Jackson-Lee (TX)	McGovern	Sabo
Jefferson	McNulty	Sanchez
Johnson (CT)	Meehan	Sanders
Johnson, E. B.	Meek (FL)	Sawyer
Jones (OH)	Meeks (NY)	Schakowsky
Kanjorski	Millender-McDonald	Schiff
Kaptur	Miller, George	Scott
Kildee	Mink	Serrano
Kilpatrick	Mollohan	Sherman
Kucinich	Murtha	Slaughter
LaFalce	Nadler	Solis
Lampson	Napolitano	Stark
Lantos	Neal	Stupak
Lee	Oberstar	Thompson (CA)
Levin	Obey	Thompson (MS)
Lewis (GA)	Olver	Thurman
Lipinski	Owens	Tierney
Lofgren	Pascrell	Udall (CO)
Lowey	Payne	Udall (NM)
Luther	Pelosi	Visclosky
Markey	Phelps	Waters
Mascara	Pomeroy	Watt (NC)
Matsui	Rangel	Waxman
McCarthy (MO)	Rodriguez	Weiner
McCollum	Roybal-Allard	Wexler
		Woolsey

NOT VOTING—19

Ackerman	Edwards	Ros-Lehtinen
Baird	Hoyer	Rothman
Bonior	Inslee	Snyder
Cramer	Kingston	Toomey
Cummings	McDermott	Towns
Deal	McKinney	
Dunn	Norwood	

□ 1123

Ms. SOLIS, Mrs. NAPOLITANO, Mr. POMEROY, Mrs. MEEK of Florida, Mr. FARR of California, Mrs. DAVIS of California, Mr. LAMPSON, Mr. GEPHARDT and Ms. MILLENDER-McDONALD changed their vote from ''yea'' to ''nay.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SESSIONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 333.

The SPEAKER pro tempore (Mr. QUINN). Is there objection to the request of the gentleman from Texas?

There was no objection.

APPOINTMENT OF MEMBERS TO PERMANENT SELECT COMMITTEE ON INTELLIGENCE

The SPEAKER pro tempore. Without objection, and pursuant to clause 11 of rule X and clause 11 of rule I, the Chair announces the Speaker's appointment of the following Members of the House to the Permanent Select Committee on Intelligence:

Mr. BISHOP of Georgia,
Ms. HARMAN of California,
Mr. SISISKY of Virginia,
Mr. CONDIT of California,
Mr. ROEMER of Indiana,
Mr. HASTINGS of Florida, and
Mr. REYES of Texas.

There was no objection.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001

The SPEAKER pro tempore (Mr. WALDEN of Oregon). Pursuant to House Resolution 71 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 333.

□ 1125

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 333) to amend title 11, United States Code, and for other purposes, with Mr. QUINN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 6 minutes.

Mr. Chairman, I rise in support of H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001.

Mr. Chairman, this bill is a bipartisan, balanced, and comprehensive package of reform measures pertaining to both consumer and business bankruptcy cases. The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system, and to ensure that the system is fair to both debtors and creditors.

With respect to its consumer provisions, H.R. 333 responds to several significant developments. One of these developments was the dramatic increase in consumer bankruptcy filings during the 1990s and the losses associated with those filings. Based on data released by the Administrative Office of the United States Courts, bankruptcy filings increased by more than 72 percent between 1994 and 1998. Mr. Chairman, for the first time in our Nation's history, bankruptcy filings exceeded 1 million in 1996. In calendar year 1997 alone, bankruptcy filings increased by more than 19 percent over the prior year. By 1998, the number of bankruptcy filings, according to the AO, reached an all-time high of more than 1.4 million cases. Although the most recent reporting periods indicate the filings have somewhat decreased, the Administrative Office states they remain well above the 1 million mark. Paradoxically, this dramatic increase in bankruptcy filing rates has occurred during a period when the economy was generally robust, with relatively low unemployment and high consumer confidence.

Coupled with this development was the release of a study estimating that financial losses attributable to bankruptcy filings in 1997 exceeded $44 billion. The committee received testimony in the last Congress stating that this figure, when amortized on a daily basis, amounts to a loss of at least $110 million a day.

Please note, those of us who pay our bills as we have agreed end up having to absorb these losses through higher costs and bank fees and interest rates.

Various other studies which thereafter became available concluded that some bankruptcy debtors can in fact repay a significant portion of their debts.

The heart of H.R. 333's consumer bankruptcy provisions is the implementation of an income-expense screening mechanism, usually referred to as a means-based or means test reform.

□ 1130

These provisions are designed to ensure that debtors repay creditors the maximum they can afford.

In addition, the bill institutes significant consumer protection reforms, including mandatory credit counseling requirements and specific disclosures in connection with certain credit transactions.

The reforms are aimed to help debtors understand their rights and obligations with respect to reaffirmation agreements are also included in the legislation.

In addition, the legislation substantially expands the debtor's ability to exempt certain tax-qualified retirement accounts and pensions. It also creates a new provision that allows a consumer debtor to exempt certain education IRA and State tuition plans for his or her child's postsecondary education from the claims of creditors.

Most importantly, H.R. 333 requires debtors to participate in credit counseling programs before they file for bankruptcy relief, unless special circumstances do not permit such participation. The legislation's credit counseling provisions are intended to educate consumers about the consequences of bankruptcy, such as the potentially devastating effect it could have on their credit rating, and to provide them with guidance about how to manage their finances so that they can avoid future financial difficulties.

Mr. Chairman, the bill also makes extensive reforms pertinent to business bankruptcies. Many of these provisions are intended to heighten administrative scrutiny and judicial oversight of small business bankruptcy cases. In addition, the bill includes provisions designed to reduce systemic risk in the financial marketplace and to clarify the treatment of tax claims in bankruptcy cases. H.R. 333 also creates a new form of bankruptcy relief for transnational insolvencies and includes provisions regarding family farmer debtors and health care providers.

It should be noted that this bill is a product of more than 3 years of congressional consideration of bankruptcy reform legislation. As reported, H.R. 333 is virtually identical to the conference report on H.R. 2415, the Gekas-Grassley Bankruptcy Reform Act of

2000, which passed the House by a voice vote last October 12 and passed the other body on December 7 by a vote of 70 to 28. But for former President Clinton's December 19 pocket veto, this legislation would have been become law.

It should also be noted that support for bankruptcy reform legislation in the last two Congresses has been overwhelming and bipartisan. In the 105th Congress, for example, the House passed both H.R. 3150, the Bankruptcy Reform Act of 1998, and the conference report on that bill by veto proof margins. In the last Congress, the House passed H.R. 833, which is the successor to H.R. 2415, by a veto-proof margin of 313–108.

This bill is the product of extensive negotiation and compromise, as well as an exhaustive and amendatory process. In the last Congress alone, the House and Senate engaged in nearly 7 months of negotiations to reconcile the differences between their respective bills. The product of these exhaustive efforts was the conference report on H.R. 2415, which is virtually identical to this bill.

Mr. Chairman, this is a balanced, bipartisan and comprehensive reform measure, which will prevent the costly exploitation of our bankruptcy system, while protecting those debtors truly in need of bankruptcy protection.

Mr. Chairman, I urge my colleagues to support this important legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, at a time when our electoral system is in tatters, voter reform ignored, our campaign finance laws riddled with loopholes, our seniors in desperate need of prescription drug coverage, our minimum wage laws unadjusted for 6 years, the first major bill the Republican majority brings to this floor is bankruptcy. Not just any bankruptcy bill, a bill that massively tilts the playing field in favor of creditors and against the interests of ordinary consumers and workers. A bill opposed by every consumer group, by the bankruptcy judges and trustees themselves, by organized labor, by every major group concerned about seniors, women, children, victims of crime, this is the first bill we bring to the floor in the 107th Congress.

To all of my friends on both sides of the aisle who tell me that this bill is balanced and fair, I have one response, read the bill and understand it.

To those who argue the bill only punishes wealthy debtors or fraudulent debtors, check out how the bill give creditors massive new rights to bring threatening court motions against low-income debtors. Read how the bill permits credit card companies to reclaim common household goods which are of little value to them, but of every value to the debtor's family. Read how the bill makes it more difficult for people below the poverty line to keep their house or their car in bankruptcy.

To those who allege the bill protects alimony and child support, I would ask them if they know that the bill creates major new categories of nondischargeable debt that compete directly against the collection of child support and alimony payments, Mr. Chairman; whether they are aware that the bill allows landlords to evict battered women without bankruptcy child support approval, even if the eviction poses a threat to the women's physical well-being; whether they are aware that the bill forces women and children involved in bankruptcy to file personal information with the court, which is then placed on-line where the whole world has direct access to it.

To my modest efforts to correct the bill and the problems, we were ruled out of order. It was considered to be unworthy of debate in the House.

To those who assert the bill cracks down on credit card abuse, I would ask them to look at the meaningless boilerplate requirements included in the bill to realize that the bill does absolutely nothing to discourage abusive underaged lending, nothing to discourage reckless lending to the developmentally disabled, yes, and nothing to regulate the practice of so-called subprime lending to persons with no means or little ability to repay their debts.

Then some suggest the bill fixes the problem of homestead exemption abuse, I would suggest that rather than repeal or even cap the homestead exemption, the bill places only weak obstacles in its place. The bill does nothing to prevent the very worst abuses in the Bankruptcy Code, such as when financiers and criminals void tens of millions of dollars in debt, while they live high on the hog in their multimillion dollar mansions. They can still do it under this bill. Again, the majority would not even allow us an amendment to try to eliminate the abuse.

To those who believe this bill streamlines and expedites business bankruptcies, look at title 4, which adds numerous new paperwork burdens, imposes arbitrary deadlines, and makes it far more likely that struggling businesses, especially small ones, will be forced to liquidate and terminate workers.

And so it is amazing that Congress is taking these actions at a time when we are in the middle of an economic slowdown. It is like pouring gasoline on a fire of economic uncertainty.

I am ashamed of this legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. ARMEY), the distinguished majority leader.

Mr. ARMEY. Mr. Chairman, let me open my remarks by thanking the Committee on the Judiciary for bringing this bill to the floor early.

I must say, Mr. Chairman, from me personally, I take it as a matter of enormous pride that this is the first significant bill we bring to the floor in this Congress. This Congress represents a new beginning, I hope, for the government of the United States.

Mr. Chairman, I believe that the law of this land should always be a complement to and encouragement for those lessons in life that we as parents invest most heartfelt in the instruction of our children.

Every mom and dad in America today that has that precious baby as their charge, realizing the responsibility that I am this child's first and most important teacher, tries to teach the child those lessons of life that will endure and, if observed and followed, will make it possible for that child to be happy and successful in their own life and a blessing in the lives of the others. That is all we want for our children.

This is a wonderful ability, the ability of adults to hold their head high and know their duty and do their duty.

One of the things that we have already worked so hard with our children is to be so, so careful how we accept obligations in our lives and be judicious in that manner, but once we accept an obligation to understand the need as a matter of personal pride and honor to fulfill that obligation, the law of the land should complement that lesson on behalf of every child in America and on behalf of every parent that passes that lesson down to yet another generation.

Bankruptcy laws in America have not done that. Bankruptcy laws in America have put a lie to one of the most important lessons we teach our children. Bankruptcy laws in America have said to our children, you are a fool if you do not file. That is not right. Yes, this is a right step for us to take, a good step for us to take. It is not about the money. Anybody who thinks this bill is about who gets the money is missing the point, Mr. Chairman.

This bill is about the character of a Nation and will the Nation's laws have a character of the Nation's people.

Again, let me thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for bringing this opportunity for me as one Member to vote for the character of this great Nation, because, Mr. Chairman, we are a wonderful people. We deserve this bill.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman from Missouri (Mr. CONYERS), the ranking member, for yielding me the time, and I thank him for his leadership.

Mr. Chairman, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary, for the time we will have to work together.

It is for that reason that I rise to the floor with a great deal of disappointment, disappointment because this

would have been a very simple and gracious way to begin the collaborative uniting that has been so eloquently spoken to by many in this country; but, yet, we took the ice skating rinks of the Nation and we got on some ice-skates and we called it bankruptcy.

Before we could even hear the state of the budget, almost before the inauguration, this bill was skidding to victory, a bill that brakes the backs of working women, disappoints children and discourages people who are truly trying to work and do the right thing from getting their life back in order.

Let me simply suggest to you that this is what we are confronting. ''Debt smothers young Americans,'' the USA Today article says. ''As a freshman at the University of Houston in 1995, Jennifer signed up for a credit card and got a free T-shirt. A year later, she had piled up about $20,000 in debt and 14 credit cards. Jennifer is not a deadbeat. She is a young women in college, seeking an opportunity and responding to the abusive solicitation by our credit card companies.''

One mode of collaboration could have been that in this bill we would have had responsible restrictions and requirements on our credit card companies to educate those who utilize credit. Yes, I think it is good that mom and dad can train a young child and get them to be responsible and pay their debts. It is great. How many of us have tried that?

□ 1145

Mr. Chairman, I have a young 21-year-old in college in America, and the T-shirts are just flowing there from credit card companies attempting to sign up students, and the T-shirts look pretty. They look like the one I am holding. Some are blue and pink, and they come in all colors.

This is a bad bill because it has a means test that says we are going to be guided by the IRS standards. We are going to test you and give you a SAT and LSAT before you go into bankruptcy court. They say we know the difference when there is frivolous lawsuit. We know when deadbeats are trying to get out of paying their debts.

What about Jennifer. Her parents may not have known she was signing up. What about women and children and dads who have custody of children and need alimony and need child support. This is a horrible bill.

What this bill does is it presents a competition, a world boxing match between the credit card companies and those who are trying to get alimony and child support from the bankrupt debtor. It says you have got to get out and fight with a lawyer before you can get prioritization. It does not prioritize alimony and child support. It is a misrepresentation to that. This hurts women and children.

Mr. Chairman, I include for the RECORD an article and a letter signed by the American Association of University Women, Children NOW, Children's Defense Fund, Center for Law and Social Policy, among others, that says we cannot survive. This is a bad bill. This is not a uniting bill. This is bad for America.

The material referred to is as follows:

[From USA Today, Feb. 13, 2001]

DEBT SMOTHERS YOUNG AMERICANS

(By Christine Dugas)

As a freshman at the University of Houston in 1995, Jennifer Massey signed up for a credit card and got a free T-shirt. A year later, she had piled up about $20,000 in debt on 14 credit cards.

Paige Hall, 34, returned from her honeymoon in 1997 to find herself laid off from her job at a mortgage company in Atlanta. She was out of work for 4 months. She and her husband, Kevin, soon were trying to figure out how to pay $18,200 in bills from their wedding, honeymoon and furnishings for their new home.

By the time Mistie Medendorp was 29, she had $10,000 in credit card debt and $12,000 in student loans.

Like no other generation, today's 18- to 35-year-olds have grown up with a culture of debt—a product of easy credit, a booming economy and expensive lifestyles.

They often live paycheck to paycheck and use credit cards and loans to finance restaurant meals, high-tech toys and new cars that they couldn't otherwise afford, according to market researchers, debt counselors and consumer advocates.

''Lenders are much more willing to take a risk on people under 25 than they were 15 years ago,'' says Nina Prikazsky, a vice president at student loan corporation Nellie Mae. ''They will give our credit cards based on a college student's expected ability to repay the bills.''

Young people are taking advantage of the offers. A study out today from Nellie Mae shows that the average credit card debt among undergraduate students increased by nearly $1,000 in the past two years. On average, they owed $2,748 last year, up from $1,879 in 1998.

At a time when they could be setting aside money for a down payment on a home, many young people are mortgaging their financial future. Instead of getting a head start on saving for retirement, they are spending years digging themselves out of debt.

''I knew for a while that I had a problem. I wouldn't say I was living high on the hog, but when I wanted clothes, I'd buy a new outfit,'' says Medendorp, an Atlanta resident. ''I'd go out to eat and charge it on my cards. There were a bunch of small expenses that added up and got out of control.''

Massey, Hall and Medendorp each ended up seeking help from a local consumer credit counseling service. Hundreds of thousands more young people like them are turning to credit counseling or bankruptcy because they can no longer juggle their bills.

In 1999 alone, an estimated 461,000 Americans younger than 35 sought protection from their creditors in bankruptcy, up from about 380,000 in 1991, according to Harvard Law School professor Elizabeth Warren, principal researcher in a national survey of debtors who filed for bankruptcy.

At the Consumer Credit Counseling Service of Greater Denver, more than half of all the clients are 18 to 35 years old, says Darrin Sandoval, director of operations. On average, they have 30% more debt than all other age groups, he says.

''By the time they begin to settle into a suburban lifestyle, they are barely able to meet their debt obligations,'' Sandoval says. ''If there is a job loss, an unexpected medical expense or the birth of a child, they supplement their income with credit cards. Soon they are being financially crushed.''

DEBT HEADS

Unlike the baby boom generation—raised by Depression-era parents—young Americans today are often unfazed by the amount of debt they carry.

''This generation has lived through a time when everything was on the upswing,'' says J. Walker Smith, president of Yankelovich Partners, a market research firm. ''There is no sense of worry about being over-leveraged. It all seems to work out.''

Kevin Jackson, a 32-year-old software engineer in Denver, has about $8,000 in credit card debt and a $20,000 home-equity loan. He doesn't believe he has a debt problem, though his goal is to reduce his credit card balance to $2,000.

''You learn to live with a certain amount of debt,'' he says. ''It's a means to an end. There is something to be said for paying for everything and something to be said for enjoying life, as long as you do it responsibly.''

Unfortunately, enjoying life can be expensive, especially for many young Americans who feel it is essential to have the latest high-tech products and services, such as a cellphone, pager, voice mail, a computer with a second phone line or a DSL connection, an Internet service provider and a Palm Pilot.

Jackson just bought a DVD player and a big-screen TV. ''I try to control costs,'' he says. ''I easily could have spent $5,000 on the TV, but instead I paid $2,000 and I got a one-year, no-interest deal.''

Movies, TV shows and advertising only reinforce the idea that young people are entitled to have an affluent lifestyle. ''We're encouraged to overspend,'' says Jason Anthony, 31, co-author of Debt-free by 30, a book he wrote with a friend after they found themselves drowning in debt.

''We all see shows like Melrose Place and Beverly Hills 90210. It creates tremendous pressure to keep up. I'm one of the few persons who think a recession will be good for my generation. Our expectations are so elevated. In the frenzy to keep up, we've gotten into financial trouble,'' he says.

THE PERILS OF PLASTIC

Consumers like Massey, who get bogged down in credit card debt before they even graduate from college, learn the hard way about managing money. Now, 24 and married, Massey has a good job in marketing. She has cut up her credit cards and is gradually repaying her debt. However, there have been consequences: She had to explain to her boss that because she no longer has a credit card, she cannot travel for work if it involves renting a car or booking a hotel reservation on her own. She had to tell her husband about her debt problems before they were married.

''I lack confidence now,'' Massey says. ''I'm hard on myself because of my mistakes. But I blame the credit card companies and the university for allowing them to promote the cards on campus without educating students about credit.''

The percentage of undergraduate college students with a credit card jumped from 67% in 1998 to 78% last year, according to the Nellie Mae study. And many of them are filling their wallets with cards. Last year, 32% said they had four or more cards, up from 27% two years earlier.

Although graduate students have an even bigger appetite for credit, they are starting to show signs of restraint. Their average debt declined slightly from $4,925 in 1998 to $4,776 last year, Nellie Mae says.

Many young people will be saddled with credit card debts for years, experts say. Among all age groups, credit cardholders

younger than 35 are least likely to pay their bills in full each month, according to Robert Manning, author of Credit Card Nation.

Though credit cards and uncontrolled spending are a combustible combination, many young people are pushed to the financial edge by the staggering cost of college. The average annual tuition at a four-year private university jumped to $16,332 last year from $7,207 in 1980, according to the College Board. Between 1991 and 2000, the average student loan burden among households under 35 increased nearly 142% to $15,700, according to an exclusive analysis of the finances of 18- to 34-year-olds for USA TODAY by Claritas, a market research firm based in San Diego.

Those who choose to go on and get a graduate degree pay an even higher price. Another Nellie Mae study found that those who borrow for graduate work, and specifically those in expensive professional programs in law and medicine, are likely to have unusually high debt burdens that are not always offset by comparably high salaries.

Karen Mann didn't need a survey to come to that conclusion. Her husband, Michael, is about to start his career as an orthopedic surgeon after racking up $400,000 in loans during four years of undergraduate school, four years of medical school, one year in an MBA program and a 5-year residency program.

During his residency and a subsequent fellowship, payments and some of the interest on his student loans have been deferred. Soon they'll have to begin paying them off.

The interest payment alone is $20,000 a year.

The Manns are not extravagant. ''I've always saved, and I have a budget,'' says Karen, 31. ''I'd love to buy a house, but there's no way. We haven't been able to afford kids yet. The loans are so awesome that you do get crazy.''

PAYING FOR EVERYTHING WITH CASH

The Manns are not alone in having to defer important goals because of heavy debt loads. Medendorp, a social worker in Decatur, Ga., lives on a budget and is diligently paying her bills with the help of a Consumer Credit Counseling Service debt-management plan. She pays for everything with cash. There are many things she'd like to do but can't afford, such as having laser eye surgery, going back to school and buying a home.

''When you get in a tar pit, forget about buying a home,'' author Anthony says. ''Instead of saving for a down payment, you're making credit card payments.''

At a time when the overall U.S. homeownership rate has risen to historic highs, young Americans are less likely than people their age 10 years ago to buy a home. The homeownership rate for heads of households younger than 35 has declined from 41.2% in 1982 to 39.7% in 1999, according to the Census Bureau. And if they own a home, young people tend to make smaller down payments or borrow against what equity they have. As a result, the average amount of equity accumulated by homeowners younger than 35 has shrunk to about $49,200 in 1999, from $57,100 10 years earlier, according to a study from the Consumer Federation of America.

''For middle-income Americans, the most important form of private savings is home equity,'' says Stephen Brobeck, executive director of the Consumer Federation of America. ''It's essential to have paid off a mortgage by retirement so that living expenses are lower and one has an asset that can be borrowed on or sold if necessary.''

By almost every measure, young people are falling behind. Between 1995 and 1998, the median net worth of families rose for all age groups except for the under 35 group. Their median net worth declined from $12,700 to $9,000, according to the Federal Reserve.

That is not to say that young people today are slackers and deadbeats, as they have sometimes been characterized. Many work hard and often make good incomes. Although they may have a lot of debt, they also are very focused on saving and investing, especially through 401(k)-type retirement accounts. Jackson, for example, contributes the maximum to his 401(k) plan.

''They want to protect themselves against future uncertainty,'' Smith says. ''They absolutely don't expect that Social Security will be around for them.''

But it's hard to save money if you are head over heels in debt. Massey earns $32,000 a year. With her husband, their annual income is more than $100,000. ''But we're still broke trying to pay our bills,'' she says.

FEBRUARY 26, 2001.

DEAR REPRESENTATIVE: The undersigned organizations write to urge you to stand with America's women, children, and working families and oppose H.R. 333, the bankruptcy act of 2001.

If it becomes law, this bill will inflict greater pain on the hundreds of thousands of economically vulnerable women and families who are affected by the bankruptcy system each year. Over 150,000 women owed child support or alimony by men who file for bankruptcy become bankruptcy creditors. An even larger number of women owed child support or alimony—over 200,000—will be forced into bankruptcy themselves. Indeed, women are the largest and fastest growing group in bankruptcy.

H.R. 333 puts both women and children owed support who are bankruptcy creditors and those who must file for bankruptcy at greater risk. By increasing the rights of many other creditors, including credit card companies, finance companies, auto lenders and others, the bill would set up a competition for scarce resources between parents and children owed child support and these commercial creditors both during and after bankruptcy. And single parents facing financial crises—often caused by divorce, nonpayment of support, loss of a job, uninsured medical expenses, or domestic violence—would find it harder to regain their economic stability through the bankruptcy process. The bill would make it harder for these parents to meet the filing requirements; harder, if they got there, to save their homes, cars, and essential household items; and harder to meet their children's needs after bankruptcy because many more debts would survive.

Contrary to the claims of some, the domestic support provisions included in the bill would not solve these problems. The provisions only relate to the collection of support during bankruptcy from a bankruptcy filer; they do nothing to alleviate the additional hardships the bill would create for the hundreds of thousands of women forced into bankruptcy themselves. And even for women who are owed support by men who file for bankruptcy, the domestic support provisions fail to ensure that, in this intensified competition for the debtor's limited resources before and after bankruptcy, parents and children owed support will prevail over the sophisticated collection departments of these powerful interests.

This bankruptcy bill takes a harsh approach toward working families who fall on hard times. At the same time, it does little to curb real abuses of the bankruptcy system, such as concerted efforts by those convicted of violence, vandalism, and harassment against reproductive health clinics to use the bankruptcy system to avoid paying the judgments and penalties resulting from their illegal acts.

We urge you to vote against H.R. 333, and to insist on bankruptcy reform that is truly fair and balanced.

Very truly yours,

American Association of University Women; Children NOW; Children's Defense Fund; Center for Law and Social Policy (CLASP); Feminist Majority Foundation; National Association of Commissions for Women (NACW); National Center for Youth Law; National Organization for Women; National Partnership for Women & Families; National Youth Law Center; National Women's Conference; National Women's Law Center; NOW Legal Defense and Education Fund; OWL; The Women Activist Fund, Inc.; Wider Opportunities for Women; Women Employed; Women Work!; Women's Law Center of Maryland, Inc.; YWCA of the U.S.A.

Mr. Chairman, the issue of bankruptcy reform has been a heated topic of debate in this body since the first session of the 105th Congress, when shortly before the National Bankruptcy Review Commission issued its report recommending changes to the current bankruptcy laws; legislation was introduced to dramatically change the way in which consumer bankruptcies are administered under the U.S. Code, 11 U.S.C. sec. 101 et seq. Both the House and Senate enacted different versions of the bill in the second session of the 105th Congress and a conference report was filed shortly after. The House agreed to the conference report version of the bill by a vote of 300 to 25 on October 9, 1998, but this bill which then President Clinton threatened to veto, was not brought before the Senate for a vote prior to adjournment.

This legislation was again reintroduced in the 106th Congress and was passed by voice vote in the House and passed in the Senate by a vote of 70 to 28. Then President Clinton withheld his approval, Congress adjourned sine die, and the bill was ''pocket'' vetoed.

Mr. Chairman, in yesterday's hearing, I questioned Philip J. Strauss who was representing the California District Attorney's Association and the California Family Support Council on the fact that H.R. 333 places economically vulnerable women and children who are forced into bankruptcy, and those who are owed support by men who file for bankruptcy at greater risk by increasing the rights of many creditors, including credit card companies, finance companies, auto lenders, and others over that of the women and children. Mr. Strauss, however, appeared shocked at these facts and affirmatively stated that women and children's child support payments for former spouses are protected because the States collect money from people who owe child support and make payments to mothers.

Mr. Chairman, I was not able to finish my point yesterday, however, in the interest of justice for the thousands of women and children who will be held hostage by H.R. 333. However, I will correct this gross misrepresentation today. While it is true that States collect money from people who owe child support to make payments to mothers, H.R. 333 would effectively bottle this money in the coffers of the State because it increases the rights of creditors over these vulnerable women and children, and sets up a competition for scarce resources between parents and children owed support and commercial creditors both during and after bankruptcy. Therefore, single parents facing financial crises often caused by divorce, nonpayment of support, loss of a job,

uninsured medical expenses, or domestic violence would find it harder to regain their economic stability through the bankruptcy process.

Mr. Chairman, this fact is not something new whose light has recently been cast over the dark future of bankruptcy reform that would follow H.R. 333. The fact that H.R. 333 would effectively place women and children in a gladiator's arena with creditors to do battle for child support money owed by former spouses who file bankruptcy has been articulated by national organizations such as the National Women's Law Center, the National Association of Consumer Bankruptcy Attorney's, the National Organization for Women, a coalition of bankruptcy professors and bankruptcy judges, and the National Association of Attorney's General's to name but a few. How, anyone could argue against the drastic effects and hardships that the language in this bill will cause on the vulnerable women and children in this country is beyond me.

I have consistently said that the greatest challenge before us in the bankruptcy reform efforts is solving the widely recognized inadequacies of the law in the area of consumer bankruptcy. As it has always been in the Congress, the key to this process, is, of course, successfully balancing the priorities of creditors, who desire a general reduction in the amount of debtor filing fraud, and debtors, who desire fair and simple access to bankruptcy protection when they need them. H.R. 333 does not accomplish this goal.

Once again, however, the bankruptcy reform bill has been introduced, now in the 107th Congress. As with the bills introduced in the 105th and 106th Congress's, I cannot in good faith support H.R. 333 introduced in the 107th Congress, because it:

Will weaken important credit card disclosure provisions that will help ensure consumers understand the debt they are incurring;

Will eliminate protections for reasonable retirement pensions that reflect years of contributions by workers and their employers; and

Will include an anticonsumer provision eliminating existing law protections against inappropriate collection practices when collecting from people who bounce checks.

For H.R. 333 to accomplish its intended goals, I believe that it must include provisions that will:

Ensure families who need chapter 7 relief are able to get it, including the preservation of appropriate judicial discretion;

Ensure women and children seeking to collect child support from a debtor do not have to compete with other creditors;

Contain adequate protection for families against abusive reaffirmation practices of creditors;

Enhance, not detract from, the viability of Chapter 13 plans; and

Require adequate and accurate disclosure of credit repayment terms.

In addition, given the recent turn in the economy, resulting in major corporations laying off workers by the thousands, it is even more important for Congress to carefully consider the impact of H.R. 333.

Mr. Chairman, I am for bankruptcy reform, but I believe that it must be equitable and fair to all interested parties. I am for bankruptcy reform that recognizes the financial interest at stake for the debtor, his or her family, and the creditors.

As I have already mentioned, in assessing bankruptcy reform we must balance two key principles. First, debtors must not be allowed to use the law to avoid repaying loans when they can actually afford to do so; and second, debtors should not be forced into serious hardship. Efforts to implement these two ideas have been made for a long time. The statute of Anne, enacted in 1705, was the first such effort. It introduced the idea of the fresh start into our law and punished those who abused the bankruptcy with death by hanging. In the bill before us today, the sponsors sought to draw the line by separating those who are worthy of a fresh start from those who abuse the system, but it is this very goal that they have failed to accomplish.

In reviewing H.R. 333, I was reminded of a hypothetical given by Douglas Baird, a law professor at the University of Chicago on H.R. 333's predecessors in the 105th and 106th Congresses stating that those bankruptcy reform bills would fail to balance the two competing goals that are the base of bankruptcy reform. The same is the case with H.R. 333 today.

Professor Baird's hypothetical considers an elderly woman living in Florida who returned to the workforce several years after her husband became ill and died. She makes $30,000 annually as a secretary and she has not taken a vacation in several years. She rents a one-bedroom apartment and owes $60,000, much of which stems from medical bills for the care of her late husband. Most of the remaining debt consists of unpaid credit card bills, most of it spent on household goods and groceries. Interest runs at 15 percent. The widow is behind in her payments, collection agencies call at home and at work, and they are threatening to garnish her wages.

The hypothetical then considers a 45-year-old businessman, also living in Florida. He works for a large corporation and makes $95,000 a year. He previously had his own business but it failed. Though single, he lives in a 5-bedroom house worth $500,000. He owes $60,000 in debt from his 10 credit cards, which he used to pay for vacations, clothes, and meals in restaurants. In addition, he is personally liable for $200,000 in debt from his failed business venture.

The current bankruptcy law would allow both the elderly widow and the businessman to file chapter 7 bankruptcy petitions and receive a fresh start. However, under H.R. 333, only the businessman would be allowed a fresh start because the widow's use of chapter 7 would be presumed abusive. The widow might be eligible for relief under chapter 13 but only if she commits all of her income for the next 5 years to the repayment of her debts, apart from monthly living expenses.

In contrast, under H.R. 333, the businessman will be eligible for chapter 7 relief, and be able to discharge all of his debt and keep his house.

The reform laid out in H.R. 333, will also increase hardship on debtors because it toughens the rules for ordinary debtors, most of whom declare bankruptcy not out of irresponsibility but because of catastrophic medical bills, unemployment, or divorce.

Mr. Chairman, women are the fastest growing and largest group filing bankruptcy today. In 1999, over half a million women filed for bankruptcy by themselves—more than men filing by themselves or married couples. Of this number, over 200,000 women who filed for bankruptcy, in 1999, tried to collect child support or alimony. The domestic support provisions of H.R. 333 does not solve the problems faced by women in bankruptcy and does nothing to address the additional problems it would cause to the hundreds of thousands of women forced into bankruptcy each year, including the single mothers forced into bankruptcy because they are unable to collect child support.

Furthermore, the National Association of Attorneys General has already warned that increasing the claims of partially secured creditors as H.R. 333 would do would make it more difficult to collect child support because credit card companies would treat all debts as secured, resulting in credit card debt being elevated to the same or a higher level than domestic support claims, and thus, make it more difficult to ensure that debtors are able to satisfy their obligations to their spouses and children.

H.R. 333 also creates a new priority for support debts owed to government units over that of a spouse, former spouse, or child, which must be paid in full in a chapter 13 plan. Mr. Speaker, this bill does not provide further protections to vulnerable women and children facing creditors, instead, the points I have outlined today show that H.R. 333 gives priority in many cases to the creditors over the vulnerable women and children.

H.R. 333 also fails in its attempt to encourage chapter 13 filings by debtors, resulting in many families who currently save their homes and cars through chapter 13 being no longer able to do so. Under current law, a chapter 13 case can be filed after a chapter 7 or 13 discharge, or after a dismissed case. This is important to families who might incur large medical expenses a few years after a prior discharge or whose chapter 13 plans fail for circumstances beyond their control.

H.R. 333, however, prohibits a new chapter 7 case within 8 years, rather than the current 6 years, after a petition resulting in a prior chapter 7 discharge, and a new chapter 13 case within 5 years. Furthermore, it is unclear whether the 5 years runs from the prior petition or the discharge. If the 5 years begin to run from the prior petition, it would mean that a chapter 13 case could be prohibited for up to 10 years after a prior chapter 13 petition.

H.R. 333 will also place many new obstacles in the path of bankruptcy debtors, which would decrease access to the system, especially for those with the least income, primarily by raising costs for filing motions, defending dischargeability litigation, obtaining stays in repeat filing, and other added administrative costs in the area of several hundred dollars which could be prohibitive for many families. This will greatly increase the already significant number of consumers who cannot afford attorney representation in bankruptcy and who would therefore have only the choices of filing pro se, going to an unqualified nonattorney petition preparer, or not filing at all.

In addition, H.R. 333 not only restricts the circumstances that families can file for chapter 13, it also significantly reduces the scope of the chapter 13 discharge making many of the debts that are currently dischargeable, nondischargeable under the full compliance discharge. This would effectively hurt debtors who can presently pay all they can afford.

Mr. Chairman, many of the provisions that are the base of H.R. 333 were designed for

the sole purpose of reducing bankruptcy debtor filing fraud. As I stated at the out-set of my statement, I applaud and support this goal. However, the facts at hand tell us decisively that this goal will not be achieved under H.R. 333 because it is not narrowly tailored and does not provide fair and equal treatment in cases like homestead exemption. Furthermore, the goal of curbing bankruptcy debtor filing fraud is in serious question due to the sharp decline in bankruptcy filings overall. Statistics provided by the VISA Bankruptcy Notification Service, which compiles weekly reports on bankruptcy filings show a continued sharp decline in the bankruptcy rate which dropped by more than 9 percent in 1999, continuing to decline at an 8 percent annual rate in the first 5 months of the year 2000. Bankruptcies are now running at a lower level than in 1997, 1998, or 1999. The per capital growth rate in personal bankruptcies was up to 25.2 percent in 1997, up by 3.1 percent in 1998, down by 7.9 percent in 1999, and down by 7.7 percent in 2000. In addition, the growth rate in personal bankruptcies was up by 26.1 percent in 1997, up by 4.0 percent in 1998, down by 7.0 percent in 1999, and down by 6.8 percent in 2000. In addition to the VISA Bankruptcy Notification Services, these numbers are also consistent with those compiled by the Chicago Mercantile Exchange in connection with the Quarterly Bankruptcy Index contract. These numbers that show a continuing decline in bankruptcies supports the view that many of the provisions provided in H.R. 333 are unnecessary and counterproductive.

Mr. Chairman, as elected officials for the American people we must protect America's families. Most individuals who file petitions in the bankruptcy courts are usually experiencing turbulent times. Financial hardship is a serious matter that deserves legislative reform that is the product of a deliberative process. This bill, is an extreme bill undertaken at the direction of special interest groups. We must protect working-class families. We must work to find a viable solution that deters abuse of the bankruptcy system while preserving the fresh start for discharged debtors. It is ironic that the consumer lending industry actively solicits unsuspecting consumers through the mail with terms of easy credit, buy-now, pay-later rhetoric. After addicting debtors to this ''financial crack'' lenders are advocating for reform. Of course debtors are responsible for financial obligations that they incur; however, lenders must assume responsibility for their actions in creating the precarious financial crisis we are discussing.

In the 105th Congress, I served as a member of the Subcommittee on Commercial and Administrative law and as a conferee on H.R. 3150, the precursor to the bill before us today. As a member of that subcommittee in the 105th Congress, I signed onto the dissenting views of the accompanied the report from the committee. The dissents' conclusion is appropriate in this context.

For nearly 100 years, Congress has carefully considered the bankruptcy laws and legislated on a deliberate and bipartisan basis. In the past, Congress has elected also to carefully preserve an insolvency system, that provides for a fresh start for honest, hard-working debtors, protects ongoing businesses and jobs, and balances the rights of and between debtors and creditors.

Because H.R. 333 departs from these historical principles, and tramples on the preservation of the American people, I oppose this legislation in the interest of all that is just and fair.

Mr. SENSENBRENNER. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Pennsylvania (Mr. GEKAS), the principal author of the bill.

(Mr. GEKAS asked and was given permission to revise and extend his remarks.)

Mr. GEKAS. Mr. Chairman, to the Members we state and restate the two principal themes that, from the very beginning of this crusade to bring about bankruptcy reform, have remained the truths of the entire debate.

Number one, in bankruptcy those who become so overburdened by debt, so crushed by the overweaning forces of finances that they no longer can meet and handle, to those people we guarantee a fresh start. That is what bankruptcy is all about, to allow and to foster a fresh start once this circumstance occurs. That we have never at all wavered in bringing about even to this moment.

The second truth is that in those circumstances where it is determined that a person filing for bankruptcy does indeed have the ability to repay some of the debt over a period of time, that individual should be compelled through a proper mechanism that we have in the bill to repay that portion of the debt. And so the purposes of bankruptcy envisioned by our forefathers have been met and yet we bring about some reform measures that guarantee or reguarantee the arena of personal responsibility on the part of the American citizen, the American worker and at the same time, to give relief where it is merited.

Mr. Chairman, what is never stated by the opponents of this bill and by the people who would criticize what we have attempted to do here is that most of the provisions of this bill have come about through testimony offered by our fellow citizens from every corner of American life, including women and children to which reference has been made many, many times; by the credit unions; by the taxing authorities; and they bring out two other truths that are part of the debate in this venture of ours here today.

One is this: Every time someone does file bankruptcy, it costs the consumer. All of the other consumers, the ones that the gentleman from Michigan says are opposed to this bill. Consumers are hurt by bankruptcy. Why? Because every time something like that occurs, the price of goods creeps up. Perhaps not envisioned immediately or seen, but they do creep up. So the consumer has to pay more at the supermarket because of bankruptcies.

Secondly, interest rates, because of the cost of credit, the cost of lending money goes up every time somebody files for bankruptcy, hits the consumer who is interested in borrowing money for a refrigerator or an automobile.

Third, I did not realize until we began investigating this whole area of concern, bankruptcy, even our taxes increase as a result of someone filing bankruptcy. I did not realize that the taxing authorities, until we were able to craft this particular piece of legislation, sometimes did not even know that a person owing back taxes or eventual taxes to be paid did not even know that those moneys were due them. We learned from the City of New York and the State of New York and other taxing authorities, municipal and county and state organizations, that for the first time they have in our bill a methodology for being notified that someone is going bankrupt and have an even chance of retrieving some of the back taxes. Why is that important? Because the consumers, the taxpayers are hurt every single time a bankruptcy is filed. The consumers, the taxpayers of our country, citizens of personal responsibility are supporting this legislation.

