housing] corporation, [but only if such fee or assessment is payable for a period during which—

(A) the debtor physically occupied a dwelling unit in the condominium or cooperative project; or

(B) the debtor rented the dwelling unit to a tenant and received payments from the tenant for such period.

but nothing in this paragraph] *or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, and until such time as the debtor or trustee has surrendered any legal, equitable or possessory interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;*

(17) for a fee imposed [by a 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) owned under State law to a State or municipality that is—

(A) in the nature of support, and

(B) enforceable under part D of title IV of the Social Security Act (42 U.S.C. 601 et seq.).]; *or*

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

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

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

*Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.*

\* \* \* \* \*

(e)(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 sec-

tion, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), **[(6), or (15)]**, or (6) as the case may be, of subsection (a) of this section.

\* \* \* \* \*

(e) Any institution-affiliated party of **[a insured]** *an insured* depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

(f) *Nothing in this section or in any other provision of this title shall preempt any State law relating to unfair trade practices that imposes restrictions on creditor conduct that would give rise to liability—*

(1) *under this section; or*

(2) *under section 524, for failure to comply with applicable requirements for seeking a reaffirmation of debt.*

(g) **ACTIONS BY STATES.**—*The attorney general of a State, or an official or agency designated by a State—*

(1) *may bring an action on behalf of its residents to recover damages on their behalf under subsection (d) or section 524(c); and*

(2) *may bring an action in a State court to enforce a State criminal law that is similar to section 152 or 157 of title 18.*

**§ 524. Effect of discharge**

(a) A discharge in a case under this title—

\* \* \* \* \*

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under **[section 523, 1228(a)(1) of this title, or that]** *section 523, 1228(a)(1) or 1328(a)(1), or that* would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor’s spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

\* \* \* \* \*

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

\* \* \* \* \*

(2)(A) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever, occurs later, by giving notice of rescission to the holder of such claim; **[and]**

(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection; and

(C) (i) the consideration for such agreement is based on a wholly unsecured consumer debt; and

(ii) such agreement contains a clear and conspicuous statement that advises the debtor that—

(I) the debtor is entitled to a hearing before the court at which—

(aa) the debtor shall appear in person; and

(bb) the court shall decide whether the agreement constitutes an undue hardship, is not in the debtor's best interest, or is not the result of a threat by the creditor to take an action that, at the time of the threat, the creditor may not legally take or does not intend to take; and

(II) if the debtor is represented by counsel, the debtor may waive the debtor's right to a hearing under subclause (I) by signing a statement—

(aa) waiving the hearing;

(bb) stating that the debtor is represented by counsel;

and

(cc) identifying the counsel;

\* \* \* \* \*

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; **and**

(ii) in the best interest of the debtor~~...~~; and

(iii) not an agreement that the debtor entered into as a result of a threat by the creditor to take an action that, at the time of the threat, the creditor could not legally take or did not intend to take; except that

(B) **Subparagraph** subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1228, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section and was not represented by an attorney **during the course of negotiating such agreement** (or if the consideration by such agreement is based on a wholly secured consumer debt, and the debtor has not waived the right to a hearing under subsection (c)(2)(C)), then the court shall

hold a hearing at which the debtor shall appear in person and at such hearing the court shall—

\* \* \* \* \*  
(h) Application to existing injunctions.—For purposes of subsection (g)—

(1) subject \* \* \*

\* \* \* \* \*  
(2) for purposes of paragraph (1), if a trust described in subsection (g)(2)(B)(i) is subject to a court order on the date of the enactment of this Act staying such trust from settling or paying further claims—

(A) the requirements \* \* \*

\* \* \* \* \*

(B) if such trust meets such requirements on the date such stay is lifted or dissolved, such trust shall be considered to have met such requirements continuously from the date of the enactment of this Act.

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

**§ 525. Protection against discriminatory treatment**

(a) \* \* \*

\* \* \* \* \*

(c)(1) A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a student grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(2) In this section, “student loan program” means [the program operated under part B, D, or E of] *any program operated under title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.*

\* \* \* \* \*

**Subchapter III—The Estate**

541. Property of the estate.

\* \* \* \* \*

[555. Contractual right to liquidate a securities contract.]

§555. *Contractual right to liquidate, terminate, or accelerate a securities contract*  
**§556. Contractual right to liquidate a commodity contract or forward contract.**  
 §556. *Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract*

\* \* \* \* \*

**§559. Contractual right to liquidate a repurchase agreement**  
 §559. *Contractual right to liquidate, terminate, or accelerate a repurchase agreement*  
**§560. Contractual right to terminate, a swap agreement**  
 §560. *Contractual right to liquidate, terminate, or accelerate a swap agreement*  
 §561. *Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts*  
 §562. *Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.*

**§ 541. Property of the estate**

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except \* \* \*

\* \* \* \* \*

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor (*other than an individual debtor who, in accordance with section 301, files a petition to commence a voluntary case under chapter 11*) after the commencement of the case.

\* \* \* \* \*

(b) Property of the estate does not include—

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

\* \* \* \* \*

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

(A)(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

\* \* \* \* \*

(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 542 of this title; **[or]**

(5) *any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent that such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a); or*

[(5)] (6) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

\* \* \* \* \*

(d) Property in which \* \* \*

(e) For purposes of this section, the following definitions shall apply:

(1) The term “asset-backed securitization” means a transaction in which eligible assets transferred to an eligible entity are used as the source of payment on securities, the most senior of which are rated investment grade by 1 or more nationally recognized securities rating organizations, issued by an issuer.

(2) The term “eligible asset” means—

(A) financial assets (including interests therein and proceeds thereof), either fixed or revolving, including residential and commercial mortgage loans, consumer receivables, trade receivables, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(B) cash; and

(C) securities.

(3) The term “eligible entity” means—

(A) an issuer; or

(B) a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto.

(4) The term “issuer” means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto.

(5) The term “transferred” means the debtor, under a written agreement, represented and warranted that eligible assets were sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to sub-section (b)(5), irrespective, without limitation of—

(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.

(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same condi-

tions as would apply if the debtor had not filed a case under this title.

\* \* \* \* \*

**§ 545. Statutory liens**

The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien—

(1) \* \* \*

(2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such a purchaser exists[;], *except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986 or in any other similar provision of State or local law;*

\* \* \* \* \*

**§ 546. Limitations on avoiding powers**

(a) An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of—

\* \* \* \* \*

(c) Except as provided in subsection (d) of this section, the rights and powers of a trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common-law right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, but—

(1) such a seller may not reclaim any such goods unless such seller demands in writing reclamation of such goods—

(A) before 10 days after receipt of such goods by the debtor; or

(B) if such 10-day period expires after the commencement of the case, before **[20]** 45 days after receipt of such goods by the debtor; and

\* \* \* \* \*

(e) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, made by or to a commodity broker, forward contract merchant, stockbroker, financial institution, *financial participant*, or securities clearing agency, that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

\* \* \* \* \*

(g) Notwithstanding sections 544, 545, 547, 548(a)(1)(B) and 548(b) of this title, the trustee may not avoid a transfer **[under a swap agreement,]** made by or to a swap participant, **[in connection with a swap agreement]** *under or in connection with any swap agreement* and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.