Mr. Chairman, I include for the RECORD a letter from the U.S. Chamber of Commerce.

U.S. CHAMBER OF COMMERCE,
Washington, DC., February 28, 2001.

To Members of the U.S. House of Representatives:

The U.S. Chamber of Commerce, the world's largest business federation, with more than three million businesses and organizations of every size, sector and region, strongly urges you to vote for the Bankruptcy Reform Act of 2001.

This balanced, bipartisan bill is identical to the bill which last year passed the House by voice vote and was overwhelmingly approved by the Senate by a 70–28 vote. An earlier version passed the House by a strong 313–108 vote.

There are two pillars upon which bankruptcy reform rests: debtors must not have their access to bankruptcy protection restricted, while those who can afford to pay a significant portion of their debts must be required to do so.

This balanced, bipartisan legislation will accomplish these goals:

Access to bankruptcy will unquestionably remain available for all Americans, regardless of income.

More than 100,000 bankruptcy filers are abusing the system every year by discharging debts that they have the ability to repay.

Abusers of the bankruptcy system, those who earn more than the median income and can afford to repay a signficiant portion of their debts, will be required to pay back what they can afford.

The bill provides substantial new protections for women and children trying to collect their child support and alimony, for example, by moving child support to first priority. Child support collection authorities describe the bill as a ''veritable wish list'' of provisions to assist them in their child support collection efforts.

The safe harbor provisions will protect lower income Americans by ensuring that they will have access to Chapter 7 relief without qualification.

The bill imposes significant new responsibilities and disclosures on lenders, and particularly credit card lenders.

The bill is fair to debtors, while it also stops the very rich from exploiting the system to discharge their debts, leaving everyone else holding the bag.

The U.S. Chamber of Commerce will consider Scoring this vote in its annual ''How They Voted'' Guide.

Mr. NADLER. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Mr. Chairman, I thank the gentleman very much for yielding me this time.

Mr. Chairman, I ask the gentleman from Wisconsin (Mr. SENSENBRENNER) if he would be willing to yield 1 additional minute to me.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1 additional minute to the gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Mr. Chairman, I thank the gentleman from Wisconsin for yielding that additional 1 minute.

Mr. Chairman, I rise in support of the bankruptcy reform legislation and urge its approval in the House. With this measure, we bring to conclusion a process that was launched 4 years ago to bring a much-needed reform to the Nation's bankruptcy laws.

During the time of the generally strong economy, consumer bankruptcy filings should be rare. Contrary, however, to this expectation, there are now more than 1.2 million annual bankruptcy filings, representing a five-fold increase since the last major bankruptcy law revision that took place in 1978.

The current level of annual filings is more than 90 percent greater than the number of 1 decade ago. Bankruptcies of convenience are driving these increased filings.

Bankruptcy was never meant to be a financial planning tool, but it is increasingly becoming a first stop rather than a last resort, as many filers who can repay a substantial part of their debt use the complete liquidation provisions of chapter 7 of the Bankruptcy Code rather than the court supervised repayment plans that are contained in chapter 13.

Our legislation will direct more filers into chapter 13 plans. Those who can afford to make payments will be required to do so.

This is a consumer protection measure. The typical American family pays a hidden tax of $550 each year arising from the increased cost of credit and the increases in prices for goods and services occasioned by the discharge of $50 billion annually in consumer bankruptcy debt. By requiring that people who can repay a substantial part of their debt do so in chapter 13 plans, we will lessen substantially that hidden tax.

Another key point should be made about the provisions of the bill. The alimony or child support recipient is clearly better off under our bill than she is under current law. At the present time, she stands seventh in the rank of priority for the payment of claims in bankruptcy proceedings.

Under the legislation we are putting forward, the child support or alimony recipient will have priority number one. Her claim will be first in line for payment. Other provisions of the bill also make it easier for her to execute against the assets of the bankruptcy state.

For this reason, our bill has been endorsed by the child support enforcement agencies of a number of States because of the better ability to collect child support payments which this bill provides. I will say again that the child support recipient is clearly better off under this bill than she is under current law.

This is a balanced bipartisan measure which contains new consumer protections and requires greater debt repayment by those who can afford to make the payments. Responsible borrowers and all consumers will benefit from its passage.

I want to commend the gentleman from Pennsylvania (Mr. GEKAS), the sponsor of this measure, for the leadership he has provided over the last 4 years as we have sought to make this important reform. The measure he brings to the floor today deserves the endorsement of this House.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentlewoman from New Jersey (Mrs. ROUKEMA).

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.)

Mrs. ROUKEMA. Mr. Chairman, I rise in strong support of this legislation and associate my remarks with the gentleman from Pennsylvania (Mr. GEKAS) and the gentleman from Wisconsin (Mr. SENSENBRENNER).

This is a significant and substantial reform. It improves bankruptcy law and restores personal responsibility and integrity to our system. It does not diminish anything. It, at the same time, is a safety net for those who need it most.

I would like to refer to the child support component of this specifically because I was a pioneer in child support legislation, going back to the mid-1980s; and I served on the Commission for Interstate Child Support Enforcement. I want to make it clear that this is a giant step in terms of protecting child support. It has made those payments number one. Let there not be any misunderstanding about that.

The gentleman from Virginia (Mr. BOUCHER), the previous speaker, made reference to the State situation; and I would specifically like to reference that it does not, the automatic stay does not apply to State child-support collection agencies. I know from speaking with child-support advocates in New Jersey, in my State that has been a leader in this respect, that this change is a top priority for them to ensure the continued payment of child support.

Mr. Chairman, I want to again thank the leaders here and also acknowledge that there are components of this that the Committee on Financial Services has always agreed to.

Let me focus with more explicit details to the key elements of the bill as follows:

Mr. Chairman, I rise today in strong support of H.R. 333, the Bankruptcy Reform Act of 2001.

INTRODUCTION

Consumer bankruptcy reform is an important issue that needs to be addressed now. In 1998 Americans filed a record of 1.4 million consumer bankruptcy petitions representing an over 650 percent increase since 1978. Those who entered into bankruptcy erased an estimated $44 billion in consumer debt. This resulted in a hidden tax of almost $400 per household for families who have to pay monthly bills including mortgages, student loans, and insurance. It is important to note that this surge in bankruptcies in the last few years occurred at a time when the national economy has grown at a strong rate. In fact, between 1986 and 1996, real per capita annual disposable income grew by over 13 percent while personal bankruptcies more than doubled.

Bankruptcy is fast becoming the first stop financial planning tool rather than a last resort. The purpose of reform is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system but also ensuring that the safety net of the Bankruptcy code is intact for those who need it most. I am a strong supporter of the consumer bankruptcy reforms contained in the bill and I will continue to work hard for bankruptcy reform legislation.

FINANCIAL SERVICES

Included in this bill are important provisions from H.R. 1161, the Financial Contract Netting Improvement Act of 2000 passed by the House last year. The netting provisions have one primary purpose: to minimize the systemic risk evident in our nation's financial system. Specifically, to minimize risk that could occur when a counterpart to a derivative contract becomes insolvent. It amends our banking and bankruptcy insolvency laws to require netting of the financial and over-the-counter derivatives instruments that are often traded among large financial institutions. It is a commonsense approach that should be enacted this Congress.

These same provisions were part of last year's Working Group recommendations on the netting of derivatives and other financial contracts. The House passed similar netting provisions on three separate occasions in the last Congress—as a stand-alone bill, as part of last year's comprehensive Bankruptcy Reform bill and as part of H.R. 4541, the Commodity Futures Modernization Act of 2000 which reauthorized the Commodities Exchange Act.

CHILD SUPPORT

I would like to thank the Committee for the child support provisions in the Bankruptcy Reform Bill.

I have a long history of standing up for child support enforcement, having been a pioneer on child support reforms and having served on the U.S. Commission for Inter-State Child Support Enforcement. It's a national disgrace that our child support enforcement system continues to allow so many parents who can afford to pay for their children's support to shirk these obligations. The so-called ''enforcement gap'' the difference between how much child support could be collected and how much child support is collected—has been estimated at $34 billion.

This legal abuse is a criminal violation as well as neglect of our children's most basic needs. In addition, the taxpayers are abused because billions of tax dollars are paid out because these families are falling onto the welfare roles at alarming rates.

H.R. 333 strengthens Child Support Enforcement by:

Child support payments are moved to Number one when determining which debts are paid first in a bankruptcy case. Currently, child support payments rank seventh behind such priorities as attorney's fees.

Confirmation and discharge of chapter 13 plans are made conditional upon the debtor's complete payment of child support. This will help further ensure that child support receives the priority it deserves.

Providing that the automatic stay does not apply to a state child support collection agency that is trying to recover child support payments. I know from speaking with child support advocates in New Jersey, that this change is a top priority for them to ensure continued payment of important child support.

The bill requires the GAO to study the feasibility of requiring all pertinent information about debtors to be collected by the Office of Child Support for the purpose to determine whether the debtor has outstanding child support payments. Chairman GEKAS and the committee at my request included the study so we can better enforce the law and make sure that dependent families get every penny they deserve.

These are important and real reforms that are supported by the Child Support Enforcement Services of New Jersey. The child support obligation for last year in New Jersey was $767 million. The total child support payments in arrears is $1.3 billion. Yes, I said $1.3 billion, of which about $800 million is still collectible. Bergen County in my district, along with six other New Jersey counties, makes up 53 percent of the total collections. The reforms in this bill will help us get that outstanding money to the families that need it most.

In conclusion, I strongly support this comprehensive bankruptcy bill and urge my colleagues support.

Mr. NADLER. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Maine (Mr. BALDACCI).

Mr. BALDACCI. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I rise today in opposition to the Bankruptcy Abuse Prevention and Consumer Protection Act. I do not oppose bankruptcy reform. Rather, I oppose this particular legislation in the manner in which it is being considered.

We have all heard the statistics concerning the alarming increase in bankruptcy filing over the past 2 decades. Consumer bankruptcy filings have reached record highs and our community banks and credit unions continue to suffer the burdens of their members' financial difficulties.

Does abuse of the bankruptcy system exist? Yes. Is reform needed? Certainly. Should those consumers with the means available to pay back some of their debt be required to do so? Absolutely. Does this bill provide the solution that is needed? No.

What is needed, Mr. Chairman, is balanced reform. We need reform that provides an adequate cap on homestead exemptions. We need reform that addresses the source of many recent personal bankruptcy filings, credit-card debt, in a proactive manner.

As our Nation's economy slows down, we need reform that strikes a better balance between meeting the needs of lenders and the needs of families who are in good faith turning to bankruptcy for a fresh start.

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Had this legislation been considered in a fair and open manner, we would have been given the opportunity to address those flaws.

I am disappointed in the insistence the legislation be rushed to the floor for a vote without a serious opportunity for the committee or here on the floor to bring the bill into balance and achieve true bipartisan support. This is too important an issue to be rushed through the process as if we were merely naming a post office instead of sealing the economic fate of families and small businesses.

This bill does not strike an appropriate balance between families and lenders. It does not address the proliferation of credit card companies that are extending credit far too easily. It imposes too stringent a means test that takes discretion away from the bankruptcy judges and prevents them from applying their good judgment in a particular case before them.

Bankruptcy reform is clearly needed, but this bill is not the right solution. Once again I urge my colleagues to vote against this bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in support of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001. I would also like to thank the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for his leadership in this area and for moving the bill so expeditiously through the Committee on the Judiciary to the House floor for debate. It has been debated and debated; and we have had many, many hearings on this bill, so it is clearly not being rushed.

I want to also thank the gentleman from Pennsylvania (Mr. GEKAS) for his tireless commitment to securing meaningful bankruptcy reform.

The text of H.R. 333, the bill we are considering today, is the result of last spring's conference committee between the House and Senate on which I served as a conferee. This vital piece of legislation protects individuals and businesses from having to pick up the tab for irresponsible debtors, debtors who are capable of paying off a significant portion of their debts. It protects responsible consumers and requires those who can afford to pay their debts to honor their commitments.

Mr. Chairman, there are people who truly have a legitimate need to declare bankruptcy. No one is denying this. At times, hard-working Americans come up against special circumstances that are beyond their control. Family illness, disability, or the loss of a spouse may necessitate the need to seek relief. This legislation effectively protects these individuals. Too frequently, however, people who have the financial ability or earnings potential to repay their debts are simply seeking an easy way out of making good on their debts. While this may prove convenient for the debtor, it is not fair to their friends and neighbors who are ultimately stuck with the bill.

As has been correctly stated by previous speakers, estimates show that the average American pays as much as $550 per year as a bad debt tax in the form of higher prices and increased consumer credit interest rates to cover the economic costs associated with excessive bankruptcy filings of others.

Mr. Chairman, I urge support of the bill.

Mr. NADLER. Mr. Chairman, I yield 5 minutes to the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, in the 13 or so blocks from my residence to my office this morning I promised myself that I was going to be calm and unemotional in this debate, despite the fact that I think the process in the committee was a charade and I think this is going to be a charade. At the end of the day this bill will not be amended because it is about making a political statement that our Republican leadership can get the bill that they passed last time and it can be signed.

This bill is an unfortunate convergence of expediency and politics. Nobody is likely to like what I say on either side of this issue because what I perceive has happened is that the people who wanted this bill knew that politically they could not get it unless they exempted the poorest people in the country from the provisions of this bill. And for those of us who start with the position that there is abuse in the bankruptcy system and have witnessed that abuse, we know that the abuse not only exists among high-income people but the abuse exists among low-income people also. But basically the same people who a couple of years ago were telling us that we need to make poor people responsible for their actions in the welfare reform context now say, for political expediency, we will accept a means test in the bankruptcy laws that basically sets up two classes of citizens for bankruptcy in this country, and that, Mr. Chairman, will be the legacy of this bill.

I know there are people who have kind of walked away from the debate because they said, well, this does not

impact my constituency any more because my constituency is poor and poor people are exempted from this bill. However, it is irrational to set up a pauper's bankruptcy court system and a higher-income court system in this country for bankruptcies, and that will be the worst legacy, I believe, that this bill will carry forward as we go on.

Now, once that unholy coalition got formed and the expediency and politics got together and the agreement was cut, then the people who wanted this bill from the beginning started to pile on additional provisions, because there really was not an effective coalition out there fighting the bill. So now we end up with all kinds of provisions in this bill that are special interest provisions that really have no rational basis.

There was no demonstration of abuse by small businesses of the bankruptcy code. It was about individual abuse. Yet we have a whole body of provisions in this bill now making it more difficult for small businesses to reorganize under the bankruptcy laws. And I tell my colleagues that the impact of that ultimately will be that person after person after person will lose their jobs because small businesses will not be able to reorganize and continue in business to continue the jobs for those people.

So I do not know. It is difficult for me to even grab ahold of one or two or three provisions. The whole concept of this bill, the whole theory that divides poor people and rich people and says we are going to set up separate systems of bankruptcy for us, one, a pauper's court, in effect, and another a richer people's court, in effect, is just alien to anything I can come to grips with and is bad public policy.

I understand why it was expedient, I understand the politics of it, but it is sorry public policy. And that will be the most devastating legacy of this bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1 minute to the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Chairman, I thank the gentleman for yielding me this time.

I rise in strong support of the bankruptcy reform legislation before us today. Many of the bankruptcy filings that do occur do originate from consumers who have been struck by sudden or unexpected financial hardship. No one wants to deny bankruptcy relief to those who truly deserve it. However, there are also consumers contributing to the upward trend in bankruptcy filing who could, with thoughtful planning and dedication, recommit themselves to repaying some of the debts they have incurred. These consumers, if permitted to simply walk away from their debts, will pass along their cost to others in the form of higher credit or tighter credit availability, increased tax burdens and higher prices for goods and services.

Now, the average American household pays about $400 a year in hidden costs associated with consumer bankruptcy. The abusers of this system, it is important to note, are not simply low-income families. In fact, many of the bankruptcy filers actually earn more than $100,000 in the year they file for bankruptcy. While this legislation has been depicted as a one-size-fits-all approach, it is highly flexible.

Mr. NADLER. Mr. Chairman, how much time is remaining?

The CHAIRMAN pro tempore (Mr. LAHOOD). The gentleman from New York (Mr. NADLER) has 11 minutes remaining.

Mr. NADLER. Mr. Chairman, I yield 2½ minutes to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I want to pose the question of why did we see the spike in bankruptcy filings up until 1998 and then saw a dramatic decline of some 15 percent in the last 2 years? Well, in 1998, the FDIC, the government agency, found that as a result of interest rate deregulation, credit card companies had become more profitable and were able to extend more unsecured credit to less creditworthy borrowers.

In other words, credit card issuers were handing money out to just about everyone. Anyone with teenagers knows that because they receive bundles of credit card solicitations. In other words, people who should not have been extended credit were getting it.

This conclusion, I suggest, is supported by an astonishing fact. The median family income of filers has dropped from $23,250 in 1981 to $17,650 in 1997. And we wonder why we have a crisis. But, as the filings peaked in 1998, the credit card companies saw their profits stall and began to tighten their underwriting requirements. In the last 2 years, we have seen this decline. In other words, the invisible hands of the marketplace are working.

As a University of Maryland study has concluded, the bankruptcy crisis is self-correcting. The reason is that lenders are profit-maximizing institutions that select their own credit criteria and they responded to this unexpected increase in personal bankruptcy. I find it rather ironic that proponents who usually proclaim the benefits of the free market would seek government intervention, a remedy, by the way, which will only impact the debtors and not impose any responsibility or accountability on creditors who behave irresponsibly.

Let the market work and reject this bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Iowa (Mr. LEACH), the distinguished former chairman of the Committee on Banking and Financial Services.

Mr. LEACH. Mr. Chairman, I thank the distinguished chairman for yielding this time to me.

Bankruptcy is an extraordinarily sensitive subject. The issue here, we must bear in mind, is balance, rather than the need for a bankruptcy law itself. After all, one of the first laws of the first Congress was a bankruptcy law, which was passed because we had debtors prisons in the United States. We ended debtors prisons, which were part of our experience as well as the European experience. We never had the pound-for-the-pound experience that was in Merchant of Venice in the European experience, but we had debtors prisons.

This bill is about balance, that is, who bears the cost, not about the principle of bankruptcy itself. I do not know if the balance is exactly right, but I am convinced its thrust is and that it is a better circumstance than current law.

I rise to stress one provision in this bill which I do not believe is controversial and was strongly supported by the Clinton administration Treasury as well as this Treasury and by the Federal Reserve, and that is the provision that relates to netting. We have a circumstance in international trade where the new phenomenon in international finance is a multi-trillion dollar trade in derivatives contracts, now over $30 trillion. These are the notional values of derivatives contracts. If they are allowed to net out, they come to less than a trillion dollars and can be managed.

So what this bill does is call for the automatic netting of derivatives contracts in the event of a bankruptcy circumstance. What this does is protect the international financial system and the domestic economy from true calamity in the event of a major derivatives party declaring bankruptcy.

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In essence, in awkward economic times, this is the overwhelmingly most important provision of the bill. On its basis alone, this bill should be adopted.

I thank the distinguished chairman of the Committee on the Judiciary for putting this provision in his bill. I am very appreciative that this step will become one of stabilizing rather than destabilizing the international economy. I urge my colleagues to support the bill.

Mr. NADLER. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, I rise in opposition to this bill which will harm American families, American businesses, especially small businesses, harm children of divorce and open the door to even greater predatory practices by lenders. It is a wish list of every big money special interest group. It does not protect debtors, and that should be no surprise, because families in bankruptcy cannot make large campaign contributions, cannot buy ads in the paper, cannot hire fancy K Street lobbyists. This bill is the poster child for the need for campaign finance reform, the ugly result of much too much special interest money in politics.

Why is this bill being rushed through? Is it because there is a crisis in bankruptcy? No, there is not. Chapter 7 filings have declined by almost 20 percent in the last 2 years. Declined. Although studies bought and paid for by the credit card industry a few years ago told us that up to 25 percent of chapter 7 debtors could repay a substantial portion of their debts, the only independent study, sponsored by the American Bankruptcy Institute, found that only 3 percent could do so. There is no crisis warranting the most radical rewrite of the Bankruptcy Code in a quarter century.

The bill does not protect debtors and families. If it does, ask yourself why every consumer organization, every organization representing debtors, women's groups, children's advocacy groups, civil rights groups, seniors groups, bankruptcy judges, trustees and bankruptcy professionals have consistently criticized this bill for the last 4 years? How dare the sponsors of this bill tell us that it will improve the custodial mother's ability to collect child support because they make child support a priority when they know perfectly well that the priority expires with the bankruptcy discharge and Mom will then have to compete with the bank's collection department in State court with no priority. Why do the agencies that collect child support for State tax departments support this bill while those agencies who try to help mothers collect child support all uniformly oppose this bill? If this bill is good for business, why have some of the top judges and big business reorganization specialists all told us that this bill will make it harder to reorganize a business under chapter 11 and force more viable businesses into chapter 7 liquidation? As the economy slows down, is this any time to make business survival more difficult?

If this bill is about personal responsibility, why have so many consumer protection amendments been rejected, watered down and ruled out of order so we cannot even debate these issues? Why does the bill contain a special interest provision to allow a small group of wealthy investors to avoid having a legal judgment against them enforced in our courts as required by international law? Why does the bill let anti-abortion terrorists abuse the Bankruptcy Code to evade lawful court judgments through costly and lengthy litigation? Why does the bill fail to place a real cap on the millionaire's loophole, the unlimited homestead exemption? Why were we not even allowed to offer amendments and debate these issues on the floor?

If this bill is so pro-family, why was an amendment by the gentleman from California (Mr. SCHIFF) which would have corrected the bill so that a battered, legally separated spouse would not have to count the income of her husband as her own even if she never saw a nickel of it taken out of the bill? Why would the bill require that she use this phantom income to repay her creditors and deny her relief when she cannot? Why should a landlord be allowed to evict tenants despite the normal bankruptcy stay? Will homelessness make people better able to repay their debts?

Does any Member think that credit card companies will really return the extra profits this bill will give them over to consumers in the form of lower interest rates? How much of the profits that the credit card companies realized from interest rate deregulation have been passed on to consumers in lower interest rates? Have credit card interest rates gone down with mortgage rates and car rates?

Why have the conferences been held in secret? Why have industry lobbyists had more access to the deliberations than most members of the Committee on the Judiciary, even those appointed as conferees?

This bill is rotten and, like the bipartisan Garn-St Germain bill of a decade and a half ago that caused the savings and loan crisis and cost the taxpayers half a trillion dollars, this bill will come back to haunt every Member who votes for it when people lose their jobs, lose their families and are crushed under mountains of debt.

I urge rejection of this bill.

Mr. Chairman, I yield 1 minute to the distinguished gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. Chairman, there are a number of reasons that have not been pointed out why this bill is a bad bill, the reasons of why we have a fresh start, a tradition that if someone is inundated by debts so that they can cash in all they have and get a fresh start. Some people incur debts through no fault of their own, a business reversal, illness, loss of a job. There is no balance in this bill.

We have heard if you can pay a substantial portion of your bills, you ought to pay those. There is nothing in this bill that limits it to a substantial portion. If you can pay $167 a month out of whatever your bills are, millions of dollars, you have got to pay that $167 for the next 5 years. This will lead to frustration and desperation suffered by many Americans. If our goal were to increase the number of people that go berserk and shoot their colleagues, this is the kind of frustration and desperation that would lead to that kind of result.

I would hope that we would keep our traditional bankruptcy laws so that those who are totally inundated with debts and can never get out can get a fresh start.

Mr. CONYERS. Mr. Chairman, I am delighted to yield 2 minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Chairman, I thank the gentleman from Michigan for yielding me this time and also for his lifetime work on behalf of people in our country.

I rise today in strong opposition to this anticonsumer, antiworking family, antiwoman, anti-low income, antichild bankruptcy legislation and to support the Democratic alternative which provides for true bankruptcy reform. Many Americans, as we know, were left out of the economic boom of the past decade. They are saving less and accumulating more debt. To add insult to injury, the credit card companies are using aggressive, unsolicited marketing techniques to offer huge lines of credit to consumers who cannot afford it, including college students who have no income. All of these factors contribute to a system where more and more Americans are struggling just to get by, and some need to rely on bankruptcy as a safety net. This has nothing to do with being irresponsible or not wanting to pay one's bills.

Many working families are forced into bankruptcy when emergencies arise, including loss of a job, the loss of a spouse or long-term illness. Instead of helping families get back on their feet in these cases, the Republican reform bill would make declaring bankruptcy under chapter 7 or 13 much more difficult. This is just plain wrong.

The domestic support provisions in H.R. 333 are inadequate. Hundreds of thousands of women who are owed child support or alimony would be harmed financially under the Republican bill. The bill does nothing to protect women owed child support by men who declare bankruptcy or those who need to declare bankruptcy themselves due to financial hardship when their former spouse or noncustodial parent fails to pay child support. Additionally, this bill fails to ensure that parents and children will have first claim on the bankruptcy filer's funds rather than big business collection departments. This bill says to the majority of ordinary Americans that we are abandoning them on behalf of big-time corporations. It is wrong.

The Democratic alternative is sensible and is fair. The Republican bankruptcy reform bill is punitive.

Mr. CONYERS. Mr. Chairman, I proudly yield the balance of my time to the gentleman from Ohio (Mr. KUCINICH).

The CHAIRMAN pro tempore (Mr. LAHOOD). The gentleman from Ohio is recognized for 1 minute.

Mr. KUCINICH. Mr. Chairman, this bill is bad for consumers and bad for business. Recently in Cleveland, the district I represent, a major American company sought to reorganize under chapter 11 of the bankruptcy laws. LTV, one of the most important employers in Ohio, one of the most strategically important companies in the country, was compelled to seek bankruptcy protection because of factors beyond their control, unfair and illegal dumping of cheap foreign steel and inadequate Federal enforcement of antidumping laws.

But if H.R. 333 had been law, LTV would not have been able to reorganize under chapter 11. Instead, the company would have been dissolved and the assets liquidated. Thousands of jobs

would have been lost. H.R. 333 makes a change to existing law reducing the assets available to a debtor company for funding operations during a reorganization. H.R. 333, had it been in effect, would have affected LTV's ability to obtain credit, thus keeping the plants open during bankruptcy proceedings.

This is only one of the many extreme changes in the law that H.R. 333 would make. It is a bad bill, but especially as we may be on the verge of a recession at a time when more businesses will need to reorganize or else face layoffs and liquidation, this bill closes the door to reorganization. It virtually guarantees more layoffs, more liquidation, and more ruin for entrepreneurs, both large and small. Defeat H.R. 333.

Mrs. MALONEY of New York. Mr. Chairman, it is with great regret that I come to the floor in opposition to this bankruptcy bill.

Mr. Chairman, I supported this legislation when the House last took a recorded vote on bill.

Unfortunately, the bill that we are voting today lacks a critically important amendment that has been added in the Senate.

In the Senate, Judiciary Chairman HATCH and Senator SCHUMER of New York have agreed to a compromise amendment that resolves the issue of the treatment of perpetrators of abortion clinic violence who declare bankruptcy.

Bankruptcy reform is important but clinic bombers should not be allowed to excuse penalties assessed on them by the courts through bankruptcy.

This is growing problem that the majority is ignoring.

More than 2,400 acts of violence have been reported at family planning clinics since 1997. These include bombings, arsons, death threats, kidnapings, asaults, and other acts of harassment.

I will carefully follow the progress of this issue in conference and I strongly urge my colleagues to add the Hatch-Schumer compromise.

Mr. DINGELL. Mr. Chairman, I rise today in opposition to H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001. H.R. 333 will neither prevent more bankruptcies from occurring, nor protect consumers. It will, however, sanction the continued predatory and abusive practices of the credit card industry.

There is no bankruptcy crisis in America. Despite the rascality perpetrated by the credit card industry, including the solicitation of our minors, seniors and pets, personal bankruptcies are not increasing. In fact, even as the average household debt burden has continued to climb, over the past two years personal bankruptcies have dropped by more than 15 percent.

Studies show that irresponsible and overly aggressive lending practices were behind the high level of bankruptcies in the mid 1990's. However, the industry has not learned its lesson. Even as the industry enjoys its highest profit level in five years, it refuses to take responsibility for its poor lending practices and continues to increase its marketing and credit extension. Last year, the credit card industry increased its mail solicitations by about 14 percent. Additionally, total credit extended, which included unused credit lines and debt incurred by consumers, approached three trillion dollars for the first time ever.

This is outrageous behavior and it should not be rewarded. Unfortunately, the Republican leadership feels differently and has crafted a bill which encourages this despicable behavior at the expense of our most at risk citizens. Americans deserve better, especially at a time when the economy is slowing and more jobs are in jeopardy. As such, I urge all of my colleagues to oppose this wrongheaded piece of legislation.

Mr. LAFALCE. Mr. Chairman, this is the wrong bill at the wrong time. It is unfair and unreasonable to consider bankruptcy reform without focusing attention on the practices of the credit card issuers that directly contribute to consumer bankruptcies. Unfortunately, the bill being considered today will only encourage credit card companies to be more aggressive in exacerbating the problem of consumer debt.

The timing of this bill could hardly be worse. By all accounts, we are in the midst of a significant economic slowdown, which will undoubtedly put a strain on many families' budgets in the coming months. Bankruptcy acts as a safety valve during economic slowdowns, providing relief to families that have reached a financial crisis point in the midst of difficult economic times. Yet, Congress is moving full steam ahead to pass a bill that will shut off the safety valve for many families that have reached a financial crisis point, most often through job loss, a medical problem, or divorce.

Moreover, many families face these financial crises as the direct result of the practices of companies assisted by this legislation.

The credit card industry is before Congress asking for relief from allegedly inadequate bankruptcy statutes. Yet, these same companies continue to aggressively market credit cards to some of our most financially vulnerable citizens—students, seniors and the working poor. Credit card companies issued 3.3 billion credit card solicitations last year, many of which have been targeted at these vulnerable groups. Is it any wonder that young people in their twenties and older Americans are the fastest growing groups filing for bankruptcy?

The credit card industry continues to aggressively market to these groups because it's good business for them. Profits for the industry are up, despite higher overall bankruptcies during the past decade. Nothing boosts the bottom line better than a growing number of families who can do no more than pay the monthly minimum on their credit card bills. If too many customers ultimately default, the companies simply make up for it by raising fees still higher.

But now they come to Congress asking for relief from the burden of so-called ''irresponsible'' customers who default on their debts. I would suggest that some of these companies only have themselves to blame for much of the bankruptcy problem. No less a pro-business source than the Wall Street Journal recently had this to say on the issue: ''America isn't a nation of deadbeats. By one estimate, at least 15% of families could benefit financially by filing for bankruptcy. Many more could do so with a little strategic planning beforehand. Yet fewer than 2% do.''

On this point, I would urge my Republican colleagues to consider letting the free market do its job. If credit card companies have issued too much bad credit, then it is up to these same companies to correct their mistakes. They should not expect any help from the government in avoiding the results of their own bad decisions.

In sum, the current bankruptcy bill is out of balance. The bill increases the burden of families who find themselves unable to repay heavy loads of consumer debt because of job loss, medical illness or the failure of an ex-spouse to pay child support. But, it does not adequately address one of the principal causes of burdensome consumer debt—misleading and deceptive practices of the credit card companies who often aggressively induce the debt.

Congress has failed to act responsibly in its consideration of this legislation. The proponents of the bill have rushed this bill through without full Congressional deliberations, where issues important to consumers and working families could be considered. The Committee process has been circumvented. The bill makes significant changes to the Truth-In-Lending Act, but the Financial Services Committee has passed up the opportunity to review the legislation. We have ignored the advice of the National Bankruptcy Conference, a balanced group of bankruptcy experts that Congress has listened to in every bankruptcy reform effort for the last forty years, until this one.

I had hoped to introduce an amendment to the bankruptcy bill in order to address these unfair and deceptive credit card practices. Unfortunately, in their haste to rush the bankruptcy bill through the Congress, the Republican Leadership has blocked my amendment from being considered during today's Floor debate.

I feel strongly that Congress must address these abusive practices, and that is why I am joining with the Gentleman from Michigan, Mr. CONYERS, in a motion to recommit that will address concerns of populations which have proven to be most vulnerable—student and young people. People in their twenties are the fastest growing group filing for bankruptcy. To a large degree, that is the result of aggressive targeting of students and young people just starting out in life by credit card companies that trap them into a cycle of debt before they have adequate income to sustain it.

Mr. ISRAEL. Mr. Chairman, I rise in support of H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act. At its core, this bill responsibly ensures that those who can afford to repay their debts do so, while protecting important priorities such as child support, alimony, and education savings.

Last year, over $40 billion was lost through bankruptcy filings. This not only affects businesses, but families as well. Bankruptcy costs are passed on to consumers in the forms of higher interest rates and restricted access for lower and middle-income taxpayers to affordable mortgages. Indeed, bankruptices cost each American household about $400 last year. It is fundamentally unfair that equal access to credit is threatened by those who abuse the system—irresponsible filings by people who can repay their debts.

H.R. 333 provides a mechanism to distinguish between those who can repay their debt from those who cannot. If a filer earns more than the median income and can afford to repay either $6,000 or 25 percent of non-priority debt over five years (after taking into account living expenses and priority expenses

such as child support), then the debt should be repaid over time. This bill insists on personal responsibility for repaying obligations while providing bankruptcy protection for special situations such as declining income and unexpected family and medical expenses.

Mr. Chairman, according to a recent study 15 percent of people claiming Chapter 7 bankruptcy relief have the ability to repay 64 percent of their debt. Bankruptcy reform recognizes that when you have the means to repay your debt, you should do so. It restores personal responsibility. It compassionately recognizes that some unique and special circumstances should be considered when ordering a repayment of debt. It will increase access to credit and home mortgages for middle and low-income families.

That is why I support H.R. 333 today.

Mr. KIND. Mr. Chairman, I rise to share my support for H.R. 333—the Bankruptcy Abuse Prevention and Consumer Protection Act. This measure, though not perfect, ensures debtors who can afford to repay their debt do so, while at the same time protecting consumers.

Bankruptcies negatively affect people in the form of higher prices and tightened credit access for lower-and middle-income taxpayers. It is estimated that over $40 billion was discharged through bankruptcies last years. As we all know, money lost to bankruptcies is passed on to consumers in the form of higher prices for goods and services.

H.R. 333 also ensures that those individuals with the ability to repay their debts do so while protecting those truly in need. This legislation creates a needs based system and assures that those who can afford to pay are required to do so. A recent study determined that 15 percent of Chapter 7 filers could repay an average of 64 percent of their debt.

Most importantly, H.R. 333 makes all marital and parental obligations to children the first priority for payment in bankruptcy proceedings. It is for this reason a number legal and child support enforcement organizations strongly support the bill.

While H.R. 333 is a good bill that could get better. It is my hope that House and Senate negotiators, during conference committee discussion, will work to eliminate current homestead exemption loopholes and seek to protect families from abusive reaffirmation practices of creditors.

Mrs. KELLY. Mr. Chairman, I rise today in strong support for H.R. 333, the Bankruptcy Reform Act, because it boils down to two words: personal responsibility. If one assumes a debt, they should do everything in their power to pay it off. However, a safety net has to remain for those who legitimately cannot pay their debts. Creditors should be made whole, if possible.

Some of my colleagues here today are trying to paint the word creditors to mean faceless financial institutions who are tricking consumers into assuming debt. They specifically speak of credit card debt. They unfortunately failed to note that credit card debt in the United States amounts to only 3.7 percent of all consumer debt. Furthermore, only 1 percent of credit card accounts end up in bankruptcy. Of that 1 percent it is estimated that 15 percent of those accounts can afford to repay some or all of their debt.

The people who are truly being hurt by our current bankruptcy system are Americans who play by the rules and pay their debts. Bankruptcy costs the average American family an average per year of $400.

Needs-based bankruptcy reform is well overdue, and that is what H.R. 833 delivers. It is the people who game the system that we have to stop.

I heard from my colleagues from Virginia (Mr. MORAN). He stated last year more people filed for bankruptcy than graduated from college. That is a staggering fact. I am pleased to support H.R. 333's provisions which strengthen the Bankruptcy Code protections for ex-spouses and children. They have to be supported.

In the current bankruptcy law, child support and alimony are placed seventh behind attorney fees as debt obligations. If enacted, this bill would move child support and alimony payments to first on the list of debt obligations.

Also under current law, some debtors use the automatic stay to avoid paying child support payments after they file for bankruptcy. H.R. 333 exempts State child support authorities from the automatic stay, thus insuring less delay in the proper payment of child support. I vehemently oppose any legislation that would reduce the ability of women and children to receive support payments.

H.R. 333 is a good bill that moves us in the right direction, and I ask my colleagues from both sides of the aisle to join me in support of this reasonable reform.

Ms. ROYBAL-ALLARD. Mr. Chairman, I rise in opposition to H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act, that we will be voting on later today. We all agree that bankruptcy reform is necessary. However, the bill clearly puts creditors ahead of families. A fair bankruptcy reform bill would balance important obligations, like child support, with a creditor's right to receive payment. It would take into account the fact that most of the people who declare bankruptcy have been through trying ordeals such as divorce, unemployment, and illness resulting in exorbitant medical bills they can't afford to pay.

In addition, a truly effective bill would address a major cause of bankruptcy: predatory lending. But H.R. 333 remains silent on these and other critical issues. This bill is a missed opportunity to incorporate some real protections for American families.

Simply stated, it is good for credit care companies and bad for consumers. I urge my colleagues to oppose this bill.

Mr. BEREUTER. Mr. Chairman, this Member wishes today to express his support for the Bankruptcy Abuse Prevention and Consumer Protection Act, H.R. 333. It is important to note that this Member is an original cosponsor of H.R. 333.

First, this Member would thank the distinguished gentleman from Pennsylvania (Mr. GEKAS), for introducing the House bankruptcy legislation, H.R. 333. This Member would also like to express his appreciation to the distinguished gentleman from Wisconsin (Mr. SENSENBRENNER), the Chairman of the Judiciary Committee, for his efforts in getting this measure to the House Floor for consideration.

This Member supports the Bankruptcy Reform Act for numerous reasons; however, the most important reasons include the following:

First, this Member supports the provision in H.R. 333 which provides for a means testing—needs-based—formula when determining whether an individual should file for Chapter 7 or Chapter 13 bankruptcy. Chapter 7 bankruptcy allows a debtor to be discharged of his or her personal liability for many unsecured debts. In addition, there is no requirement that a Chapter 7 filer repay many of his or her debts. However, Chapter 13 bankruptcy filers commit to repay some portion of his or her debts under a repayment plan.

Some Chapter 7 filers actually have the capacity to repay some of what they owe, but they choose Chapter 7 bankruptcy and are able to walk away from these debts. For example, the stories in which an individual filed for Chapter 7 bankruptcy and then proceeds to take a nice vacation and/or buys a new car are too common. Moreover, the status quo is costing the average American individual and family increased costs for consumer goods and credit because of the amount of debt which is never repaid to creditors.

As a response to these concerns, the needs-based test of H.R. 333 will help ensure that high income filers, who could repay some of what they owe, are required to file Chapter 13 bankruptcy as compared to Chapter 7. This needs-based system takes a debtor's income, expenses, obligations and any special circumstances into account to determine whether he or she has the capacity to repay a portion of their debts.

Second, this Member supports the additional monthly expense items that are exempted from consideration under the needs-based test which determines, under H.R. 333, whether a person can file either a Chapter 7 or 13 version of bankruptcy. These expenses include the following: reasonable expenses incurred to maintain the safety of the debtor and debtor's family from domestic violence; an additional food and clothing allowance if demonstrated to be reasonable and necessary; and reasonable and necessary expenses for the care and support of an elderly, chronically ill, or disabled member of the debtor's household or immediate family.

Lastly, this Member supports the permanent extension of Chapter 12 bankruptcy in H.R. 333 since it allows family farmers to reorganize their debts as compared to liquidating their assets. Using the Chapter 12 bankruptcy provision has been an important and necessary option for family farmers throughout the nation. It has allowed family farmers to reorganize their assets in a manner which balances the interests of creditors and the future success of the involved farmer.

If Chapter 12 bankruptcy provisions are not permanently extended for family farmers, its expiration would be another very painful blow to an agricultural sector already reeling from low commodity prices. Not only will many family farmers have no viable option but to end their operations, it likely will also cause land values to plunge. Such a decrease in value of farmland will affect the ability of family farmers to obtain adequate credit to maintain a viable farm operation. It will impact the manner in which banks conduct their agricultural lending activities. Furthermore, this Member has received many contacts from his constituents supporting the extension of Chapter 12 bankruptcy because of the situation now being faced by our nation's farm families. It is clear that the agricultural sector is hurting and by a permanent extension of the Chapter 12 authorization, Congress can avoid one more negative possibility.

In closing, for these aforementioned reasons and many others, this Member urges his colleagues to support H.R. 333.

Ms. SLAUGHTER. Mr. Chairman, I offered with my colleague, the distinguished ranking member of the Judiciary Committee (Mr. CONYERS), an amendment in the Rules Committee that would have specified that creditors would not be able to collect the money owed them by a debtor, if that action would prevent the debtor from making family payments, like alimony and child support.

Our amendment was not made in order. However, that does not mean I will remain silent on this issue. In 1994, I introduced the Spousal Equity in Bankruptcy Amendments to give priority to child and spousal support payments in bankruptcy proceedings, so that debtors' obligations to their children could not be discharged. That legislation became law as part of the Bankruptcy Reform Act of 1994.

Due to these and other child support enforcement reforms, child support collections have increased by 123 percent since 1992. But we have further to go, as American children in fiscal year 1999 were still owed $76.9 billion in child support. The supporters of this bill argue that since the bill creates a new priority in bankruptcy proceedings for child support and alimony payments, it provides far greater protections from bankruptcy for such payments than current law. They are wrong. Do not just take my word for it. Twenty women's and children's organizations and more than 100 professors of bankruptcy and commercial law have expressed their grave concerns about some of the provisions of the bankruptcy reform bill, particularly the effects of the bill on women and children.

This bill forces women and children as creditors to compete with powerful creditors, such as credit card issuers, to collect their claims after bankruptcy. In other words, the bill divides the pie into more pieces, leaving less for women and children who are owed child support and alimony. I urge all my colleagues to oppose H.R. 333 for this reason.

Mr. SMITH of Michigan. Mr. Chairman, my amendment is a simple one. It would raise the aggregate debt level a family farmer could have and qualify for Chapter 12 bankruptcy. Currently, the limit is set at $1,500,000, which was the original limit set in 1986 when Chapter 12 was created. It has not been raised since then although CPI–U has increased approximately 43 percent. With the increase in land and equipment values the debt level needs to be increased to accommodate family farmers.

It's important for farmers to be able to qualify for Chapter 12. Chapter 11 is for larger corporations and is very costly and requires that all creditors be paid off, which is typically impossible for a farmer. Chapter 13, on the other hand, can't be used by corporate entities, has low debt levels and doesn't provide for rewrites of debt, which is typical in a farm bankruptcy.

H.R. 333 does provide that Chapter 12's aggregate debt limit will be indexed starting this year. But this ignores the deterioration of the debt level's value from 1986 through 2001. My amendment takes into account this change in the CPI since then and adjusts the debt limit accordingly. The Senate has included this provisions in their bill and I am assured the increase will be in the final version we send to the President.

Mr. CROWLEY. Mr. Chairman, I rise in strong support for H.R. 333, The Bankruptcy Abuse Prevention and Consumer Protection Act of 2001. This legislation represents a good, commonsense approach towards tackling the important yet complicated issues surrounding the issue of bankruptcy.

While the United States has undergone the greatest period of economic expansion in American history, in contrast, our nation has also witnessed over 1 million bankruptcy filings in each of the past five years. The facts show that in 1997 the consumer bankruptcy rate filing hit a record level of 1.3 million with $40 billion in consumer debt discharged. It is estimated that bankruptcy discharges cost each American household $400 a year and cost retailers billions. And recent trends demonstrate that our Nation—and our economy—can expect even more bankruptcies in the coming years. Ultimately, consumers pay the price for the surge in bankruptcy filings.

Last year, working in a bipartisan fashion, the House of Representatives passed basically this same legislation on an overwhelming vote of 318 to 108. The fundamental issue that drove Congress to pass this bill in the 106th Congress, and hopefully again today is—Why should consumers who work hard and pay their bills on time be forced to pick up the check for those who can afford to repay their debts, but instead choose to walk away and burden others with their responsibilities?

A few days ago, representatives from a number of credit unions came to my office, including Alan Kaufmann of the Melrose Credit Union in Woodside, Queens in my Congressional District. He detailed about how the hard working, middle class people of his credit union—and of my district—continually have to pick up the tab for those who file bankruptcy—whether legitimately, as many do, or irresponsibly, as far too many do.

In advocating for this legislation, I stress several key components of this bill: This legislation places child and family support first in bankruptcy—above all other claims. Let me repeat, this bankruptcy reform legislation recognizes that no obligation is more important than that of a parent to his or her children. This bill includes 9 provisions designed to strengthen protections for child support and alimony payments. Family and child support obligations come first—no ifs, ands or buts.

Second, this legislation will assist those that have filed for bankruptcy by assisting those people to pay their bills on time as well as create a new program about financial education. In fact, this bill creates a Debtors Bill of Rights. Specifically, H.R. 333 provides for new disclosures which bankruptcy petition preparers and attorneys who represent debtors must provide their customers or clients. This ensures that debtors are better informed about the nature and scope of bankruptcy, the different remedies available, and the significance of bankruptcy on an individual's personal financial affairs. The intent is also to allow debtors to better negotiate with their attorneys about fees and services provided.

Most importantly, this bill mandates personal responsibility. As I stated earlier, even in the booming economy of the mid and late 1990's—America saw record numbers of new bankruptcy filers. All of this costs tens of billions of dollars, and these losses by companies are passed directly onto Americans—Americans who pay their debts, use their credit cards responsibly and balance their checkbooks. These people should not be held responsible for bad debtors—but they are currently, and this is wrong.

As a believer in personal responsibility and working to protect the working and middle class residents I represent in Queens and the Bronx, I support this legislation. Responsible borrowers should not be paying the price for bankruptcy abuse—and too many of my constituents—hard working, middle class people—are paying for the sins of others.

I believe that individuals with the means to repay some or all of their debt should be required to meet their financial obligations and not pass their debts onto society. Only those who truly cannot repay their debts should be bale to immediately discharge all of their debts under Chapter 7—and this bill protects those people who are in greatest need of bankruptcy protection.

This is a good bill, it promotes personal responsibility and tightens up our current laws. Families and children are protected; consumers are protected; our local credit unions are protected and most important, hard working Americans who pay their bills and balance their household budgets are protected.

I ask for the support of all of my colleagues for this commonsense legislation.

Mr. BENTSEN. Mr. Chairman, I rise today in support of H.R. 333, the ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2001.''

Mr. Chairman, for most people, the decision to file for bankruptcy protection is made with a heavy heart when all hope of managing one's personal finances has disappeared. Most consumers who file for bankruptcy are working families who have experienced a catastrophic event such as illness, job loss, or a recent divorce. The decision to file for bankruptcy is not one easily reached. It is the ultimate public statement of financial failure and a cry for help.

However, there are some with average or higher incomes who have exploited our bankruptcy laws to walk away from debt that they have the means to repay. H.R. 333 is virtually identical to H.R. 2415, legislation that passed both Houses in the 106th Congress. The main feature of this bill is the application of a means test to bar such individuals from filing for bankruptcy under Chapter 7—a section of the bankruptcy code that allows the debtor to escape liability for unsecured debts, such as credit card bills.

Though the number of personal bankruptcy filings skyrocketed in the past two decades, reaching a record of 1.44 million in 1998, recent statistics tell another story. However, in the past two years, bankruptcy filings have declined. Total filings first dropped 8.5 percent, to 1.32 million in 1999 and then another 5 percent, in 2000, to 1.25 million. With the number of consumer filings falling, the question emerges, is bankruptcy reform still necessary? I believe it is.

While most people treat bankruptcy as a last resort, there are some debtors that seek to exploit our current bankruptcy laws to simply walk away from consumer debt. This even-handed measure establishes a means test for debtors to determine their eligibility for bankruptcy relief, based on the ability to repay debt under Chapter 13. Moreover, this legislation protects those low-income consumers who need a fresh start by allowing them to discharge their debts and rebuild their lives. Additionally, under H.R. 333, creditors also would receive unprecedented fair treatment. Under H.R. 333, all debts, secured or unsecured, are treated equally under bankruptcy law.

Mr. Chairman, I am very pleased that H.R. 333's $100,000 federal homestead cap (indexed for inflation) would only preempt state law if the homeowner file for bankruptcy protection within two years of establishing their initial homestead in the state, unless the value in excess of that amount occurs from a transfer of residences within the same state. Thus, any individual who has an existing homestead in Texas for two or more years would not be subject to the cap nor would they, anytime they moved within the state.

The Texas Homestead Law is a critical part of the Texas Constitution and is part of the history of Texas. The Texas Homestead Law was designed to protect settlers in Texas and to prevent the sale of their home for payment of debts. Sam Houston, one of the original founders of the Republic of Texas, was a strong proponent of including the Texas Homestead Act in the Texas Constitution because he had personal experience with declaring bankruptcy. In his former residence of Tennessee, he and his family lost everything. Sam Houston wanted to make sure that future Texans would not suffer the same humiliation.

H.R. 333 respects the Texas Homestead Act. I would not support any measure that would not do so. I have worked with others who represent Texas, including Senator KAY BAILEY HUTCHISON, to ensure that Texans retain their homestead exemption. In 1999, during consideration of an earlier version of this bill by the House, Representative BENTSEN successfully authored an amendment allowing states to opt out of the federal law placing a cap on the amount of equity protected by state homestead laws. The Bentsen amendment allows states to opt out of any federal cap. This language was amended in the Senate to create a two-year residency requirement before one's homestead is exempt from the cap. H.R. 333 maintains the Senate language, protecting the vast majority of Texas homeowners.

Mr. Chairman, while this legislation is not perfect, I believe it has some important provisions, including expanding the disclosure requirements under the Truth and Lending Act with respect to several types of credit plans and prohibiting retroactive finance charges with respect to open-ended credit card accounts. Therefore, Mr. Chairman, I urge passage of H.R. 333.

Mr. KINGSTON. Mr. Chairman, I have been a strong supporter of this bill throughout its formulation. Despite the healthy economy these past few years, people are still going bankrupt in record numbers. This legislation included some much needed reforms in the area of bankruptcies, especially in terms of personal credit.

I have also been very actively engaged in a section of this bill which deals with bankruptcy judges. In 1998, there were over 26,000 bankruptcy cases filed in the Southern and Middle Judicial Districts of Georgia alone, with only one shared judge to manage this tremendous volume. I fought hard to ensure that this bill would establish a new judgeship in the Southern Judicial District, which is the 7th busiest in the United States. The new judgeship would benefit most of the state, spanning five congressional districts, covering 3 million people.

Finally, I would like to thank Chairman GEKAS for his hard work in this area, and for the work of Alan on his personal staff, and Susan on the committee staff. Without everyone's team effort in dealing with this legislation, we would not have been successful.

Mr. COSTELLO. Mr. Chairman, I rise today in support of H.R. 333. Consumer bankruptcy filings have increased over the past two decades, peaking at 1.44 million in 1998. Flaws in the bankruptcy law allow individuals to walk away from their debts, regardless of whether they are able to pay a portion of them. H.R. 333 offers a fresh start to those overwhelmed by debt and financial obligations, while also ensuring that debtors with financial means to pay a portion of their debt will have to do so.

I believe this legislation is a good start at consumer protection from predatory credit card companies. Credit card companies need to be held responsible for continued aggressive credit card marketing. The bill includes new safeguards against abusive reaffirmation agreements, new credit card disclosure specifications, and requirements that credit card companies provide explanatory statements on introductory interest rates and minimum payments.

In addition, I support this bill because it considers domestic support obligations, such as alimony and child support, as priority debts. These debts are nondischargeable, meaning they must be paid, regardless of whether an individual files under Chapter 7 or Chapter 13. This legislation raised the priority of domestic support obligations from seventh to first, thereby granting greater protection to child and domestic support.

Mr. Chairman, it is important to ensure bankruptcy protection is available to those who truly need it. This legislation provides such protections, places a higher priority on domestic support obligations, and offers some consumer protection from credit card companies. For these reasons, I support this legislation.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. All time for general debate has expired.

Pursuant to the rule, the amendments printed in the bill are adopted and the bill, as amended, is considered read for amendment under the 5-minute rule.

The text of H.R. 333, as amended, is as follows:

H.R. 333

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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

(a) SHORT TITLE.—This Act may be cited as the ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2001''.

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

TITLE I—NEEDS-BASED BANKRUPTCY

SEC. 101. CONVERSION.

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

SEC. 102. DISMISSAL OR CONVERSION.

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

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

"§ 707. Dismissal of a case or conversion to a case under chapter 11 or 13";

and

(2) in subsection (b)—

(A) by inserting ''(1)'' after ''(b)'';

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

(i) in the first sentence—

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

(II) by inserting '', or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title,'' after ''consumer debts''; and

(III) by striking ''a substantial abuse'' and inserting ''an abuse''; and

(ii) by striking the next to last sentence; and

(C) by adding at the end the following:

''(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income 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 $6,000, whichever is greater; or

''(II) $10,000.

''(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act (42 U.S.C. 10408), or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

''(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, and siblings of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case) who is not a dependent and who is unable to pay for such reasonable and necessary expenses.

''(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

''(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child under the age of 18 years up to $1,500 per year per child to attend a private elementary or secondary school, if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary.

''(iii) The debtor's average monthly payments on account of secured debts shall be calculated as—

''(I) the sum of—

''(aa) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

''(bb) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts; 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 only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

''(ii) 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 expense or adjustment to income; and

''(bb) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

''(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

''(iv) The presumption of abuse may only 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) when multiplied by 60 to be less than the lesser of—

''(I) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

''(II) $10,000.

''(C) 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.

''(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 demonstrates abuse.

''(4)(A) The court shall order the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion brought under section 707(b), including reasonable attorneys' fees, if—

''(i) a trustee appointed under section 586(a)(1) of title 28 or from a panel of private trustees maintained by the bankruptcy administrator 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 violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

''(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, 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 trustee, the United States trustee, or the bankruptcy administrator.

''(C) In the case of a petition, pleading, or written motion, the signature of an attorney shall constitute a certification that the attorney has—

''(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

''(ii) determined that the petition, pleading, or written motion—

''(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).

''(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

''(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion brought by a party in interest (other than a trustee, United States trustee, or bankruptcy administrator) under this subsection 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 violated rule 9011 of the Federal Rules of Bankruptcy Procedure; 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 small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

''(C) For purposes of this paragraph—

''(i) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(I) has less than 25 full-time employees as determined on the date the motion is filed; and

''(II) is engaged in commercial or business activity; and

''(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(I) a parent corporation; and

''(II) any other subsidiary corporation of the parent corporation.

''(6) Only the judge, United States trustee, or bankruptcy administrator may bring a motion under section 707(b), if the current

monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4.

''(7) No judge, United States trustee, panel trustee, bankruptcy administrator or other party in interest may bring a motion under paragraph (2), if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4.''.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (10) the following:

''(10A) '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 6-month period preceding the date of determination; and

''(B) includes any amount paid by any 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), but excludes benefits received under the Social Security Act and payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;''.

(c) UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR DUTIES.—Section 704 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The trustee shall—''; and

(2) by adding at the end the following:

''(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 after the date of 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 the date of filing a statement under paragraph (1), either 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 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) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census; or

''(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census.

''(3) In any case in which a motion to dismiss or convert, or a statement is required to be filed by this subsection, the United States trustee or bankruptcy administrator may decline to file a motion to dismiss or convert pursuant to section 704(b)(2) if the product of the debtor's current monthly income multiplied by 12 exceeds 100 percent, but does not exceed 150 percent of—

''(A)(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census; or

''(ii) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; and

''(B) the product of the debtor's current monthly income, reduced by the amounts determined under section 707(b)(2)(A)(ii) (except for the amount calculated under the other necessary expenses standard issued by the Internal Revenue Service) and clauses (iii) and (iv) of section 707(b)(2)(A), multiplied by 60 is less than the lesser of—

''(i) 25 percent of the debtor's nonpriority unsecured claims in the case or $6,000, whichever is greater; or

''(ii) $10,000.''.

(d) NOTICE.—Section 342 of title 11, United States Code, is amended by adding at the end the following:

''(d) In an individual case under chapter 7 in which the presumption of abuse is triggered under section 707(b), the clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the petition that the presumption of abuse has been triggered.''.

(e) NONLIMITATION OF INFORMATION.—Nothing in this title shall limit the ability of a creditor to provide information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee, bankruptcy administrator or trustee.

(f) DISMISSAL FOR CERTAIN CRIMES.—Section 707 of title 11, United States Code, as amended by this section, is amended by adding at the end the following:

''(c)(1) In this subsection—

''(A) the term 'crime of violence' has the meaning given that term in section 16 of title 18; and

''(B) the term 'drug trafficking crime' has the meaning given that term in section 924(c)(2) of title 18.

''(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victims dismiss a voluntary case filed by an individual debtor under this chapter if that individual was convicted of that crime.

''(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.''.

(g) CONFIRMATION OF PLAN.—Section 1325(a) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(7) the action of the debtor in filing the petition was in good faith;''.

(h) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, is amended—

(1) in paragraph (1)(B), by inserting ''to unsecured creditors'' after ''to make payments''; and

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

''(2) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

''(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date the petition is filed and for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

''(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

''(3) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4.''.

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

''707. Dismissal of a case or conversion to a case under chapter 11 or 13.''.

SEC. 103. SENSE OF CONGRESS AND STUDY.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service standards established to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of title 11, United States Code.

(b) STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the findings of the Director regarding the utilization of Internal Revenue Service standards for determining—

(A) the current monthly expenses of a debtor under section 707(b) of title 11, United States Code; and

(B) the impact that the application of such standards has had on debtors and on the bankruptcy courts.

(2) RECOMMENDATION.—The report under paragraph (1) may include recommendations for amendments to title 11, United States Code, that are consistent with the findings of the Director under paragraph (1).

SEC. 104. NOTICE OF ALTERNATIVES.

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

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

''(1) a brief description of—

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

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

''(2) statements specifying that—

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

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

SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

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

(b) TEST.—

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

(2) USE.—For an 18-month period beginning not later than 270 days after the date of enactment of this Act, such curriculum and materials shall be, for the 6 judicial districts selected under paragraph (1), used as the instructional course concerning personal financial management for purposes of section 111 of title 11, United States Code.

(c) EVALUATION.—

(1) IN GENERAL.—During the 18-month period referred to in subsection (b), the Director shall evaluate the effectiveness of—

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

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

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

SEC. 106. CREDIT COUNSELING.

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

''(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 180-day period preceding the date of filing of the petition of that individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) 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 bankruptcy administrator of the bankruptcy court of that district determines that the approved nonprofit budget and credit counseling agencies for that district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from that agency 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. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling service may be disapproved by the United States trustee or bankruptcy administrator at any time.

''(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 budget and credit counseling agency, 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, except that the court, for cause, may order an additional 15 days.''.

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

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

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

(3) by adding at the end the following:

''(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111.

''(12)(A) Paragraph (11) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of that district determines that the approved instructional courses are not adequate to service the additional individuals required to complete such instructional courses under this section.

''(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.''.

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

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

''(h) Subsection (g) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to 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.''.

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The debtor shall—''; and

(2) by adding at the end the following:

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

''(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and

''(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1).''.

(e) GENERAL PROVISIONS.—

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

''§ 111. Credit counseling services; financial management instructional courses

''(a) The clerk of each district shall maintain a publicly available list of—

''(1) credit counseling agencies that provide 1 or more programs described in section 109(h) currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable; and

''(2) instructional courses concerning personal financial management currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable.

''(b) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency or instructional course concerning personal financial management as follows:

''(1) The United States trustee or bankruptcy administrator shall have thoroughly reviewed the qualifications of the credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the programs or instructional courses which will be offered by such agency or provider, and may require an agency or provider of an instructional course which has sought approval to provide information with respect to such review.

''(2) The United States trustee or bankruptcy administrator shall have determined that the credit counseling agency or course of instruction fully satisfies the applicable standards set forth in this section.

''(3) When an agency or course of instruction is initially approved, such approval shall be for a probationary period not to exceed 6 months. An agency or course of instruction is initially approved if it did not appear on the approved list for the district under subsection (a) immediately prior to approval.

''(4) At the conclusion of the probationary period under paragraph (3), the United States trustee or bankruptcy administrator may only approve for an additional 1-year period, and for successive 1-year periods thereafter, any agency or course of instruction which has demonstrated during the probationary or subsequent period that such agency or course of instruction—

''(A) has met the standards set forth under this section during such period; and

''(B) can satisfy such standards in the future.

''(5) Not later than 30 days after any final decision under paragraph (4), that occurs either after the expiration of the initial probationary period, or after any 2-year period thereafter, an interested person may seek judicial review of such decision in the appropriate United States District Court.

''(c)(1) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters as relate to the quality, effectiveness, and financial security of such programs.

''(2) To be approved by the United States trustee or bankruptcy administrator, a credit counseling agency shall, at a minimum—

''(A) be a nonprofit budget and credit counseling agency, the majority of the board of directors of which—

''(i) are not employed by the agency; and

''(ii) will not directly or indirectly benefit financially from the outcome of a credit counseling session;

''(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

''(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

''(D) provide full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by the debtor and how such costs will be paid;

''(E) provide adequate counseling with respect to client credit problems that includes an analysis of their current situation, what brought them to that financial status, and how they can develop a plan to handle the problem without incurring negative amortization of their debts;

''(F) provide trained counselors who receive no commissions or bonuses based on the counseling session outcome, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

''(G) demonstrate adequate experience and background in providing credit counseling; and

''(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

''(d) The United States trustee or bankruptcy administrator shall only approve an instructional course concerning personal financial management—

''(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

''(A) trained personnel with adequate experience and training in providing effective instruction and services;

''(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such course of instruction;

''(C) adequate facilities situated in reasonably convenient locations at which such course of instruction is offered, except that such facilities may include the provision of such course of instruction or program by telephone or through the Internet, if the course of instruction or program is effective; and

''(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such course of instruction or program, including any evaluation of satisfaction of course of instruction or program requirements for each debtor attending such course of instruction or program, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee, bankruptcy administrator, or chief bankruptcy judge for the district in which such course of instruction or program is offered; and

''(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

''(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

''(B) is otherwise likely to increase substantially debtor understanding of personal financial management.

''(e) The District Court may, at any time, investigate the qualifications of a credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such credit counseling agencies. The District Court may, at any time, remove from the approved list under subsection (a) a credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

''(f) The United States trustee or bankruptcy administrator shall notify the clerk that a credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

''(g)(1) No credit counseling service may provide to a credit reporting agency information concerning whether an individual debtor has received or sought instruction concerning personal financial management from the credit counseling service.

''(2) A credit counseling service that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

''(A) any actual damages sustained by the debtor as a result of the violation; and

''(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.''.

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

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

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

''(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.

''(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.''.

SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY EXPENSES.

For purposes of section 707(b) of title 11, United States Code, as amended by this Act, the Director of the Executive Office for United States Trustees shall, not later than 180 days after the date of enactment of this Act, issue schedules of reasonable and necessary administrative expenses of administering a chapter 13 plan for each judicial district of the United States.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.

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

''(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based 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 described in section 111 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 prior to expiration of the 60-day period specified in paragraph (1)(B)(i).''.

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

''(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment plan between the debtor

and any creditor of the debtor created by an approved credit counseling agency.''.

SEC. 202. EFFECT OF DISCHARGE.

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

''(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title (including a plan of reorganization confirmed under chapter 11 of this title), unless the plan is dismissed, in default, or the creditor has not received payments required to be made under the plan 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) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

''(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

''(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

''(2) such act is in the ordinary course of business between the creditor and the debtor; and

''(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.''.

SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION PRACTICES.

(a) IN GENERAL.—Section 524 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (c), by striking paragraph (2) and inserting the following:

''(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;'';

(2) by adding at the end the following:

''(k)(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement, statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with the reaffirmation.

''(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms 'Amount Reaffirmed' and 'Annual Percentage Rate' shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases 'Before agreeing to reaffirm a debt, review these important disclosures' and 'Summary of Reaffirmation Agreement' may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms 'Amount Reaffirmed' and 'Annual Percentage Rate' must be used where indicated.

''(3) The disclosure statement required under this paragraph shall consist of the following:

''(A) The statement: 'Part A: Before agreeing to reaffirm a debt, review these important disclosures:';

''(B) Under the heading 'Summary of Reaffirmation Agreement', the statement: 'This Summary is made pursuant to the requirements of the Bankruptcy Code';

''(C) The 'Amount Reaffirmed', using that term, which shall be—

''(i) the total amount which the debtor agrees to reaffirm, and

''(ii) the total of any other fees or cost accrued as of the date of the disclosure statement.

''(D) In conjunction with the disclosure of the 'Amount Reaffirmed', the statements—

''(i) 'The amount of debt you have agreed to reaffirm'; and

''(ii) 'Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.'.

''(E) The 'Annual Percentage Rate', using that term, which shall be disclosed as—

''(i) if, at the time the petition is filed, the debt is open end credit as defined under the Truth in Lending Act (15 U.S.C. 1601 et seq.), then—

''(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)(5) and (6)), as applicable, as disclosed to the debtor in the most recent periodic statement prior to the agreement or, if no such periodic statement has been provided the debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

''(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

''(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the simple interest rate under subclause (II);

''(ii) if, at the time the petition is filed, the debt is closed end credit as defined under the Truth in Lending Act (15 U.S.C. 1601 et seq.), then—

''(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act (15 U.S.C. 1638(a)(4)), as disclosed to the debtor in the most recent disclosure statement given the debtor prior to the reaffirmation agreement with respect to the debt, or, if no such disclosure statement was provided the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

''(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

''(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

''(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act (15 U.S.C. 1601 et seq.), by stating 'The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.'.

''(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the obligations you are reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

''(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

''(i) by making the statement: 'Your first payment in the amount of $_____ is due on _____ but the future payment amount may be different. Consult your reaffirmation or credit agreement, as applicable.', and stating the amount of the first payment and the due date of that payment in the places provided;

''(ii) by making the statement: 'Your payment schedule will be:', and describing the repayment schedule with the number, amount and due dates or period of payments scheduled to repay the obligations reaffirmed to the extent then known by the disclosing party; or

''(iii) by describing the debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

''(I) The following statement: 'Note: When this disclosure refers to what a creditor 'may' do, it does not use the word 'may' to give the creditor specific permission. The word 'may' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirmation or what the law requires, talk to the attorney who helped you negotiate this agreement. If you don't have an attorney helping you, the judge will explain the effect of your reaffirmation when the reaffirmation hearing is held.'.

''(J)(i) The following additional statements:

'' 'Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

'' '1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

'' '2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

'' '3. If you were represented by an attorney during the negotiation of the reaffirmation agreement, the attorney must have signed the certification in Part C.

'' '4. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, you must have completed and signed Part E.

'' '5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

'' '6. If you were represented by an attorney during the negotiation of the reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

'' '7. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your agreement. The bankruptcy court must approve the agreement as consistent with your best interests, except that no court approval is required if the agreement is for a consumer debt secured by a mortgage, deed of trust, security deed or

other lien on your real property, like your home.

''`Your right to rescind a reaffirmation. You may rescind (cancel) your reaffirmation at any time before the bankruptcy court enters a discharge order or within 60 days after the agreement is filed with the court, whichever is longer. To rescind or cancel, you must notify the creditor that the agreement is canceled.

''`What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy. That means that if you default on your reaffirmed debt after your bankruptcy is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of the agreement in the future under certain conditions.

''`Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

''`What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A ''lien'' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.'.

''(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

''`6. If you were represented by an attorney during the negotiation of the reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.'.

''(4) The form of reaffirmation agreement required under this paragraph shall consist of the following:

''`Part B: Reaffirmation Agreement. I/we agree to reaffirm the obligations arising under the credit agreement described below.

''`Brief description of credit agreement:

''`Description of any changes to the credit agreement made as part of this reaffirmation agreement:

''`Signature: Date:

''`Borrower:

''`Co-borrower, if also reaffirming:

''`Accepted by creditor:

''`Date of creditor acceptance:'.

''(5)(A) The declaration shall consist of the following:

''`Part C: Certification by Debtor's Attorney (If Any).

''`I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor(s); (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

''`Signature of Debtor's Attorney: Date:'.

''(B) In the case of reaffirmations in which a presumption of undue hardship has been established, the certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

''(C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

''(6)(A) The statement in support of reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

''`Part D: Debtor's Statement in Support of Reaffirmation Agreement.

''`1. I believe this agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $_____, leaving $_____ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____.

''`2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

''(B) Where the debtor is represented by counsel and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(iv)), the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

''`I believe this agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'

''(7) The motion, which may be used if approval of the agreement by the court is required in order for it to be effective and shall be signed and dated by the moving party, shall consist of the following:

''`Part E: Motion for Court Approval (To be completed only where debtor is not represented by an attorney.). I (we), the debtor, affirm the following to be true and correct:

''`I am not represented by an attorney in connection with this reaffirmation agreement.

''`I believe this agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement above, and because (provide any additional relevant reasons the court should consider):

''`Therefore, I ask the court for an order approving this reaffirmation agreement.'.

''(8) The court order, which may be used to approve a reaffirmation, shall consist of the following:

''`Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.'.

''(9) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

''(A) such creditor retains a security interest in real property that is the debtor's principal residence;

''(B) such act is in the ordinary course of business between the creditor and the debtor; and

''(C) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.

''(l) Notwithstanding any other provision of this title:

''(1) A creditor may accept payments from a debtor before and after the filing of a reaffirmation agreement with the court.

''(2) A creditor may accept payments from a debtor under a reaffirmation agreement which the creditor believes in good faith to be effective.

''(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

''(m)(1) Until 60 days after a reaffirmation agreement is filed with the court (or such additional period as the court, after notice and hearing and for cause, orders before the expiration of such period), it shall be presumed that the reaffirmation agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of the reaffirmation agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation which identifies additional sources of funds to make the payments as agreed upon under the terms of the reaffirmation agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove the agreement. No agreement shall be disapproved without notice and hearing to the debtor and creditor and such hearing shall be concluded before the entry of the debtor's discharge.

''(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(iv)).''.

(b) LAW ENFORCEMENT.—

(1) IN GENERAL.—Chapter 9 of title 18, United States Code, is amended by adding at the end the following:

''§ 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

''(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. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

''(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, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

''(d) BANKRUPTCY PROCEDURES.—The bankruptcy courts shall establish procedures for referring any case which may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.''.

(2) CLERICAL AMENDMENT.—The analysis for chapter 9 of title 18, United States Code, is amended by adding at the end the following:

''158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules.''.

Subtitle B—Priority Child Support

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

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

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

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

''(14A) 'domestic support obligation' means a debt that accrues before or after the entry of an order for relief under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of 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, legal guardian, or responsible relative; 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, 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, legal guardian, or responsible relative of the child for the purpose of collecting the debt;''.

SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

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

(1) by striking paragraph (7);

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

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

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

(5) in paragraph (4), as redesignated—

(A) by striking ''Third'' and inserting ''Fourth''; and

(B) by striking the semicolon at the end and inserting a period;

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

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

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

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

''(1) First:

''(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of that person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

''(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date the petition was filed are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a government unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.''.

SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

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

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

(2) in section 1208(c)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.'';

(3) in section 1222(a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period, beginning on the date that the first payment is due under the plan, will be applied to make payments under the plan.'';

(4) in section 1222(b)—

(A) by redesignating paragraph (11) as paragraph (12); and

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

''(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims;'';

(5) in section 1225(a)—

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

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

(C) by adding at the end the following:

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

(6) in section 1228(a), in the matter preceding paragraph (1), by inserting '', and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for in the plan) have been paid'' after ''completion by the debtor of all payments under the plan'';

(7) in section 1307(c)—

(A) in paragraph (9), by striking ''or'' at the end;

(B) in paragraph (10), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.'';

(8) in section 1322(a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding in the end the following:

''(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.'';

(9) in section 1322(b)—

(A) in paragraph (9), by striking ''; and'' and inserting a semicolon;

(B) by redesignating paragraph (10) as paragraph (11); and

(C) inserting after paragraph (9) the following:

''(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and'';

(10) in section 1325(a) (as amended by this Act), by adding at the end the following:

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

(11) in section 1328(a), in the matter preceding paragraph (1), by inserting '', and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for in the plan) have been paid'' after ''completion by the debtor of all payments under the plan''.

SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) under subsection (a)—

''(A) of the commencement or continuation of a civil action or proceeding—

''(i) for the establishment of paternity;

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

''(iii) concerning child custody or visitation;

''(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

''(v) regarding domestic violence;

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

''(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order;

''(D) 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));

''(E) the reporting of overdue support owed by a 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));

''(F) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)) or under an analogous State law; or

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

SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

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

(1) in subsection (a)—

(A) by striking paragraph (5) and inserting the following:

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

(B) in paragraph (15)—

(i) by inserting ''to a spouse, former spouse, or child of the debtor and'' before ''not of the kind'';

(ii) by inserting ''or'' after ''court of record,''; and

(iii) by striking ''unless—'' and all that follows through the end of the paragraph and inserting a semicolon; and

(C) by striking paragraph (18); and

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

SEC. 216. CONTINUED LIABILITY OF PROPERTY.

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

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

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

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

(3) in subsection (g)(2), by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

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

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

SEC. 218. DISPOSABLE INCOME DEFINED.

(a) CONFIRMATION OF PLAN UNDER CHAPTER 12.—Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting ''or for a domestic support obligation that first becomes payable after the date on which the petition is filed'' after ''dependent of the debtor''.

(b) CONFIRMATION OF PLAN UNDER CHAPTER 13.—Section 1325(b)(2)(A) of title 11, United States Code, is amended by inserting ''or for a domestic support obligation that first becomes payable after the date on which the petition is filed'' after ''dependent of the debtor''.

SEC. 219. COLLECTION OF CHILD SUPPORT.

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

(1) in subsection (a)—

(A) in paragraph (8), by striking ''and'' at the end;

(B) in paragraph (9), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(10) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c); and''; and

(2) by adding at the end the following:

''(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, 666) 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;

''(III) the last recent known name and address of the debtor's employer; and

''(IV) 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) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) 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.''.

(b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—Section 1106 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking ''and'' at the end;

(B) in paragraph (7), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(8) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In any case described in subsection (a)(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, 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;

''(III) the last recent known name and address of the debtor's employer; and

''(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

''(aa) is not discharged under paragraph (2), (3), or (14) of section 523(a); or

''(bb) was reaffirmed by the debtor under section 524(c).

''(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) 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.''.

(c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—Section 1202 of title 11, United States Code, is amended—

(1) in subsection (b)—

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

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

(C) by adding at the end the following:

''(6) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(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, 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;

''(III) the last recent known name and address of the debtor's employer; and

''(IV) 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 (14) of section 523(a); or

''(bb) was reaffirmed by the debtor under section 524(c).

''(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) 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.''.

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

(1) in subsection (b)—

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

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

(C) by adding at the end the following:

''(6) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (d).''; and

(2) by adding at the end the following:

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

''(A)(i) notify in writing the holder of the claim of the right of 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, 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 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;

''(III) the last recent known name and address of the debtor's employer; and

''(IV) 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 (14) of section 523(a); or

''(bb) was reaffirmed by the debtor under section 524(c).

''(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) 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.''.

SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.

Section 523(a) of title 11, United States Code, is amended by striking paragraph (8) and inserting the following:

''(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

''(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

''(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

''(B) any other educational loan that is a qualified education loan, as that term is defined in section 221(e)(1) of the Internal Revenue Code of 1986, incurred by an individual debtor;''.

Subtitle C—Other Consumer Protections

SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANKRUPTCY FILINGS.

Section 110 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by striking ''a person, other than an attorney or an employee of an attorney'' and inserting ''the attorney for the debtor or an employee of such attorney under the direct supervision of such attorney'';

(2) in subsection (b)—

(A) in paragraph (1), by adding at the end the following: ''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.''; and

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

''(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.'';

(3) in subsection (c)—

(A) in paragraph (2)—

(i) by striking ''(2) For purposes'' and inserting ''(2)(A) Subject to subparagraph (B), for purposes''; and

(ii) by adding at the end the following:

''(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.''; and

(B) by striking paragraph (3);

(4) in subsection (d)—

(A) by striking ''(d)(1)'' and inserting ''(d)''; and

(B) by striking paragraph (2);

(5) in subsection (e)—

(A) by striking paragraph (2); and

(B) by adding at the end the following:

''(2)(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.'';

(6) in subsection (f)—

(A) by striking ''(f)(1)'' and inserting ''(f)''; and

(B) by striking paragraph (2);

(7) in subsection (g)—

(A) by striking ''(g)(1)'' and inserting ''(g)''; and

(B) by striking paragraph (2);

(8) in subsection (h)—

(A) by redesignating paragraphs (1) through (4) as paragraphs (2) through (5), respectively;

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

''(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.'';

(C) in paragraph (2), as redesignated—

(i) by striking ''Within 10 days after the date of filing a petition, a bankruptcy petition preparer shall file a'' and inserting ''A'';

(ii) by inserting ''by the bankruptcy petition preparer shall be filed together with the petition,'' after ''perjury''; and

(iii) by adding at the end the following: ''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).'';

(D) by striking paragraph (3), as redesignated, and inserting the following:

''(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).''; and

(E) in paragraph (4), as redesignated, by striking ''or the United States trustee'' and inserting ''the United States trustee, the bankruptcy administrator, or the court, on the initiative of the court,'';

(9) in subsection (i)(1), by striking the matter preceding subparagraph (A) and inserting the following:

''(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on motion of the debtor, trustee, United States trustee, or bankruptcy administrator, 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—'';

(10) in subsection (j)—

(A) in paragraph (2)—

(i) in subparagraph (A)(i)(I), by striking ''a violation of which subjects a person to criminal penalty'';

(ii) in subparagraph (B)—

(I) by striking ''or has not paid a penalty'' and inserting ''has not paid a penalty''; and

(II) by inserting ''or failed to disgorge all fees ordered by the court'' after ''a penalty imposed under this section,'';

(B) by redesignating paragraph (3) as paragraph (4); and

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

''(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, the United States trustee, or the bankruptcy administrator.''; and

(11) by adding at the end the following:

''(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, the United States trustee, or the bankruptcy administrator may file a motion for an order imposing a fine on the bankruptcy petition preparer for each violation of this section.

''(4)(A) Fines imposed under this subsection in judicial districts served by United States trustees 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 subparagraph shall be available to fund the enforcement of this section on a national basis.

''(B) Fines imposed under this subsection in judicial districts served by bankruptcy administrators shall be deposited as offsetting receipts to the fund established under section 1931 of title 28, and shall remain available until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the operation and maintenance of the courts of the United States.''.

SEC. 222. SENSE OF CONGRESS.

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

SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.

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

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

SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

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

(ii) in subparagraph (B), by striking the period at the end and inserting ''; and'';

(iii) by adding at the end the following:

''(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.''; and

(iv) by striking ''(2)(A) any property'' and inserting:

''(3) Property listed in this paragraph is—

''(A) any property'';

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

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

(C) by striking ''(b) Notwithstanding'' and inserting ''(b)(1) Notwithstanding'';

(D) by striking ''paragraph (2)'' each place it appears and inserting ''paragraph (3)'';

(E) by striking ''paragraph (1)'' each place it appears and inserting ''paragraph (2)'';

(F) by striking ''Such property is—''; and

(G) by adding at the end the following:

''(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 under 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 under 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, under 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.''; and

(2) in subsection (d)—

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

(B) by adding at the end the following:

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

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

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

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

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

''(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under 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 chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;''; and

(4) by adding at the end of the flush material at the end of the subsection, the following: ''Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(18) 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, under—

''(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 chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title.