*(h) Notwithstanding sections 544, 545, 547, 548(a)(2)(B), and 548(b), the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement (except under section 548(a)(1)(A)).*

**[(g)]** *(i) 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 good 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.*

*(j)(1) Notwithstanding section 545 (2) and (3), the trustee may not avoid a warehouseman's lien for storage, transportation or other costs incidental to the storage and handling of goods.*

*(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any applicable State statute that is similar to section 7-209 of the Uniform Commercial Code.*

**§ 547. Preferences**

(a) In this section—

\* \* \* \* \*

(b) Except as provided in **[(subsection (c)] subsections (c) and (i)** of this section, the trustee may avoid any transfer of an interest of the debtor in property—

\* \* \* \* \*

(c) The trustee may not avoid under this section a transfer—

\* \* \* \* \*

**[(2) to the extent that such transfer was—**

**[(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;**

**[(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and**

**[(C) made according to ordinary business terms;]**

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

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

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

(3) that creates a security interest in property acquired by the debtor—

\* \* \* \* \*

(B) that is perfected on or before **[20]** 30 days after the debtor receives possession of such property;

\* \* \* \* \*

**[(7) to the extent such transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—]**

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

\* \* \* \* \*

(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support; **[or]**

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600**[.]**; or

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

\* \* \* \* \*

(e)(1) For the purposes of this section—

\* \* \* \* \*

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made—

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within **[10]** 30 days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such **[10]** 30 days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—

(i) the commencement of the case; or

(ii) **[10]** 30 days after such transfer takes effect between the transferor and the transferee.

\* \* \* \* \*

(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.

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

(i) *If the trustee avoids under subsection (b) a security interest given between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such security interest shall be considered to be avoided under this section only with respect to the creditor that is an insider.*

**§ 548. Fraudulent transfers and obligations**

(a) \* \* \*

\* \* \* \* \*

(d)(1) \* \* \*

(2) In this section—

(A) \* \* \*

(B) a commodity broker, forward contract merchant, stockbroker, financial institution, *financial participant*, or securities clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment.

(C) a repo participant that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment; **[and]**

(D) a swap participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer **[.]**; and

(E) *a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.*

**§ 549. Postpetition transactions**

(a) \* \* \*

\* \* \* \* \*

(c) The trustee may not avoid under subsection (a) of this section a transfer of *an interest in* real property to go good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such *real* property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to **[the interest]** *such interest* of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any

present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

\* \* \* \* \*

**§ 552. Postpetition effect of security interest**

\* \* \* \* \*

(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], offspring, or profits of such property, then such security interest extends to such proceeds, [product], offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

\* \* \* \* \*

**§ 553. Setoff**

(a) Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—

(1) the claim of such creditor against the debtor is disallowed;

\* \* \* \* \*

(3) the debt owed to the debtor by such creditor was incurred by such creditor—

(A) after 90 days before the date of the filing of the petition;

(B) while the debtor was insolvent; and

(C) for the purpose of obtaining a right of setoff against the debtor (*except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(28), 555, 556, 559, or 560*).

(b)(1) Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), [362(b)(14)] 362(b)(7), 362(b)(28), 555, 556, 559, 560, 365(h)(2), or 365(i)(2) of this title, if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

\* \* \* \* \*

**[§ 555. Contractual right to liquidate a securities contract]**

**§ 555. *Contractual right to liquidate, terminate, or accelerate a securities contract***

The exercise of a contractual right of a stockbroker, financial institution, *financial participation*, or securities clearing agency to cause the **[liquidation]** *liquidation, termination, or acceleration* of a securities contract, as defined in section 741(7), because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title unless such order is authorized under the provisions of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or any statute administered by the Securities and Exchange Commission. As used in this section, the term “contractual right” includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, *a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.*

**[§ 556. Contractual right to liquidate a commodities contract or forward contract]**

**§ 556. *Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract***

The contractual right of a commodity broker, *financial participant*, or forward contract merchant to cause the liquidation, *termination, or acceleration* of a commodity contract, as defined in section 761 of this title, or forward contract because of a condition of the kind specified in section 365(e)(1) of this title, and the right to a variation or maintenance margin payment received from a trustee with respect to open commodity contracts or forward contracts, shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by the order of a court in any proceeding under this title. As used in this section, the term “contractual right” includes a right set forth in a rule or bylaw of a clearing organization or contract market or in a resolution of the governing board thereof and a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.

\* \* \* \* \*

**[§ 559. Contractual right to liquidate a repurchase agreement]**

**§ 559. *Contractual right to liquidate, terminate, or accelerate a repurchase agreement***

The exercise of a contractual right of a repo participant to cause the liquidation, *termination, or acceleration* of a repurchase agreement because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise lim-

ited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title, unless, where the debtor is a stockbroker or securities clearing agency, such order is authorized under the provisions of the Securities Investor Protection Act of 1970 or any statute administered by the Securities and Exchange Commission. In the event that a repo participant liquidates one or more repurchase agreements with a debtor and under the terms of one or more such agreements has agreed to deliver assets subject to repurchase agreements to the debtor, any excess of the market prices received on liquidation of such assets (or if any such assets are not disposed of on the date of liquidation of such repurchase agreements, at the prices available at the time of liquidation of such repurchase agreements from a generally recognized source or the most recent closing bid quotation from such a source) over the sum of the stated repurchase prices and all expenses in connection with the liquidation of such repurchase agreements shall be deemed property of the estate, subject to the available rights of setoff. As used in this section, the term “contractual right” includes a right set forth in a rule or bylaw, applicable to each party to the repurchase agreement, of a national securities exchange, a national securities association, or a securities clearing agency, and a right whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.

**[§ 560. Contractual right to terminate a swap agreement]**

**§560. Contractual right to liquidate, terminate, or accelerate a swap agreement**

The exercise of any contractual right of any swap participant to cause the [termination of a swap agreement] *liquidation, termination, or acceleration of a swap agreement* because of a condition of the kind specified in section 365(e)(1) of this title or to offset or net out any termination values or payment amounts arising under or [in connection with any swap agreement] *in connection with the termination, liquidation, or acceleration of a swap agreement* shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. As used in this section, the term “contractual right” includes a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

**§561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts**

(a) *Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts or other transfer obligations arising under or in connection with 1 or more (or the termination, liquidation, or acceleration of 1 or more)—*

- (1) *securities contracts, as defined in section 741(7);*
- (2) *commodity contracts, as defined in section 761(4);*

- (3) forward contracts;
- (4) repurchase agreements;
- (5) swap agreements; or
- (6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provisions of this title or by any order of a court or administrative agency in any proceeding under this title.

(b)(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

(2) If a debtor is a commodity broker subject to sub-chapter IV of chapter 7—

(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a), except to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under such subchapter IV; and

(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor against any claim arising under, or in connection with, other instruments, contracts, or agreements referred to in subsection (a).

(c) As used in this section, the term “contractual right” includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

**§562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements**

If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761) repurchase agreement, or master netting agreement under section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

- (1) the date of such rejection; or
- (2) the date of such liquidation, termination, or acceleration.

## CHAPTER 7—LIQUIDATION

### Subchapter I—Officers and Administration

Sec.

701. Interim trustee.

\* \* \* \* \*

**【707. Dismissal.】**

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

\* \* \* \* \*

**§ 704. Duties of trustee**

(a) The trustee shall—

(b)(1) *With respect to an individual debtor under this chapter—*

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

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

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

(A) *the highest national or applicable State median family income reported for a family of equal or lesser size, whichever is greater; or*

(B) *in the case of a household of 1 person, the national or applicable State median household income for 1 earner, whichever is greater.*

(3)(A) *The court shall order the counsel for the debtor to reimburse the panel trustee for all reasonable costs in prosecuting a motion brought under section 707(b), including reasonable attorneys' fee, if—*

(i) *a panel trustee appointed under section 586(a)(1) of title 28 brings a motion for dismissal or conversion under this subsection; and*

(ii) *the court—*

(I) *grants that motion; and*

(II) *finds that the action of the counsel for the debtor in filing under this chapter was not substantially justified.*

(B) *If the court finds that the attorney for the debtor violated Rule 9011, at a minimum, the court shall order—*

(i) *the assessment of an appropriate civil penalty against the counsel for the debtor; and*

(ii) *the payment of the civil penalty to the panel trustee or the United States trustee.*

(C) *In the case of a petition referred to in subparagraph (B), the signature of an attorney shall constitute a certificate that the attorney has—*



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

(ii) determined that the petition—

(I) is well grounded in fact; and

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

(4)(A) Except as provided in subparagraph (B) and subject to paragraph (5), the court may award a debtor all reasonable costs in contesting a motion brought by a party in interest (other than a panel trustee or United States trustee) under this subsection (including reasonable attorneys' fees) if—

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

(ii) the court finds that—

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

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

(B) A party in interest that has a claim of an aggregate amount less than \$1,000 shall not be subject to subparagraph (A).