Nothing in paragraph (18) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

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

''(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute 'disposable income' under section 1325.''.

(e) ASSET LIMITATION.—Section 522 of title 11, United States Code, is amended by adding at the end the following:

''(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of that Code or a simple retirement account under section 408(p) of that Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,000,000 (which amount shall be adjusted as provided in section 104 of this title) in a case filed by an individual debtor, except that such amount may be increased if the interests of justice so require.''.

SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANKRUPTCY.

(a) EXCLUSIONS.—Section 541 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''or'' at the end;

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

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

''(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of filing of the petition, but—

''(A) only if the designated beneficiary of such account was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were placed in such account;

''(B) only to the extent that such funds—

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

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

''(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

''(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of filing of the petition, but—

''(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were paid or contributed;

''(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(7) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

''(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;''; and

(2) by adding at the end the following:

''(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).''.

SEC. 226. DEFINITIONS.

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

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

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

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

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

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

''(12A) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

''(A) any person that is an officer, director, employee or agent of that person;

''(B) a nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(C) a creditor of the person, to the extent that the creditor is assisting the person to restructure any debt owed by the person to the creditor;

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

''(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.''.

(b) CONFORMING AMENDMENT.—Section 104(b)(1) of title 11, United States Code, is amended by inserting ''101(3),'' after ''sections''.

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

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

''§ 526. Restrictions on debt relief agencies

''(a) A debt relief agency shall not—

''(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

''(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

''(i) the services that such agency will provide to such person; or

''(ii) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

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

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

''(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

''(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and hearing, to have—

''(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

''(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

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

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

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

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

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

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

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

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

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

''(d) No provision of this section, section 527, or section 528 shall—

''(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

''(2) be deemed to limit or curtail the authority or ability—

''(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

''(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.''.

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

''526. Debt relief enforcement.''.

SEC. 228. DISCLOSURES.

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

''§ 527. Disclosures

''(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

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

''(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

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

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

''(C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

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

''(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

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

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

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

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

'' 'If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so and a creditor is not permitted to coerce you into reaffirming your debts.

'' 'If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

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

'' 'Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.'.

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

''(1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2)) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;

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

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

''(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person.''.

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

''527. Disclosures.''.

SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.

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

''§ 528. Requirements for debt relief agencies

''(a) A debt relief agency shall—

''(1) not later than 5 business days after the first date such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously—

''(A) the services such agency will provide to such assisted person; and

''(B) the fees or charges for such services, and the terms of payment;

''(2) provide the assisted person with a copy of the fully executed and completed contract;

''(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

''(4) clearly and conspicuously using the following statement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.' or a substantially similar statement.

''(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public includes—

''(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement; and

''(B) statements such as 'federally supervised repayment plan' or 'Federal debt restructuring help' or other similar statements that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title.

''(2) An advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt shall—

''(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

''(B) include the following statement: 'We are a debt relief agency. We help people file

for bankruptcy relief under the Bankruptcy Code,' or a substantially similar statement.''.

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

''528. Debtor's bill of rights.''.

SEC. 230. GAO STUDY.

(a) STUDY.—Not later than 270 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of the feasibility, effectiveness, and cost of requiring trustees appointed under title 11, United States Code, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of cases by individual debtors under such title, the names and social security numbers of such debtors for the purposes of allowing such Office to determine whether such debtors have outstanding obligations for child support (as determined on the basis of information in the Federal Case Registry or other national database).

(b) REPORT.—Not later than 300 days after the date of enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report containing the results of the study required by subsection (a).

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

SEC. 301. REINFORCEMENT OF THE FRESH START.

Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking ''by a court'' and inserting ''on a prisoner by any court'',

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

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

SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.

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

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

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

(3) by adding at the end the following:

''(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 shall 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 subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; 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 of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

''(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.''.

SEC. 303. CURBING ABUSIVE FILINGS.

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

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

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

(3) by adding at the end the following:

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

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

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

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered 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 the date of entry of such order by the court, except that a debtor in a subsequent case may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (19), as added by this Act, the following:

''(20) 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;

''(21) 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;''.

SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521(a) (as so designated by this Act)—

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

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

(C) by adding at the end the following:

''(6) in an individual case under chapter 7 of this title, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured

in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

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

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

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) of this title is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee brought before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee.''; and

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

SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

Title 11, United States Code, is amended—

(1) in section 362—

(A) in subsection (c), by striking ''(e), and (f)'' inserting ''(e), (f), and (h)'';

(B) by redesignating subsection (h) as subsection (k); and

(C) by inserting after subsection (g) the following:

''(h)(1) In an individual case under chapter 7, 11, or 13, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2) of this title—

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

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

''(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the proceeding on the motion.''; and

(2) in section 521—

(A) in subsection (a)(2), as so designated by this Act, by striking ''consumer'';

(B) in subsection (a)(2)(B), as so designated by this Act—

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

(ii) by striking ''forty-five day'' and inserting ''30-day'';

(C) in subsection (a)(2)(C), as so designated by this Act, by inserting '', except as provided in section 362(h) of this title'' before the semicolon; and

(D) by adding at the end the following:

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

SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

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

''(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''.

(b) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, is amended by adding at the end the following flush sentence:

''For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt 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 1-year period preceding that filing.''.

(c) DEFINITIONS.—Section 101 of title 11, United States Code, as amended by this Act, is amended—

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

''(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, a mobile or manufactured home, or trailer;''; and

(2) by inserting after paragraph (27), the following:

''(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;''.

SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.

Section 522(b)(3)(A) of title 11, United States Code, as so designated by this Act, is amended—

(1) by striking ''180 days'' and inserting ''730 days''; and

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

SEC. 308. RESIDENCY REQUIREMENT FOR HOMESTEAD EXEMPTION.

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

(1) in subsection (b)(3)(A), as so designated by this Act, by inserting ''subject to subsections (o) and (p),'' before ''any property''; and

(2) by adding at the end the following:

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

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

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

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

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 7-year 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.''.

SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER 13 CASES.

(a) STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.—Section 348(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B)—

(A) by striking ''in the converted case, with allowed secured claims'' and inserting ''only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12''; and

(B) by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(C) with respect to cases converted from chapter 13—

''(i) the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the chapter 13 proceeding; and

''(ii) unless a prebankruptcy default has been fully cured 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.''.

(b) GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section 365 of title 11, United States

Code, is amended by adding at the end the following:

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

(c) ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.—

(1) CONFIRMATION OF PLAN.—Section 1325(a)(5)(B) of title 11, United States Code, is amended—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking ''or'' at the end and inserting ''and''; and

(C) by adding at the end the following:

''(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''.

(2) PAYMENTS.—Section 1326(a) of title 11, United States Code, is amended to read as follows:

''(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

''(A) proposed by the plan to the trustee;

''(B) scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment; and

''(C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

''(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. 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 and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

''(3) Subject to section 363, the court may, upon notice and a hearing, modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.

''(4) Not later than 60 days after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.''.

SEC. 310. LIMITATION ON LUXURY GOODS.

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

''(C)(i) for purposes of subparagraph (A)—

''(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.''.

SEC. 311. AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (21), as added by this Act, the following:

''(22) 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;

''(23) 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;

''(24) under subsection (a)(3), of eviction actions based on endangerment to property or person or the use of illegal drugs;

''(25) under subsection (a) of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;''.

SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

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

(2) in section 1328, by inserting after subsection (e) the following:

''(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502 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.''.

SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

(a) DEFINITION.—Section 522(f) of title 11, United States Code, is amended by adding at the end the following:

''(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 the toys and hobby equipment of minor dependent children and wedding rings) 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 dependents 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.''.

(b) STUDY.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing its findings regarding utilization of the definition of household goods, as defined in section 522(f)(4) of title 11, United States Code, as added by this section, with respect to the avoidance of nonpossessory, nonpurchase money security interests in household goods under section 522(f)(1)(B) of title 11, United States Code, and the impact that section 522(f)(4) of that title, as added by this section, has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to section 522(f)(4) of title 11, United States Code, consistent with the Director's findings.

SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE DEBTS.

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

''(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);''.

(b) DISCHARGE UNDER CHAPTER 13.—Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) provided for under section 1322(b)(5);

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

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

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

SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7 AND 13 CASES.

(a) NOTICE.—Section 342 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (c)—

(A) by inserting ''(1)'' after ''(c)'';

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

(C) by adding at the end the following:

''(2) If, within the 90 days prior to the date of the filing of a petition in a voluntary case, the creditor supplied the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which the creditor wishes to receive correspondence, then the debtor shall send any notice required under this title to the address provided by the creditor and such notice shall include the account number. In the event the creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if the creditor supplied the debtor in the last 2 communications with the current account number of the debtor and the address at which the creditor wishes to receive correspondence, then the debtor shall send any notice required under this title to the address provided by the creditor and such notice shall include the account number.''; and

(2) by adding at the end the following:

''(e) 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.

''(f) 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 (e) with respect to a particular case.

''(g)(1) 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. 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(k) 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.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (a), as so designated by this Act, by striking paragraph (1) and inserting the following:

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

''(i) a schedule of assets and liabilities;

''(ii) a schedule of current 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 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;

''(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

''(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;''; and

(2) by adding at the end the following:

''(e)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case, and the court shall make those documents available to the creditor who requests those documents.

''(2)(A) The debtor shall provide either a tax return or transcript at the election of the debtor, for the latest taxable period prior to filing for which a tax return has been or should have been filed, to the trustee, not later than 7 days before the date first set for the first meeting of creditors, or the case shall be dismissed, unless the debtor demonstrates that the failure to file a return as required is due to circumstances beyond the control of the debtor.

''(B) If a creditor has requested a tax return or transcript referred to in subparagraph (A), the debtor shall provide such tax return or transcript to the requesting creditor at the time the debtor provides the tax return or transcript to the trustee, or the case shall be dismissed, unless the debtor demonstrates that the debtor is unable to provide such information due to circumstances beyond the control of the debtor.

''(3)(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 request such plan—

''(i) at a reasonable cost; and

''(ii) not later than 5 days after such request.

''(f) An individual debtor in a case under chapter 7, 11, or 13 shall file with the court at the request of any party in interest—

''(1) at the time filed with the taxing authority, all tax returns required under applicable law, 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 required under applicable law, 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 of 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.

''(g)(1) A statement referred to in subsection (f)(4) shall disclose—

''(A) the amount and sources of income of the debtor;

''(B) the identity of any 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 subsection (e)(2)(A) and subsection (f) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).

''(h)(1) Not later than 180 days after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, 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 and 180 days after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, 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.

''(i) 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.''.

SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

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

''(j)(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.''.

SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

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

(1) by striking ''After'' and inserting the following:

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

(2) by adding at the end the following:

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

SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

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

''(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 5 years.

''(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.'';

(2) in section 1325(b)(1)(B), by striking ''three-year period'' and inserting ''applicable commitment period''; and

(3) in section 1325(b), as amended by this Act, by adding at the end the following:

''(4) For purposes of this subsection, the 'applicable commitment period'—

''(A) subject to subparagraph (B), shall be—

''(i) 3 years; or

''(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

''(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4; and

''(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.''; and

(4) in section 1329(c), by striking ''three years'' and inserting ''the applicable commitment period under section 1325(b)(1)(B)''.

SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such documents is—

(1) well grounded in fact; and

(2) warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

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

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

''(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

''(B) that 60-day period is extended—

''(i) by agreement of all parties in interest; or

''(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.''.

SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—

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

''§ 1115. Property of the estate

''(a) In a case concerning an individual debtor, property of the estate includes, in addition to the property specified in section 541—

''(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

''(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.''.

''(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, is amended by adding at the end of the matter relating to subchapter I the following:

''1115. Property of the estate.''.

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

(1) in paragraph (6), by striking ''and'' at the end;

(2) in paragraph (7), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(8) in a case concerning an individual, provide for the payment to creditors through the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.''.

(c) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(15) In a case concerning an individual in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

''(A) the value of the property to be distributed under the plan on account of such claim is, as of the effective date of the plan, not less than the amount of such claim; or

''(B) the value of the property to be distributed under the plan is not less than the debtor's projected disposable income (as that term is defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the term of the plan, whichever is longer.''.

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11, United States Code, is amended by inserting before the period at the end the following: '', except that in a case concerning an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14)''.

(d) EFFECT OF CONFIRMATION—Section 1141(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''The confirmation of a plan does not discharge an individual debtor'' and inserting ''A discharge under this chapter does not discharge a debtor''; and

(2) by adding at the end the following:

''(5) In a case concerning an individual—

''(A) except as otherwise ordered for cause shown, the discharge is not effective until completion of all payments under the plan; and

''(B) at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

''(i) for each allowed unsecured claim, the value, as of the effective date of the plan, of property actually distributed under the plan on account of that claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

''(ii) modification of the plan under 1127 of this title is not practicable.''.

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a case concerning an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

''(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

''(2) extend or reduce the time period for such payments; or

''(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

''(f)(1) Sections 1121 through 1128 of this title and the requirements of section 1129 of this title apply to any modification under subsection (a).

''(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125, as the court may direct, notice and a hearing, and such modification is approved.''.

SEC. 322. LIMITATION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548 of this title, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 2-year period preceding the filing of the petition which exceeds in the aggregate $100,000 in value in—

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

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

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

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

''(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of the 2-year period) into the debtor's current principal residence, where the debtor's previous and current residences are located in the same State.''.

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''522(d),'' and inserting ''522(d), 522(n), 522(p),''; and

(2) in paragraph (3), by striking ''522(d),'' and inserting ''522(d), 522(n), 522(p),''.

SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.

(a) IN GENERAL.—Section 541(b) of title 11, United States Code, is amended by inserting after paragraph (6), as added by this Act, the following:

''(7) any amount—

''(A) withheld by an employer from the wages of employees for payment as contributions to—

''(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, except that amount shall not constitute disposable income, as defined in section 1325(b)(2) of this title; or

''(ii) a health insurance plan regulated by State law whether or not subject to such title; or

''(B) received by the employer from employees for payment as contributions to—

''(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, except that amount shall not constitute disposable income, as defined in section 1325(b)(2) of this title; or

''(ii) a health insurance plan regulated by State law whether or not subject to such title;''.

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

SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLVING BANKRUPTCY PROFESSIONALS.

(a) IN GENERAL.—Section 1334 of title 28, United States Code, is amended—

(1) in subsection (b), by striking ''Notwithstanding'' and inserting ''Except as provided in subsection (e)(2), and notwithstanding''; and

(2) by striking subsection (e) and inserting the following:

''(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

''(1) of all the property, wherever located, of the debtor as of the date of commencement of such case, and of property of the estate; and

''(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.''.

(b) APPLICABILITY.—This section shall only apply to cases filed after the date of enactment of this Act.

SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.

(a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11, UNITED STATES CODE.—Section 1930(a) of title 28, United States Code, is amended by striking paragraph (1) and inserting the following:

''(1) For a case commenced—

''(A) under chapter 7 of title 11, $160; or

''(B) under chapter 13 of title 11, $150.''.

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 589a(b) of title 28, United States Code, is amended—

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

''(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

''(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;'';

(2) in paragraph (2), by striking ''one-half'' and inserting ''three-fourths''; and

(3) in paragraph (4), by striking ''one-half'' and inserting ''100 percent''.

(c) COLLECTION AND DEPOSIT OF MISCELLANEOUS BANKRUPTCY FEES.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking ''pursuant to 28 U.S.C. section 1930(b) and 33.87 per centum of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) and 25 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(3) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931'' and inserting ''under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title''.

SEC. 326. SHARING OF COMPENSATION.

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

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

SEC. 327. FAIR VALUATION OF COLLATERAL.

Section 506(a) of title 11, United States Code, is amended by—

(1) inserting ''(1)'' after ''(a)''; and

(2) by adding at the end the following:

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

SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

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

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking the semicolon at the end and inserting the following: ''other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of paragraph (b)(1);''; and

(B) in paragraph (2)(D), by striking ''penalty rate or provision'' and inserting ''penalty rate or penalty provision'';

(2) in subsection (c)—

(A) in paragraph (2), by inserting ''or'' at the end;

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

(C) by striking paragraph (4);

(3) in subsection (d)—

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

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

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

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

(1) in subparagraph (A), by inserting ''or of a kind that section 365(b)(2) of this title expressly does not require to be cured'' before the semicolon at the end;

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

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

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

''(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and''.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.

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

''(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission 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);''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (25), as added by this Act, the following:

''(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;''.

SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

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

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

SEC. 403. PROTECTION OF REFINANCE OF SECURITY INTEREST.

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

SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

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

''(4)(A) Subject to subparagraph (B), in any case under any chapter of this title, an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender 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)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days upon motion of the trustee or lessor for cause.

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

(b) EXCEPTION.—Section 365(f)(1) of title 11, United States Code, is amended by striking ''subsection'' the first place it appears and inserting ''subsections (b) and''.

SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

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

''(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change 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. The court may order the United States trustee to increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act (15 U.S.C. 632(a)(1))), if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.''.

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

''(3) A committee appointed under subsection (a) shall—

''(A) provide access to information for creditors who—

''(i) hold claims of the kind represented by that committee; and

''(ii) are not appointed to the committee;

''(B) solicit and receive comments from the creditors described in subparagraph (A); and

''(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).''.

SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended—

(1) by redesignating the second subsection designated as subsection (g) (as added by section 222(a) of Public Law 103–394) as subsection (i); and

(2) by adding at the end the following:

''(j)(1) Notwithstanding paragraphs (2) and (3) of section 545, 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, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, or any successor thereto.''.

SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.

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

(1) in paragraph (3)—

(A) by striking ''(A) In'' and inserting ''In''; and

(B) by inserting ''to an examiner, trustee under chapter 11, or professional person'' after ''awarded''; and

(2) by adding at the end the following:

''(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326 of this title.''.

SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.

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

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

SEC. 409. PREFERENCES.

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

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

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

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

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

(2) in paragraph (8), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

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

SEC. 410. VENUE OF CERTAIN PROCEEDINGS.

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

SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

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

(1) by striking ''On'' and inserting ''(1) Subject to paragraph (2), on''; and

(2) by adding at the end the following:

''(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 20 months after the date of the order for relief under this chapter.''.

SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

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

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

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

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

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

SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting at the end the following: ''Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.''.

SEC. 414. DEFINITION OF DISINTERESTED PERSON.

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

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

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

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

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

SEC. 415. FACTORS FOR COMPENSATION OF PROFESSIONAL PERSONS.

Section 330(a)(3) of title 11, United States Code, as amended by this Act, is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

''(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and''.

SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

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

(2) by adding at the end the following:

''(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election.

''(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.''.

SEC. 417. UTILITY SERVICE.

Section 366 of title 11, United States Code, is amended—

(1) in subsection (a), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)''; and

(2) by adding at the end the following:

''(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 30-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.''.

SEC. 418. BANKRUPTCY FEES.

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

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

(2) by adding at the end the following:

''(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such debtor has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term ''filing fee'' means the filing required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

''(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

''(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.''.

SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.

(a) IN GENERAL.—

(1) DISCLOSURE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing debtors under chapter 11 of title 11, United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) INFORMATION.—The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) PURPOSE.—The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

Subtitle B—Small Business Bankruptcy Provisions

SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

Section 1125 of title 11, United States Code, is amended—

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

(2) by striking subsection (f), and inserting the following:

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

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

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

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

''(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not 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.''.

SEC. 432. DEFINITIONS.

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

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

''(51D) 'small business debtor'—

''(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) 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 $3,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide 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 $3,000,000 (excluding debt owed to 1 or more affiliates or insiders);''.

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

SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

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

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

(2) economy and simplicity for debtors.

SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—

(1) IN GENERAL.—Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following:

''§ 308. Debtor reporting requirements

''(a) 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.

''(b) A small business debtor shall file periodic financial and other reports containing information including—

''(1) the debtor's profitability;

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

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

''(4)(A) 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 other required government filings and paying taxes and other administrative claims when due;

''(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

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

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

''308. Debtor reporting requirements.''.

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

SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

(2) the debtor's cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative claims when due.

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among—

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

(2) the small business debtor's interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's financial condition and plan the small business debtor's future.

SEC. 436. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Subchapter I of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''§ 1116. 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 not later than 7 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 and other required government filings; and

''(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

''(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.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, is amended by adding at the end of the matter relating to subchapter I the following:

''1116. Duties of trustee or debtor in possession in small business cases.''.

SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121 of title 11, United States Code, is amended by striking subsection (e) and inserting the following:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

''(A) extended as provided by this subsection, after notice and hearing; or

''(B) the court, for cause, orders otherwise;

''(2) the plan, and any necessary disclosure statement, shall be filed not later than 300 days after the date of the order for relief; and

''(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e), 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.''.

SEC. 438. PLAN CONFIRMATION DEADLINE.

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

''(e) In a small business case, the plan shall be confirmed not later than 175 days after the date of the order for relief, unless such 175-day period is extended as provided in section 1121(e)(3).''.

SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.

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

(1) in paragraph (3)—

(A) in subparagraph (G), by striking ''and'' at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

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

''(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and'';

(2) in paragraph (5), by striking ''and'' at the end;

(3) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(7) in each of such small business cases—

''(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—

''(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 1112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.''.

SEC. 440. SCHEDULING CONFERENCES.

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

(1) in the matter preceding paragraph (1), by striking '', may''; and

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

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''.

SEC. 441. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by this Act is amended—

(1) in subsection (k), as redesignated by this Act—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.''; and

(2) by adding at the end the following:

''(l)(1) Except as provided in paragraph (2) of this subsection, the provisions of subsection (a) do not apply in a case 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) This subsection does not apply—

''(A) to an involuntary case involving no collusion by the debtor with creditors; or

''(B) to the filing of a petition if—

''(i) the debtor proves by a preponderance of the evidence that 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

''(ii) 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.''.

SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

''(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, 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) a plan with a reasonable possibility of being confirmed will be filed within a reasonable period of time; and

''(B) the grounds include an act or omission of the debtor—

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

''(ii) that will be cured within a reasonable period of time fixed by the court.

''(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 not later than 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, the term '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 that poses a risk to the estate or to the public;

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

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

''(F) repeated 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 Procedure;

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

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

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

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

''(L) revocation of an order of confirmation under section 1144;

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

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

''(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

''(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.

''(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 not later than 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.''.

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

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

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

(3) by adding at the end the following:

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

SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED STATES CODE, WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11, United States Code, and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.

SEC. 444. PAYMENT OF INTEREST.

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

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

(2) by striking subparagraph (B) and inserting the following:

''(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''.

SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.

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

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or penalty provisions, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);''.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.

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

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

(1) by inserting ''(a)'' before ''A voluntary''; and

(2) by striking the last sentence and inserting the following:

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

SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting ''555, 556,'' after ''553,''; and

(2) by inserting ''559, 560, 561, 562'' after ''557,''.

TITLE VI—BANKRUPTCY DATA

SEC. 601. IMPROVED BANKRUPTCY STATISTICS.

(a) IN GENERAL.—Chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''§ 159. Bankruptcy statistics

''(a) The clerk of each district shall collect statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be on a standardized form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Director').

''(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, 2002, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

''(c) The compilation required under subsection (b) shall—

''(1) be itemized, by chapter, with respect to title 11;

''(2) be presented in the aggregate and for each district; and

''(3) include information concerning—

''(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

''(B) the current monthly income, average income, and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

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

''(D) the average period of time between the filing of the petition and the closing of the case;

''(E) for the reporting period—

''(i) the number of cases in which a reaffirmation was filed; and

''(ii)(I) the total number of reaffirmations filed;

''(II) of those cases in which a reaffirmation was filed, the number of cases in which the debtor was not represented by an attorney; and

''(III) of those cases in which a reaffirmation was filed, the number of cases in which the reaffirmation was approved by the court;

''(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

''(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

''(II) the number of final orders determining the value of property securing a claim issued;

''(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

''(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;

''(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

''(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's counsel or damages awarded under such Rule.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''159. Bankruptcy statistics.''.

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

SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Chapter 39 of title 28, United States Code, is amended by adding at the end the following:

''§ 589b. Bankruptcy data

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

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

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

''(b) REPORTS.—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 possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

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

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

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

''(3) appropriate privacy concerns and safeguards.

''(d) FINAL REPORTS.—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

''(1) information about the length of time the case was pending;

''(2) assets abandoned;

''(3) assets exempted;

''(4) receipts and disbursements of the estate;

''(5) expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 13 of title 11;

''(6) claims asserted;

''(7) claims allowed; and

''(8) distributions to claimants and claims discharged without payment,

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

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

''(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

''(2) length of time the case has been pending;

''(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

''(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

''(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

''(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

''(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.''.

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

''589b. Bankruptcy data.''.

SEC. 603. AUDIT PROCEDURES.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROCEDURES.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(2) PROCEDURES.—Those procedures required by paragraph (1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform those audits;

(B) 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;

(C) 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

(D) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

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

(1) in subsection (a), by striking paragraph (6) and inserting the following:

''(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001; and''; and

(2) by adding at the end the following:

''(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001.

''(2)(A) The report of each audit referred to in paragraph (1) 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 in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

''(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

''(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

''(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11.''.

(c) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as so designated by this Act, is amended in each of paragraphs (3) and (4) by inserting ''or an auditor appointed under section 586(f) of title 28'' after ''serving in the case''.

(d) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

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

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

(3) by adding at the end the following:

''(4) the debtor has failed to explain satisfactorily—

''(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

''(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.''.

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

SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of Congress that—

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

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

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

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

TITLE VII—BANKRUPTCY TAX PROVISIONS

SEC. 701. TREATMENT OF CERTAIN LIENS.

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

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

(2) in subsection (b)(2), by inserting ''(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)'' after ''507(a)(1)''; and

(3) by adding at the end the following:

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

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

''(2) in a manner consistent with section 506(c), 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)(4).

''(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).''.

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

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

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

(3) by adding at the end the following:

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

SEC. 702. TREATMENT OF FUEL TAX CLAIMS.

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

''(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement and, if so filed, shall be allowed as a single claim.''.

SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended—

(1) in the first sentence, by inserting ''at the address and in the manner designated in paragraph (1)'' after ''determination of such tax'';

(2) by striking ''(1) upon payment'' and inserting ''(A) upon payment'';

(3) by striking ''(A) such governmental unit'' and inserting ''(i) such governmental unit'';

(4) by striking ''(B) such governmental unit'' and inserting ''(ii) such governmental unit'';

(5) by striking ''(2) upon payment'' and inserting ''(B) upon payment'';

(6) by striking ''(3) upon payment'' and inserting ''(C) upon payment'';

(7) by striking ''(b)'' and inserting ''(2)''; and

(8) by inserting before paragraph (2), as so designated, the following:

''(b)(1)(A) The clerk of each district shall maintain a listing under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may—

''(i) designate an address for service of requests under this subsection; and

''(ii) describe where further information concerning additional requirements for filing such requests may be found.

''(B) If a governmental unit referred to in subparagraph (A) does not designate an address and provide that address to the clerk under that subparagraph, any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of that governmental unit.''.

SEC. 704. RATE OF INTEREST ON TAX CLAIMS.

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

''§ 511. Rate of interest on tax claims

''(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, 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 the rate determined under applicable nonbankruptcy law.

''(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 510 the following:

''511. Rate of interest on tax claims.''.

SEC. 705. PRIORITY OF TAX CLAIMS.

Section 507(a)(8) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by inserting ''for a taxable year ending on or before the date of filing of the petition'' after ''gross receipts'';

(B) in clause (i), by striking ''for a taxable year ending on or before the date of filing of the petition''; and

(C) by striking clause (ii) and inserting the following:

''(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; and

''(II) 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 90 days.''; and

(2) by adding at the end the following:

''An otherwise applicable time period specified in this paragraph shall be suspended for (i) any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result

of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus (ii) any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.''.

SEC. 706. PRIORITY PROPERTY TAXES INCURRED.

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking ''assessed'' and inserting ''incurred''.

SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 13.

Section 1328(a)(2) of title 11, United States Code, as amended by section 314 of this Act, is amended by striking ''paragraph'' and inserting ''section 507(a)(8)(C) or in paragraph (1)(B), (1)(C),''.

SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 11.

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

''(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt described in section 523(a)(2) or 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.''.

SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO PREPETITION TAXES.

Section 362(a)(8) of title 11, United States Code, is amended by striking ''the debtor'' and inserting ''a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning an individual debtor's tax liability for a taxable period ending before the order for relief under this title''.

SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

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

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by striking ''deferred cash payments,'' and all that follows through the end of the subparagraph, and inserting ''regular installment payments in cash—

''(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

''(ii) over a period ending not later than 5 years after the date of the entry of the order for relief under section 301, 302, or 303; and

''(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for in the plan (other than cash payments made to a class of creditors under section 1122(b)); and''; and

(3) by adding at the end the following:

''(D) with respect to a secured claim which would otherwise meet the description of 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).''.

SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 545(2) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: '', 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''.

SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Any''; and

(2) by adding at the end the following:

''(b) A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, 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, an order of 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.''.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B)(i) of title 11, United States Code, is amended by inserting ''whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both,'' before ''except''.

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by adding ''and'' at the end; and

(3) by adding at the end the following:

''(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;''.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting ''or State statute'' after ''agreement''; and

(2) in subsection (c), by inserting '', including the payment of all ad valorem property taxes with respect to the property'' before the period at the end.

SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.

Section 726(a)(1) of title 11, United States Code, is amended by striking ''before the date on which the trustee commences distribution under this section;'' and inserting the following: ''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;''.

SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (1)(B)—

(A) in the matter preceding clause (i), by inserting ''or equivalent report or notice,'' after ''a return,'';

(B) in clause (i), by inserting ''or given'' after ''filed''; and

(C) in clause (ii)—

(i) by inserting ''or given'' after ''filed''; and

(ii) by inserting '', report, or notice'' after ''return''; and

(2) by adding at the end the following:

''For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy 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 or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.''.

SEC. 715. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b)(2) of title 11, United States Code, as amended by this Act, is amended by inserting ''the estate,'' after ''misrepresentation,''.

SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.''.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—

(1) IN GENERAL.—Subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

''§ 1308. Filing of prepetition tax returns

''(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-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 meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor 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 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 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 is timely made, in accordance with 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 a preponderance of the 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 subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.''.

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

''1308. Filing of prepetition tax returns.''.

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

''(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.''.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by inserting before the period at the end the following '', 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 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required''.

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States should, as soon as practicable after the date of enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, an objection to the confirmation of a plan filed by a governmental unit on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed before such confirmation; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax with respect to which a return is required to be filed under section 1308 of title 11, United States Code, shall be filed until such return has been filed as required.

SEC. 717. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a)(1) of title 11, United States Code, is amended—

(1) by inserting ''including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case,'' after ''records''; and

(2) by striking ''a hypothetical reasonable investor typical of holders of claims or interests'' and inserting ''such a hypothetical investor''.

SEC. 718. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (26), as added by this Act, the following:

''(27) under subsection (a), of the setoff under applicable nonbankruptcy law 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, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, upon motion of the trustee and after notice and hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of that authority in the setoff under section 506(a);''.

SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.

(a) IN GENERAL.—Section 346 of title 11, United States Code, is amended to read as follows:

''§ 346. Special provisions related to the treatment of state and local taxes

''(a) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of such estate shall be taxed to or claimed by the estate, a separate taxable estate is also created for purposes of any State and local law imposing a tax on or measured by income and such income, gain, loss, deductions, and credits shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence shall not apply if the case is dismissed. The trustee shall make tax returns of income required under any such State or local law.

''(b) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax on or measured by income and may not be taxed to or claimed by the estate. The trustee shall make such tax returns of income of corporations and of partnerships as are required under any State or local law, but with respect to partnerships, shall make said returns only to the extent such returns are also required to be made under such Code. The estate shall be liable for any tax imposed on such corporation or partnership, but not for any tax imposed on partners or members.

''(c) With respect to a partnership or any entity treated as a partnership under a State or local law imposing a tax on or measured by income that is a debtor in a case under this title, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of any income, gain, loss, deduction, or credit of a partner or member that is distributed, or considered distributed, from such partnership, after the commencement of the case, is gain, loss, income, deduction, or credit, as the case may be, of the partner or member, and if such partner or member is a debtor in a case under this title, shall be subject to tax in accordance with subsection (a) or (b).

''(d) For purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor in a case under this title shall terminate only if and to the extent that the taxable period of such debtor terminates under the Internal Revenue Code of 1986.

''(e) The estate in any case described in subsection (a) shall use the same accounting method as the debtor used immediately before the commencement of the case, if such method of accounting complies with applicable nonbankruptcy tax law.

''(f) For purposes of any State or local law imposing a tax on or measured by income, a transfer of property from the debtor to the estate or from the estate to the debtor shall not be treated as a disposition for purposes of any provision assigning tax consequences to a disposition, except to the extent that such transfer is treated as a disposition under the Internal Revenue Code of 1986.

''(g) Whenever a tax is imposed pursuant to a State or local law imposing a tax on or measured by income pursuant to subsection (a) or (b), such tax shall be imposed at rates generally applicable to the same types of entities under such State or local law.

''(h) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld or collected was paid.

''(i)(1) To the extent that any State or local law imposing a tax on or measured by income provides for the carryover of any tax attribute from one taxable period to a subsequent taxable period, the estate shall succeed to such tax attribute in any case in which such estate is subject to tax under subsection (a).

''(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) to the extent consistent with the Internal Revenue Code of 1986.

''(3) The estate may carry back any loss or tax attribute to a taxable period of the debtor that ended before the order for relief under this title to the extent that—

''(A) applicable State or local tax law provides for a carryback in the case of the debtor; and

''(B) the same or a similar tax attribute may be carried back by the estate to such a taxable period of the debtor under the Internal Revenue Code of 1986.

''(j)(1) For purposes of any State or local law imposing a tax on or measured by income, income is not realized by the estate, the debtor, or a successor to the debtor by reason of discharge of indebtedness in a case under this title, except to the extent, if any, that such income is subject to tax under the Internal Revenue Code of 1986.

''(2) Whenever the Internal Revenue Code of 1986 provides that the amount excluded from gross income in respect of the discharge of indebtedness in a case under this title shall be applied to reduce the tax attributes of the debtor or the estate, a similar reduction shall be made under any State or local law imposing a tax on or measured by income to the extent such State or local law recognizes such attributes. Such State or local law may also provide for the reduction of other attributes to the extent that the full amount of income from the discharge of indebtedness has not been applied.

''(k)(1) Except as provided in this section and section 505, the time and manner of filing tax returns and the items of income, gain, loss, deduction, and credit of any taxpayer shall be determined under applicable nonbankruptcy law.

''(2) For Federal tax purposes, the provisions of this section are subject to the Internal Revenue Code of 1986 and other applicable Federal nonbankruptcy law.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 728 of title 11, United States Code, is repealed.

(2) Section 1146 of title 11, United States Code, is amended—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

(3) Section 1231 of title 11, United States Code, is amended—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX RETURNS.

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

''(k)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

''(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.''.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

''CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

''§ 1501. Purpose and scope of application

''(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

''(1) cooperation between—

''(A) United States courts, United States trustees, trustees, examiners, debtors, and debtors in possession; and

''(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

''(2) greater legal certainty for trade and investment;

''(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

''(4) protection and maximization of the value of the debtor's assets; and

''(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

''(b) This chapter applies where—

''(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

''(2) assistance is sought in a foreign country in connection with a case under this title;

''(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

''(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

''(c) This chapter does not apply to—

''(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 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, 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.

''(d) The court may not grant relief under this chapter 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.

''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;

''(7) 'recognition' means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter; and

''(8) 'within the territorial jurisdiction of the United States', when used with reference to property of a debtor, refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

''§ 1503. International obligations of the United States

''To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

''§ 1504. Commencement of ancillary case

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

''§ 1505. Authorization to act in a foreign country

''A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

''§ 1506. Public policy exception

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

''§ 1507. Additional assistance

''(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

''(1) just treatment of all holders of claims against or interests in the debtor's property;

''(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

''(3) prevention of preferential or fraudulent dispositions of property of the debtor;

''(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

''(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

"§ 1508. Interpretation

''In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

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

"§ 1509. Right of direct access

''(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.

''(b) If the court grants recognition under section 1515, and subject to any limitations that the court may impose consistent with the policy of this chapter—

''(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

''(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

''(3) a court in the United States shall grant comity or cooperation to the foreign representative.

''(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of an order granting recognition under section 1517.

''(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

''(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

''(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

"§ 1510. Limited jurisdiction

''The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

"§ 1511. Commencement of case under section 301 or 303

''(a) Upon recognition, a foreign representative may commence—

''(1) an involuntary case under section 303; or

''(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

''(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

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

''Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

"§ 1513. Access of foreign creditors to a case under this title

''(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

''(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

"§ 1514. Notification to foreign creditors concerning a case under this title

''(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

''(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.

''(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

''(1) indicate the time period for filing proofs of claim and specify the place for their filing;

''(2) indicate whether secured creditors need to file their proofs of claim; and

''(3) contain any other information required to be included in such a notification to creditors under this title and the orders of the court.

''(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

"§ 1515. Application for recognition

''(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) shall 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 granting recognition

''(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

''(1) the foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

''(2) the foreign representative applying for recognition is a person or body as defined in section 101; and

''(3) the petition meets the requirements of section 1515.

''(b) The foreign proceeding shall be recognized—

''(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

''(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. The case under this chapter may be closed in the manner prescribed under section 350.

"§ 1518. Subsequent information

''From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

''(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

''(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

"§ 1519. Relief that may be granted upon filing petition for recognition

''(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that,

by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

''(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

''(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.

''(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (28) of section 362(b) or pursuant to section 362(l) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

''§ 1520. Effects of recognition of a foreign main proceeding

''(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

''(1) sections 361 and 362 apply with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;

''(2) sections 363, 549, and 552 of this title apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

''(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

''(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

''(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

''(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

''§ 1521. Relief that may be granted upon recognition

''(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

''(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

''(6) extending relief granted under section 1519(a); and

''(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

''(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

''(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (28) of section 362(b) or pursuant to section 362(l) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

''§ 1522. Protection of creditors and other interested persons

''(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.

''(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

''(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

''§ 1523. Actions to avoid acts detrimental to creditors

''(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

''(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

''§ 1524. Intervention by a foreign representative

''Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

''§ 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives

''(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

''(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

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

''(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

''(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

''§ 1527. Forms of cooperation

''Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

''(1) appointment of a person or body, including an examiner, to act at the direction of the court;

''(2) communication of information by any means considered appropriate by the court;

''(3) coordination of the administration and supervision of the debtor's assets and affairs;

''(4) approval or implementation of agreements concerning the coordination of proceedings; and

''(5) coordination of concurrent proceedings regarding the same debtor.

''SUBCHAPTER V—CONCURRENT PROCEEDINGS

''§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding

''After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

''§ 1529. Coordination of a case under this title and a foreign proceeding

''If 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 laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

''§ 1530. Coordination of more than 1 foreign proceeding

''In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

''(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

''(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

''§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding

''In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

''§ 1532. Rule of payment in concurrent proceedings

''Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.''.

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

''15. Ancillary and Other Cross-Border Cases ..... 1501''.

SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: '', and this chapter, sections 307, 362(l), 555 through 557, and 559 through 562 apply in a case under chapter 15''; and

(2) by adding at the end the following:

''(j) Chapter 15 applies only in a case under such chapter, except that—

''(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

''(2) section 1509 applies whether or not a case under this title is pending.''.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

''(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

''(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;''.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ''and'' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.''.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking ''Nothing in'' and inserting ''Except with respect to a case under chapter 15 of title 11, nothing in''.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by striking ''or 13'' and inserting ''13, or 15,''.

(4) VENUE OF CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Section 1410 of title 28, United States Code, is amended to read as follows:

''§ 1410. Venue of cases ancillary to foreign proceedings

''A case under chapter 15 of title 11 may be commenced in the district court for the district—

''(1) in which the debtor has its principal place of business or principal assets in the United States;

''(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

''(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.''.

(d) OTHER SECTIONS OF TITLE 11.—

(1) Section 109(b)(3) of title 11, United States Code, is amended to read as follows:

''(3)(A) a foreign insurance company, engaged in such business in the United States; or

''(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101) in the United States.''.

(2) Section 303(k) of title 11, United States Code, is repealed.

(3)(A) Section 304 of title 11, United States Code, is repealed.

(B) The table of sections at the beginning of chapter 3 of title 11, United States Code, is amended by striking the item relating to section 304.

(C) Section 306 of title 11, United States Code, is amended by striking '', 304,'' each place it appears.

(4) Section 305(a)(2) of title 11, United States Code, is amended to read as follows:

''(2)(A) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted; and

''(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.''.

(5) Section 508 of title 11, United States Code, is amended—

(A) by striking subsection (a); and

(B) in subsection (b), by striking ''(b)''.

TITLE IX—FINANCIAL CONTRACT PROVISIONS

SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by inserting '', resolution, or order'' after ''any similar agreement that the Corporation determines by regulation''.

(b) DEFINITION OF SECURITIES CONTRACT.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement

provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.''.

(c) DEFINITION OF COMMODITY CONTRACT.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.''.

(d) DEFINITION OF FORWARD CONTRACT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV).''.

(e) DEFINITION OF REPURCHASE AGREEMENT.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V).

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).''.

(f) DEFINITION OF SWAP AGREEMENT.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

''(II) any agreement or transaction similar to any other agreement or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (I), (II), (III), (IV), or (V).

Such term is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations promulgated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.''.

(g) DEFINITION OF TRANSFER.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and

foreclosure of the depository institutions's equity of redemption.''.

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (A)—

(A) by striking ''paragraph (10)'' and inserting ''paragraphs (9) and (10)'';

(B) in clause (i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration''; and

(C) by striking clause (ii) and inserting the following:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''; and

(2) in subparagraph (E), by striking clause (ii) and inserting the following:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''.

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States (12 U.S.C. 91) or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Corporation''.

SEC. 902. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking ''other than paragraph (12) of this subsection, subsection (d)(9)'' and inserting ''other than subsections (d)(9) and (e)(10)''; and

(2) by adding at the end the following new subparagraphs:

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting ''or the exercise of rights or powers by'' after ''the appointment of''.

SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

''(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

''(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

''(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

''(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

''(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

''(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

''(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

''(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contract and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

''(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

''(D) DEFINITION.—For purposes of this paragraph, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution.''.

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking ''the conservator'' and all that follows through the period and inserting the following: ''the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.''.

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or sections 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

''(i) A bridge bank.

''(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

''(I) immediately upon the organization of the institution; or

''(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.''.

SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively; and

(2) by inserting after paragraph (10) the following new paragraph:

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the depository institution in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).''.

SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

''(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.''.

SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon '', or is exempt from such registration by order of the Securities and Exchange Commission''; and

(B) in subparagraph (B), by inserting before the period ''or that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act'';

(2) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

''(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;''; and

(C) by amending subparagraph (C) (as redesignated) to read as follows:

''(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;'';

(3) in paragraph (11), by inserting before the period ''and any other clearing organization with which such clearing organization has a netting contract'';

(4) by amending paragraph (14)(A)(i) to read as follows:

''(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or closeout values relating to such obligations or entitlements) among the parties to the agreement; and''; and

(5) by adding at the end the following new paragraph:

''(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.''.

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as 407A; and

(2) by inserting after section 406 the following new section:

''SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.

''(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, except that for such purpose—

''(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency;

''(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency; and

''(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank or an uninsured Federal branch or Federal agency.

''(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank or uninsured Federal branch or agency shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

''(c) REGULATORY AUTHORITY.—

''(1) IN GENERAL.—The Comptroller of the Currency, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations to implement this section.

''(2) SPECIFIC REQUIREMENT.—In promulgating regulations to implement this section, the Comptroller of the Currency shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

''(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meanings as in section 1(b) of the International Banking Act of 1978.''.

SEC. 907. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking ''means a contract'' and inserting ''means—

''(A) a contract'';

(ii) by striking '', or any combination thereof or option thereon;'' and inserting '', or any other similar agreement;''; and

(iii) by adding at the end the following:

''(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

''(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

''(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with

all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

''(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), but not to exceed the actual value of such contract on the date of the filing of the petition;'';

(B) in paragraph (46), by striking ''on any day during the period beginning 90 days before the date of'' and inserting ''at any time before'';

(C) by amending paragraph (47) to read as follows:

''(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(A) means—

''(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as 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 securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

''(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

''(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

''(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

''(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), but not to exceed the actual value of such contract on the date of the filing of the petition; and

''(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;'';

(D) in paragraph (48), by inserting '', or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission,'' after ''1934''; and

(E) by amending paragraph (53B) to read as follows:

''(53B) 'swap agreement'—

''(A) means—

''(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is an interest rate swap, option, future, or forward agreement, including—

''(I) 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;

''(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

''(VIII) a weather swap, weather derivative, or weather option;

''(ii) any agreement or transaction similar to any other agreement or transaction referred to in this paragraph that—

''(I) is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference therein); and

''(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

''(iii) any combination of agreements or transactions referred to in this subparagraph;

''(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

''(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

''(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), but not to exceed the actual value of such contract on the date of the filing of the petition; and

''(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.'';

(2) in section 741(7), by striking paragraph (7) and inserting the following:

''(7) 'securities contract'—

''(A) means—

''(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

''(ii) any option entered into on a national securities exchange relating to foreign currencies;

''(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

''(iv) any margin loan;

''(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

''(vi) any combination of the agreements or transactions referred to in this subparagraph;

''(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

''(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

''(ix) any security agreement or arrangement or other credit enhancement, related to any agreement or transaction referred to in this 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 any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan.''; and

(3) in section 761(4)—

(A) by striking ''or'' at the end of subparagraph (D); and

(B) by adding at the end the following:

''(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

''(G) any combination of the agreements or transactions referred to in this paragraph;

''(H) any option to enter into an agreement or transaction referred to in this paragraph;

''(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

''(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition;''.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (22) the following:

''(22A) 'financial participant' means an entity that, at the time it enters into a securities contract, commodity contract, or forward contract, or at the time of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) 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 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 one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period;''; and

(2) by striking paragraph (26) and inserting the following:

''(26) '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 which is presently or in the future becomes the subject of dealing in the forward contract trade;''.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

''(38A) 'master netting agreement'—

''(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 one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing; and

''(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a);

''(38B) 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;''.

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by this Act, is amended—

(A) in paragraph (6), by inserting '', pledged to, and under the control of,'' after ''held by'';

(B) in paragraph (7), by inserting '', pledged to, and under the control of,'' after ''held by'';

(C) by striking paragraph (17) and inserting the following:

''(17) under subsection (a), of the setoff by a swap participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, and under the control of, or due from such swap participant to margin, guarantee, secure, or settle any swap agreement;''; and

(D) by inserting after paragraph (27), as added by this Act, the following new paragraph:

''(28) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one 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 to, 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 that 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; or''.

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

''(l) LIMITATION.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (28) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.''.

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement''; and

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement''; and

(2) by adding at the end the following:

''(k) Notwithstanding sections 544, 545, 547, 548(a)(1)(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, except under section 548(a)(1)(A) 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.''.

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

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

''(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, 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.''.

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract'';

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract'';

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement'';

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement'';

(2) in the first sentence, by striking ''termination of a swap agreement'' and inserting ''liquidation, termination, or acceleration of one or more swap agreements''; and

(3) by striking ''in connection with any swap agreement'' and inserting ''in connection with the termination, liquidation, or acceleration of one or more swap agreements''.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—

(1) IN GENERAL.—Title 11, United States Code, is amended by inserting after section 560 the following:

''§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts

''(a) IN GENERAL.—Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

''(1) securities contracts, as defined in section 741(7);

''(2) commodity contracts, as defined in section 761(4);

''(3) forward contracts;

''(4) repurchase agreements;

''(5) swap agreements; or

''(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

''(b) EXCEPTION.—

''(1) IN GENERAL.—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) COMMODITY BROKERS.—If a debtor is a commodity broker subject to subchapter 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 that subchapter IV; and

''(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

''(3) CONSTRUCTION.—No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

''(A) a cross-margining agreement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under section 5(a)(12)(A) of the Commodity Exchange Act and has been approved; or

''(B) any other netting agreement between a clearing organization, as defined in section 761, and another entity that has been approved by the Commodity Futures Trading Commission.

''(c) DEFINITION.—As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

''(d) CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under chapter 15 of this title, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

''561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts.''.

(l) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

''§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, 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, financial participant, 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.''.

(m) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

''§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(3)(C), by inserting before the period the following: ''(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, 560, or 561 of this title)''; and

(2) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 362(b)(28), 555, 556, 559, 560, 561''.

(o) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking ''financial institutions,'' each place such term appears and inserting ''financial institution, financial participant,'';

(2) in section 546(e), by inserting ''financial participant,'' after ''financial institution,'';

(3) in section 548(d)(2)(B), by inserting ''financial participant,'' after ''financial institution,'';

(4) in section 555—

(A) by inserting ''financial participant,'' after ''financial institution,''; and

(B) by inserting before the period at the end '', a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice''; and

(5) in section 556, by inserting '', financial participant,'' after ''commodity broker''.

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

''555. Contractual right to liquidate, terminate, or accelerate a securities contract.

''556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.'';

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

''559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

''560. Contractual right to liquidate, terminate, or accelerate a swap agreement.'';

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following:

''767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.'';

and

(B) by inserting after the item relating to section 752 the following:

''753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''.

SEC. 908. RECORDKEEPING REQUIREMENTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

''(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping with respect to qualified financial contracts (including market valuations) by insured depository institutions.''.

SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

''(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

''(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

''(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

''(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

''(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.''.

SEC. 910. DAMAGE MEASURE.

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by this Act, the following:

''§ 562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements

''If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to 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.''; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by this Act) the following:

''562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.''.

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(g)''; and

(2) by adding at the end the following:

''(2) A claim for damages calculated in accordance with section 562 of this title shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.''.

SEC. 911. SIPC STAY.

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FROM STAY.—

''(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101 and 741 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

''(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

''(iii) As used in this subparagraph, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.''.

SEC. 912. ASSET-BACKED SECURITIZATIONS.

Section 541 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting after paragraph (7), as added by this Act, the following:

''(8) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a);''; and

(2) by adding at the end the following new subsection:

''(f) For purposes of this section—

''(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, including, without limitation, all securities issued by governmental units, at least one class or tranche of which was rated investment grade by one or more nationally recognized securities rating organizations, when the securities were initially issued by an issuer;

''(2) the term 'eligible asset' means—

''(A) financial assets (including interests therein and proceeds thereof), either fixed or revolving, whether or not the same are in existence as of the date of the transfer, including residential and commercial mortgage loans, consumer receivables, trade receivables, assets of governmental units, including payment obligations relating to taxes, receipts, fines, tickets, and other sources of revenue, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any residual interest in property subject to receivables included in such financial assets plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

''(B) cash; and

''(C) securities, including without limitation, all securities issued by governmental units;

''(3) the term 'eligible entity' means—

''(A) an issuer; or

''(B) a trust, corporation, partnership, governmental unit, limited liability company (including a single member limited liability company), or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;

''(4) the term 'issuer' means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto; and

''(5) the term 'transferred' means the debtor, 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 subsection (b)(8) (whether or not reference is made to this title or any section hereof), irrespective and without limitation of—

''(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

''(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

''(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.''.

SEC. 913. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—This title shall take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply with respect to cases commenced or appointments made under any Federal or State law after the date of enactment of this Act, but shall not apply with respect to cases commenced or appointments made under any Federal or State law before the date of enactment of this Act.

TITLE X—PROTECTION OF FAMILY FARMERS

SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—

(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), is hereby reenacted, and as here reenacted is amended by this Act.

(2) EFFECTIVE DATE.—Subsection (a) shall take effect on July 1, 2000.

(b) CONFORMING AMENDMENT.—Section 302 of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

SEC. 1002. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, is amended by adding at the end the following:

''(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, 2004.''.

SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, is amended to read as follows:

''(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;''.

(b) SPECIAL NOTICE PROVISIONS.—Section 1231(b) of title 11, United States Code, as so designated by this Act, is amended by striking ''a State or local governmental unit'' and inserting ''any governmental unit''.

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

SEC. 1101. DEFINITIONS.

(a) HEALTH CARE BUSINESS DEFINED.—Section 101 of title 11, United States Code, is amended—

(1) by redesignating paragraph (27A), as added by this Act, as paragraph (27B); and

(2) by inserting after paragraph (27) the following:

''(27A) 'health care business'—

''(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

''(i) the diagnosis or treatment of injury, deformity, or disease; and

''(ii) surgical, drug treatment, psychiatric, or obstetric care; and

''(B) includes—

''(i) any—

''(I) general or specialized hospital;

''(II) ancillary ambulatory, emergency, or surgical treatment facility;

''(III) hospice;

''(IV) home health agency; and

''(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

''(ii) any long-term care facility, including any—

''(I) skilled nursing facility;

''(II) intermediate care facility;
''(III) assisted living facility;
''(IV) home for the aged;
''(V) domiciliary care facility; and
''(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living;''.

(b) PATIENT AND PATIENT RECORDS DEFINED.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (40) the following:

''(40A) 'patient' means any person who obtains or receives services from a health care business;

''(40B) 'patient records' means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium;''.

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) of this section shall not affect the interpretation of section 109(b) of title 11, United States Code.

SEC. 1102. DISPOSAL OF PATIENT RECORDS.

(a) IN GENERAL.—Subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

''§ 351. Disposal of patient records

''If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

''(1) The trustee shall—

''(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

''(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the last known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

''(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

''(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

''(A) if the records are written, shredding or burning the records; or

''(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 350 the following:

''351. Disposal of patient records.''.

SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF CLOSING A HEALTH CARE BUSINESS AND OTHER ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as that term is defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

''(A) in disposing of patient records in accordance with section 351; or

''(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business;

''(9) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or related to a failure to operate or penalty provisions, for the period of 2 years following the later of the rejection date or date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6); and''.

SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PATIENT ADVOCATE.

(a) IN GENERAL.—

(1) APPOINTMENT OF OMBUDSMAN.—Subchapter II of chapter 3 of title 11, United States Code, is amended by inserting after section 331 the following:

''§ 332. Appointment of ombudsman

''(a) IN GENERAL.—

''(1) AUTHORITY TO APPOINT.—Not later than 30 days after a case is commenced by a health care business under chapter 7, 9, or 11, the court shall order the appointment of an ombudsman to monitor the quality of patient care to represent the interests of the patients of the health care business, unless the court finds that the appointment of the ombudsman is not necessary for the protection of patients under the specific facts of the case.

''(2) QUALIFICATIONS.—If the court orders the appointment of an ombudsman, the United States trustee shall appoint 1 disinterested person, other than the United States trustee, to serve as an ombudsman, including a person who is serving as a State Long-Term Care Ombudsman appointed under title III or VII of the Older Americans Act of 1965 (42 U.S.C. 3021 et seq., 3058 et seq.).

''(b) DUTIES.—An ombudsman appointed under subsection (a) shall—

''(1) monitor the quality of patient care, to the extent necessary under the circumstances, including interviewing patients and physicians;

''(2) not later than 60 days after the date of appointment, and not less frequently than every 60 days thereafter, report to the court, at a hearing or in writing, regarding the quality of patient care at the health care business involved; and

''(3) if the ombudsman determines that the quality of patient care is declining significantly or is otherwise being materially compromised, notify the court by motion or written report, with notice to appropriate parties in interest, immediately upon making that determination.

''(c) CONFIDENTIALITY.—An ombudsman shall maintain any information obtained by the ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. The ombudsman may not review confidential patient records, unless the court provides prior approval, with restrictions on the ombudsman to protect the confidentiality of patient records.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 331 the following:

''332. Appointment of ombudsman.''.

(b) COMPENSATION OF OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended—

(1) in the matter proceeding subparagraph (A), by inserting ''an ombudsman appointed under section 331, or'' before ''a professional person''; and

(2) in subparagraph (A), by inserting ''ombudsman,'' before ''professional person''.

SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO TRANSFER PATIENTS.

(a) IN GENERAL.—Section 704(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(11) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

''(A) is in the vicinity of the health care business that is closing;

''(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

''(C) maintains a reasonable quality of care.''.

(b) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, is amended by striking ''sections 704(2), 704(5), 704(7), 704(8), and 704(9)'' and inserting ''paragraphs (2), (5), (7), (8), (9), and (11) of section 704(a)''.

SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION NOT SUBJECT TO AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (28), as added by this Act, the following:

''(29) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f)) pursuant to title XI of such Act (42 U.S.C. 1301 et seq.) or title XVIII of such Act (42 U.S.C. 1395 et seq.).''.

TITLE XII—TECHNICAL AMENDMENTS

SEC. 1201. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by this Act, is amended—

(1) by striking ''In this title—'' and inserting ''In this title the following definitions shall apply:'';

(2) in each paragraph, by inserting ''The term'' after the paragraph designation;

(3) in paragraph (35)(B), by striking ''paragraphs (21B) and (33)(A)'' and inserting ''paragraphs (23) and (35)'';

(4) in each of paragraphs (35A), (38), and (54A), by striking ''; and'' at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting ''who is not a family farmer'' after ''debtor'' the first place it appears; and

(B) by striking ''thereto having aggregate'' and all that follows through the end of the paragraph;

(6) by striking paragraph (54) and inserting the following:

''(54) The term 'transfer' means—

''(A) the creation of a lien;

''(B) the retention of title as a security interest;

''(C) the foreclosure of a debtor's equity of redemption; or

''(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

''(i) property; or

''(ii) an interest in property.''; and

(7) in each of paragraphs (1) through (35), in each of paragraphs (36) and (37), and in each of paragraphs (40) through (55), by striking the semicolon at the end and inserting a period.

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, as amended by section 322 of this Act, is amended by inserting ''522(f)(3),'' after ''522(d),'' each place it appears.

SEC. 1203. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking ''922'' and all that follows through ''or'', and inserting ''922, 1201, or''.

SEC. 1204. TECHNICAL AMENDMENTS.

Title 11, United States Code, is amended—

(1) in section 109(b)(2), by striking ''subsection (c) or (d) of''; and

(2) in section 552(b)(1), by striking ''product'' each place it appears and inserting ''products''.

SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(4) of title 11, United States Code, as so designated by this Act, is amended by striking ''attorney's'' and inserting ''attorneys' ''.

SEC. 1206. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting ''on a fixed or percentage fee basis,'' after ''hourly basis,''.

SEC. 1207. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting ''of the estate'' after ''property'' the first place it appears.

SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting ''subparagraph (A), (B), (C), (D), or (E) of'' before ''paragraph (3)''.

SEC. 1209. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, as amended by this Act, is amended—

(1) by transferring paragraph (15), as added by section 304(e) of Public Law 103–394 (108 Stat. 4133), so as to insert such paragraph after subsection (a)(14);

(2) in subsection (a)(9), by striking ''motor vehicle'' and inserting ''motor vehicle, vessel, or aircraft''; and

(3) in subsection (e), by striking ''a insured'' and inserting ''an insured''.

SEC. 1210. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking ''section 523'' and all that follows through ''or that'' and inserting ''section 523, 1228(a)(1), or 1328(a)(1), or that''.

SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting ''student'' before ''grant'' the second place it appears; and

(2) in paragraph (2), by striking ''the program operated under part B, D, or E of'' and inserting ''any program operated under''.

SEC. 1212. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting ''365 or'' before ''542''.

SEC. 1213. PREFERENCES.

(a) IN GENERAL.—Section 547 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (b), by striking ''subsection (c)'' and inserting ''subsections (c) and (i)''; and

(2) by adding at the end the following:

''(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.''.

(b) APPLICABILITY.—The amendments made by this section shall apply to any case that is pending or commenced on or after the date of enactment of this Act.

SEC. 1214. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting ''an interest in'' after ''transfer of'' each place it appears;

(2) by striking ''such property'' and inserting ''such real property''; and

(3) by striking ''the interest'' and inserting ''such interest''.

SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking ''1009,''.

SEC. 1216. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, as amended by this Act, is amended by inserting ''1123(d),'' after ''1123(b),''.

SEC. 1217. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1218. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1219. DISCHARGE UNDER CHAPTER 12.

Subsections (a) and (c) of section 1228 of title 11, United States Code, are amended by striking ''1222(b)(10)'' each place it appears and inserting ''1222(b)(9)''.

SEC. 1220. BANKRUPTCY CASES AND PROCEEDINGS.

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking ''made under this subsection'' and inserting ''made under subsection (c)''; and

(2) by striking ''This subsection'' and inserting ''Subsection (c) and this subsection''.

SEC. 1221. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting ''(1) the term'' before '' 'bankruptcy''; and

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

(2) in the second undesignated paragraph—

(A) by inserting ''(2) the term'' before '' 'document''; and

(B) by striking ''this title'' and inserting ''title 11''.

SEC. 1222. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended by striking ''only'' and all that follows through the end of the subsection and inserting ''only—

''(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

''(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.''.

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(16) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.''.

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(g) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.''.

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, or filed under that title on or after that date of enactment, except that the court shall not confirm a plan under chapter 11 of title 11, United States Code, without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

SEC. 1223. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''30''.

SEC. 1224. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 2001''.

(b) TEMPORARY JUDGESHIPS.—

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

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

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

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

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

(E) One additional bankruptcy judgeship for the southern district of Georgia.

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

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

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

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

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

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

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

(M) One additional bankruptcy judgeship for the eastern district of North Carolina.

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

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

(P) One additional bankruptcy judgeship for the district of Puerto Rico.

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

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

(2) VACANCIES.—The first vacancy occurring in the office of a bankruptcy judge in each of the judicial districts set forth in paragraph (1) shall not be filled if the vacancy—

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

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

(c) EXTENSIONS.—

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

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

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

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

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

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

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to temporary judgeship positions referred to in this subsection.

(d) TECHNICAL AMENDMENTS.—Section 152(a) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking the first sentence and inserting the following: ''Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the United States court of appeals for the circuit in which such district is located.''; and

(2) in paragraph (2)—

(A) in the item relating to the middle district of Georgia, by striking ''2'' and inserting ''3''; and

(B) in the collective item relating to the middle and southern districts of Georgia, by striking ''Middle and Southern . . . . . 1''.

(e) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) With respect to the temporary bankruptcy judgeship authorized for the district of South Carolina under paragraph (8) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), subsection (c)(1) as it applies to the extension specified in subparagraph (D) of such subsection shall take effect immediately before December 31, 2000.

SEC. 1225. COMPENSATING TRUSTEES.

Section 1326 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''and'';

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

''(A) by prorating such amount over the remaining duration of the plan; and

''(B) by monthly payments not to exceed the greater of—

''(i) $25; or

''(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan.''; and

(2) by adding at the end the following:

''(d) Notwithstanding any other provision of this title—

''(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior proceeding under this title; and

''(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).''.

SEC. 1226. AMENDMENT TO SECTION 362 OF TITLE 11, UNITED STATES CODE.

Section 362(b)(18) of title 11, United States Code, is amended to read as follows:

''(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the filing of the petition;''.

SEC. 1227. JUDICIAL EDUCATION.

The Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in implementing this Act and the amendments made by this Act, including the requirements relating to the means test and reaffirmations under section 707(b) of title 11, United States Code, as amended by this Act.

SEC. 1228. RECLAMATION.

(a) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:

''(c)(1) Except as provided in subsection (d) of this section and subsection (c) of section 507, and subject to the prior rights of holders of security interests in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, not later than 45 days after the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

''(A) not later than 45 days after the date of receipt of such goods by the debtor; or

''(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

''(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(7).''.

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(10) the value of any goods received by the debtor not later than 20 days after the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.''.

SEC. 1229. PROVIDING REQUESTED TAX DOCUMENTS TO THE COURT.

(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual seeking bankruptcy under chapter 7 of title 11, United States Code, unless requested tax documents have been provided to the court.

(b) CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganization in the case of an individual under chapter 11 or 13 of title 11, United States Code, unless requested tax documents have been filed with the court.

(c) DOCUMENT RETENTION.—The court shall destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the date of the conclusion of a bankruptcy case filed by an individual under chapter 7, 11, or 13 of title 11, United States Code. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

SEC. 1230. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the indiscriminate solicitation and extension of credit by the credit industry;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

SEC. 1231. PROPERTY NO LONGER SUBJECT TO REDEMPTION.

Section 541(b) of title 11, United States Code, is amended by inserting after paragraph (8), as added by this Act, the following:

''(9) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

''(A) the tangible personal property is in the possession of the pledgee or transferee;

''(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

''(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b) of this title; or''.

SEC. 1232. TRUSTEES.

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting ''(1)'' after ''(d)''; and

(2) by adding at the end the following:

''(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the United States district court for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the United States district court for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.''.

(b) EXPENSES OF STANDING TRUSTEES.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

''(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the United States district court in the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

''(4) The Attorney General shall prescribe procedures to implement this subsection.''.

SEC. 1233. BANKRUPTCY FORMS.

Section 2075 of title 28, United States Code, is amended by adding at the end the following:

''The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.''.

SEC. 1234. EXPEDITED APPEALS OF BANKRUPTCY CASES TO COURTS OF APPEALS.

(a) IN GENERAL.—Section 158 of title 28, United States Code, is amended—

(1) by striking subsection (d) and inserting the following:

''(d)(1) In a case in which the appeal is heard by the district court, the judgment, decision, order, or decree of the bankruptcy judge shall be deemed a judgment, decision, order, or decree of the district court entered 31 days after such appeal is filed with the district court, unless not later than 30 days after such appeal is filed with the district court—

''(A) the district court—

''(i) files a decision on the appeal from the judgment, decision, order, or decree of the bankruptcy judge; or

''(ii) enters an order extending such 30-day period for cause upon motion of a party or upon the court's own motion; or

''(B) all parties to the appeal file written consent that the district court may retain such appeal until it enters a decision.

''(2) For the purpose of this subsection, an appeal shall be considered filed with the district court on the date on which the notice of appeal is filed, except that in a case in which the appeal is heard by the district court because a party has made an election under subsection (c)(1)(B), the appeal shall be considered filed with the district court on the date on which such election is made.

''(e) The courts of appeals shall have jurisdiction of appeals from—

''(1) all final judgments, decisions, orders, and decrees of district courts entered under subsection (a);

''(2) all final judgments, decisions, orders, and decrees of bankruptcy appellate panels entered under subsection (b); and

''(3) all judgments, decisions, orders, and decrees of district courts entered under subsection (d) to the extent that such judgments, decisions, orders, and decrees would be reviewable by a district court under subsection (a).

''(f) In accordance with rules prescribed by the Supreme Court of the United States under sections 2072 through 2077, the court of appeals may, in its discretion, exercise jurisdiction over an appeal from an interlocutory judgment, decision, order, or decree under subsection (e)(3).''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 305(c) of title 11, United States Code, is amended by striking ''section 158(d)'' and inserting ''subsection (e) or (f) of section 158''.

(2) Section 1334(d) of title 28, United States Code, is amended by striking ''section 158(d)'' and inserting ''subsection (e) or (f) of section 158''.

(3) Section 1452(b) of title 28, United States Code, is amended by striking ''section 158(d)'' and inserting ''subsection (e) or (f) of section 158''.

SEC. 1235. EXEMPTIONS.

Section 522(g)(2) of title 11, United States Code, is amended by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

TITLE XIII—CONSUMER CREDIT DISCLOSURE

SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

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

''(11)(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

''(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

''(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: _____.' (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

''(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 percent. Any creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

''(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

''(F)(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

''(ii)(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, a toll-free telephone number, or

provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)), with total assets not exceeding $250,000,000. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

''(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking and Financial Services of the House of Representatives a report on the program described in subclause (I).

''(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

''(H) The Board shall—

''(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

''(ii) establish the table required under clause (i) by assuming—

''(I) a significant number of different annual percentage rates;

''(II) a significant number of different account balances;

''(III) a significant number of different minimum payment amounts; and

''(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

''(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

''(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

''(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

''(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: 'Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: _____.' (the blank space to be filled in by the creditor).''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System (hereafter in this title referred to as the ''Board'') shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section.

(2) EFFECTIVE DATE.—Section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 18 months after the date of enactment of this Act; or

(B) 12 months after the publication of such final regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES.—

(1) IN GENERAL.—The Board may conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default.

(2) FACTORS FOR CONSIDERATION.—In conducting a study under paragraph (1), the Board should, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which—

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

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

(C) consumers make only the required minimum payment under open end credit plans;

(D) consumers are aware that making only required minimum payments will increase the cost and repayment period of an open end credit obligation; and

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

(3) REPORT TO CONGRESS.—Findings of the Board in connection with any study conducted under this subsection shall be submitted to Congress. Such report shall also include recommendations for legislative initiatives, if any, of the Board, based on its findings.

SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking ''CONSULTATION OF TAX ADVISER.—A statement that the'' and inserting the following: ''TAX DEDUCTIBILITY.—A statement that—

''(A) the''; and

(B) by striking the period at the end and inserting the following: ''; and

''(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Internal Revenue Code of 1986) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.''.

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking ''If any'' and inserting the following:

''(1) IN GENERAL.—If any''; and

(B) by adding at the end the following:

''(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

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

''(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''; and

(B) in subsection (b), by adding at the end the following:

''(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.''.

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

''(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

''(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(c) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the amendments made by this section.

(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1303. DISCLOSURES RELATED TO "INTRODUCTORY RATES".

(a) INTRODUCTORY RATE DISCLOSURES.—Section 127(c) of the Truth in Lending Act (15

U.S.C. 1637(c)) is amended by adding at the end the following:

''(6) ADDITIONAL NOTICE CONCERNING 'INTRODUCTORY RATES'.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

''(i) use the term 'introductory' in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

''(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

''(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c)), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(B) EXCEPTION.—Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

''(C) CONDITIONS FOR INTRODUCTORY RATES.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

''(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

''(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

''(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

''(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(D) DEFINITIONS.—In this paragraph—

''(i) the terms 'temporary annual percentage rate of interest' and 'temporary annual percentage rate' mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

''(ii) the term 'introductory period' means the maximum time period for which the temporary annual percentage rate may be applicable.

''(E) RELATION TO OTHER DISCLOSURE REQUIREMENTS.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—Section 127(c)(6) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.

(a) INTERNET-BASED APPLICATIONS AND SOLICITATIONS.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(7) INTERNET-BASED APPLICATIONS AND SOLICITATIONS.—

''(A) IN GENERAL.—In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

''(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

''(ii) the information described in paragraph (6).

''(B) FORM OF DISCLOSURE.—The disclosures required by subparagraph (A) shall be—

''(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

''(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

''(ii) the term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.

(a) DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

''(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

''(B) The amount of the late payment fee to be imposed if payment is made after such date.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

(a) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(h) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1307. DUAL USE DEBIT CARD.

(a) REPORT.—The Board may conduct a study of, and present to Congress a report containing its analysis of, consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on its findings.

(b) CONSIDERATIONS.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g), as in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protection for consumers;

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

(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), or revisions to regulations promulgated by the Board to carry out that Act, are necessary to further address adequate protection for consumers concerning unauthorized use liability.

SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

(a) STUDY.—

(1) IN GENERAL.—The Board shall conduct a study regarding the impact that the extension of credit described in paragraph (2) has on the rate of bankruptcy cases filed under title 11, United States Code.

(2) EXTENSION OF CREDIT.—The extension of credit described in this paragraph is the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled within 1 year of successfully completing all required secondary education requirements and on a full-time basis, in postsecondary educational institutions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Board shall submit to the Senate and the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.

(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Board, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration Board, and the Federal Trade Commission, shall promulgate regulations to provide guidance regarding the meaning of the term ''clear and conspicuous'', as used in subparagraphs (A), (B), and (C) of section 127(b)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act referred to in subsection (a).

(c) STANDARDS.—In promulgating regulations under this section, the Board shall ensure that the clear and conspicuous standard required for disclosures made under the provisions of the Truth in Lending Act referred to in subsection (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

SEC. 1310. ENFORCEMENT OF CERTAIN FOREIGN JUDGMENTS BARRED.

(a) IN GENERAL.—Notwithstanding any other provision of law or contract, a court within the United States shall not recognize or enforce any judgment rendered in a foreign court if, by clear and convincing evidence, the court in which recognition or enforcement of the judgment is sought determines that the judgment gives effect to any purported right or interest derived, directly or indirectly, from any fraudulent misrepresentation or fraudulent omission that occurred in the United States during the period beginning on January 1, 1975, and ending on December 31, 1993.

(b) EXCEPTION.—Subsection (a) shall not prevent recognition or enforcement of a judgment rendered in a foreign court if the foreign tribunal rendering judgment giving effect to the right or interest concerned determines that no fraudulent misrepresentation or fraudulent omission described in subsection (a) occurred.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—Except as otherwise provided in this Act, the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

The CHAIRMAN pro tempore. No further amendment is in order except those printed in the House Report 107–4. Each amendment may be offered only in the order printed, may be offered only by a Member designated in the report, shall be considered read, debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in House Report 107–4.

AMENDMENT NO. 1 OFFERED BY MR. SENSENBRENNER

Mr. SENSENBRENNER. Mr. Chairman, I offer an amendment made in order by the rule.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. SENSENBRENNER:

Page 10, line 13, strike ''case) who is not a dependent'' and insert ''case who is not a dependent)''.

Page 22, line 3, strike ''an individual case under chapter 7'' and insert ''a case under chapter 7 of this title in which the debtor is an individual and''.

Page 31, line 9, strike ''service'' and insert ''agency''.

Page 34, line 20, strike ''**services**'' and insert ''**agencies**''.

Page 41, lines 12 and 16, strike ''service'' and insert ''agency''.

Page 42, in the matter following line 3, strike ''services'' and insert ''agencies''.

page 74, strike lines 5 through 20, and insert the following:

(1) in subsection (a)—

(A) by striking paragraph (5) and inserting the following:

''(5) for a domestic support obligation;''; and

(B) by striking paragraph (18);

(2) in subsection (c), by striking ''(6), or (15)'' each place it appears and inserting ''or (6)''; and

(3) in paragraph (15), as added by Public Law 103–394 (108 Stat. 4133)—

(A) by inserting ''to a spouse, former spouse, or child of the debtor and'' before ''not of the kind'';

(B) by inserting ''or'' after ''court of record,''; and

(C) by striking ''unless—'' and all that follows through the end of the paragraph and inserting a semicolon.

Page 75, strike line 21.

Page 76, strike lines 1 through 5.

Page 86, line 14, insert ''a person other than'' before the open quotation marks.

Page 99, lines 18 through 21, indent the left margin 2 ems to the right.

Page 101, line 22, strike the period at the end and insert a semicolon.

Page 101, line 23, strike ''Nothing in paragraph (18)'' and insert ''but nothing in this paragraph''.

Page 107, line 18, strike ''that person'' and insert ''a person who provides such assistance or of such preparer''.

Page 107, lines 22, 23, and 24, strike ''the person'' and insert ''such assisted person''.

Page 113, strike the matter after line 4, and insert the following:

''526. Restrictions on debt relief agencies.''.

Page 114, line 18, strike ''proceeding'' and insert ''case''.

Page 120, strike the matter after line 22, and insert the following:

''528. Requirements for debt relief agencies.''.

Page 123, lines 19 and 24, strike ''chapter 7, 11, or 13'' and insert ''chapters 7, 11, and 13''.

Page 130, beginning line 15, strike ''an individual case under chapter 7 of this title'' and insert ''a case under chapter 7 of this title in which the debtor in an individual''.

Page 132, beginning on line 13, strike ''an individual case under chapter 7, 11, or 13'' and insert ''in which the debtor is an individual''.

Page 140, line 2, strike ''chapter 13 proceeding'' and insert ''case under chapter 13''.

Page 142, line 1, move the left margin 2 ems to the left.

Page 142, lines 2 through 13, move the left margin 2 ems to the left.

Page 144, line 13, indent the left margin 2 additional ems to the right.

Page 144, lines 14 through 25, indent the left margin 2 additional ems to the right.

Page 145, line 1, indent the left margin 2 additional ems to the right.

Page 145, lines 2 through 14, indent the left margin 2 additional ems to the right.

Page 164, beginning on line 10, strike ''the case of an individual filing under chapter 7, 11, or 13'' and insert ''a case under chapter 7, 11, or 13 in which the debtor in an individual''.

Page 165, line 7, strike ''concerning an individual debtor'' and insert '' in which the debtor is an individual''.

Page 171, line 3, strike ''(3)'' and insert ''(2)''.

Page 172, line 1, strike ''amount'' and insert ''such amount under this clause''.

Page 172, line 20, strike ''amount'' and insert ''such amount under this clause''.

Page 177, line 14, strike ''(b)(l)'' and insert ''(b)(1)''.

Page 183, line 24, strike ''(i)'' and insert ''(h)''.

Page 184, line 2, strike ''(j)'' and insert ''(i)''

Beginning on page 184, line 23 and all that follows through line 2 on page 185, move the left margin 2 ems to the left.

Page 187, line 12, strike ''period'' and insert ''period,''.

Page 189, lines 11 through 14, move the left margin 2 ems to the left.

Page 198, line 24, strike ''claims'' and insert ''expenses''.

Page 200, line 11, strike ''claims'' and insert ''expenses''.

Page 201, line 2, add ''of chapter 11'' after ''Subchapter 1''.

Page 216, line 19, strike ''each district'' and insert ''the district court, or the clerk of the bankruptcy court if one has been certified pursuant to section 156(b) of this title,''.

Page 216, line 22, strike ''on a standardized form'' and insert ''in a standardized format''.

Page 218, line 5, insert ''cases filed during'' after ''in''.

Page 218, line 13, insert ''for cases closed during the reporting period'' after ''case''.

Page 218, line 14, insert ''cases closed during'' after ''for''.

Page 219, line 11, insert ''entered'' after ''orders''.

Page 219, line 13, strike ''issued''.

Page 224, beginning on line 24, strike ''individual cases filed under chapter 7 or 13 of such title'' and insert ''cases filed under chapter 7 or 13 in which the debtor is an individual''.

Page 234, line 7, insert ''the'' after ''date of''.

Page 235, line 3, strike ''(i)''.

Page 235, line 9, strike ''(ii)''.

Page 246, line 16, insert ''claim for a'' after ''to a''.

Page 248, line 3, insert ''(1)'' before ''Section''.

Page 252, after line 22, insert the following:

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by striking the item relating to section 346 and inserting the following:

''346. Special provisions related to the treatment of State and local taxes.''.

Page 252, line 24, insert ''(A)'' after ''(1)''.

Page 252, after line 25, insert the following:

(B) The table of sections for chapter 7 of title 11, United States Code, is amended by striking the item relating to section 728.

Page 281, line 13, strike ''(j)'' and insert ''(k)''.

Page 283, line 3, strike ''15,'' and insert ''15''.

Page 327, line 17, strike the period and insert a semicolon.

Page 331, line 15, strike ''FINANCIAL INSTITUTION''.

Page 336, line 21, strike ''(l)'' and insert ''(m)''.

Page 337, lne 13, strike ''(k)'' and insert ''(j)''.

Page 346, line 16, strike ''561'' and insert ''561,''.

Page 348, strike the matter following line 4, and insert the following:

''767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.'';

Page 356, strike lines 11 through 21 (and make such technical and conforming changes as may be appropriate).

Page 357, line 11, strike ''Bankruptcy,'' and insert ''Bankruptcy''.

Page 369, line 13, insert ''and inserting a semicolon'' after ''paragraph''.

Page 370, line 1, strike ''property.'' and insert ''property;''.

Page 370, line 3, strike ''and (37)'' and insert ''(37), (38A), and (38B),''.

Page 377, beginning on line 20, strike ''judgeship positions shall be filled'' and insert ''bankruptcy judges shall be appointed''.

Page 378, lines 1, 5, 9, 13, 15, 17, 19, 21, and 23, strike ''judgeship'' and insert ''judge''.

Page 378, line 3, 7, and 11, strike ''judgeships'' and insert ''judges''.