(5) Only the judge, United States trustee, bankruptcy administrator, or panel trustee may bring a motion under this section if the debtor and the debtor's spouse combined, as of the date of the order for relief, have a total current monthly income equal to or less than the national or applicable State median family monthly income calculated on a monthly basis for a family of equal size.

\* \* \* \* \*

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

(c)(1) In any case described in subsection (a)(10), the trustee shall—

(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664 and 666, respectively) for the State in which the holder resides for assistance in collecting child support during and after the bankruptcy procedures;

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

(iii) include in the notice an explanation of the rights of the holder of the claim to payment of the claim under this chapter; and

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

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

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

(I) the granting of the discharge;

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

(III) with respect to the debtor's case, the name of each creditor that holds a claim that—

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

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

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

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

\* \* \* \* \*

**§ 706. Conversion**

(a) the debtor \* \* \*

\* \* \* \* \*

(c) The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests or consents to such conversion.

\* \* \* \* \*

**[§ 707. Dismissal]**

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

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

\* \* \* \* \*

(b)(1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, [but not at the request or suggestion] panel trustee or of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 13 of this title, if it finds that the granting of relief would be a [substantial abuse] abuse of

the provisions of this chapter. **¶There shall be a presumption in favor of granting the relief requested by the debtor.¶**

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

(I) 25 percent of the debtor's nonpriority unsecured claims in the case; or

(II) \$15,000.

(ii) *The debtor's monthly expenses shall be the applicable monthly (excluding payments for debts) expenses under standards issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent.*

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

(I) *the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; divided by*

(II) 60.

(iv) *The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as—*

(I) *the total amount of debts entitled to priority; divided by*

(II) 60.

(B)(i) *In any proceeding brought under this subsection, the presumption of abuse may be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly total income. In order to establish special circumstances, the debtor shall be required to—*

(I) *itemize each additional expense or adjustment of income; and*

(II) *provide—*

(aa) *documentation for such expenses; and*

(bb) *a detailed explanation of the special circumstances that make such expenses necessary and reasonable.*

(ii) *The debtor, and the attorney for the debtor if the debtor has an attorney, shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.*

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

(I) 25 percent of the debtor's nonpriority unsecured claims; or

(II) \$15,000.

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

(ii) *The Supreme Court shall promulgate rules under section 2075 of title 28, that prescribe a form for a statement under clause (i) and may provide general rules on the content of the statement.*

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

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

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

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

\* \* \* \* \*

**§ 722. Redemption**

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien *in full at the time of redemption.*

\* \* \* \* \*

**§ 724. Treatment of certain liens**

(a) The trustee may avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title.

(b) Property in which the estate has an interest and that is subject to a lien that is not avoidable under this title (*other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate*) and that secures an allowed claim for a tax, or proceeds of such property, shall be distributed—

(1) first, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is senior to such tax lien;

(2) second to any holder of a claim of a kind specified in section 507(a)(1) (*except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title*) 507(a)(2), 507(a)(3), 507(a)(4), 507(a)(5), or 507(a)(6) of this title, to the extent of the amount of such allowed tax claim that is secured by such tax lien;

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

- (1) exhaust the unencumbered assets of the estate; and
- (2) in a manner consistent with section 506(c), recover from property securing an allowed secured claim the reasonable, necessary costs, and expenses of preserving or disposing of that property.

(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subject to the requirements of subsection (e), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:

- (1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(3).
- (2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4).

\* \* \* \* \*

**§ 726. Distribution of property of the estate**

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed [before the date on which the trustee commences distribution under this section;] on or before the earlier of—

- (A) the date that is 10 days after the mailing to creditors of the summary of the trustee’s final report; or
- (B) the date on which the trustee commences final distribution under this section;

\* \* \* \* \*

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section [1009] 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

\* \* \* \* \*

**§ 727. Discharge**

(a) The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

\* \* \* \* \*

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within [six] 8 years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the

Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

- (A) 100 percent of the allowed unsecured claims in such case; or
- (B)(i) 70 percent of such claims; and
- (ii) the plan was proposed by the debtor in good faith, and was the debtor’s best effort; **[or]**
- (10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter**[.]** ;  
or
- (11) *after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111.*

\* \* \* \* \*

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

\* \* \* \* \*

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;**[or]**

(3) the debtor committed an act specified in subsection (a)(6) of this section**[.]** ; or

(4) *the debtor has failed to explain satisfactorily—*

*(A) a material misstatement in an audit performed under section 586(f) of title 28; or*

*(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and any other papers, things, or property belonging to the debtor that are requested for an audit conducted under section 586(f).*

\* \* \* \* \*

**Subchapter III—Stockbroker Liquidation**

\* \* \* \* \*

741. Definitions for this subchapter.

\* \* \* \* \*

§ 753. *Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants*

**§ 741. Definitions for this subchapter**

In this subchapter—

(1) “Commission” means Securities and Exchange Commission;

\* \* \* \* \*

**[(7)** “securities contract” means contract for the purchase, sale, or loan of a security, including an option for the purchase

or sale of a security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency;】

(7) “securities contract”—

(A) means—

(i) a contract for the purchase, sale, or loan of a security, a mortgage loan or an interest in a mortgage loan, a group or index of securities, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any of the foregoing;

(ii) an option entered into on a national securities exchange relating to foreign currencies;

(iii) the guarantee by or to a securities clearing agency of a settlement of cash, securities, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of take forgoing, including an option to purchase or sell any of the foregoing;

(iv) a margin loan;

(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

(vi) a combination of the agreements or transactions referred to in this subparagraph;

(vii) an option to enter into an agreement or transaction referred to in this subparagraph;

(viii) a master netting agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to such master netting agreement, without regard to whether such master netting agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master netting agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master netting agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

(ix) a security agreement or arrangement, or other credit enhancement, directly pertaining to a contract referred to in this subparagraph, but not to exceed the actual value of such contract on the date of the filing of the petition; and

(B) does not include a purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan;

\* \* \* \* \*

**§ 752. Customer property**

(a) The trustee shall distribute customer property ratably to customers on the basis and to the extent of such customers' allowed net equity claims and in priority to all other claims, except claims of the kind specified in section 507(a)(1) of this title that are attributable to the administration of such customer property.

\* \* \* \* \*

**§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stock-brokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.

**Subchapter IV—Commodity Broker Liquidation**

761. Definitions for this subchapter.

\* \* \* \* \*

§ 767. *Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants*

**§ 761. Definitions for this subchapter**

In this subchapter—

(1) \* \* \*

(4) “commodity contract” means—  
 A \* \* \*

\* \* \* \* \*

(D) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; [or]

\* \* \* \* \*

(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

(G) a combination of the agreements or transactions referred to in this paragraph;

(H) an option to enter into an agreement or transaction referred to in this paragraph;

(I) a master netting agreement that provides for an agreement or transaction referred to in subparagraph (A), (B),



*(C), (D), (E), (F), (G), or (H), together with all supplements to such master netting agreement, without regard to whether such master netting agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that such master netting agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under such master netting agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or*

*(J) a security agreement or arrangement, or other credit enhancement, directly pertaining to a contract referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition.*

\* \* \* \* \*

**§767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

*Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.*

**CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY**

**Subchapter I—General Provisions**

\* \* \* \* \*

**§ 901. APPLICABILITY OF OTHER SECTIONS OF THIS TITLE**

(a) Sections 301, 344, 347(b), 349, 350(b), 361, 362, 364(c), 364(d), 364(e), 364(f), 365, 366, 501, 502, 503, 504, 506, 507(a)(1), 509, 510, 524(a)(1), 524(a)(2), 544, 545, 546, 547, 548, 549(a), 549(c), 549(d), 550, 551, 552, 553, 555, 556, 557, 559, 560, 1102, 1103, 1109, 1111(b), 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), 1123(d) 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(6), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), 1129(b)(2)(B), 1142(b), 1143, 1144, and 1145 of this title apply in a case under this chapter.