Page 379, lines 1, 3, 5, 7, 9, and 11, strike ''judgeship'' and insert ''judge''.

Page 379, beginning on line 23, strike ''bankruptcy judgeship positions'' and insert ''office of bankruptcy judges''.

Page 381, beginning on line 2, strike ''judgeship positions referred to in this subsection'' and insert ''office of bankruptcy judges referred to in paragraph (1)''.

Page 393, strike lines 10 through 13 (and conform the table of contents of the bill accordingly).

Page 411, line 21, strike ''APPLICATIONS AND''.

Page 412, line 1, strike ''APPLICATIONS AND''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 71, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 5 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is one that proposes to make technical and conforming changes to the bill. The 420-page bill had a number of technical problems, such as improper spacing, incorrect terminology, drafting errors, incorrect headings, incorrect references to section numbers and grammatical inconsistencies. This amendment will clean up the bill which will make the provisions of the legislation easier to execute and to understand.

I want to emphasize that this amendment does not substantively alter the composition of the bill. Over the last several years, the Congress has considered, amended, debated, negotiated and refined this measure, and the product under consideration is the result of those labors. During the last Congress, that delicate balance is preserved in this legislation. This amendment improves the bill by making it as technically accurate as possible, which is important because lawyers, accountants, creditors and debtors will be relying on and scrutinizing its provisions. Again, this is a technical amendment meant only to clarify with precision the terms of this legislation. I urge its adoption.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume. Could I ask my friend the chairman why the Schiff provision was struck out after it had been put in, which led to the dilemma that we did not put it in, and so, therefore, it was subsequently struck out, and now we do not have it at all?

Mr. SENSENBRENNER. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, this provision was struck because it was determined to be substantive in nature and potentially controversial. It is the intention of me as the author of this amendment to have the amendment to be completely technical and nonsubstantive in nature and to clean up the inconsistencies in the bill that was presented to the President last year and ended up being pocket vetoed.

Mr. CONYERS. We are now in this situation that it was subsequently struck after we went to the Committee on Rules. We are under the limitation of the Committee on Rules' determination of what is allowed to be brought to the floor. So what do we do now, assuming that you are sympathetic to this, to what was in it?

By the way, it was also struck unilaterally. We never got any word that it was going to be struck. In the midst of the great atmosphere of bipartisanship which has been repeatedly urged upon us by the administration, we have a problem brewing that, if possible, I would like to try to extinguish. How do we do that?

□ 1230

The gentleman could extend me some kind of a proposal that would lend us to be able to get this measure back in.

By the way, I thought it was a technical amendment that the gentleman from California had accepted.

Mr. SENSENBRENNER. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I thank the gentleman from Michigan (Mr. CONYERS) for yielding again.

Mr. Chairman, the problem is that it ended up not being technical in nature and it ended up changing substantive rights in the bill, which is something that we had decided to keep out of the technical amendment.

I would further point out to my friend, the gentleman from Michigan (Mr. CONYERS), that the change was made prior to the Committee on Rules holding its hearing yesterday, and the amendment that was before the Committee on Rules was the revised text.

Mr. CONYERS. Mr. Chairman, it was issued February 28, 2001, 3:29 p.m.

Does the gentleman know what time we went into Committee on Rules yesterday? 2:00. So this came out afterward.

Beside that, we were not notified, contrary to the practice that I understand that we operate under for technical amendments.

Mr. SENSENBRENNER. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, all of the amendments that were made in order by the Committee on Rules were redrafted to reflect the Union Calendar print that has been submitted to the House for its consideration. So of the five amendments that were made in order by the Committee on Rules, all of them had to be redrafted, recognizing the fact that the text of the bill as reported from committee is not the text of the Union Calendar printed as before the Committee of the Whole today.

Mr. CONYERS. I beg to differ with my friend, the chairman, but the only change was page numbers. There were no substantive changes whatsoever; and if the gentleman knows of any, beside the one of which I complain, which was dropping a technical amendment, there were no other changes made outside of the pagination.

So February 28, 2001, 3:29 p.m. It came after the fact, no notice. I think we are off to a not-good start here about how we are going to operate.

We went before the committee, and I was asked before the Committee on Rules what is my priority for these amendments? And I said in the order in which they are numbered if there is some cutoff.

How much time does the gentleman need?

Well, as much as the generosity will extend.

The CHAIRMAN pro tempore (Mr. LAHOOD). The time of the gentleman from Michigan (Mr. CONYERS) has expired.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, it was in the Committee on Rules that we were asked how much time and how many amendments we would like; and as I recall it, we got one amendment and certainly not in the priority which was listed.

So this is a very unhappy situation. The version before the House is not the version that was submitted to the Committee on Rules, and the majority dropped the amendment after the Committee on Rules met or the Committee on Rules did or the leadership did or somebody did to ensure that an important provision was eliminated that would ensure that children and single parents do not suffer unduly in bankruptcy.

Therefore, Mr. Chairman, I regretfully announce that I will not be able to support the gentleman's amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, this is a technical amendment. The gentleman from Michigan (Mr. CONYERS) is complaining about the fact that there is an omission in the technical amendment, and the fact that it is substantive in nature means that the provisions that the gentleman from Michigan (Mr. CONYERS) is complaining about do not belong in a technical amendment.

Now, the question before the committee, when we vote on this amendment, is whether or not to pass a technical amendment that is needed to clean up the bill and to make its provisions easier to understand and easier to execute when the court has questions placed before them.

A no vote means that people want to make it harder to understand and harder to execute. I would urge the House to support this amendment so that it can be made easier to understand by everybody.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. CONYERS. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) will be postponed.

The point of no quorum is considered withdrawn.

It is now in order to consider amendment No. 2 printed in House Report 107–4.

AMENDMENT NO. 2 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer amendment No. 2.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Ms. JACKSON-LEE of Texas:

Page 11, line 1, insert ''or public'' after ''private''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 71, the gentlewoman from Texas (Ms. JACKSON-LEE) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, let me thank both the chairman and the ranking member and the Committee on Rules for seeing merit in this amendment. As I indicated, I have concerns about this legislation. I have offered it to say that important elements of protecting the consumer are not included, but I do believe that we have an opportunity to add to the enhancement of the legislation. So I offer an amendment that speaks to all Americans, Americans who are raising children, from rural hamlets to urban centers, from large school districts to small school districts.

Recognizing that the education of our children from K to 12 is an expensive endeavor, H.R. 333 includes a provision that allows for private school expenses to be deducted or to be utilized as relates to bankruptcy so that those expenses could be paid, and therefore this particular amendment adds a debtor's monthly public school expenses as allowable expenses under the means test.

Mr. SENSENBRENNER. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I thank the gentlewoman from Texas (Ms. JACKSON-LEE) for yielding.

Mr. Chairman, I believe that the gentlewoman has pointed out an unequal treatment in this bill which needs correction. I am happy to support the amendment of the gentlewoman from Texas (Ms. JACKSON-LEE) and hope that we can get it passed quickly.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) very much for his comments, and I will move to summarize my remarks. I ask the gentleman, if the gentleman would stand, I would very much encourage the gentleman's support. I believe that is what I heard. I am just trying to be clear.

Mr. SENSENBRENNER. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. The gentleman from Wisconsin said he is pleased to support the amendment of the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. I thank the gentleman from Wisconsin very much for his support.

Mr. Chairman, I am going to be very responsive in summarizing simply to say that, as we well know, parents who have children who are in debate clubs and cheerleaders, choir, athletic programs in public schools have many of the enormous expenses that other parents have and we believe that equalizing that provision is very important. It certainly helps our low-income families, our middle-income families.

Mr. Chairman, I would like to ask my colleagues to support this amendment.

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I have a full page statement touting all of the excellent parts of the amendment of the gentlewoman from Texas (Ms. JACKSON-LEE), but I think I will insert them in the RECORD instead and congratulate the gentlewoman and thank the chairman of the committee for joining in his support.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the ranking member for his leadership and his excellent statement.

Mr. Chairman, I ask support of my amendment.

Mr. Chairman, this amendment to page 11, line 1 of H.R. 333 merely adds a debtor's monthly public school expenses as an allowable expense under the means test. My amendment would put public school expenses at an equal footing with that of private school expenses, which is already included in the bill.

I am surprised that my colleagues in the majority do not know that there are expenses associated with sending children to public schools. Parents whose children participate in extra-curricular activities such as, the debate club, bank, choir, athletic programs, cheerleaders, or dozens of other courses that are offered in public schools. These courses require that parents provide financial support from their own resources in order to support their child's participation in these programs. It is very unfair to assume that only parents whose children attend private schools have expenses worth protecting under this new bankruptcy reform legislation. What does not make sense is protecting private education, for no other reason other than it is private education, while ignoring the overwhelming majority of children who's parents send their children to public schools.

The principal problem with the means test is that the rigid one-size-fits-all in determining eligibility for chapter 7 and the operation of chapter 13 will often operate in an arbitrary fashion.

Access to bankruptcy would be more difficult, especially for low-income filers who are not able to meet the requirements because they cannot list public school expenses as an allowable expense as would their private school counterparts. The ''safe harbor'' provision that is supposed to protect some low-income families from the application of the IRS

standards will not protect many single mothers, because it is based on the combined income of the debtor and the debtor's spouse—even if they are separated and the mother who is filing for bankruptcy is receiving no support from the nondebtor spouse from whom she is separated. As the committee knows, the majority of low-income families send their children to public schools (as opposed to higher income people) because they cannot afford the private school tuition. It would seem that if the true intent of this bill were to assist all Americans, a provision recognizing public school tuition would have accompanied the recognition of private school tuition as an allowable expense under the ''means test,'' however, this is not the case.

Under my amendment, low-income people will have a more flexible standard (that is consistent with that of high-income people) that would allow the debtor to have a fair opportunity to financial recourse, which is not possible under the legislation as written. I think such a change in the standard would be warmly welcomed for middle-income and low-income filers. We cannot in good conscience allow such an unbalanced approach to prevail, Mr. Chairman.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The amendment was agreed to.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 3 printed in House Report 107–4.

AMENDMENT NO. 3 OFFERED BY MR. GREEN OF WISCONSIN

Mr. GREEN of Wisconsin. Mr. Chairman, I offer amendment No. 3.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. GREEN of Wisconsin:

Page 121, after line 16, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 231. PROHIBITION ON DISCLOSURE OF IDENTITY OF MINOR CHILDREN.

(a) PROHIBITION.—Title 11 of the United States Code, as amended by section 106, is amended by inserting after section 111 the following:

''§ 112. Prohibition on disclosure of identity of minor child

''In a case under this title, the debtor may be required to provide information regarding a minor child involved in matters under this title, but may not be required to disclose in the public records in the case the name of such minor child.''.

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

''112. Prohibition on disclosure of name of minor child.''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 71, the gentleman from Wisconsin (Mr. GREEN) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. GREEN).

Mr. GREEN of Wisconsin. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me begin by congratulating not only the gentleman from Pennsylvania (Mr. GEKAS) but also the gentleman from Wisconsin (Mr. SENSENBRENNER) for their fine work in moving this forward. This amendment that I rise to address is not so much an amendment about bankruptcy as it is an effort of closing a small, unintended hole in child safety. It in no way restricts the flow of necessary information regarding debtor's financial records, and it does not attempt to deal with larger issues of privacy or the Internet.

What it does try to do is take a small, modest step towards protecting children from unnecessary exposure to harm. The problem is a real simple one, Mr. Chairman.

When someone files for bankruptcy, they are naturally required to disclose information regarding themselves and their dependents. This information is vital to ensuring the integrity of the bankruptcy process, but as we all recognize, it is also very detailed and personal.

Schedule I, for example, a document entitled ''The Current Income of Individual Debtors,'' requires the debtor to list his or her dependents, their names, ages and their relationship to the debtor. Now, much of this information is important to creditors. Unfortunately, if it is left unchanged it is also all of the information that some people might need to seek out and contact children. I think in this dangerous world, that represents a problem.

My amendment makes a single, small, modest change that makes no difference to the information that creditors need but perhaps a great difference to debtors. It simply prevents the name of the child from being disclosed in these forms that go into the public domain. That is all that it attempts to do.

Mr. SENSENBRENNER. Mr. Chairman, will the gentleman yield?

Mr. GREEN of Wisconsin. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I am happy to support the amendment. I think the points made by my colleague, the gentleman from Wisconsin (Mr. GREEN) are absolutely correct, and I believe that this would be a significant improvement to this bill and hope that the committee adopts it.

Mr. GREEN of Wisconsin. Mr. Chairman, I thank the chairman for his graciousness.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. GREEN of Wisconsin. I yield to the gentlewoman from Texas.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, let me say that my preceding amendment dealing with children being educated follows my concern as chair of the Congressional Children's Caucus and welcomes this amendment. I congratulate the gentleman for it.

The personal information about children certainly needs to be avoided in this instance and the gentleman is right, it has no impact on this legislation. We are happy to support his amendment, and congratulations.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Wisconsin and commend him for taking action on a problem that was identified during our Committee hearing on the bill. While I agree that we must protect our children by removing their names from bankruptcy filings, which now can be accessed electronically over the Internet, this amendment is only the tip of the iceberg.

We have a much bigger problem—namely the availability of all kinds of personal information that is part of a bankruptcy proceeding. This information is now available for the world to see over the Internet. That is why our Democratic substitute limits electronic access to all personal, financial, or medical data that is part of a bankruptcy petition.

In addition to the names of children, there are all kinds of other information that debtors have to disclose in bankruptcy. There is basic personal information such as the debtor's social security number, telephone number, credit card and bank account numbers, medical history, mother's maiden name, and other highly sensitive data. I don't think any one of us would want this information to be just a point-and-click away from being available to persons who have no legitimate use for the information.

In addition, there's even a risk that personal information about third parties will be posted on the Internet. If the debtor is paying the medical expenses for a child or an aging parent, that medical information about someone other than the debtor will be just a point-and-click away as well.

If we really want to protect our children whose parent or guardian files for bankruptcy, then we've got to do more than just keep their names out of the filings. A provision in our Democratic substitute amendment that was originally drafted by Senator LEAHY would protect not only the names of children and all other sensitive information by limiting electronic access to such information only to those parties who certify that they are qualified to obtain it.

If we really want to protect the privacy of our children in bankruptcy, then we've got to support the Green amendment and the additional privacy protections in the Democratic substitute.

Mr. GREEN of Wisconsin. Mr. Chairman, I thank the gentlewoman from Texas (Ms. JACKSON-LEE) for her support.

Mr. LAMPSON. Mr. Chairman, today I rise in support of Congressman GREEN's amendment would prevent the name of a child from being disclosed during a bankruptcy proceeding. Although this is a small part of the bigger picture of privacy, this amendment will have an immediate effect in protecting innocent children.

Last Congress, our former colleague and my former co-chairman of the Congressional Missing and Exploited Children's Caucus, Congressman Bob Franks, introduced legislation that would have amended the Federal criminal code to prohibit and set penalties for

specified activities relating to personal information about a child including knowingly selling such information (by a list broker) without the written consent of a parent of that child, knowing that such information pertains to a child; and distributing or soliciting any such information, knowing or having reason to believe that the information will be used to abuse or physically harm the child.

How easily could a pedophile construct a list of names, ages and addresses of children simply by obtaining a list of bankruptcy filings over the Internet? Very easily.

I contacted the National Center for Missing and Exploited Children just to be certain that NCMEC doesn't use bankruptcy filings in aiding their searches for missing children. Few, if any, of these filings are used. While it may not be very common practice for a child predator to use these filings to his or her advantage, I would rather not take that chance.

I urge my colleagues to support Congressman GREEN's amendment to keep our children safe.

Mr. GREEN of Wisconsin. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Wisconsin (Mr. GREEN).

The amendment was agreed to.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 4 printed in House Report 107–4.

AMENDMENT NO. 4 OFFERED BY MR. OXLEY

Mr. OXLEY. Mr. Chairman, I offer amendment No. 4.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. OXLEY:

Page 286, line 10, insert ''mortgage'' before ''loan''.

Page 286, line 11, insert '', and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, loan, interest, group or index, or option'' before the semicolon at the end.

Page 287, line 10, insert a comma after ''index''.

Page 288, line 18, insert ''or any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause'' after ''clause''.

Page 291, line 8, insert ''or any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause'' after ''clause''.

Page 293, line 7, insert ''or any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause'' after ''(III), or (IV)''.

Page 296, line 2, insert ''or any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause'' after ''(IV), or (V)''.

Page 297, line 7, insert ''total return,'' before ''credit''.

Page 297, line 15, insert ''that is'' before ''similar''.

Page 297, line 17, strike ''that'' and insert ''and that has been,''.

Page 297, beginning on line 18, strike ''regularly entered into in the swap market'' and insert ''the subject of recurrent dealings in the swap markets''.

Page 298, line 1, insert ''quantitative measures associated with an occurrence, extent of an occurrence or contingency associated with a financial, commercial or economic consequence,'' before ''or''.

Page 298, line 1, insert ''or financial'' after ''economic''.

Page 298, line 2, insert ''or financial'' after ''economic''.

Page 299, beginning on line 4, strike ''subparagraph'' and insert ''subclause''.

Page 299, line 5, insert ''or any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause'' before the period at the end.

Page 299, line 19, insert ''the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000,'' before ''and''.

Page 305, line 19, strike ''contract'' and insert ''contracts''.

Page 306, line 18, insert ''cleared by or'' before ''subject''.

Page 307, line 2, insert ''and the term 'clearing organization' means a 'clearing organization' as defined in Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991'' after ''financial institution''.

Page 313, line 2, strike ''or that'' and insert '', that''.

Page 313, line 4, insert ''or that is a multilateral clearing organization (as defined in section 408 of this Act)'' before the closing quotation marks.

Page 317, line 12, strike ''BANKS AND'' insert ''BANKS,''.

Page 317, line 13, insert '', CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS'' before the period.

Page 317, line 21, strike ''**banks and**'' and insert ''**banks,**''.

Page 317, line 22, insert '', **certain uninsured state member banks, and edge act corporations**'' before the period.

Page 318, line 2, insert ''or a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act,'' after ''agency''.

Page 318, line 7, insert ''in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank'' before the semicolon at the end.

Page 318, line 15, insert ''in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank'' before ''; and''.

Page 318, line 18, strike ''bank or'' and insert ''bank,''.

Page 318, line 19, insert ''a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act'' before the period at the end.

Page 318, line 21, strike ''bank or'' and insert ''bank,''.

Page 318, line 22, insert ''a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act,'' after ''agency''.

Page 319, line 3, insert ''and the Board of Governors of the Federal Reserve System'' after ''Currency''.

Page 319, line 4, insert ''each'' after ''may''.

Page 319, line 8, insert ''and the Board of Governors of the Federal Reserve System'' after ''Currency''.

Page 319, line 8, insert ''each'' after ''shall''.

Page 321, line 6, insert ''or any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph,'' after ''(C), or (D)''.

Page 321, beginning on line 7, strike ''actual value of such contract on the date of the filing of the petition'' and insert ''damages in connection with any such agreement or transaction measured in accordance with Section 562 of this title''.

Page 323, line 18, insert ''or any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause'' after ''(iii), or (iv)'' .

Page 323, beginning on line 19, strike ''actual value of such contract on the date of the filing of the petition'' and insert ''damages in connection with any such agreement or transaction measured in accordance with section 562 of this title''.

Page 324, beginning on line 11, strike ''which is an interest rate swap'' and insert ''which is—

''(I) an interest rate swap''.

Page 324, beginning on line 13, strike ''including—'' and all that follows through ''a rate floor'' on line 14, and insert ''including a rate floor''

Page 325, line 3, insert ''total return,'' before ''credit spread''.

Page 325, line 12, insert ''that is'' before ''similar''.

Page 325, line 13, insert ''and'' before ''that''.

Page 325, line 14, insert ''has been,'' before ''is''.

Page 325, beginning on line 15, strike ''regularly entered into in the swap market'' and insert ''the subject of recurrent dealings in the swap markets''.

Page 325, line 23, insert ''quantitative measures associated with an occurrence, extent of an occurrence or contingency associated with a financial, commercial or economic consequence,'' after ''instruments,''.

Page 325, line 24, insert ''or financial'' after ''economic''.

Page 325, line 25, insert ''or financial'' before ''risk''.

Page 326, line 24, insert ''or any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause'' after ''through (v)''.

Page 326, beginning on line 25, strike ''actual value of such contract on the date of the filing of the petition'' and insert ''damages in connection with any such agreement or transaction measured in accordance with section 562 of this title''.

Page 327, line 14, insert ''the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000,'' before ''and''.

Page 328, line 6, insert ''mortgage'' before ''loan''.

Page 328, line 7, insert '', and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, loan, interest, group or index, or option'' before the semicolon at the end.

Page 329, line 25, strike the comma.

Page 330, line 2, insert ''or any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution or financial participant

in connection with any agreement or transaction referred to in this subparagraph'' before the comma after ''subparagraph''.

Page 330, beginning on line 3, strike ''actual value of such contract on the date of the filing of the petition'' and insert ''damages in connection with any such agreement or transaction measured in accordance with section 562 of this title''.

Page 331, line 12, insert ''or any guarantee or reimbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph'' before the comma after ''paragraph''.

Page 331, beginning on line 12, strike ''actual value of such contract on the date of the filing of the petition'' and insert ''damages in connection with any such agreement or transaction measured in accordance with section 562 of this title''.

Page 331, after line 18, insert the following new paragraph (and redesignate subsequent paragraphs accordingly):

(1) by striking paragraph (22) and inserting the following:

''(22) 'financial institution' means—

''(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741, such customer; or

''(B) in connection with a securities contract, as defined in section 741, an investment company registered under the Investment Company Act of 1940;'';

Page 332, line 13, strike ''participant' means an entity'' and insert ''participant' means—

''(A) an entity''.

Page 332, line 15, insert ''swap agreement, repurchase agreement,'' after ''commodity contract,''.

Page 333, line 3, strike the closing quotation marks and the second semicolon.

Page 333, after line 3, insert the following new subparagraph:

''(B) a 'clearing organization' (as such term is defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991);''; and

Page 333, line 7, strike the comma after ''entity''.

Page 333, line 9, strike ''or'' after ''merchants''.

Page 334, line 3, insert ''or any guarantee or reimbursement obligation related to 1 or more of the foregoing'' before the semicolon.

Page 334, line 24, strike ''and''.

Page 335, line 2, strike ''and''.

Page 335, line 7, insert ''or financial participant'' after ''swap participant''.

Page 335, line 13, insert ''or financial participant'' after ''swap participant''.

Page 335, line 15, strike ''and''.

Page 335, line 17, insert ''or financial participant'' after ''swap participant''.

Page 336, line 10, strike ''and''.

Page 337, strike line 8.

Page 337, after line 11, insert the following new subparagraph:

(C) by inserting 'or financial participant' after 'swap participant' each time such term appears; and

Page 339, strike line 12.

Page 339, line 15, strike the period at the end and insert ''; and''.

Page 339, after line 15, insert the following new paragraph:

(3) by striking so much of the text of the second sentence as appears before ''whether'' and inserting ''As used in this section, the term ''contractual right'' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''

Page 339, strike line 23.

Page 340, line 3, strike the period at the end and insert ''; and''

Page 340, after line 3, insert the following new paragraph:

(3) by striking so much of the text of the third sentence as appears before ''whether'' and inserting ''As used in this section, the term ''contractual right'' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,

Page 340, line 14, strike ''and''.

Page 340, line 18, strike the period and insert ''; and''.

Page 340, after line 18, insert the following new paragraph:

(4) by striking so much of the text of the second sentence as appears before ''whether'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a contract market designated under the Commodity Exchange Act), a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

Page 341, line 3, insert ''**; proceedings under chapter 15**'' after ''**contracts**''.

Page 342, line 11, insert ''traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act'' after ''contract''.

Page 342, line 22, insert ''and traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act'' after ''debtor''.

Page 343, line 5, strike ''agreement'' and insert ''or similar arrangement''.

Page 343, beginning on line , strike ''section 5a(a)(12)(A)'' and insert ''paragraph (1) or (2) of section 5c(c)''.

Page 343, line 10, strike ''been approved'' and insert ''not been abrogated or rendered ineffective by the Commodity Futures Trading Commission''.

Page 343, beginning on line 18, strike ''national'' and all that follows through ''market'' on line 21, and insert ''derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act)''.

Page 344, strike the item following line 18, and insert the following new item:

''561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15.''.

Page 345, line 21, insert ''**financial participants**'' before ''**securities**''.

Page 346, line 9, insert ''in subsection (a)(2)(B)(ii), by inserting before the semicolon, and'' after ''(1)''.

Page 346, line 10, insert a comma after ''period'',

Page 346, after line 22, insert the following new paragraph (and redesignate the subsequent paragraphs as paragraphs (3), (4), (7), and (8), respectively):

(2) in sections 362(b)(7) and 546(f), by inserting ''or financial participant'' after ''repo participant'' each time such term appears;

Page 347, after line 2, insert the following new paragraphs:

(5) in section 548(d)(2)(C), by inserting ''or financial participant'' after ''repo participant'';

(6) in section 548(d)(2)(D), by inserting ''or financial participant'' after ''swap participant'';

Page 347, beginning on line 6, strike ''by inserting'' and all that follows through ''contract market'' on line 8, and insert ''by striking the second sentence and inserting 'As used in this section, the term ''contractual right'' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act)' ''.

Page 347, line 12, strike ''and''.

Page 347, line 14, strike the period and insert a semicolon.

Page 347, after line 14, insert the following new paragraphs:

(9) in section 559, by inserting ''or financial participant'' after ''repo participant'' each time such term appears; and

(10) in section 560, by inserting ''or financial participant'' after ''swap participant''.

Page 348, strike the item following line 4, and insert the following new item:

''767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.'';

Page 348, strike the item following line 7, and insert the following new item:

''753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''.

Page 348, after the item following line 7, insert the following new section:

SEC. 907A. SECURITIES BROKER AND COMMODITY BROKER LIQUIDATION.

The Securities and Exchange Commission and the Commodity Futures Trading Commission may consult with each other with respect to—

(1) whether, under what circumstances, and the extent to which security futures products will be treated as commodity contracts or securities in a liquidation of a person that is both a securities broker and a commodity broker; and

(2) the treatment in such a liquidation of accounts in which both commodity contracts and securities are carried.

Page 352, line 1, insert a comma after ''101''.

Page 352, line 2, strike ''and 741'' and insert ''741, and 761''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 71, the gentleman from Ohio (Mr. OXLEY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Ohio (Mr. OXLEY).

□ 1245

Mr. OXLEY. Mr. Chairman, I yield myself 3 minutes.

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Chairman, I rise today in support of the amendment offered by the ranking minority member of the Committee on Financial Services, the gentleman from New York (Mr. LAFALCE), and myself.

Our amendment makes several technical and conforming changes to Title IX of H.R. 333. Currently Title IX contains the provisions of H.R. 1161 which passed the House three times in the 106th Congress but did not make it to the President.

That legislation was based upon recommendations of the Clinton administration. It had broad bipartisan support, and was sought by the financial services industry and the regulatory community.

I am very pleased we have brought this bill back to the floor so quickly and successfully. The majority leader and the chairman, the gentleman from Wisconsin (Mr. SENSENBRENNER), both deserve high praise for their work on this legislation.

Unfortunately, the bill before the House today does not make changes to these provisions necessitated by the later enactment of the Commodities Futures Modernization Act of 2000 sponsored by our good friend, Mr. Ewing. Without the changes in this amendment, similar kinds of financial contracts and market participants could be treated differently under the banking laws and the bankruptcy laws, where I come from.

Mr. Chairman, this does not make any sense. To my knowledge, this amendment is noncontroversial and has the support of the Treasury Department, the President's Working Group on Financial Markets, and the financial services industry. I am unaware of any opposition to the substance of this amendment.

We look forward to continuing to work with the administration and our colleagues in conference to address the remaining issues that were not included in this amendment. Mr. Chairman, this bill is a good bill and enjoys broad support.

I also want to thank my ranking minority member, the gentleman from New York (Mr. LAFALCE), for his assistance in developing this amendment which is so important to the smooth operation of our financial markets.

Mr. Chairman, this is a good amendment and a good bill. I urge all of my colleagues to support both.

Mr. Chairman, I am including for the RECORD some material explaining the provisions of title IX and the changes made by this amendment to provide needed technical background. This is a good amendment and a good bill, and I urge all of my colleagues to support both.

SECTION-BY-SECTION ANALYSIS OF TITLE IX OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001 (H.R. 333)

I. INTRODUCTION

Title IX of H.R. 333 is based on the work of an interagency working group under the auspices of the President's Working Group on Financial Markets following a review of current statutory provisions governing the treatment of qualified financial contracts and similar financial contracts upon the insolvency of a counterparty.

II. PURPOSE

Title IX amends the U.S. Bankruptcy Code, the Federal Deposit Insurance Act (FDIA), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the payment system risk reduction and meeting provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), and the Securities Investor Protection Act of 1970 (SIPA). These amendments address the treatment of certain financial transactions following the insolvency of a party to such transactions. The amendments are designed to clarify and improve the consistency between the applicable statutes and to minimize the risk of a disruption within or between financial markets upon the insolvency of a market participant.

III. BACKGROUND

Since its adoption in 1978, the Bankruptcy Code has been amended several times to afford different treatment for certain financial transactions upon the bankruptcy of a debtor, as compared with the treatment of other commercial contracts and transactions. These amendments were designed to further the policy goal of minimizing the systemic risks potentially arising from certain interrelated financial activities and markets. Similar amendments have been made to the FDIA and FDICIA, and both the Federal Deposit Insurance Corporation (FDIC) and the Securities Investor Protection Corporation (SIPC) have issued policy statements and letters clarifying general issues in this regard.

Systemic risk has been defined as the risk that a disruption—at a firm, in a market segment, to a settlement system, etc—can cause widespread difficulties at other firms, in other market segments or in the financial system as a whole. If participants in certain financial activities are unable to enforce their rights to terminate financial contracts with an insolvent entity in a timely manner, to offset or net payment and other transfer obligations and entitlements arising under such contracts, and to foreclose on collateral securing such contracts, the resulting uncertainty and potential lack of liquidity could increase the risk of an inter-market disruption.

Congress has in the past taken steps to ensure that the risk of such systemic events is minimized. For example, both the Bankruptcy Code and the FDIA contain provisions that protect the rights of financial participants to terminate swap agreements, forward contracts, securities contracts, commodity contracts and repurchase agreements following the bankruptcy or insolvency of a counterparty to such contracts or agreements. Furthermore, other provisions prevent transfers made under such circumstances from being avoided as preferences or fraudulent conveyances (except when made with actual intent to defraud and taken in bath faith). Protections also are afforded to ensure that the acceleration, termination, liquidation, netting, setoff and collateral foreclosure provisions of such transactions and master agreements for such transactions are enforceable.

In addition, FDICIA was enacted in 1991 to protect the enforceability of close-out netting provisions in ''netting contracts'' between ''financial institutions.'' FDICIA states that the goal of enforcing netting arrangements is to reduce systemic risk within the banking system and financial markets.

The orderly resolution of insolvencies involving counterparties to such contracts also is an important element in the reduction of systemic risk. The FDIA allows the receiver for an insolvent insured depository institution the opportunity to review the status of certain contracts to determine whether to terminate or transfer the contracts to new counterparties. These provisions provide the receiver with flexibility in determining the most appropriate resolution for the failed institution and facilitate the reduction of systemic risk by permitting the transfer, rather than termination, of such contracts.

IV. SUMMARY AND SECTION-BY-SECTION ANALYSIS

In general, Title IX is designed to clarify the treatment of certain financial contracts upon the insolvency of a counterparty and to promote the reduction of systemic risk. It furthers the goals of prior amendments to the Bankruptcy Code and the FDIA regarding the treatment of those financial contracts and of the payment system risk reduction provisions in FDICIA. It has four principal purposes:

1. To strengthen the provisions of the Bankruptcy Code and the FDIA that protect the enforceability of acceleration, termination, liquidation, close-out netting, collateral foreclosure and related provisions of certain financial agreements and transactions.

2. To harmonize the treatment of these financial agreements and transactions under the Bankruptcy Code and the FDIA.

3. To amend the FDIA and FDICIA to clarify that certain rights of the FDIC acting as conservator or receiver for a failed insured depository institution (and in some situations, rights of SIPC and receivers of certain uninsured institutions) cannot be defeated by operation of the terms of FDICIA.

4. To make other substantive and technical amendments to clarify the enforceability of financial agreements and transactions in bankruptcy or insolvency.

All these changes are designed to further minimize systemic risk to the banking system and the financial markets.

Section 901

Subsections (a) through (f) amend the FDIA definitions of ''qualified financial contract,'' ''securities contract,'' ''commodity

contract,'' ''forward contract,'' ''repurchase agreement'' and ''swap agreement'' to make them consistent with the definitions in the Bankruptcy Code and to reflect the enactment of the Commodity Futures Modernization Act of 2000 (CFMA). It is intended that the legislative history and case law surrounding those terms, to the date of this amendment, be incorporated into the legislative history of the FDIA.

Subsection (b) amends the definition of ''securities contract'' expressly to encompass margin loans, to clarify the coverage of securities options and to clarify the coverage of repurchase and reverse repurchase transactions. 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 any securities clearing agency'' is intended to cover other arrangements, such as novation, that have an effect similar to a guarantee. The reference to a ''loan'' of a security in the definition is intended to apply to loans of securities, whether or not for a ''permitted purpose'' under margin regulations. The reference to ''repurchase and reverse repurchase transactions'' is intended to eliminate any inquiry under the qualified financial contract provisions of the FDIA as to whether a repurchase or reverse repurchase transaction is a purchase and sale transaction or a secured financing. Repurchase and reverse repurchase transactions meeting certain criteria are already covered under the definition of ''repurchase agreement'' in the FDIA (and a regulation of the FDIC). Repurchase and reverse repurchase transactions on all securities (including, for example, equity securities, asset-backed securities, corporate bonds and commercial paper) are included under the definition of ''securities contract''.

Subsection (b) 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, sale or repurchase of 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.''

A number of terms used in the qualified financial contract provisions, but not defined therein, are intended to have the meanings set forth in the analogous provisions of the Bankruptcy Code or FDICIA (for example, ''securities clearing agency''). The term ''person,'' however, is not intended to be so interpreted. Instead, ''person'' is intended to have the meaning set forth in 1 U.S.C. §1.

Subsection (e) amends the definition of ''repurchase agreement'' to codify the substance of the FDIC's 1995 regulation defining repurchase agreement to include those on qualified foreign government securities. See 12 C.F.R. §360.5 The term ''qualified foreign government securities'' is defined to include those that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development (OECD). Subsection (e) reflects developments in the repurchase agreement markets, which increasingly use foreign government securities as the underlying 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 (e) 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 United States government- and agency-issued or fully guaranteed securities is intended to include obligations issued or guaranteed by Fannie Mae and the Federal Home Loan Mortgage Corporation (Freddie Mac) as well as all obligations eligible for purchase by Federal Reserve banks under the similar language of section 14(b) of the Federal Reserve Act.

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 the qualified financial contract provisions. In particular, an agreement for the sale and repurchase of a security would continue to be a securities contract as defined in the FDIA, even if not a ''repurchase agreement'' as defined in the FDIA. Similarly, an agreement for the sale and repurchase of a commodity, even though not a ''repurchase agreement'' as defined in the FDIA, would continue to be a forward contract for purposes of the FDIA.

Subsection (e), like subsection (b) for ''securities contracts,'' specifies that repurchase obligations under a participation in a commercial mortgage loan do not make the participation agreement a ''repurchase agreement.'' Such repurchase obligations embedded in participations in commercial loans (such as recourse obligations) do not constitute a ''repurchase agreement.'' 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 one year or less after such transfer would constitute a ''repurchase agreement'' (as well as a ''securities contract'').

Subsection (f) amends the definition of ''swap agreement'' to include an ''interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange 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 total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option.'' As amended, the definition of ''swap agreement'' will update the statutory definition and achieve contractual netting across economically similar transactions.

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. (The phrase ''or any similar agreement'' has been added to the definitions of ''forward contract,'' ''commodity contract,'' ''repurchase agreement'' and ''securities contract'' for the same reason.) To clarify this, subsection (f) expands the definition of ''swap agreement'' to include ''any agreement or transactions that is similar to any other agreement or transaction referred to in [subsection (f)] . . . that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence or contingency associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial risk or value.''

The definition of ''swap agreement,'' however, 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 simply because the parties purport to document or label the transactions as ''swap agreements.'' In addition, these definitions apply only for purposes of the FDIA and the Bankruptcy Code. These definitions, and the characterization of a certain transaction as a ''swap agreement,'' are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f). Similarly, the definition of ''securities contract,'' ''repurchase agreement,'' ''forward contract,'' and ''commodity contract,'' and the characterization of certain transactions as such a contract or agreement, are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f).

The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement, and any guarantee or reimbursement obligation 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 FDIA and the Bankruptcy Code. Similar changes are made in the definitions of ''forward contract,'' ''commodity contract,'' ''repurchase agreement'' and ''securities contract.''

The use of the term ''forward'' in the definition of ''swap agreement'' is not intended to refer only to transactions that fall within the definition of ''forward contract.'' Instead, a ''forward'' transaction could be a ''swap agreement'' even if not a ''forward contract.''

Subsection (g) amends the FDIA by adding a definition for ''transfer,'' which is a key term used in the FDIA, to ensure that tit is broadly construed to encompass dispositions of property or interests in property. The definition tracks that in section 101 of the Bankruptcy Code.

Subsection (h) makes clarifying technical changes to conform the receivership and conservatorship provisions of the FDIA. This subsection (h) also clarifies that the FDIA expressly protects rights under security agreements, arrangements or other credit enhancements related to one or more qualified financial contracts (QFCs). An example of a security arrangement is a right of setoff, and examples of other credit enhancements are letters of credit, guarantees, reimbursement obligations and other similar agreements.

Subsection (i) clarifies that no provision of Federal or state law relating to the avoidance of preferential or fraudulent transfers (including the anti-preference provision of the National Bank Act) can be invoked to avoid a transfer made in connection with any QFC of an insured depository institution in conservatorship or receivership, absent actual fraudulent intent on the part of the transferee.

Section 902

Section 902 provides that no provision of law, including FDICIA, shall be construed to limit the power of the FDIC to transfer or to repudiate any QFC in accordance with its powers under the FDIA. As discussed below, there has been some uncertainty regarding whether or not FDICIA limits the authority of the FDIC to transfer or to repudiate QFCs of an insolvent financial institution. Section 902—as well as other provisions in the Act—clarify that FDICIA does not limit the transfer powers of the FDIC with respect to QFCs.

Section 902 denies enforcement to ''walkaway'' clauses in QFCs. A walkaway clause is defined as a provision that, after calculation of a value of a party's position or an amount due to or from one of the parties upon termination, liquidation or acceleration of the QFC, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a non-defaulting party.

Section 903

Subsection (a) amends the FDIA to expand the transfer authority of the FDIC to permit transfers of QFCs to ''financial institutions'' as defined in FDICIA or in regulations. This provision will allow the FDIC to transfer QFCs to a non-depository financial institution, provided the institution is not subject to bankruptcy or insolvency proceedings.

The new FDIA provision specifies that when the FDIC transfers QFCs that are cleared on or subject to the rules of a particular clearing organization, the transfer will not require the clearing organization to accept the transferee as a member of the organization. This provision gives the FDIC flexibility in resolving QFCs cleared on or subject to the rules of a clearing organization, while preserving the ability of such organizations to enforce appropriate risk reducing membership requirements. The amendment does not require the clearing organization to accept for clearing any QFCs from the transferee, except on the terms and conditions applicable to other [parties permitted to clear through that clearing organization. ''Clearing organization'' is defined to mean a ''clearing organization'' within the meaning of FDICIA (as amended both by the CFMA and by Section 906 of the Act).

The new FDIA provision also permits transfers to an eligible financial institution that is a non-U.S. person, or the branch or agency of a non-U.S. person or a U.S. financial institution that is not an FDIC-insured institution if, following the transfer, the contractual rights of the parties would be enforceable substantially to the same extent as under the FDIA. It is expected that the FDIC would not transfer QFCs to such a financial institution if there were an impending change of law that would impair the enforceability of the parties' contractual rights.