\* \* \* \* \*

**Subchapter II—Administration**

\* \* \* \* \*

**§ 921. Petition and proceedings relating to petition \* \* \***

(a) Notwithstanding \* \* \*

\* \* \* \* \*

(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.

\* \* \* \* \*

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

*§ 1110. Aircraft equipment and vessels*

\* \* \* \* \*

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

**§ 1102. Creditors' and equity security holders' committees**

(a)(1) Except \* \* \*

(2) *On its own motion or on request of a party in interest, and after notice and hearing, the court may order a change in the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders.* On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.

(3) On request of a party in interest in a case in which the debtor is a small business *debtor* and for cause, the court may order that a committee of creditors not be appointed.

\* \* \* \* \*

**§ 1104. Appointment of trustee or examiner**

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; **[or]**

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor[.]; or

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

*(b)(1) Except as provided in section 1163 of this title, on the request of a party in interest made not later than 30 days after the court orders the appointment of a trustee under subsection (a), the United States trustee shall convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee in the case. The election of a trustee shall be conducted in the manner provided in subsections (a), (b), and (c) of section 702 of this title.*

*(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election.*

*(B) Upon the filing of a report under subparagraph (A)—*

*(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and*

*(ii) the service of any trustee appointed under subsection (d) shall terminate.*

*(C) In the case of any dispute arising out of an election described in subparagraph (A), the court shall resolve the dispute.*

\* \* \* \* \*

**§ 1106. Duties of trustee and examiner**

*(a) A trustee shall—*

*(b) An examiner appointed under section 1104(d) of this title shall perform the duties specified in paragraphs (3) and (4) of subsection (a) of this section, and, except to the extent that the court orders otherwise, any other duties of the trustee that the court orders the debtor in possession not to perform.*

\* \* \* \* \*

*(7) if, with respect to an individual debtor, there is a claim for support of a child of the debtor or a custodial parent or legal guardian of such child entitled to receive priority under section 507(a)(1), provide the applicable notification specified in subsection (c).*

\* \* \* \* \*

*(c)(1) In any case described in subsection (b)(7), the trustee shall—*

*(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664 and 666) for the State in which the holder resides; and*

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

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

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

(iii) at such time as the debtor is granted a discharge under section 1141, notify the holder of the claim and the State child support agency of the State in which that holder resides of—

(I) the granting of the discharge;

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

(III) with respect to the debtor's case, the name of each creditor that holds a claim that—

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

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

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

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

\* \* \* \* \*

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

[(a)(1) The right of a secured party with a security interest in equipment described in paragraph (2) or of a lessor or conditional vendor of such equipment to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract is not affected by section 362, 363, or 1129 or by any power of the court to enjoin the taking of possession unless—

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

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

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

[(ii) that occurs after the date of the order is cured before the later of—

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

[(II) the expiration of such 60-day period.

[(2) Equipment is described in this paragraph if it is—

[(A) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a citizen of the United States (as defined in section 40102 of title 49) holding an air carrier operating certificate issued by the Secretary of Transportation pur-

suant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

[(B) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission.

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

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

[(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

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

[(2) the term “security interest” means a purchase-money equipment security interest.]

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

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

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

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

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

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

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

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

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

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

(3) The equipment described in this paragraph—

(A) is—

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

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

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

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

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

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

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

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

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

(2) the term “security interest” means a purchase-money equipment security interest.

\* \* \* \* \*

## § 112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

- (1) the debtor is not a debtor in possession;
- (2) the case originally was commenced as an involuntary case under this chapter; or
- (3) the case was converted to a case under this chapter other than on the debtor’s request.

[(b) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best 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

[(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 section 1104(a)(3), 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 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—*

*(i) a period of time fixed under this title or by order of the court entered under section 1121(e)(3); or*

- (ii) a reasonable period of time if no period of 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)(I) the act or omission will be cured within a reasonable period of time fixed by the court, but 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
- (II) compelling circumstances beyond the control of the debtor justify an extension.
- (3) 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.
- (4) 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) or an examination ordered under Rule 2004 of the Federal Rules of Bankruptcy Procedures;
- (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;
- (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.
- (5) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for



*a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph*

\* \* \* \* \*

**§ 1114. Payment of insurance benefits to retired employees**

(a) For purposes of this section, the term “retiree benefits” means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title.

\* \* \* \* \*

**§ 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 unless the court waives that requirement after notice and hearing, upon a finding of extraordinary and compelling circumstances;*

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

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

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

*(6)(A) timely file tax returns;*

*(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, unless the court waives that requirement after notice and hearing, upon a finding of extraordinary and compelling circumstances; and

(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.

### Subchapter II—The Plan

\* \* \* \* \*

#### § 1121. Who may file a plan

(a) \* \* \*

\* \* \* \* \*

(d) **[On]** (1) Subject to paragraph (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) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

“(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 120 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 that period is—

(A) shortened on request of a party in interest made during the 90-day period;

(B) extended as provided by this subsection, after notice and hearing; or

(C) 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 timer periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e), within which the plan shall be confirmed, may be extended only if—

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

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

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

\* \* \* \* \*

**§ 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

\* \* \* \* \*

[(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 under 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 later 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 particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(1) or 507(a)(2) of this title, on the effective date of the plan, the holder of such claim will received on account of such claim cash equal to the allowed amount of such claim;

\* \* \* \* \*

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; **[and]**

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will received on account of such claim **[deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.]regular installment payments—**

*(i) of a total value, as of the effective date of the claim, equal to the allowed amount of such claim in cash, but in no case with a balloon payment; and*

(ii) beginning not later than the effective date of the plan and ending on the earlier of—

(I) the date that is 5 years after the date of the filing of the petition; or

(II) the last date payments are to be made under the plan to unsecured creditors; and

(D) with respect to a secured claim which would otherwise meet the description on an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

\* \* \* \* \*  
(13) \* \* \*

\* \* \* \* \*

(15) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

\* \* \* \* \*

(e) In a small business case, the 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).

**Subchapter III—Postconfirmation Matters**

\* \* \* \* \*

**§ 1141. Effect of confirmation**

(a) \* \* \*

\* \* \* \* \*

(d)(1) \* \* \*

\* \* \* \* \*

(5) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt for a tax or customs duty with respect to which the debtor—

(A) made a fraudulent return; or

(B) willfully attempted in any manner to evade or defeat that tax or duty.

\* \* \* \* \*

**Subchapter IV—Railroad Reorganization**

Sec.  
1161. Inapplicability of other sections.

\* \* \* \* \*

【1168. Rolling stock equipment.】  
 § 1168. *Rolling stock equipment*

**【§ 1168. Rolling stock equipment**

【(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract is not affected by section 362, 363, or 1129 or by any power of the court to enjoin the taking of possession, unless—

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

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

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

【(ii) that occurs or becomes an event of default after the date of commencement of the case is cured before the later of—

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

【(II) the expiration of such 60-day period.

【(2) Equipment is described in this paragraph if it is rolling stock equipment or accessories used on such equipment, including superstructures and racks, that is subject to a security interest granted by, leased to, or conditionally sold to the debtor.

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

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

【(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

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

【(2) the term “security interest” means a purchase-money equipment security interest.

【(d) With respect to equipment first placed in service after the date of enactment of this subsection, for purposes of this section, the term “rolling stock equipment” includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.】

**§ 1168. Rolling stock equipment**

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

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

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

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

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

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

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

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

(2) *The equipment described in this paragraph—*

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

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

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

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

(c)(1) *In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(2), if at any time after the date of commencement of*

*the case under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession of the trustee.*

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

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

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

*(2) the term “security interest” means a purchase-money equipment security interest.*

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

\* \* \* \* \*

**§ 1170. Abandonment of railroad line**

(a) \* \* \*

\* \* \* \* \*

(e)(1) In authorizing any abandonment of a railroad line under this section, the court shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section [11347] 11326(a) of title 49.

\* \* \* \* \*

**§ 1172. Contents of plan**

(a) \* \* \*

\* \* \* \* \*

(c)(1) In approving an application under subsection (b) of this section, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section [11347] 11326(a) of title 49.

\* \* \* \* \*

**CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER WITH REGULAR ANNUAL INCOME**

**Subchapter I—Officers, Administration, and the Estate**

\* \* \* \* \*

**§ 1202. Trustee**

(a) If the \* \* \*



(b) The trustee shall—

(1) perform the duties specified in sections 704(2), 704(3), 704(5), 704(6), 704(7), and 704(9) of this title;

\* \* \* \* \*

(4) ensure that the debtor commences making timely payments required by a confirmed plan; **[and]**

(5) if the debtor ceases to be a debtor in possession, perform the duties specified in sections 704(8), 1106(a)(1), 1106(a)(2), 1106(a)(6), 1106(a)(7), and 1203**[.];** and

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

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

(A)(i) *notify in writing the holder of claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664 and 666) for the State in which the holder resides; and*

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

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

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

(iii) *at such time as the debtor is granted a discharge under section 1228, notify the holder of the claim and the State child support agency of the State in which that holder resides of—*

*(I) the granting of the discharge;*

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

*(III) with respect to the debtor’s case, the name of each creditor that holds a claim that—*

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

*(bb) was reaffirmed by the debtor under section 524(c)*

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

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

\* \* \* \* \*

**Subchapter II—The Plan**

\* \* \* \* \*

**§ 1222. Contents of plan**

(a) The plan shall—

(1) provide \* \* \*

**[(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and]**

*(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—*

*(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor’s farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or*

*(B) the holder of a particular claim agrees, to a different treatment of that claim; and*

\* \* \* \* \*

**§ 1225. Confirmation of plan**

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan \* \* \*

\* \* \* \* \*

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder \* \* \*

\* \* \* \* \*

(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) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the plan provides for the full payment of all amounts payable under such order or statute for such obligation that initially become payable after the date on which the petition is filed.*

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the \* \* \*

\* \* \* \* \*

(2) For purposes of this subsection, “disposable income” means income which is received by the debtor and which is not reasonably necessary to be expended

(A) for the maintenance or support of the debtor or a dependent of the debtor for a child support, foster care, or disability payment for a dependent child made in accordance with applicable nonbankruptcy law; or

\* \* \* \* \*

**§ 1228. Discharge**

[(a) As soon as practicable] (a)(1) Subject to paragraph (2), as soon as practicable after completion by the debtor of all payments under the plan, other than payments to holders of allowed claims provided for under section 1222(b)(5) or [1222(b)(10)] 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

[10 provided] for under section 1222(b)(5) or 1222(b)(10) of this title; or (A) providecd

[(2) of the kind] (B) of the kind specified in section 523(a) of this title.

(2) With respect to a debtor who is required by a judicial or administrative order or statute to pay a domestic support obligation, the court may not grant the debtor a discharge under paragraph (1) until after the debtor certifies that—

(A) all amounts payable under that order or statute that initially became payable after the date on which the petition was filed (through the date of the certification) have been paid; and

(B) all amounts payable under that order that, as of the date of the certification, are owed directly to a spouse, former spouse, or child of the debtor, or the parent or legal guardian of such child, have been paid, unless the holder of such claim agrees to a different treatment of such claim.

\* \* \* \* \*

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or [1222(b)(10)] 1226(b)(9) of this title, or

\* \* \* \* \*

**§ 1231. Special tax provisions**

(a) For \* \* \*

\* \* \* \* \*

(d) The court may authorize the proponent of a plan to request a determination, limited to questions of law, by [a State or local governmental unit] any governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

**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.

\* \* \* \* \*

1309. Filing of prepetition tax returns.

\* \* \* \* \*

**§ 1302. Trustee**

(a) If the \* \* \*

(b) The trustee shall—

(1) perform the duties specified in sections 704(2), 704(3), 704(4), 704(5), 704(6), 704(7), and 704(9) of this title;

\* \* \* \* \*

(4) advise, other than on legal matters, and assist the debtor in performance under the plan; and **[and]**

(5) ensure that the debtor commences making timely payments under section 1326 of this title **[ ]**; and

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

(c) If the debtor is engaged in business, then in addition to the duties specified in subsection (b) of this section, the trustee shall perform the duties specified in sections 1106(a)(3) and 1106(a)(4) of this title.

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

(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664 and 666, respectively) for the State in which the holder resides; and

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

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

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

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

(I) the granting of the discharge;

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

(III) with respect to the debtor's case, the name of each creditor that holds a claim that—

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

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

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

(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connec-

*tion with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.*

\* \* \* \* \*

**§ 1307. Conversion or dismissal**

(a) The debtor \* \* \*

\* \* \* \* \*

*(e) Upon the failure of the debtor to file a tax return under section 1309, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss the case.*

**[(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.*

\* \* \* \* \*

**§ 1309. Filing of prepetition tax returns**

*(a) Not later than the day before the day on which the first meeting of the creditors is convened under section 341(a), the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 3-year period ending on the date of the filing of the petition.*

*(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the first meeting of creditors is convened under section 341(a), the trustee may continue that meeting for a reasonable period of time to allow the debtor or an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—*

*(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that first meeting; or*

*(B) for any return that is not past due as of the date of the filing of the petition, the later of—*

*(i) the date that is 120 days after the date of that first meeting; or*

*(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request has been timely made, according to applicable nonbankruptcy law.*

*(2) Upon notice and hearing, and order entered before the tolling of any applicable filing period determined under this subsection, if the debtor demonstrates by clear and convincing evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under this subsection for—*

*(A) a period of not more than 30 days for returns described in paragraph (1); and*

*(B) a period not to extend after the applicable extended due date for a return described in paragraph (2).*

*(c) For purposes of this section, the term "return" includes a return prepared pursuant to section 6020 (a) or (b) of the Internal Revenue Code of 1986, or a similar State or local law, or written stipulation to a judgment entered by a nonbankruptcy tribunal.*

**Subchapter II—The Plan**

[1321. Filing of plan.]

**§ 1321. Filing of plan**

\* \* \* \* \*

**[§ 1321. Filing of plan**

**][The debtor shall file a plan.]**

**§ 1321. Filing of plan**

*Not later than 90 days after the order for relief under this chapter, the debtor shall file a plan, except that the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.*

**§ 1322. Contents of plan**

(a) The plan shall—

(1) provide \* \* \*

(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) if the debtor is required by judicial or administrative order or statute to pay a domestic support obligation, unless the holder of such claim agrees to a different treatment of such claim, provide for the full payment of—

*(A) all amounts payable under such order or statute for such obligation that first become payable after the date of which the petition is filed; and*

*(B) all amounts payable under such order before the date on which such petition was filed, if such amounts are owed directly to a spouse, former spouse, child of the debtor, or a parent or legal guardian of such child.*

\* \* \* \* \*

**[(d) The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years.]**

*(d)(1) Except as provided in paragraph (2), the plan may not provide for payments over a period that is longer than 3 years.*

*(2) The plan may provide for payments over a period that is longer than 3 years if—*

(A) the plan is for a case that was converted to a case under this chapter from a case under chapter 7, or the plan is for a debtor who has been dismissed from chapter 7 by reason of section 707(b), in which case the plan shall provide for payments over a period of 5 years; or

(B) the plan is for a case that is not described in subparagraph (A), and the court, for cause, approves a period longer than 3 years, but not to exceed 5 years.