Subsection (b) amends the notification requirements following a transfer of the QFCs of a failed depository institution to require the FDIC to notify any party to a transferred QFC of such transfer by 5:00 p.m. (Eastern Time) on the business day following the date of the appointment of the FDIC acting as receiver or following the date of such transfer by the FDIC acting as a conservator. This amendment is consistent with the policy statement on QFCs issued by the FDIC on December 12, 1989.

Subsection (c) amends the FDIA to clarify the relationship between the FDIA and FDICIA. There has been some uncertainty whether FDICIA permits counterparties to terminate or liquidate a QFC before the expiration of the time period provided by the FDIA during which the FDIC may repudiate or transfer a QFC in a conservatorship or receivership. Subsection (c) provides that a party may not terminate a QFC based solely on the appointment of the FDIC as receiver until 5:00 p.m. (Eastern Time) on the business day following the appointment of the receiver or after the person has received notice of a transfer under FDIA section 11(d)(9), or based solely on the appointment of the FDIC as conservator, notwithstanding the provisions of FDICIA. This provides the FDIC with an opportunity to undertake an orderly resolution of the insured depository institution.

The amendment also prohibits the enforcement of rights of termination or liquidation that arise solely because of the insolvency of the institution or are based on the ''financial condition'' of the depository institution in receivership or conservatorship. For example, termination based on a cross-default provision in a QFC that is triggered upon a default under another contract could be rendered ineffective if such other default was caused by an acceleration of amounts due under that other contract, and such acceleration was based solely on the appointment of a conservator or receiver for that depository institution. Similarly, a provision in a QFC permitting termination of the QFC based solely on a downgraded credit rating of a party will not be enforceable in an FDIC receivership or conservatorship because the provision is based solely on the financial condition of the depository institution in default. However, any payment, delivery or other performance-based default, or breach of a representation or covenant putting in question the enforceability of the agreement, will not be deemed to be based solely on financial condition for purposes of this provision. The amendment is not intended to prevent counterparties from taking all actions permitted and recovering all damages authorized upon repudiation of any QFC by a conservator or receiver, or from taking actions based upon a receivership or other financial condition-triggered default in the absence of a transfer (as contemplated in Section 11(e)(10) of the FDIA).

The amendment allows the FDIC to meet its obligation to provide notice to parties to transferred QFCs by taking steps reasonably calculated to provide notice to such parties by the required time. This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Finally, the amendment permits the FDIC to transfer QFCs of a failed depository institution to a bridge bank or a depository institution organized by the FDIC for which a conservator is appointed either (i) immediately upon the organization of such institution or (ii) at the time of a purchase and assumption transaction between the FDIC and the institution. This provision clarifies that such institutions are not to be considered financial institutions that are ineligible to receive such transfers under FDIA section 11(e)(9). This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Section 904

Section 904 limits the disaffirmance and repudiation authority of the FDIC with respect to QFCs so that such authority is consistent with the FDIC's transfer authority under FDIA section 11(e)(9). This ensures that no disaffirmance, repudiation or transfer authority of the FDIC may be exercised to ''cherry-pick'' or otherwise treat independently all the QFCs between a depository institution in default and a person or any affiliate of such person. The FDIC has announced that its policy is not to repudiate or disaffirm QFCs selectively. This unified treatment is fundamental to the reduction of systemic risk.

Section 905

Section 905 states that a master agreement for one or more securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements will be treated as a single QFC under the FDIA. This provision ensures that cross-product netting pursuant to a master agreement, or pursuant to an umbrella agreement for separate master agreements between the same parties, each of which is used to document one or more qualified financial contracts, will be enforceable under the FDIA. Cross-product meeting permits a wide variety of financial transactions between two parties to be netted, thereby maximizing the present and potential future risk-reducing benefits of the netting arrangement between the parties. Express recognition of the enforceability of such cross-product master agreements furthers the policy of increasing legal certainty and reducing systemic risks in the case of an insolvency of a large financial participant.

Section 906

Subsection (a)(1) amends the definition of ''clearing organization'' to include clearinghouses that are subject to exemptions pursuant to orders of the Securities and Exchange Commission or the Commodity Futures Trading Commission and to include multilateral clearing organizations (the definition of which was added to FDICIA by the CFMA).

Subsection (a)(2). FDICIA provides that a netting arrangement will be enforced pursuant to its terms, notwithstanding the failure of a party to the agreement. However, the current netting provisions of FDICIA limit this protection to ''financial institutions,'' which include depository institutions. This subsection amends the FDICIA definition of covered institutions to include (i) uninsured national and State member banks, irrespective of their eligibility for deposit insurance and (ii) foreign banks (including the foreign bank and its branches or agencies as a combined group, or only the foreign bank parent of a branch or agency). The latter change will extend the protections of FDICIA to ensure that U.S. financial organizations participating in netting agreements with foreign banks are covered by the Act, thereby enhancing the safety and soundness of these arrangements. It is intended that a non-defaulting foreign bank and its branches and agencies be considered to be a single financial institution for purposes of the bilateral netting provisions of FDICIA (except to the extent that the non-defaulting foreign bank and its branches and agencies on the one hand, and the defaulting financial institution, on the other, have entered into agreements that clearly evidence an intention that the non-defaulting foreign bank and its branches and agencies be treated as separate financial institutions for purposes of the bilateral netting provisions of FDICIA).

Subsection (a)(3) amends FDICIA to provide that, for purposes of FDICIA, two or more clearing organizations that enter into a netting contract are considered ''members'' of each other. This assures the enforceability of netting arrangements involving two or more clearing organizations and a member common to all such organizations, thus reducing systemic risk in the event of

the failure of such a member. Under the current FDICIA provisions, the enforceability of such arrangements depends on a case-by-case determination that clearing organizations could be regarded as members of each other for purposes of FDICIA.

Subsection (a)(4) amends the FDICIA definition of netting contract and the general rules applicable to netting contracts. The current FDICIA provisions require that the netting agreement must be governed by the law of the United States or a State to receive the protections of FDICIA. However, many of these agreements, particularly netting arrangements covering positions taken in foreign exchange dealings, are governed by the laws of a foreign country. This subsection broadens the definition of ''netting contract'' to include those agreements governed by foreign law, and preserves the FDICIA requirement that a netting contract not be invalid under, or precluded by, Federal law.

Subsections (b) and (c) establish two exceptions to FDICIA's protection of the enforceability of the provisions of netting contracts between financial institutions and among clearing organization members.

First, the termination provisions of netting contracts will not be enforceable based solely on (i) the appointment of a conservator for an insolvent depository institution under the FDIA or (ii) the appointment of a receiver for such institution under the FDIA, if such receiver transfers or repudiates QFCs in accordance with the FDIA and gives notice of a transfer by 5:00 p.m. on the business day following the appointment of a receiver. This change is made to confirm the FDIC's flexibility to transfer or repudiate the QFCs of an insolvent depository institution in accordance with the terms of the FDIA. This modification also provides important legal certainty regarding the treatment of QFCs under the FDIA, because the current relationship between the FDIA and FDICIA is unclear.

The second exception provides that FDICIA does not override a stay order under SIPA with respect to foreclosure on securities (but not cash) collateral of a debtor (section 911 makes a conforming change to SIPA). There is also an exception relating to insolvent commodity brokers.

Subsections (b) and (c) also clarify that a security agreement or other credit enhancement related to a netting contract is enforceable to the same extent as the underlying netting contract.

Subsection (d) adds a new section 407 to FDICIA. This new section provides that, notwithstanding any other law, QFCs with uninsured national banks or uninsured Federal branches or agencies or uninsured State member banks or Edge Act corporations that operate, or operate as, a multilateral clearing organization and that are placed in receivership or conservatorship will be treated in the same manner as if the contract were with an insured national bank or insured Federal branch for which a receiver or conservator was appointed. This provision will ensure that parties to QFCs with these institutions will have the same rights and obligations as parties entering into the same agreements with insured depository institutions. The new section specifically limits the powers of a receiver or conservator for such an institution to those contained in 12 U.S.C. §§1821(e)(8), (9), (10), and (11), which address QFCs.

While the amendment would apply the same rules to such institutions that apply to insured institutions, the provision would not change the rules that apply to insured institutions. Nothing in this section would amend the International Banking Act, the Federal Deposit Insurance Act, the National Bank Act, or other statutory provisions with respect to receiverships of insured national banks or Federal branches.

Section 907

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 United States government- and agency-issued or fully guaranteed securities is intended to include obligations issued or guaranteed by Fannie Mae and the Federal Home Loan Mortgage Corporation (Freddie Mac) as well as all obligations eligible for purchase by Federal Reserve banks under the similar language of section 14(b) of the Federal Reserve Act.

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, an agreement for the sale and repurchase of 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, even if not a ''repurchase agreement'' as defined in the Bankruptcy Code. Similarly, an agreement for the sale and repurchase of a commodity, even though not a ''repurchase agreement'' as defined in the Bankruptcy Code, 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 a commercial mortgage loan do not make the participation agreement a ''repurchase agreement.'' Such repurchase obligations embedded in participations in commercial loans (such as recourse obligations) do not constitute a ''repurchase agreement.'' 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 one year or less after such transfer would constitute a ''repurchase agreement'' (as well as a ''securities contract'').

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 total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option.'' As amended, the definition of ''swap agreement'' will update the statutory definition and achieve contractual netting across economically similar transactions.

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. (The phrase ''or any similar agreement'' has been added to the definitions of ''forward contract,'' ''commodity contract,'' ''repurchase agreement,'' and ''securities contract'' for the same reason.) To clarify this, subsection (a)(1) expands the definition of ''swap agreement'' to include ''any agreement or transactions that is similar to any other agreement or transaction referred to in [subsection (a)(1)] and that has been, is presently, or in the future becomes, the subject of recurrent dealing sin the swap markets and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence or contingency associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial 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.'' These definitions, and the characterization of a certain transaction as a ''swap agreement,'' are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (a)(1)(C). Similarly, the definitions of ''securities contract,'' ''repurchase agreement,'' ''forward contract,'' and ''commodity contract,'' and the characterization of certain transactions as such a contract or agreement, are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f).

The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement and any guarantee or reimbursement obligation 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,'' ''repurchase agreement,'' and ''securities contract.'' An example of a security arrangement is a right of setoff; examples of

other credit enhancements are letters of credit and other similar agreements. A security agreement or arrangement or guarantee or reimbursement obligation related to a ''swap agreement,'' ''forward contract,'' ''commodity contract,'' ''repurchase agreement'' or ''securities contract'' will be such an agreement or contract only to the extent of the damages in connection with such agreement measured in accordance with Section 562 of the Bankruptcy Code (added by the Act). This limitation does not affect, however, the other provisions of the Bankruptcy Code (including Section 362(b)) relating to security arrangements in connection with agreements or contracts that otherwise qualify as ''swap agreements,'' ''forward contracts,'' ''commodity contracts,'' ''repurchase agreements'' or ''securities contracts.''

The use of the term ''forward'' in the definition of ''swap agreement'' is not intended to refer only to transactions that fall within the definition of ''forward contract.'' Instead, a ''forward'' transaction could be a ''swap agreement'' even if not a ''forward contract.''

Subsections (a)(2) and (a)(3) amend the Bankruptcy Code definitions of ''securities contract'' and ''commodity contract,'' respectively, to conform them to the definition in the FDIA.

Subsection (a)(2), like the amendments to the FDIA, amends the definition of ''securities contract'' expressly to encompass margin loans, to clarify the coverage of securities options and to clarify the coverage of repurchase and reverse repurchase transactions. 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. The reference to a ''loan'' of a security in the definition is intended to apply to loans of securities, whether or not for a ''permitted purpose'' under margin regulations. The reference to ''repurchase and reverse repurchase transactions'' is intended to eliminate any inquiry under Section 555 and related provisions as to whether a repurchase or reverse repurchase transaction is a purchase and sale transaction or a secured financing. Repurchase and reverse repurchase transactions meeting certain criteria are already covered under the definition of ''repurchase agreement'' in the Bankruptcy Code. Repurchase and reverse repurchase transactions on all securities (including, for example, equity securities, asset-backed securities, corporate bonds and commercial paper) are included under the definition of ''securities contract''. A repurchase or reverse repurchase transaction which is a ''securities contract'' but not a ''repurchase agreement'' would thus be subject to the ''counterparty limitations'' contained in Section 555 of the Bankruptcy Code (i.e., only stockbrokers, financial institutions, securities clearing agencies and financial participants can avail themselves of Section 555 and related provisions).

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, sale or repurchase of 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 to securities contracts, the definition of ''financial institution'' expressly 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), 555, and 556 even if the creditor could not qualify as, for example, a commodity broker. Sections 326(b)(6), 555 and 556 preserve 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, sections 362(b)(6), 555 and 556 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 impact upon the markets from a single failure, and is derived from threshold tests contained in Regulation EE promulgated by the Federal Reserve Board in implementing the netting provisions of the Federal Deposit Insurance Corporation Improvement Act. It is intended that the 15-month period be measured with reference to the 15 months preceding the filing of a petition by or against the debtor.

''Financial participant'' is also defined to include ''clearing organizations'' within the meaning of FDICIA (as amended by the CFMA and Section 906 of the Act). This amendment, together with the inclusion of ''financial participants'' as eligible counterparties in connection with ''commodity contracts,'' ''forward contracts'' and ''securities contracts'' and the amendments made in other Sections of the Act to include ''financial participants'' as counterparties eligible for the protections in respect of ''swap agreements'' and ''repurchase agreements'', take into account the CFMA and will allow clearing organizations to benefit from the protections of all of the provisions of the Bankruptcy Code relating to these contracts and agreements. This will further the goal of promoting the clearing of derivatives and other transactions as a way to reduce systemic risk. The definition of ''financial participant'' (as with the other provisions of the Bankruptcy Code relating to ''securities contracts,'' ''forward contracts,'' ''commodity contracts,'' ''repurchase agreements'' and ''swap agreements'') is not mutually exclusive, i.e., an entity that qualifies as a ''financial participant'' could also be a ''swap participant,'' ''repo participant,'' ''forward contract merchant,'' ''commodity broker,'' ''stockbroker,'' ''securities clearing agency'' and/or ''financial institution.''

Subsection (c) adds to the Bankruptcy Code new definitions for the terms ''master netting agreement'' and ''master netting agreement participant.''

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

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

Subsection (d) amends section 362(b) of the Bankruptcy Code to protect enforcement, free from the automatic stay, of setoff or netting provisions in swap agreements and in master netting agreements and security agreements or arrangements related to one or more swap agreements or master netting agreements. This provision parallels the other provisions of the Bankruptcy Code that protect netting provisions of securities contracts, commodity contracts, forward contracts, and repurchase agreements. Because the 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 agreements, 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 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 re-sold pursuant to repurchase agreements.

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

Subsections (e) and (f) amend sections 546 and 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 and not taken in good faith. This amendment provides the same protections for a transfer made under, or in connection with, a master netting agreement as currently is provided for margin payments, settlement payments and other transfers received by commodity brokers, forward contract merchants, stockbrokers, financial institutions, securities

clearing agencies, repo participants, and swap participants under Sections 546 and 548(d), except to the extent the trustee could otherwise avoid such a transfer made under an individual contract covered by such 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 derivatives clearing organization, multilateral clearing organization, securities exchange, securities association, contract market, derivatives transaction execution facility or board of trade, (ii) under common law, law merchant or (iii) by reason of normal business practice. This reflects the enactment of the CFMA and the current treatment of rights under swap agreements under section 560 of the Bankruptcy Code. Similar changes to reflect the enactment of the CFMA have been made to the definition of ''contractual right'' for purposes of Sections 555, 556, 559 and 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 traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act. 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 accounts 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 obligations under such commodity contracts with other 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. Subsection (b)(2)(C) provides an exception to subsections (b)(2)(A) and (b)(2)(B) for cross-margining and other similar arrangements approved by, or submitted to and not rendered ineffective by, the Commodity Futures Trading Commission, as well as certain other netting arrangements.

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 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)(28).

Under the Act, 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.

Section 502 of the Act 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, Section 502 makes a technical amendment in Chapter 9 to clarify the applicability of these provisions.

New Section 561 of the Bankruptcy Code 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 under new Chapter 15.

Subsections (l) and (m) 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 (n) 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, and 561 of the Bankruptcy Code to the types of setoff excepted from section 553(b).

Subsection (o), as well as other subsections of the Act, adds references to ''financial participant'' in all the provisions of the Bankruptcy Code relating to securities, forward and commodity contracts and repurchase and swap agreements.

Section 908

Section 908 amends section 11(e)(8) of the Federal Deposit Insurance Act to explicitly authorize the FDIC, in consultation with appropriate Federal banking agencies, to prescribe regulations on recordkeeping with respect to QFCs. Adequate recordkeeping for such transactions is essential to effective risk management and to the reduction of systemic risk permitted by the orderly resolution of depository institutions utilizing QFCs.

Section 909

Section 909 amends FDIA section 13(e)(2) to provide that an agreement for the collateralization of governmental deposits, bankruptcy estate funds, Federal Reserve Bank or Federal Home Loan Bank extensions of credit or one or more QFCs shall not be deemed invalid solely because such agreement was not entered into contemporaneously with the acquisition of the collateral or because of pledges, delivery or substitution of the collateral made in accordance with such agreement.

The amendment codifies portions of policy statements issued by the FDIC regarding the application of section 13(e), which codifies the ''D'Oench Duhme'' doctrine. With respect to QFCs, this codification recognizes that QFCs often are subject to collateral and other security arrangements that may require posting and return of collateral on an ongoing basis based on the mark-to-market values of the collateralized transactions. The codification of only portions of the exiting FDIC policy statements on these and related issues should not give rise to any negative implication regarding the continued validity of these policy statements.

Section 910

Section 910 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 QFCs in the FDIA.

Section 911

Section 911 amends SIPA to provide that an order or decree issued pursuant to SIPA shall not operate as a stay of any right of liquiation, termination, acceleration, offset or netting under one or more securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements or master netting agreements (as defined in the Bankruptcy Code and including rights of foreclosure on collateral), except that such order or decree may stay any right to foreclose on or dispose of securities (but not cash) collateral pledged by the debtor or sold by the debtor under a repurchase agreement or lent by the debtor under a securities lending agreement. (A corresponding amendment to FDICIA is made by section 906). A creditor that was stayed in exercising rights against such securities would be entitled to post-insolvency interest to the extent of the value of such securities.

Section 912

Section 912 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 securities 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 at least one tranche of the 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. The investment-grade rating requirement applies only when the security is initially issued. 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 (whether or not reference is made to section 541 in the written agreement). The definition makes clear that the debtor's written intention as to the exclusion of the eligible assets 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 913

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.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore. Does any Member claim the time in opposition?

Ms. JACKSON-LEE of Texas. I claim the time in opposition, Mr. Chairman.

The CHAIRMAN pro tempore. The gentlewoman from Texas (Ms. JACKSON-LEE) is recognized for 5 minutes.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. LAFALCE), ranking member of the Committee on Financial Services.

Mr. LAFALCE. Mr. Chairman, I thank the gentlewoman for yielding time to me.

Mr. Chairman, I have difficulties with the bankruptcy bill and believe that it needs significant improvements in the amendatory process; amendments that we, unfortunately, for the most part will not be able to offer.

However, there are some technical matters in the bill within the jurisdiction of the Committee on Financial Services which require adjustments, and one of which has been allowed as an amendment by the gentleman from Ohio (Mr. OXLEY) and myself.

That title is solely concerned with changes to the current system for quickly netting the obligations of financial institutions in bankruptcy or receivership situations in order to prevent destabilizing disruptions in our clearing and settlement systems.

The provision now in the bill has passed the House repeatedly and without objection in the last Congress. The adjustments that the gentleman from Ohio (Mr. OXLEY) and I offer are largely technical and are necessitated by enactment of the Commodities Exchange Modernization Act during the last Congress.

Our amendment also includes some minor substantive changes which have been rendered advisable due to transitions in market structure since the President's Working Group on Financial Markets recommended the original text of Title IX in 1998.

The Justice Department and all regulatory departments and agencies which might be affected by these changes have been consulted, in detail, and offer no objections. These regulators include the Department of the Treasury, Federal Reserve, Securities and Exchange Commission, Federal Deposit Insurance Corporation, and the Commodities Futures Trading Commission. This group essentially mirrors the President's Working Group on Financial Markets as it was constituted in 1998.

Title IX contains provisions which are of central importance to the stability of our financial system. Their potential importance is magnified in a time of possible economic downturn. There is no opposition to these changes. Indeed, there is broad support. They could have, and should have, passed the House and Senate and been enacted into law last Congress. Unfortunately, they became unnecessarily caught up in the far more contentious bankruptcy debate.

If H.R. 333 again becomes caught up in a long and contentious debate, I will urge that Title IX be quickly pursued as an independent measure. If there were a major problem with the machinery of the securities system, the country would be hard pressed to resolve it expeditiously and easily without the enactment of these netting provisions. Instability and delay in such a circumstance could prove a recipe for major economic trouble. Our financial system has undergone such fundamental change that existing legal structures are woefully inadequate for handling an emergency—

particularly if they involve new instruments for managing risk and transferring value, such as swaps.

The updating amendments Mr. OXLEY and I are proposing ensure that Title IX will be better tailored for the present and well-integrated with the Commodities Exchange Modernization Act of 2000. They will also establish a ready template for translating Title IX into an independent bill should that become necessary.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield back the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me thank again the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for his leadership on this issue, as well as my colleague, the gentleman from New York (Mr. LAFALCE), and the ranking member of the Committee.

Mr. Chairman, I am pleased to yield such time as he may consume to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, I rise in support of the amendment offered by the distinguished chairman and by his colleague, the ranking member, the gentleman from New York (Mr. LAFALCE).

Among other things, the amendment modifies the bill's so-called netting provisions to conform them to important changes made to Federal law in the Commodities Futures Modernization Act which was signed into law December 21, 2000.

I might point out to my colleagues that the provisions in this amendment were passed by this House in a bipartisan overwhelming vote last year, but they never made it into law. What they do is promote an orderly unwinding of financial contracts in those instances in which one party to a derivative contract becomes insolvent and those contracts go into a bankruptcy proceeding. This avoids that possibility.

We all found out from the long-term capital management situation, and that was 1998, a major hedge fund, what a situation that was. We want to avoid that in the future, tying these contracts up in a long bankruptcy proceeding.

The Commodity Futures Modernization Act made a number of important changes to the regulation of over-the-counter derivatives. The law expressly excluded certain derivative contracts from the Commodities Exchange Act, and allowed for the formation of new clearing entities. The amendment before the House now would update the ''financial contracts'' definition and the netting provisions to reflect new market developments in the swaps industry and the changes made in the Commodity Futures Modernization Act.

Let me again commend the chairman and the ranking member for bringing this important amendment to the floor today, and I urge my colleagues to support its adoption. If we do not do it, the next time we have a major financial player threatened with insolvency we will find ourselves needing to pass this, and we might as well get ahead of the game.

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I again thank the chairman of the Subcommittee on Financial Institutions of the Committee on Financial Services for his good work in this area.

Mr. Chairman, in summary, there were some other changes that the President's working group had requested that are not contained in this amendment, but we will hopefully reserve the right to seek those changes in conference, working very closely with all of the major players in this historic legislation.

Mr. OXLEY. Mr. Speaker, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Ohio (Mr. OXLEY).

The amendment was agreed to.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 6 printed in House Report 107–4.

AMENDMENT NO. 6 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Ms. JACKSON-LEE of Texas:

Page 8, after line 11, insert the following (and make such technical and conforming changes as may be appropriate):

(III) by striking ''whose debts are primarily consumer debts'';

Page 10, line 7, strike ''the continuation of''.

Page 10, after line 22, insert the following (and make such technical and conforming changes as may be appropriate):

''(II) In addition, if the debtor does have health insurance benefits the debtor's monthly expenses shall include an allowance to pay for reasonable medical expenses, as circumstances require, not covered by the insurance for the debtor, the dependents of the debtor, and the spouse of the debtor.

Page 10, beginning on line 24, strike ''actual administrative expenses'' and insert ''reasonable expense''.

Page 11, line 1, insert ''or public'' after ''private''.

Page 11, after line 4, insert the following:

''(V) In addition, the debtor's monthly expenses shall include expenses necessary for the care of foster children in the custody of the debtor.

Page 11, beginning on line 1, strike ''if'' and all that follows through ''why'' on line 3.

Page 12, strike lines 2 through 6, and insert the following:

''(B)(i) In any proceeding brought under this subsection, the presumption of abuse may be overcome if the court finds special circumstances indicating by a preponderance of the evidence that the debtors income should be adjusted to less than the current monthly income, that the debtors reasonably necessary expenses are greater than those allowed by the Internal Revenue Service guidelines, or that the debtors financial difficulties were caused by circumstances beyond the debtors control including medical problems.

Page 13, after line 3, insert the following:

''(v) A debtor whose current monthly income is equal to or less than the Federal Income Poverty Guidelines and has been for the 1-year period preceding the date of the filing of the petition may, in lieu of the requirements of clauses (iv) and (v) of section 521(a)(1)(B) and subsections (e), (f), and (g) of section 521, file with the court written evidence showing the debtors income for the 1-year period before the date of the filing of the petition and a declaration under penalty of perjury that the debtors income meets the test of this clause for that period.

Page 24, line 2, strike ''current monthly income'' and insert ''projected disposable income''.

Page 17, lines 6, 11, and 16, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median family income is not reported by the Bureau of the Census)'' after ''Census''.

Page 18, lines 2, 7, and 12, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median family income is not reported by the Bureau of the Census)'' after ''Census''.

Page 20, lines 18 and 23, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median family income is not reported by the Bureau of the Census)'' after ''Census''.

Page 21, lines 9 and 14, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median family income is not reported by the Bureau of the Census)'' after ''Census''.

Page 25, lines 9, 14, and 19, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median family income is not reported by the Bureau of the Census)'' after ''Census''.

Page 160, lines 14, 19, and 24, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median family income is not reported by the Bureau of the Census)'' after ''Census''.

Page 161, lines 9, 14, and 19, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median family income is not reported by the Bureau of the Census)'' after ''Census''.

Page 162, lines 17 and 23, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median family income is not reported by the Bureau of the Census)'' after ''Census''.

Page 163, line 4, insert ''(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median family income is not reported by the Bureau of the Census)'' after ''Census''.

Beginning on page 45, strike line 24 and all that follows through line 9 on page 61, and insert the following:

(1) in subsection (c)(2)—

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

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

(C) by adding at the end the following:

''(C) such agreement contains a clear and conspicuous statement which advises the debtor what portion of the debt to be reaffirmed is attributable to principal, interest, late fees, creditors attorney fees, expenses or other costs relating to the collection of the debt;'';

(2) in subsection (c)(6)(B), by inserting ''or is a debt described in subsection (c)(7)'' after ''real property''; and

(3) in subsection (c)—

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

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

(C) by adding at the end the following:

''(7) in a case concerning an individual, if the consideration for such agreement is based in whole or in part on an unsecured consumer debt, or is based in whole or in part upon a debt for an item of personalty the value of which at point of purchase was $1,000 or less, and in which the creditor asserts a purchase money interest, the court, approves such agreement as—

''(A) in the best interest of the debtor in light of the debtors income and expenses;

''(B) not imposing an undue hardship on the debtors future ability to pay for the needs of children and other dependents (including court ordered support);

''(C) not requiring the debtor to pay the creditors attorneys fees, expenses or other costs relating to the collection of debt;

''(D) not entered into to protect property that is necessary for the care and maintenance of children or other dependents that would have nominal value on repossession;

''(E) not entered into after coercive threats or actions by the creditor in the creditors course of dealings with the debtor; and

''(F) not unfair because excessive in amount based upon the value of the collateral.'';

(4) in subsection (d)(2)—

(A) by striking ''subsection (c)(6)'' and inserting ''paragraphs (6) and (7) of subsection (c)'', and

(B) by striking '', if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor after of this section and adding at the end as applicable''.

Page 86, strike lines 1 through 5 (and make such technical and conforming changes as may be appropriate).

Page 121, after line 16, insert (and make such technical and conforming changes as may be appropriate):

SEC. 231. PRIVACY POLICY ENFORCEMENT.

(a) FTC AND STATE ATTORNEYS GENERAL AUTHORITY TO PROTECT PERSONAL PRIVACY.—

(1) IN GENERAL.—Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following new section:

''§ 308. Personally identifiable information; authority of Federal Trade Commission and State attorneys general

''(a) FTC AUTHORITY.—The Federal Trade Commission may appear and be heard in any case or proceeding under this title in which personally identifiable information is, or is proposed to be, used, sold, leased, or otherwise disclosed in violation of section 363(b)(3).

''(b) AUTHORITY OF STATE ATTORNEYS GENERAL.—A State, as parens patriae, may appear and be heard in any case or proceeding under this title in which—

''(1) the attorney general of a State has reason to believe that the personally identifiable information of the residents of that State has been or is threatened or adversely affected; and

''(2) personally identifiable information is, or is proposed to be, used, sold, leased, or otherwise disclosed in violation of section 363(b)(3).

''(c) NO AFFECT ON OTHER AUTHORITY.—Nothing in this section shall be construed to limit the authority of the Federal Trade Commission or a State to appear and be heard in any case or proceeding—

''(1) as a creditor where the Federal Trade Commission or a State asserts a claim against a debtor based on alleged violations of statutes within the enforcement jurisdiction of the Federal Trade Commission or the State; or

''(2) as a party in interest concerning other matters or issues within the jurisdiction of the Federal Trade Commission or the State.''.

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

''308. Personally identifiable information; authority of Federal Trade Commission and State attorneys general.''.

(b) LIMITATION ON SALE, USE, OR LEASE OF CERTAIN PERSONALLY IDENTIFIABLE INFORMATION.—Section 363(b) of title 11, United States Code, is amended by adding at the end the following:

''(3)(A) If the debtor is not an individual, personally identifiable information in the possession of the debtor that relates to any other person may only—

''(i) be used by the debtor—

''(I) in accordance with the terms of the debtor's privacy policy in effect at the time of the bankruptcy filing; or

''(II) if no such privacy policy relating to the personally identifiable information was in effect at the time of the bankruptcy filing, in accordance with subparagraph (B); and

''(ii) be sold, leased, or otherwise disclosed by the debtor—

''(I) to a nondebtor party; and

''(II) in accordance with subparagraph (B).

''(B) In the case of the use, sale, lease, or other disclosure of personally identifiable information, as described in clause (i)(II) or (ii) of subparagraph (A), the debtor shall provide prior clear and conspicuous notice to the person to whom the personally identifiable information relates of—

''(i) the proposed use, sale, lease, or other disclosure of the information;

''(ii) the identity of the purchaser, lessee, or other recipient of the information, if applicable;

''(iii) the privacy policy of the purchaser, lessee, or other recipient of the information, if applicable; and

''(iv) the right of that person to choose not to have the information used or transferred, and an opportunity to choose not to have the information used or transferred.

''(C) The bankruptcy court, after notice to all parties in interest and the Federal Trade Commission and hearing—

''(i) shall establish mechanisms for providing clear and conspicuous notice and choice referred to in subparagraph (B); and

''(ii) may tailor such mechanisms to the specific circumstances of a case, as determined by the bankruptcy court.''.

(c) DEFINITION OF PERSONALLY IDENTIFIABLE INFORMATION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (41) the following:

''(41A) 'personally identifiable information' means, with respect to the person to whom the information relates—

''(A) a first name, initials, and last name of that person, whether given at birth or adoption, assumed, or legally changed;

''(B) a home or other physical address for that person, including street name and name of city or town;

''(C) an e-mail address for that person;

''(D) a telephone number for that person;

''(E) a social security account number for that person;

''(F) a credit card account number for that person;

''(G) a birth date, birth certificate number, or place of birth for that person;

''(H) information concerning that person that the debtor collects and combines with any other identifier described in this paragraph; and

''(I) any other identifying information relating to that person that permits the physical or electronic contacting or identification of that person, as determined by the bankruptcy court.''.

Page 198, strike lines 3 and 4 and insert the following:

308, as added by this Act, the following:

''§ 309. Debtor reporting requirements

Page 199, strike line 15 and all that follows through the end of the material between lines 15 and 16 and insert the following:

section 308, as added by this Act, the following:

''309. Debtor reporting requirements.''.

Page 254, after line 4, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 605. PROTECTION OF PERSONAL PRIVACY IN BANKRUPTCY CASES.

(a) PERSONAL PRIVACY PROTECTION.—Section 107 of title 11, United States Code, is amended by adding at the end the following:

''(c) ELECTRONIC ACCESS.—

''(1) IN GENERAL.—The clerk of the bankruptcy court, the United States trustee, and the trustee in a case under this title may provide electronic access to a paper filed in a case under this title, to any of the information contained in a paper filed in such a case, and to the dockets of a bankruptcy court only as permitted in this subsection.

''(2) LIMITATIONS ON ACCESS.—Except as provided in paragraph (3), the clerk of the bankruptcy court, the United States trustee, and the trustee in the case may not provide electronic access—

''(A) to the debtor's social security number, date of birth, mother's maiden name, telephone number, or account numbers (including bank account and credit card account numbers);

''(B) to any of the single line items in the debtor's schedule of assets or statement of income and expenditures; or

''(C) to any personal, medical, or financial information regarding the debtor or a relative of the debtor.

''(3) PERMISSIBLE ACCESS.—The clerk of the bankruptcy court, the United States trustee, and the trustee in the case may provide electronic access to the information specified in paragraph (2) to—

''(A) a party in interest in the case;

''(B) an entity that requires any such information to determine whether it is a party in interest in the case;

''(C) the trustee in the case;

''(D) the United States trustee; or

''(E) a governmental unit that requires any such information for a bona fide law enforcement purpose.

''(4) CERTIFICATION REQUIRED.—A party or entity whose only basis for obtaining electronic access to information in a case under this title is under subparagraph (A) or (B) of

paragraph (3) shall, as a condition to obtaining electronic access to any of the information listed in paragraph (2), certify, in writing or in electronic form, to the clerk of the bankruptcy court, the United States trustee, or the trustee in the case, as the case may be, that the party or entity—

''(A) properly qualifies for electronic access to information under paragraph (3);

''(B) will use the information obtained through electronic access only for the purpose of—

''(i) participating or determining whether to participate in the case;

''(ii) the entity's own internal credit evaluation of the debtor; or

''(iii) providing the information to a governmental unit for a bona fide law enforcement purpose;

''(C) will use reasonable means to secure the information obtained from unauthorized access and disclosure; and

''(D) will comply with the requirements of paragraph (6).

''(5) MAINTENANCE OF RECORDS.—The clerk of the bankruptcy court, the United States trustee, or the trustee in the case, as the case may be, shall maintain a record of, and shall make available to the debtor, the identity of and contact information for any entity that has obtained electronic access to information in a case under this title.

''(6) DUTIES OF RECIPIENT.—Upon written request by the debtor, an entity that has obtained electronic information under this subsection shall promptly inform the debtor of the content of the information stored by the entity and shall correct any such information to the extent that it differs from the information contained in the records of the bankruptcy court.

''(7) LIABILITY.—A party or entity that is required to make the certification required under paragraph (4), that obtains electronic access to information in a case, and that does not provide or does not comply with the certification is liable to the debtor for—

''(A) any actual damages;

''(B) the debtor's attorney's fees and costs in enforcing compliance with this subsection;

''(C) $500 per violation; and

''(D) punitive damages, if the violation is willful or part of a pattern or practice of violations of this subsection.

''(8) USE BY OFFICIAL RECIPIENTS.—An entity that obtains electronic access to information under subparagraph (C), (D), or (E) of paragraph (3)—

''(A) may use the information concerning an individual debtor only in connection with carrying out the official duties of that entity in connection with the administration of the case or the administration of the bankruptcy system in general; and

''(B) may not provide electronic access to any such information concerning an individual debtor, except in accordance with the provisions of this subsection.

''(9) ACCESS TO STATISTICAL INFORMATION.—The clerk of the bankruptcy court may provide electronic access to statistical information concerning cases and information concerning particular cases without regard to the restrictions of this subsection, but only if the information does not include any means of identifying a particular debtor's name, social security number, date of birth, mother's maiden name, telephone number, address, or account numbers (including bank account and credit card account numbers).

''(10) DEFINITION.—For purposes of this subsection, 'electronic access' means access through electronic means, such as through a computer or telephone, to a database or to court or other electronic records, without human intervention.

''(11) APPLICABILITY TO INDIVIDUALS.—This subsection applies only in a case in which the debtor is an individual.''.

(b) CONFORMING AMENDMENT.—Section 107(a) of title 11, United States Code, is amended by striking ''subsection (b)'' and inserting ''subsections (b) and (c)''.

(c) CLERICAL AMENDMENTS.—Section 107 of title 11, United States Code, is amended—

(1) by inserting ''GENERAL ACCESS.—'' after ''(a)''; and

(2) by inserting ''PROTECTED MATTER.—'' after ''(b)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective 180 days after the date of enactment of this Act.

Page 145, strike lines 19 through 23 (and make such technical and conforming changes as may be appropriate).

Beginning on page 147, strike line 6 and all that follows through line 16 on page 148, and insert the following:

''(4)(A) For purposes of paragraph (1)(B), the term 'household goods' includes tangible personal property normally found in or around a residence, but does not include motorized vehicles used for transportation purposes.''.

Page 159, line 12, insert '', or on a showing of good cause such longer period as the court considers to be reasonable,'' after ''45 days''.

Page 167, strike lines 21 through 24 (and make such technical and conforming changes as may be appropriate).

Page 236, line 8, strike ''described in section 523(a)(2) or''.

Page 182, line 3, strike the close quotation marks and the period at the end.

Page 182, after line 3, insert the following (and make such technical and conforming changes as may be appropriate):

''(iii) The court may extend the time periods specified in this paragraph if the debtor establishes by clear and convincing evidence that an extension is justified by circumstances beyond the debtor's control that were not foreseeable on the date of the order for relief.''.

Page 186, line 18, strike ''The'' and insert ''Unless the debtor establishes by clear and convincing evidence that there are circumstances beyond the debtor's control that were not foreseeable on the date of the order of relief, the''.

Page 186, line 21, strike ''The'' and insert ''Unless the debtor establishes by clear and convincing evidence that there are circumstances beyond the debtor's control that were not foreseeable on the date of the order of relief, the''.

Page 191, after line 24, insert the following (and make such technical and conforming changes as may be appropriate):

''(4) The court may extend the time period specified in paragraph (2) if the debtor establishes by clear and convincing evidence that an extension is justified by circumstances beyond the debtor's control that were not foreseeable on the date the assurance of payment was due.

Page 201, line 7, insert ''(a)'' before ''In''.

Page 202, line 25, strike the close quotation marks and the period at the end.

Page 202, after line 25, insert the following:

''(b) The court may extend the time periods specified in paragraphs (1) and (3) of subsection (a) if the debtor establishes by clear and convincing evidence that an extension is justified by circumstances that there are beyond the debtor's control that were not foreseeable on the date of the order of relief.''.

Page 204, line 5, strike ''and'' at the end.

Page 204, line 7, strike the close quotation marks and the period at the end.

Page 204, after line 7, insert the following (and make such technical and conforming changes as may be appropriate):

''(D) the debtor establishes by clear and convincing evidence that an extension is justified by circumstances beyond the debtor's control that were not foreseeable on the date of the order of relief.''.

Page 204, line 14, insert ''or the debtor establishes by clear and convincing evidence that an extension is justified by circumstances beyond the debtor's control that were not foreseeable on the date of the order for relief'' after ''1121(e)(3)''.

Page 353, line 19, insert ''of this title or the transfer of the asset-backed securitization would not be a true transfer, conveyance or sale under nonbankruptcy law'' after ''548(a)''.

Page 194, after line 8, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 420. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.

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

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

Page 194, before line 9, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 421. CLARIFICATION OF DEBTOR'S DUTIES.