\* \* \* \* \*

(f) A plan may not materially alter the terms of a loan described in section 362(b)(20).

\* \* \* \* \*

**§ 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 later than 45 after the meeting of creditors under section 341(a).

**§ 1325. Confirmation of plan**

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan \* \* \*

\* \* \* \* \*

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder \* \* \*

\* \* \* \* \*

(B)**[(i) the plan provides that the holder of such claim retain the lien securing such claim; and] (i) the plan provides that—**

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

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

(bb) discharge under section 1328; and

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

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property the amount of such payments shall not be less than an amount sufficient to provide to the holder of

*such claim adequate protection during the period of the plan; or*

*(C) the debtor surrenders the property securing such claim to such holder; [and]*

*(6) the debtor will be able to make all payments under the plan and to comply with the plan[.]; and*

*(7) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the plan provides for full payment of all amounts payable under such order for such obligation that become payable after the date on which the petition is filed; and*

*(8) if the debtor has filed all applicable Federal, State, and local tax returns as required by section 1309.*

*For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the debt that is the subject of the claim was incurred within the 5-year period preceding the filing of the petition and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 6-month period preceding that filing.*

*(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—*

*\* \* \* \* \**

*(2) For purposes of this subsection, “disposable income” means income which is received by the debtor and which is not reasonably necessary to be expended*

*(A) for the maintenance or support of the debtor or a dependent of the debtor or for a child support, foster care, or disability payment for a dependent child made in accordance with applicable nonbankruptcy law; and*

*\* \* \* \* \**

**§ 1326. Payments**

***[(a)(1) Unless the court orders otherwise, the debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed.]***

*(a)(1) Unless the court orders otherwise, the debtor shall—*

*(A) commence making the payments proposed by a plan within 30 days after the plan is filed; or*

*(B) if no plan is filed then as specified in the proof of claim, within 30 days after the order for relief or within 15 days after the plan is filed, whichever is earlier.*

*(2) A payment made under this section shall be retained by the trustee until confirmation, denial of confirmation, or paid by the trustee as adequate protection payments in accordance with paragraph (3). If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).*



(3)(A) *As soon as is practicable, and not later than 40 days after the filing of the case, the trustee shall—*

*(i) pay from payments made under this section the adequate protection payments proposed in the plan; or*

*(ii) if no plan is filed then, according to the terms of the proof of claim.*

(B) *The court may, upon notice and a hearing, modify, increase, or reduce the payments required under this paragraph pending confirmation of a plan.*

\* \* \* \* \*

### § 1328. Discharge

[(a) *As soon as practicable*] (a)(1) *Subject to paragraph (2), as soon as practicable after completion by the debtor of all payments under the plan and with respect to a debtor who is required by a judicial or administrative order to pay a domestic support obligation, and with respect to whom the court certifies that all amounts payable under such order or statute that initially became payable after the date on which the petition was filed through the date of the certification have been paid, after all amounts payable under that order that, as of the date of certification, are owned directly to a spouse, former spouse, or child of the debtor, or the parent or legal guardian of such child have been paid (unless the holder of such claim agrees to a different treatment of such claim), unless the court approves a written waiver of discharge executed by the debtor or after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—*

[(1) provided] (A) *provided for under section 1322(b)(5) of this title;*

[(2) of the kind] (B) *of the kind specified in paragraph (1), (5), (8), or (9) of section 523(a) of this title;*

(2) *With respect to a debtor who is required by a judicial or administrative order or statute to pay a domestic support obligation, the court may not grant the debtor a discharge under paragraph (1) until after the debtor certifies that—*

*(A) all amounts payable under that order or statute that initially became payable after the date on which the petition was filed (through the date of the certification) have been paid; and*

*(B) all amounts payable under that order that, as of the date of the certification, are owed directly to a spouse, former spouse, or child of the debtor, or the parent or legal guardian of such child, have been paid, unless the holder of such claim agrees to a different treatment of such claim,*

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

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

\* \* \* \* \*

(f) *Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed*

*under section 502 if the debtor has received a discharge in any case filed under this title within 5 years before the order for relief under this chapter.*

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

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

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

\* \* \* \* \*

**PART IV—JURISDICTION AND VENUE**

**CHAPTER 85—DISTRICT COURTS; JURISDICTION**

**§ 1334. Bankruptcy cases and proceedings**

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

\* \* \* \* \*

(d) Any decision to abstain or not to abstain [made under this subsection] *made under subsection (c)* (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 or this title. [This subsection] *Subsection (c) and this subsection* shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

**CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES**

Sec.  
1501. Purpose and scope of application

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**SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND  
CREDITORS TO THE COURT**

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**SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN  
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1525. *Cooperation and direct communication between the court and foreign courts or foreign representatives.*  
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**SUBCHAPTER V—CONCURRENT PROCEEDINGS**

1528. *Commencement of a case under this title after recognition of a foreign main proceeding.*  
 1529. *Coordination of a case under this title and a foreign proceeding.*  
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 1531. *Presumption of insolvency based on recognition of a foreign main proceeding.*  
 1532. *Rule of payment in concurrent proceedings.*

**CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER  
CASES**

**§ 1501. Purpose and scope of application**

(a) *The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—*

(1) *cooperation between—*

(A) *United States courts, United States Trustees, trustees, examiners, debtors, and debtors in possession; and*

(B) *the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;*

(2) *greater legal certainty for trade and investment;*

(3) *fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;*

(4) *protection and maximization of the value of the debtor's assets; and*

(5) *facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.*

(b) *This chapter applies if—*

(1) assistance is sought in the United States by 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, case or proceeding under this title.

(c) This chapter does not apply to—

(1) a proceeding concerning an entity identified by exclusion in subsection 109(b);

(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970 (84 Stat. 1636 et seq.), a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

### **Subchapter I—General Provisions**

#### **§ 1502. Definitions**

For the purposes of this chapter, the term—

(1) “debtor” means an entity that is the subject of a foreign proceeding;

(2) “establishment” means any place of operations where the debtor carries out a nontransitory economic activity;

(3) “foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;

(4) “foreign main proceeding” means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

(5) “foreign nonmain proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

(6) “trustee” includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title; and

(7) “within the territorial jurisdiction of the United States” when used with reference to property of a debtor refer to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

#### **§ 1503. International obligations of the United States**

To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement

to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

**§ 1504. Commencement of ancillary case**

A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

**§ 1505. Authorization to act in a foreign country**

A trustee or another entity, including an examiner, may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

**§ 1506. Public policy exception**

Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

**§ 1507. Additional assistance**

(a) Subject to the specific limitations under other provisions of this chapter, the court, upon recognition of a foreign proceeding, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

(1) just treatment of all holders of claims against or interests in the debtor's property;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(3) prevention of preferential or fraudulent dispositions of property of the debtor;

(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

**§ 1508. Interpretation**

In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

**Subchapter II—Access of Foreign Representatives and Creditors to the Court**

**§ 1509. Right of direct access**

(a) A foreign representative is entitled to commence a case under section 1504 by filing a petition for recognition under section 1515, 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 1510, a foreign representative shall have the capacity to sue and be sued, and shall be subject to the laws of the United States of general applicability.

(c) Subject to section 1510, a foreign representative is subject to laws of general application.

(d) Recognition under this chapter is prerequisite to the granting of comity or cooperation to a foreign representative in any Federal or State court in the United States. Any request for comity or cooperation by a foreign representative in any court shall be accompanied by a sworn statement setting forth whether recognition under section 1515 has been sought and the status of any such petition.

(e) 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.

**§ 1510. Limited jurisdiction**

The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

**§ 1511. Commencement of case under section 301 or 303**

(a) Upon recognition, a foreign representative may commence—

(1) an involuntary case under section 303; or

(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

(b) The petition commencing a case under subsection (a) must be accompanied by a 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) prior to such commencement.

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

Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

**§ 1513. Access of foreign creditors to a case under this title**

(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

(b)(1) Subsection (a) does not change or codify law in effect on the date of enactment of this chapter as to the priority of claims under section 507 or 726, except that the claim of a foreign creditor under section 507 or 726 shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

(2)(A) Subsection (a) and paragraph (1) do not change or codify law in effect on the date of enactment of this chapter as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

*(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.*

**§ 1514. Notification to foreign creditors concerning a case under this title**

*(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.*

*(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.*

*(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—*

*(1) indicate the time period for filing proofs of claim and specify the place for their filing;*

*(2) indicate whether secured creditors need to file their proofs of claim; and*

*(3) contain any other information required to be included in such a notification to creditors 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**

**§ 1515. Application for recognition of a foreign proceeding**

*(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.*

*(b) A petition for recognition shall be accompanied by—*

*(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;*

*(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or*

*(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.*

*(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.*

(d) *The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.*

**§ 1516. Presumptions concerning recognition**

(a) *If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding as defined in section 101 and that the person or body is a foreign representative as defined in section 101, the court is entitled to so presume.*

(b) *the court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.*

(c) *In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.*

**§ 1517. Order recognizing a foreign proceeding**

(a) *Subject a section 1506, after notice and a hearing an order recognizing a foreign proceeding shall be entered if—*

(1) *the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;*

(2) *the foreign representative applying for recognition is a person or body as defined in section 101; and*

(3) *the petition meets the requirements of section 1515.*

(b) *the foreign proceeding shall be recognized—*

(1) *as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests, or*

(2) *as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.*

(c) *A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding 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.*

**§ 1518. Subsequent information**

*After the petition for recognition of the foreign proceeding is filed, the foreign representative shall file with the court promptly a notice of change of status concerning—*

(1) *any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and*

(2) *any other foreign proceeding regarding the debtor that becomes known to the foreign representative.*



**§ 1519. Relief that may be granted upon petition for recognition of a foreign proceeding**

(a) Beginning on the date on which a petition for recognition is filed and ending on the date on which 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 1521(a).

(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.

(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

**§ 1520. Effects of recognition of a foreign main proceeding**

(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

(1) section 362 applies with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;

(2) a transfer, an 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; and

(3) 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) 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) 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) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title

or the right of any party to file claims or take other proper actions in such a case.

**§ 1521. Relief that may be granted upon recognition of a foreign proceeding**

(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

(1) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities to the extent the actions or proceedings have not been stayed under section 1520(a);

(2) staying execution against the debtor's assets to the extent the execution has not been stayed under section 1520(a);

(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent that right has not been suspended under section 1520(a);

(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

(6) extending relief granted under section 1519(a); and

(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, if the court is satisfied that the interests of creditors in the United States are sufficiently protected.

(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

**§ 1522. Protection of creditors and other interested persons**

(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(2), to conditions that the court considers to be appropriate, including the giving of security or the filing of a bond.

(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate the relief referred to in subsection (b).

(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

**§ 1523. Actions to avoid acts detrimental to creditors**

(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).

(b) In any case in which the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

**§ 1524. Intervention by a foreign representative**

Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

**Subchapter IV—Cooperation With Foreign Courts and Foreign Representatives**

**§ 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives**

(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

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

(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

**§ 1527. Forms of cooperation**

Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

- (1) appointment of a person or body, including an examiner, to act at the direction of the court;
- (2) communication of information by any means considered appropriate by the court;
- (3) coordination of the administration and supervision of the debtor's assets and affairs;
- (4) approval or implementation of agreements concerning the coordination of proceedings; and
- (5) coordination of concurrent proceedings regarding the same debtor.

### **Subchapter V—Concurrent Proceedings**

#### **§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding**

After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a), and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

#### **§ 1529. Coordination of a case under this title and a foreign proceeding**

In any case in which a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

- (1) If the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—
  - (A) any relief granted under sections 1519 or 1521 must be consistent with the relief granted in the case in the United States; and
  - (B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply.
- (2) If a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—
  - (A) any relief in effect under sections 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and
  - (B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.
- (3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law

of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

**§ 1530. Coordination of more than 1 foreign proceeding**

In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

**§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding**

In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

**§ 1532. Rule of payment in concurrent proceedings**

Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.

**TITLE 18—CRIMES AND CRIMINAL PROCEDURE**

\* \* \* \* \*

**PART I.—CRIMES**

\* \* \* \* \*

CHAPTER 9—BANKRUPTCY

Sec.  
151. Definitions.

\* \* \* \* \*  
158. *Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debts.*  
\* \* \* \* \*

§ 156. **Knowing disregard of bankruptcy law or rule**

- (a) DEFINITIONS.—In this section—
  - (1) *the term “bankruptcy petition preparer” means a person, other than the debtor’s attorney or an employee of such an attorney, who prepares for compensation a document for filing; and*
  - (2) *the term “document for filing” means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under title 11.*
- (b) OFFENSE.—If a bankruptcy case or related proceeding is dismissed because of a knowing attempt by a bankruptcy petition preparer in any manner to disregard the requirements of title 11, United States Code, or the Federal Rules of Bankruptcy Procedure, the bankruptcy petition preparer shall be fined under this title, imprisoned not more than 1 year, or both.

\* \* \* \* \*

§ 158. ***Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt***

- (a) *IN GENERAL.—The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt.*
- (b) *UNITED STATES DISTRICT ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION.—The individuals referred to in subsection (a) are—*
  - (1) *a United States attorney for each judicial district of the United States; and*
  - (2) *an agent of the Federal Bureau of Investigation (within the meaning of section 3107) for each field office of the Federal Bureau of Investigation.*
- (c) *BANKRUPTCY INVESTIGATIONS.—Each United States attorney designated under this section shall have primary responsibility for carrying out the duties of a United States attorney under section 3057.*

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

\* \* \* \* \*

**PART I—ORGANIZATION OF COURTS**

\* \* \* \* \*

**CHAPTER 6—BANKRUPTCY JUDGES**

Sec.

151. Designation of bankruptcy courts.

\* \* \* \* \*

159. *Bankruptcy statistics.*

\* \* \* \* \*

**§ 152. Appointment of bankruptcy judges**

(a)(1) [The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph.] *Each bankruptcy judge to be appointed for a judicial district as provided in paragraph (2) shall be appointed by the United States court of appeals of for the circuit in which such district is located.* Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

\* \* \* \* \*

**§ 156. Staff; expenses**

(a) \* \* \*

\* \* \* \* \*

(g)(1) *In this subsection, the term “travel expenses”—*

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

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

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

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

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

*(3)(A) Each chief bankruptcy judge shall submit an annual report to the Director of the Administrative Office of the United States Courts on the travel expenses of each bankruptcy judge assigned to*

*the applicable district (including the travel expenses of the chief bankruptcy judge of such district).*

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

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

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

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

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

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

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

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

**§ 157. Procedures**

*(a) \* \* \**

*\* \* \* \* \**

*(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; [and]*

*(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims[.]; and*

*(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.*

*\* \* \* \* \**

**§ 159. Bankruptcy statistics**

*(a) The clerk of each district court shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the "Office").*

*(b) The Director shall—*

*(1) compile the statistics referred to in subsection (a);*

*(2) make the statistics available to the public; and*

*(3) not later than October 31, 1999, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.*

*(c) The compilation required under subsection (b) shall—*

*(1) be itemized, by chapter, with respect to title 11;*



- (2) be presented in the aggregate and for each district; and  
 (3) include information concerning—

(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed under section 2075 and filed by those debtors;

(B) the total current monthly income, projected monthly net income, and average income, and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 111, 521, and 1322 of title 11;

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

(D) the average period for time between the filing of the petition and the closing of the case;

(E) for the reporting period—

(i) the number of cases in which a reaffirmation was filed; and

(ii)(I) the total number of reaffirmations filed;

(II) of those cases in which a reaffirmation was filed, the number in which the debtor was not represented by an attorney; and

(III) of the cases under each of subclauses (I) and (II), the number of cases in which the reaffirmation was approved by the court;

(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

(II) the number of final orders determining the value of property securing a claim issued;

(ii) the number of cases dismissed for failure to make payments under the plan; and

(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the date of filing;

(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

(H) the number of cases in which sanctions under Rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's counsel and damages awarded under such rule.

## **PART II—DEPARTMENT OF JUSTICE**

\* \* \* \* \*

**CHAPTER 39—UNITED STATES TRUSTEES**

Sec.  
581. United States trustees.

589b. *Bankruptcy data.*

**§ 586. Duties; supervision by Attorney General**

(a) Each United States trustee, within the region for which such United States trustee is appointed, shall—

(1) \* \* \*

(3) supervise the administration of cases and trustees in cases under chapter 7, 11, 12, [or 13] 13, or 15, of title 11 by, whenever the United States trustee considers it to be appropriate—

(A) \* \* \*

(G) monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress; [and]

*(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases;*

[(H)] *(I) monitoring applications filed under section 327 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications;*

(5) perform the duties prescribed for the United States trustee under title 11 and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe; [and]

[(6) make such reports as the Attorney General directs.]

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

*(7) in each of such small business cases—*

*(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—*

- (i) begin to investigate the debtor's viability;*
  - (ii) inquire about the debtor's business plan;*
  - (iii) explain the debtor's obligations to file monthly operating reports and other required reports;*
  - (iv) attempt to develop an agreed scheduling order;*
- and*

*(v) inform the debtor of other obligations;*

*(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns; and*

- (C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and
- (8) in any case in which the United States trustee finds material grounds for any relief under section 112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.

\* \* \* \* \*

(f)(1)(A) The Attorney General shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title.

(B) Those procedures shall—

- (i) establish a method of selecting appropriate qualified persons to contract to perform those audits;
- (ii) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;
- (iii) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed if those variances occur by reason of higher income or higher expenses than the statistical norm of the district in which the schedules were filed; and
- (iv) include procedures for providing, not less frequently than annually, public information concerning the aggregate results of the audits referred to in this subparagraph, including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

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

(3)(A) The report of each audit conducted under this subsection shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case where a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

- (i) report the material misstatement, if appropriate, to the United States Attorney under section 3057 of title 18; and
- (ii) if advisable, take appropriate action, including commencing an adversary proceeding to revoke the debtor's discharge under section 727(d) of title 11.

#### HISTORICAL AND STATUTORY NOTES OF § 581

\* \* \* \* \*

**“SEC. 302. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.**

*“(a) General effective date.*

\* \* \* \* \*

“(d) Application of amendments to judicial districts.

“(1) Certain regions not currently served by United States trustees. \* \* \*

\* \* \* \* \*

“(3) Judicial districts for the States of Alabama and North Carolina. (A) Notwithstanding \* \* \*

“(i) become effective in or with respect to a judicial district specified in subparagraph (E) until, or

“(ii) apply to cases while pending in such district before, such district elects to be included in a bankruptcy region established in section 581(a) of Title 28, United States Code, as amended by section 111(a) of this Act [subsec. (a) of this section], [or October 1, 2002, whichever occurs first,] except that the amendment to section 105(a) of Title 11, United States Code [section 105(a) of Title 11], shall become effective as of the date of the enactment of the Federal Courts Study Committee Implementation Act of 1990 [Dec. 1, 1990].

\* \* \* \* \*

“(F)(i) Subject to clause (ii), with respect to cases under chapters 7, 11, 12, and 13 of title 11, United States Code [sections 701 et seq., 1101 et seq., 1201 et seq., and 1301 et seq., respectively, of Title 11]—

“(I) commenced before the effective date of this Act, and

“(II) pending in a judicial district in the State of Alabama or the State of North Carolina before any election made under subparagraph (A) by such district becomes effective [or October 1, 2002, whichever occurs first],

the amendments made by section 113 [amending section 586 of this title] and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act) [section 1930(a)(6) of this title], shall not apply until [October 1, 2003, or] the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first.

“(ii) For purposes of clause (i), the amendments made by section 113 [amending section 586 of this title] and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act) [section 1930(a)(6) of this title], shall not apply with respect to a case under chapter 7, 11, 12, or 13 of title 11, United States Code [sections 701 et seq., 1101 et seq., 1201 et seq., and 1301 et seq., respectively, of Title II], if—

“(I) the trustee in the case files the final report and account of administration of the estate, required under section 704 of such title [section 704 of Title 11], or

“(II) a plan is confirmed under section 1129, 1225, or 1325 of such title [section 1129, 1225, or 1325, respectively of Title 11],

【before October 1, 2003, on】 the expiration of the 1-year period beginning on the date such election becomes effective 【whichever occurs first】.

\* \* \* \* \*

**§589b. Bankruptcy data**

(a) *Within a reasonable period of time after the effective date of this section, the Attorney General of the United States shall 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) *Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum practicable access of the public, by—*

(1) *physical inspection at 1 or more central filing locations; and*

(2) *electronic access through the Internet or other appropriate media.*

(c)(1) *The information required to be filed in the reports referred to in subsection (b) shall be information that is—*

(A) *in the best interests of debtors and creditors, and in the public interest; and*

(B) *reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system.*

(2) *In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—*

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

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

(d)(1) *Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall include with respect to a case under such title, by appropriate category—*

(A) *information about the length of time the case was pending;*

(B) *assets abandoned;*

(C) *assets exempted;*

(D) *receipts and disbursements of the estate;*

(E) *expenses of administration;*

(F) *claims asserted;*

(G) *claims allowed; and*

(H) *distributions to claimants and claims discharged without payment.*

(2) *In cases under chapters 12 and 13 of title 11, final reports proposed for adoption by trustees shall include—*

(A) *the date of confirmation of the plan;*

(B) *each modification to the plan; and*

(C) *defaults by the debtor in performance under the plan.*

(3) *The information described in paragraphs (1) and (2) shall be in addition to such other matters as are required by law for a final report or as the Attorney General, in the discretion of the Attorney General, may propose for a final report.*

*(e)(1) Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall include—*

*(A) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;*

*(B) the length of time the case has been pending;*

*(C) the number of full-time employees—*

*(i) as of the date of the order for relief; and*

*(ii) at the end of each reporting period since the case was filed;*

*(D) cash receipts, cash disbursements, and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;*

*(E) 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;*

*(F) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those that would not have been so incurred); and*

*(G) 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.*

*(2) The information described in paragraph (1) shall be in addition to such other matters as are required by law for a periodic report or as the Attorney General, in the discretion of the Attorney General, may propose for a periodic report.*

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**PART III—COURT OFFICERS AND EMPLOYEES**

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**§ 960. Tax liability**

*(a) Any officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.*

*(b) A tax under subsection (a) shall be paid when due in the conduct of business unless—*

*(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable period of time after the lien attaches, by the trustee of a bankruptcy estate, under 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 makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.*

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**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.

**PART IV—JURISDICTION AND VENUE**

**CHAPTER 85—DISTRICT COURTS; JURISDICTION**

**§ 1334. Bankruptcy cases and proceedings**

(c)(1) **[Nothing in]** *Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title II or arising in or related to a case under title 11.*

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