(a) DUTIES.—Section 521 of title 11, United States Code, as amended by this Act, is amended by inserting after paragraph (6) the following:—

''(7) unless a trustee is serving in the case, the debtor who, at the time of the commencement of the case, served as the administrator or plan sponsor of an employee benefit plan, pursuant to section 1002(16) of title 29, United States Code, shall continue to perform the obligations required of the plan administrator or plan sponsor; and

''(8) unless a trustee is serving in the case, where a proof of claim is filed on behalf of employees or retirees of the debtor by a labor organization serving as the collective bargaining representative of such employees or retirees, the debtor shall, for the purpose of facilitating the location of, and distribution to the employees and retirees of the allowed amount of the claim, provide to such collective bargaining representative a complete list of such employees or retirees and their current addresses as listed on the books and records of the debtor, and such other information as may reasonably be requested for the purpose of aiding in the claims distribution.''.

(b) CHAPTER 7.—Section 704 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(12) where, at the time of the commencement of the case, the debtor served as the administrator or plan sponsor of an employee benefit plan, pursuant to section 1002(16) of title 29, United States Code, continue to perform the obligations required of the plan administrator or plan sponsor;

''(13) where a proof of claim is filed on behalf of employees or retirees of the debtor by a labor organization serving as the collective bargaining representative of such employees or retirees, provide to such collective bargaining representative a complete list of such employees or retirees and their current addresses as listed on the books and records of the debtor, and such other information as

may reasonably be requested for the purpose of aiding in the distribution of allowed claims to such employees or retirees; and

''(14) assume the obligations of the debtor to withhold, report, and pay withholding taxes to the appropriate taxing authority with respect to the distribution of allowed claims for employee compensation and prepare and submit the reports and returns required by such authorities.''.

(c) CHAPTER 11.—Section 1106(a)(1) of title 11, United States Code, is amended to read as follows:

''(1) perform the duties of the trustee as specified in section 704(2), (5), (7), (8), (9), (10), (11), and (12);''.

(d) OFFICIAL FORM.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption an Official Bankruptcy Form to be used to file a proof of multiple claim for wages owed to employees of the debtor.

Page 358, after line 18, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 1004. EXPANDED DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''$1,500,000'' and inserting ''$3,000,000'';

(B) by striking ''80'' and inserting ''65''; and

(C) by striking ''the taxable year preceding the taxable year'' and inserting ''at least 1 of the 3 taxable years preceding the taxable year''; and

(2) in subparagraph (B)—

(A) in clause (ii), by striking ''80'' and inserting ''65''; and

(B) in clause (ii), by striking ''$1,500,000'' and inserting ''$3,000,000''.

Page 393, after line 13, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 1236. TECHNICAL CORRECTIONS TO THE COLLEGE SCHOLARSHIP FRAUD PREVENTION ACT OF 2000.

(a) SENTENCING ENHANCEMENT GUIDELINES.—Section 3 of the College Scholarship Fraud Prevention Act of 2000 (Public Law 106–420) is amended—

(1) by striking ''obtaining or providing of'' and inserting ''the obtaining of, the offering of assistance in obtaining''; and

(2) by striking ''base offense level for misrepresentation'' and inserting ''enhanced penalties provided for in the Federal sentencing guidelines for an offense involving fraud or misrepresentation''.

(b) LIMITATION ON EXEMPT PROPERTY.—Section 522(c)(4) of title 11, United States Code, as added by section 4 of the College Scholarship Fraud Prevention Act of 2000 (Public Law 106–420), is amended—

(1) by striking ''in the obtaining or providing of'' and inserting ''or misrepresentation in the providing of, the offering of assistance in obtaining, or the furnishing of information to a consumer on,''; and

(2) by striking ''(20 U.S.C. 1001)''.

(c) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—

(1) EFFECTIVE DATE.—Except as provided in paragraph (2), this section and the amendments made by this section shall take effect on November 1, 2000.

(2) APPLICATION OF SECTION 552(C)(4) OF TITLE 11, UNITED STATES CODE.—Section 522(c)(4) of title 11, United States Code, as added by section 4 of the College Scholarship Fraud Prevention Act of 2000 (Public Law 106–420) and as amended by subsection (b) of this section, shall apply only with respect to cases commenced under title 11, United States Code, on or after November 1, 2000.

Beginning on page 419, strike lines 5 through 23 (and make such technical and conforming changes as may be appropriate).

The CHAIRMAN pro tempore. Pursuant to House Resolution 71, the gentlewoman from Texas (Ms. JACKSON-LEE) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 30 minutes.

The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Democratic substitute makes a number of technical improvements to this bill. It modifies some of the most onerous provisions on lower-income debtors and struggling businesses. We had hoped that most of these amendments could have been accepted by the bill's supporters during the committee markup on the bill. However, the majority have objected to each and every amendment that we were able to offer, no matter how obvious, technical, or noncontroversial.

I think, as the ranking member began his remarks, the gentleman from Michigan (Mr. CONYERS), we noted that this bill has moved at a very fast and very unmeasured speed, so the collaborative efforts have fallen short.

We would hope our colleagues would join us in understanding some of the sensitivities that we are trying to express that H.R. 333 needs to correct: the recognition, of course, of catastrophic illnesses and how it impacts those who file for bankruptcy; how those who are senior citizens fall upon hard times and need to file for bankruptcy; how women and children are negatively impacted and have to file for bankruptcy as it relates to alimony and child support of the particular debtor; that they are now seeking their alimony and child support and cannot do so, and it leads to catastrophic events in their lives.

If they realize, as well, or if the authors of the bill recognize that there are some indications that our economy has some weaknesses, this would be the absolute wrong time not to enhance legislation, of course, and to begin to acknowledge that in fact some of the provisions of this bill actually close or slam the door in the faces of hardworking Americans. That is why we have the AFL–CIO and so many women's groups who oppose this particular amendment, representing millions of Americans, this particular legislation.

While the provisions in the amendment are too numerous to describe in detail, here are a few examples to illustrate the point.

First, our amendment contains provisions clarifying the deductibility of health care costs from the means test. Without this amendment, a single mother could not claim as an expense the cost of medical care for a child who was seriously injured in a car accident after the date that the bankruptcy petition was filed.

The ability to claim medical costs as an expense under the means test should not turn on whether the condition occurred before the petition has been filed. One is still seriously injured.

Second, our amendment seeks to correct an oversight in the bill is that would directly impact on children. Although the bill allows parents to list the costs of caring for their dependent children as a monthly expense, the costs of caring for foster children are not included.

Parents who volunteer to become foster parents should not have a harder time making ends meet during a bankruptcy than biological parents.

Interestingly enough, Mr. Chairman, I work with foster parents in Harris County in Texas. In fact, we work to solicit, recruit foster parents to provide sort of an interlude for foster parents who never get vacations, sort of say to them that we thank them.

I can assure the Members that this is a real aspect of this bill that need to be corrected. It goes without saying that we should not be passing laws in this Congress that penalize children who have to be in foster homes and, as well, the loving foster parents.

Third, our amendment seeks to correct obvious shortcomings in the bill. For example, the bill says that for purposes of the means test, median income is based upon Census Bureau figures.

As we all know, the census only occurs once every 10 years, and obviously the economy is one that changes precipitously, as we have noted over the last couple of weeks, days, and months, which means that under this bill, in its current form, a debtor in 2009 would not pass the means test if her monthly income falls below the median income from 2000.

How ridiculous. How much of a difficulty would that debtor be placed in? All that our provision says is that those census figures should be adjusted periodically by Consumer Price Index updates.

The last position in our amendment that I am going to address is intended to respond to the arbitrary nature of the business bankruptcy provisions. The bill imposes all kind of bright line rules and firm deadlines on businesses seeking to reorganize. We would think that, at this time of economic uncertainty, we would want to be doing all that we can to ensure that Americans keep their jobs. We know some are losing them as we speak, but the business bankruptcy provisions do just the opposite. If a small business cannot complete its Chapter 11 reorganization plan under the bill's draconian timetable, then the business will be forced to liquidate.

Let me say to the thousands and millions of small businesses and mediumsized businesses, and maybe even large businesses all over America, they should be listening. We have not heard from them as to their understanding

that what I have just said is that their doors will be closing, even if a delay is caused through no fault of the small business, such as when the reorganization is delayed pending the completion of a regulatory proceeding. We are slamming the doors shut on business all over America, and we are putting people on the streets without jobs.

□ 1300

Once the deadline passes, the businesses will have to simply shut their doors. That means jobs will be lost, and this bill will contribute to increased unemployment in America, not reinforcing the value of holding your head up high, paying off your responsibilities, but yet what it will do is undermine hard-working Americans, and certainly our wonderful entrepreneurs who keep this economy running.

Although time allows me to discuss only a sampling of the provisions, I would like to emphasize that this amendment and this substitute is an extremely important bill that adds to H.R. 333. Mr. Chairman, I would like my colleagues to join me in supporting this legislation.

Mr. Chairman, I am pleased to come before you today with my fellow colleagues to offer the Conyers-Nadler-Scott-Watt-Jackson Lee-Baldwin-LaFalce-Tierney Democratic Substitute that would make a number of technical improvements to the Bankruptcy bill and modify some of the most onerous provisions on lower income debtors and struggling businesses.

Mr. Chairman, some of the important modifications that the Democratic Substitute would make to the Bankruptcy bill would be to amend page 10, line 14 of H.R. 333 to merely add a debtor's monthly public school expenses as an allowable expense under the means test. This is important because it would put public school expenses at an equal footing with that of private school expenses which is already included in the bill.

The principal problem with the means test is that the rigid one-size-fits-all test in determining eligibility for Chapter 7 and the operation of Chapter 13 will often operate in an arbitrary fashion.

Access to bankruptcy would be more difficult, especially for low-income filers who are not able to meet the requirements because they cannot list public school expenses as an allowable expense as would their private school counterparts. The ''safe harbor'' provision that is supposed to protect some low-income families from the application of the IRS standards will not protect many single mothers, because it is based on the combined income of the debtor and the debtor's spouse—even if they are separated and the mother who is filing for bankruptcy is receiving no support from the non-debtor spouse from whom she is separated. As the Committee knows, the majority of low-income families send their children to public schools (as opposed to higher-income people) because they cannot afford the private school tuition. It would seem that if the true intent of this bill were to assist all Americans, a provision recognizing public school tuition would have accompanied the recognition of private school tuition as an allowable expense under the ''means test,'' however, this is not the case.

Under this important amendment, low-income people will have a more flexible standard (that is consistent with that of high-income people) that would allow the debtor to have a fair opportunity to financial recourse, which is not possible under the legislation as written. I think such a change in the standard would be warmly welcomed for middle-income and low-income filers.

The Democratic Substitute would also address one of the real flaws of H.R. 333, the means test approach as it relates to business debtors. It is well known that business debtors enjoy considerable favorable treatment are accorded under the means-test contained when compared to non-business debtors under H.R. 333.

H.R. 333's means-testing, regrettably, is known to be arbitrary and unworkable in practice. A one-size fits-all test will simply hurt low and middle-income filers disproportionately. Accordingly, the Democratic Substitute would ensure that business debtors are treated as favorably as non-business debtors within the framework of the means-testing standard contained in the bill by essentially expanding the means-test to apply to business debts.

Let me explain a few of the glaring difficulties with treatment of business debtors under H.R. 333. First, the bill relies upon IRS collection standards, which lay out no comprehensive or specific standards for the deduction of living expenses. In fact, the bill even fails to provide specific guidance concerning the appropriateness of deducting part or all of the funds a debtor may expend for items such as health care (both medical expenses and health insurance), taxes, and accounting and legal fees, among other things.

The 1973 Commission on Bankruptcy Laws similarly considered and rejected industry calls for mandatory Chapter 13s, noting that Congress itself rejected similar proposals in 1967, and observed: ''[b]usiness debtors are not subject to any limitation on the availability of straight bankruptcy relief, including discharge from debts, and it was pointed out, quite apart from bankruptcy, business debtors are able to incorporate and to limit their liability to their investments in corporate assets . . .'' See Report of the Commission on Bankruptcy Laws, H.R. Doc. No. 137, Part I, 93rd Congress, 15859 (1973).

The bottom line is that business debtors incur a windfall if the legislation is not amended. There are several consumer provisions in the bill that will exact hardships on all debtors, regardless of income level or degree of culpability. This will harm consumers, especially low-income filers and place them on an unfair playing field when compared to business debtors. For example, by allowing landlords to continue eviction or unlawful detainer actions even after debtors have obtained an automatic stay, the bill will force many battered women and families with children and seniors out on the streets, without ever having an opportunity to use bankruptcy to catch up on their rents.

Mr. Chairman, there is a sense that the approach regarding business and non-debtors within H.R. 333 must be revisited if bankruptcy reform is realized this year. The Democratic Substitute would solve this problem.

The Democratic Substitute would also address an important aspect of H.R. 333, disaster relief for debtors. Disaster relief is not recognizable as something you can write off in H.R. 333 as income. The Democratic Substitute would include disaster relief as part of allowable deductions within means-testing under H.R. 333. This would restore some fundamental fairness to the legislation, particularly when we think of the tragic accidents that occur with regular frequency in America.

If means-testing and other consumer provisions will harm low-income and middle-income people, then H.R. 333 is sure to have an undesirable effect on consumers that are victims of disasters. While it is unclear how such costs will affect the overall bankruptcy system, it is clear that excluding disaster assistance from allowable expenses under the means-test in H.R. 333 is an unfortunate and unnecessary component of the bill.

The Democratic Substitute also modifies some of the most onerous provisions on lower income debtors and struggling businesses by excluding persons below the poverty line from having to fulfill burdensome paperwork requirements that would otherwise be necessary to demonstrate that the debtor does not meet the requirements of means test. Under the provisions of the bill before the Rules Committee today these individuals would be prevented from having a fair and justifiable opportunity to file for bankruptcy due to financial restraints.

The Democratic Substitute would also discourage creditors from attempting to secure repayment of debts by entering into abusive reaffirmation agreements with debtors by providing safeguards so that debtors are made aware of exactly what debts they are agreeing to repay, whether they are secured or unsecured, and provides an opportunity for the court to determine whether the amendment is in the debtor's best interest and would eliminate the provision in the bill that expands the exception to discharge for student loans to cover a wide range of student loans, not just government insured loans and loans from non-profit organizations.

Mr. Chairman, we can not risk the creation of a ''two-tier'' credit system in this country that generally ignores the interests of individuals at lower income levels. The significant problems that are present within H.R. 333 will be addressed if you allow the Democratic Substitute to be debated on the floor. We must press forward and work together to find the best way to accomplish these goals for the greater benefit of all of the parties involved in this process.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition to the substitute amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE), my colleague, and others. This amendment is problematic for several very important reasons.

First, it eviscerates more than 3 years of careful consideration, analysis, negotiation and compromise embodied in H.R. 333's needs-based reforms.

For example, one provision of this amendment completely rewrites the standard for overcoming the presumption of abuse in cases where debtors have the ability to pay debts. Although I did not participate in the negotiations that transpired between the

House and the Senate last year, I am informed that H.R. 333's provisions are the product of intense analysis and exhaustive negotiation.

Second, the substitute amendment introduces truly novel concepts that have, to my knowledge, not been the subject of any oversight hearing by the House Committee on the Judiciary. These provisions, although perhaps well-intentioned, attempt to address various privacy issues perceived to be present in the bankruptcy system.

Under current law, most information filed in connection with a bankruptcy case is available to the public. Both the Justice Department and the Judicial Conference of the United States, however, have recently begun to consider whether unlimited public access to such information through the Internet and other electronic means should somehow be restricted.

Nevertheless, the substitute imposes a broad array of restrictions and requirements with regard to this matter and provides for the award of punitive damages for their violation under certain circumstances.

Rather than slip these substantive provisions in in an amendment filed on the eve of floor consideration of this bill, they should be the subject of an oversight hearing where they can be aired in the light of day and the public should be given an opportunity to be heard.

Third, this amendment attempts to include in the bill amendments that were roundly defeated during the Committee on the Judiciary's markup of H.R. 333 last month.

Out of 18 amendments considered during the markup, the bill was reported with only one modest amendment making minor technical and conforming revisions.

The bill as reported clearly reflects the considered judgment of the Committee on the Judiciary that H.R. 333 is the product of an exhaustive and mandatory process, as well as extensive negotiation, and does not need to be further amended.

Accordingly, I urge my colleagues to oppose this substitute amendment

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Democratic substitute is an effort to make a number of improvements to the bill and to modify and take the sting out of some of the most onerous provisions on lower income debtors and struggling small businesses.

We had hoped that some of these, if not even most of the amendments, would have been accepted by the bill's supporters during the markup in the Committee on the Judiciary, but they have been all with great regularity rejected, and every amendment that we were able to offer was technical. No matter what happened, we were not able to get our message through.

While the provisions in the amendment are too numerous to describe here, a few details illustrate the fact that we have a clarification of the deductibility of health care costs from the means tests.

We correct an oversight in the bill that would directly impact on children, which allows parents to list the costs of caring for their dependent children as a monthly expense, but the costs of caring for foster children are not included at all.

Parents who voluntary become foster parents will have a harder time making ends meet during bankruptcy than biological parents. Obviously, we do not think this was intended by even the Members of the House Committee on the Judiciary, and we wanted to correct it.

We have other shortcomings that are dealt with. The bill says that for purposes of a means test, the medium income is based on Census figures, but that only occurs every 10 years. We need something a little more periodically adjusted, for example, by Consumer Price Index updates.

Finally, the arbitrary nature of business banking provisions seems to be in order. A small business cannot complete its chapter 11 reorganization plan under the bill's very, very tough timetable. We have asked that we have a little bit more flexibility in that area.

Small businesses are the place where more jobs are created in this country than anywhere else, and so it is very important that these and other mentioned remedies and corrections be included, which have been previously mentioned.

I am hoping that the substitute amendment offered by myself and several of our colleagues would be accepted by the majority of the Members in the House.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 4 minutes to the gentleman from Pennsylvania (Mr. GEKAS).

(Mr. GEKAS asked and was given permission to revise and extend his remarks.)

Mr. GEKAS. Mr. Chairman, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for yielding the time to me, and I rise in opposition to the substitute offered by the gentleman from Michigan (Mr. CONYERS).

If we were to adopt the tenets of the substitute that has been offered here, and that is what the intention is in the offering in the first place, we would be wiping out the tremendous advances in reform of bankruptcy that we have made up to now.

For instance, the gentleman from Virginia (Mr. BOUCHER) outlined in his presentation how we have changed the priorities for alimony and women's rights in support matters from what now exists as being a number 7 position, behind attorneys fees, I believe, in priorities, that is the existing system, to a situation where we place women, alimony, support, all the women's and children's issues, at the first priority.

What it means is if my colleagues vote for the substitute, my colleagues are reverting back to the current situation which places women number 7. We want them to be number 1.

The bankruptcy reform measure which is before my colleagues permits that, mandates that, brings women up to a number 1 position in claims under bankruptcy. If my colleagues want to go back to the system, make women number 7, then vote for the substitute.

The other situation that is obvious about the substitute is that it will not honor what we have tried to do with reform of small business and the business bankruptcies under chapter 11. Everyone should recognize that what we did in this bill was to adopt the recommendations of the Bankruptcy Commission with respect to business, reorganizations and bankruptcies.

If my colleagues vote for the substitute, my colleagues are erasing the recommendations of the Bankruptcy Commission, which this Congress authorized in the first place, to develop reforms in business bankruptcies.

Mr. Chairman, I say to my colleagues, if my colleagues want to go back to the primitive stages of bankruptcy which have caused this flood of bankruptcies or want to enter into a new phase of more responsibility for all phases of bankruptcy, then my colleagues too can argue about what my colleagues want to argue about.

The other phase to show my colleagues is the lack of foresight on the part of the people who are supporting the substitute.

Mr. Chairman, I would like to ask a question of the gentleman from Michigan (Mr. CONYERS), does the substitute include the recommendations for a change in homestead exemption?

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Michigan.

Mr. CONYERS. No, sir, it does not.

Mr. GEKAS. Mr. Chairman, then I will skip that part of the argument.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Chairman, I appreciate the gentleman from Pennsylvania (Mr. GEKAS) yielding to me.

Mr. Chairman, I was going to suggest to the gentleman that he skip the first part of the argument, too, because this amendment does not do anything about the priorities. I was wondering whether he was debating another amendment possibly.

Mr. GEKAS. Mr. Chairman, I want to thank the gentleman from North Carolina (Mr. WATT) for setting me right on this.

Mr. Chairman, the point is that the substitute wrecks bankruptcy reform. What I am trying to get across, and what I hope is the message to all the

Members is that any amendments practically that would harm the basic reforms that we put into this measure are unacceptable.

Mr. Chairman, I ask that we vote down this substitute, as well as the other amendments.

Mr. WATT of North Carolina. Mr. Chairman, I ask unanimous consent to control the time for our side.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, I just want to say that it is very magnanimous of the gentleman from Pennsylvania (Mr. GEKAS) to say that they are following a set of recommendations that were put forward by the Commission. This actually is the only one recommendation in their bill that they followed. They threw out 95 percent of the rest of the recommendations of that Commission, and nothing in this bill really follows the recommendations of the Commission.

Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. Chairman, I thank the gentleman from North Carolina (Mr. WATT) for yielding the time to me.

Mr. Chairman, I rise to speak in support of the amendment, which would add several improvements to H.R. 333. While the proponents of the underlying legislation portray this as a compromised bill, the approach in this bill is, in fact, a significant departure from well-established sound principles and procedures designed to protect consumers. It eliminates the tradition of a fresh start for those who are willing to cash in all of their chips to get the fresh start.

The underlying bill prevents most Americans from getting access to that fresh start and creates more people in our communities who will be financially desperate with nothing to lose.

There are several amendments that I would like to speak to in the substitute. One, the underlying bill directs the debtor to pay all that they can after food and rent towards their debts. In calculating what they can pay, it is only reasonable that we base the determination on the actual monthly income.

The underlying bill, however, counts all of your income for the last 6 months to determine what your average monthly income is, and that could include money that we received from a job that we have lost, money from an inheritance, or a gift, or an automobile accident settlement, things that are not going to be there. The court ought to have the opportunity to adjust your income to fit actual reality.

This amendment would allow the court to disregard one-time nonrecurring funds or take into consideration the fact that you lost the job, and that is what put you into financial distress to begin with.

Second, the amendment deals with illnesses for family members. The underlying bill allows you to consider ongoing expenses involved in illnesses or disabilities of family members, but it does not recognize new illnesses that may come about during the next 5 years. The amendment would allow those to be considered, too.

□ 1315

Another amendment prevents landlords from evicting tenants pending bankruptcy. The tradition of bankruptcy is that tenants have a stay of all proceedings and they have an opportunity to work out some arrangement so that they can stay in their house. This underlying bill allows for immediate eviction. This would retain the tradition of automatic stay.

Mr. Chairman, administrative expenses, they are limited to 10 percent to what is being paid in. If very much is not being paid in, a debtor may not have a reasonable amount to hire attorneys. This would allow for reasonable expenses which is usually the standard that is used.

Mr. Chairman, another amendment would deal with the assumption under the private school expenses. The underlying bill says private school expenses are paid if documentation and an explanation is provided. It does not say that the documentation is meaningful. A ridiculous explanation could be given. The amendment says that the trustee would determine whether expenses are reasonable and necessary, not whether an explanation was provided.

Mr. Chairman, these are just some of the much-needed changes. It will not fix the bill totally, but it would at least make a bad bill a little better.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the very distinguished gentleman from Virginia (Mr. MORAN).

(Mr. MORAN of Virginia asked and was given permission to revise and extend his remarks.)

Mr. MORAN of Virginia. Mr. Chairman, this is not a perfect bill, the underlying bill; but I think it is an important bill to pass. It is a bill that received the overwhelming bipartisan support of this House and of the Senate last year. Last year, because this bill is almost identical, it is relevant to recognize 96 Democrats voted for this bill last year. That is bipartisan. The reason that they did so was that they recognized that the American public wants a fair system. They want people to be able to get a new fresh start. They do not want a system that lends itself to abuse. That is basically the problem that we face today.

Mr. Chairman, back in 1980 there were only about 300,000 people that filed for bankruptcy. In 1998, 1.4 million people filed for bankruptcy. That is an enormous number. Something is wrong. What is wrong is that it has become too easy to wipe out your debts.

What is particularly galling is that this cost does not go away. It is not just limited to the bankruptcy court. We all pay for it. The American family today pays about $400 more per year to cover the cost of these bankruptcies. That is $400 that families who are paying their bills get stuck with that they ought not to. Approximately 100,000 people file for bankruptcy each year who could in fact pay off their debt, but they are avoiding about $1 billion annually of debt that they could pay off that they do not because the system has not been fixed. That is what this bill would do. It would fix the system. It is a needs-based bankruptcy plan.

Mr. Chairman, I have to tell my colleagues when there is a bill that is able to put child support and spousal support ahead of lawyer's fees, you had better get it passed immediately because once the trial lawyers find out that it is even ahead of lawyer's fees I do not know how long it will last, but we ought to do it.

We have a debtor's bill of rights here that addresses a number of the problems that we have had in terms of credit cards. Some people are taking these credit cards in, they sign up, they max it out whatever they can charge. They pile debt up, and then they get themselves relieved from paying off their debt; and oftentimes they can go right back to doing it all over again. It needs to be fixed.

Mr. Chairman, this bill is a good, balanced, bipartisan bill to fix it. I think we ought to vote for the underlying bill.

Mr. WATT of North Carolina. Mr. Chairman, would the Chair advise us of the time remaining on both sides.

The CHAIRMAN pro tempore (Mr. HOOD). The gentleman from North Carolina (Mr. WATT) has 15 minutes remaining; the gentleman from Wisconsin (Mr. SENSENBRENNER) has 20 minutes remaining. The gentleman from Wisconsin has the right to close.

Mr. WATT of North Carolina. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. WATERS), a member of the committee.

(Ms. WATERS asked and was given permission to revise and extend her remarks.)

Ms. WATERS. Mr. Chairman, I would like to address some strong problems and concerns I have with the proposed legislation. As a whole, the general consensus has been that we need to overhaul the Bankruptcy Code. However, H.R. 333 does so at the expense of consumers and small businesses. It is overly harsh on the honest but unfortunate debtor.

I tried to introduce an amendment which would prevent landlords from being able to evict domestic violence victims, elderly persons on limited income, and single parents with minor children on limited income without going through the bankruptcy court. That protection already exists under current law, but is absolutely removed by H.R. 333. I was not successful with that amendment.

Mr. Chairman, the Democratic substitute amendment which seeks to correct the most glaring problems with H.R. 333 deserves support, and I am here today to try to make a bad bill just a little bit better. The fifth provision of the Democratic substitute, for example, would allow debtors to exclude up to $1,500 for expenses for a child's schooling, whether those expenses are for a public or private school. The proposed legislation only allows for expenses from private schools. This discriminates against low-income debtors and has no logical rationale. I understand the gentlewoman from Texas (Ms. JACKSON-LEE) has taken this up. We have had two attempts to correct this in the bill.

Provision 12 of the Democratic substitute deals with reaffirmations. It would discourage creditors from entering into abusive reaffirmation agreements with debtors. H.R. 333 purports to protect women and children. However, when debtors enter into reaffirmation agreements, they are increasing the number of debts they must pay. Each time another debt is added to the list, it becomes more and more unlikely that child support and alimony will be paid. It does not matter that domestic support obligations are given first priority under this bill. Women and children do not have the resources to defend their rights over the rights of credit card companies. We should not ignore the fact that numerous women and children's organizations have spoken out in strong opposition to this bill.

Mr. Chairman, the Democratic substitute would provide an opportunity for court review of proposed reaffirmations, an essential measure to protect from abusive reaffirmations.

The Democratic substitute also addresses problems with medical expenses and health insurance premiums, exempts debtors who fall below the poverty line from burdensome reporting requirements, and ensures that governmental education loans are not placed in competition with higher interest rate loans from private institutions.

Passage of this amendment is crucial if we are to avoid a crisis in the bankruptcy system. We must not pass a bill merely because the time is right; we must pass a bill when the bill is right.

Mr. Chairman, I would like to address some strong problems and concerns I have with the proposed legislation as a whole. The general consensus has been that we need to overhaul the Bankruptcy Code. However, H.R. 333 does so at the expense of consumers and small businesses. It is overly harsh on the honest but unfortunate debtor.

I tried to introduce an amendment that would prevent landlords from being able to evict domestic violence victims, elderly persons on limited income, and single parents with minor children on limited income without going through bankruptcy court. That protection already exists under current law, but is removed by H.R. 333.

I was not successful with that amendment. However, I am here to support the Democratic Substitute amendment, which seeks to correct the most glaring problems with H.R. 333.

The fifth provision of the Democratic Substitute, for example, would allow debtors to exclude up to $1500 for expenses for a child's schooling, whether those expenses are for public or private school. The proposed legislation only allows for expenses from private school. This discriminates against low-income debtors and has no logical rationale.

Provision 12 of the Democratic Substitute deals with reaffirmations. It would discourage creditors from entering into abusive reaffirmation agreements with debtors.

H.R. 333 purports to protect women and children. However, when debtors enter into reaffirmation agreements, they are increasing the number of debts they must pay. Each time another debt is added to the list, it becomes more and more unlikely that child support and alimony will be paid.

It does not matter that domestic support obligations are given first priority under H.R. 333. Women and children do not have the resources to defend their rights over the rights of credit card companies. We should not ignore the fact that numerous women and children's organizations have spoken out in strong opposition to H.R. 333. The Democratic Substitute would provide an opportunity for court review of proposed reaffirmations, an essential measure to protect from abusive reaffirmations.

The Democratic Substitute also addresses problems with medical expenses and health insurance premiums; exempts debtors who fall below the poverty line from burdensome reporting requirements; and ensures that governmental education loans are not placed in competition with higher-interest rate loans from private institutions. Passage of this amendment is crucial if we are to avoid a crisis in the bankruptcy system.

We must not pass a bill merely because the time is right. We must pass a bill when the bill is right.

Mr. SENSENBRENNER. Mr. Chairman, I yield 5 minutes to the other very distinguished gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Chairman, I thank my chairman for yielding me this time.

Mr. Chairman, I rise today in strong support of H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act, and in strong opposition to this substitute amendment. This important legislation, which is similar to the bankruptcy reform legislation passed out of the House last year by a vote of 313 to 108, is an honest compromise that is pro-personal responsibility and antibankruptcy abuse.

With a record high 1.4 million bankruptcy filings in 1998, every American must pay more for credit, goods and services when others go bankrupt. I worked to pass H.R. 833 last year and cosponsored H.R. 333 this year because it is high time that we relieve consumers from the burden of paying for the debts of others.

The Bankruptcy Abuse Prevention and Consumer Protection Act restores personal responsibility, fairness, and accountability to our bankruptcy laws and will be of great benefit to consumers. For too long, our bankruptcy laws have allowed individuals to walk away from their debts even though many are able to repay them. That is not fair to millions of hard-working families who pay their bills, mortgages, car loans, student loans, and credit card bills every month.

The loopholes in our bankruptcy laws have led to a 400 percent increase in personal bankruptcy filings since 1980 at a cost of $40 billion per year. These losses have been passed directly to consumers, costing every household that pays its bills an average of $400 in hidden taxes each year. In real terms, that is a year's supply of diapers or 20 tanks of gas.

The bill under consideration today retains the strong income-based means test that will distinguish between those who need the fresh start available under chapter 7 and those who can afford to file under chapter 13, which requires a 5-year repayment plan.

This important provision, which bases a debtor's ability to pay on clear and well-defined standards, will give a fresh start to those who need it, while ensuring that those who can afford to pay back some of their debt do so.

Under the current system, some irresponsible people filing for bankruptcy run up their credit card debt immediately prior to filing, knowing that their debts will soon be wiped away. These debts, however, do not just disappear. They are passed along to hard-working folks who play by the rules and pay their own bills on time.

The Bankruptcy Abuse Prevention and Consumer Protection Act ends this practice by requiring bankruptcy filers to pay back nondischargeable debts made in the period immediately prior to their filing.

While ending the abuses of our bankruptcy laws, the act is strongly pro-consumer in other ways as well. This legislation, for example, helps children by strengthening protections in the law that prioritize child support and alimony payments.

Additionally, H.R. 333 protects consumers from bankruptcy mills that encourage folks to file for bankruptcy without fully informing them of their rights and the potential harms that bankruptcy can cause.

This legislation also includes language that I strongly support to restore fairness and equity to the relationship between the U.S. Trustee and private-standing bankruptcy trustees. Specifically, the language will provide private trustees the right to seek judicial review in court in certain cases following an administrative hearing on the record of U.S. Trustee actions related to trustee expenses and trustee removal.

This compromise, worked out between the U.S. Trustee's office and representatives of the private bankruptcy trustees, will provide fairness to those who dedicate themselves to their duties as private trustees while ensuring that the U.S. Trustee is subject to the

same checks and balances as other government agencies.

Mr. Chairman, bankruptcy should remain available to the folks who truly need it. But those who can afford to repay their debts should not be able to stick other folks with the tab. Enactment of this carefully crafted legislation will send a big signal toward those who would abuse our bankruptcy system that the free ride is over.

I want to commend the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary, for moving this important legislation quickly to the floor, as well as the gentleman from Pennsylvania (Mr. GEKAS) for his outstanding work on this issue.

I urge my colleagues to support this fair and reasonable bill and to oppose the Democratic substitute.

Mr. WATT of North Carolina. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. LAFALCE).

Mr. LAFALCE. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, this is the wrong bill at the wrong time. It is driven, not by the public interest, it is driven by lobbyists primarily for the creditor industry that exists and walks the halls of the Capitol and has for years and years and years.

Most individuals who go into bankruptcy go there because they have lost a job, they have accumulated huge medical expenses, they have been through a divorce, et cetera, and for another major reason, because of the predatory practices of the credit industry; predatory practices with respect to the purchase and mortgage of one's home or a home equity loan; predatory practices with respect to the car that one buys or leases; predatory practices with respect to the credit card that one uses for almost everything in life today; predatory practices even with respect to one's virtual identity, the most personal information about oneself.

□ 1330

This Congress, for 6 years now, has not done a single thing about those predatory practices, has not even looked at them in hearings, refuses to take them up on the floor of the House, refuses to make amendments in order to rectify them; and yet our colleagues come before us with the bill basically drafted by the credit card industry.

I called some friends of mine, referees in bankruptcy and asked them what they thought of the bill before us. Terrible. I called some friends of mine, attorneys for major lending institutions specializing in one issue and one issue only, bankruptcy; and I asked them what they thought of it. They said, terrible.

This bill today in the House will pass, it will probably go before President Bush for his signature; but it is a terrible bill. And what is even more terrible is that my Republican colleagues have not even attempted to deal with the real problems that exist in the real world, the predatory practices of the credit industry.

Mr. WATT of North Carolina. Mr. Chairman, I yield 3½ minutes to the gentleman from Massachusetts (Mr. DELAHUNT), a member of the Committee on the Judiciary.

Mr. DELAHUNT. Mr. Chairman, I thank the gentleman for yielding me this time.

I keep hearing from the proponents how the benefits of this bill will flow to the American people. Well, if they believe that, I have a bridge that I want to sell them.

At one of our subcommittee hearings on this legislation last year I asked each of the panelists, and there were nine, whether the bill would result in lower interest rates to consumers. Every single one of them admitted probably not. Well, I appreciated their honesty. By the way, there is ample empirical evidence, hard evidence, to suggest that consumers will not benefit at all by this bill.

The American people should know that in 1996, a Harvard University study pointed out that between 1980 and 1982 the Federal funds rate fell from 13.4 percent to 3.5 percent, a drop of nearly 10 percentage points. The average credit card interest rates went the other way. It rose from nearly 17.3 percent to 17.9 percent. The bottom line, the credit card industry will be the only beneficiary of this proposal, and to suggest otherwise does not hold water.

So if my colleagues' concern is about credit card company profits, by all means vote for this bill. Be assured, however, if there is a concern that these companies are doing very well, if there are any doubts, pick up a copy of the January 26, 2001, edition of USA Today. The headline reads, and I am quoting, ''Adding fees, new ones, raising old ones, and credit card profits are soaring.'' Credit card industry profit rose to a 5-year high last year. In fact, credit cards are one of the most profitable businesses in banking, according to a CEO in a consulting firm that advises credit card issuers.

The American people should also know that as profits rose, several major credit card issuers, including Chase and Providian, agreed to pay hefty penalties to settle complaints related to unfair late fees and other practices. And just this past week in Business Week, that liberal, liberal magazine, an article reflects how MBNA not only provided substantial contributions to both parties and to individual Members, but the MBNA credit card, which I understand is the third largest in the country, recently paid about $8 million for unfair practices and deceptive advertising.

So given that the credit card companies will be the chief beneficiaries of this public subsidy, because that is exactly what it is, exactly what it is, it seems to me there ought to be at least a quid pro quo. Let us require responsible corporate behavior and continue the decline that we have witnessed over the past 2 years in bankruptcy filings, the 170,000 fewer in 2000 than existed in 1998; and let us support the substitute.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Chairman, the time has come for bankruptcy reform. This will be the third time that Congress has passed a bankruptcy reform bill in our effort to get this through.

Our bankruptcy laws do play an important and necessary role in protecting Americans who really need them, and that is the key. That should be the key: need. And this bill makes the existing bankruptcy system a needs-based system addressing the flaw in the current system that encourages people to file for bankruptcy and walk away from their debts regardless of whether they are able to repay any portion of what they owe. It does this while protecting those who truly need protection. They are exempted under the bill.

The cost to all of us in terms of what is going on in these filings is great. This is a cost borne not only by the business community and the property owners but by the consumers who pay their bills responsibly. By some estimates, it takes 33 responsible consumers to pay for just one bankruptcy of convenience.

Mr. WATT of North Carolina. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. TIERNEY).

Mr. TIERNEY. Mr. Chairman, I thank the gentleman for yielding me this time. I also thank the gentleman from Michigan (Mr. CONYERS) and the gentleman from New York (Mr. NADLER), as well as their staffs, for including language on an amendment that I submitted on health care to this bill.

We have heard for some time now supporters of this bill urging us to believe that we face a bankruptcy fraud epidemic, with an exponentially increasing number of debtors who, but for the fact they are in bankruptcy, otherwise would pay their debts. Instead we find out, as one study says, that some 3.6 percent of chapter 7 debtors would hardly be able to pay any more of their bills if bankruptcy were not an option. That hardly constitutes a bankruptcy fraud epidemic, as advocates of the bill claim. More often, filing for bankruptcy is not a way out for scam artists, but a critical source of relief for common people trapped in unfortunate, and sometimes dire, circumstances.

Among the many egregious shortcomings of this particular bill is the absence of a definitive provision to allow the coverage of reasonable medical expenses whether a debtor does or does not have health insurance coverage. Certainly we all share the goal

of ensuring that the bankruptcy system is not used as a shield for irresponsible spending decisions. But debt repayment should not preempt reasonable and necessary medical expenses. Currently, H.R. 333 in fact does that.

The health language contained in our substitute would allow debtors to cover reasonable medical expenses in the event of bankruptcy. Without this amendment, this protection is not guaranteed. The IRS guidelines that form the basis for the means test in this reform legislation can change from year to year. Right now these guidelines make it possible but do not guarantee allowance of reasonable medical expenses. In fact, three out of four debtors cite serious medical problems or exorbitant health care costs as the reason for their filing for bankruptcy. In 1999, a half million middle-class families were forced into bankruptcy for these reasons alone.

It does not make sense to deny people who have the financial wherewithal to pay for these medical expenses, when they should be able to file bankruptcy in the first place and be able to afford vital health care costs. This is a vital component of this bill, Mr. Chairman. Real bankruptcy reform should be about not eliminating opportunity but making sure people can stop having themselves financially devastated particularly because of medical problems.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Mrs. DAVIS).

(Mrs. DAVIS of California asked and was given permission to revise and extend her remarks.)

Mrs. DAVIS of California. Mr. Chairman, I rise in strong support of the well-fashioned Democratic alternative and to clarify also a mistake.

Unfortunately, Mr. Chairman, staff inadvertently added me as a cosponsor rather than the correct DAVIS. As the chairman knows, there are several of us here now. I respectfully request the record show I am not a cosponsor.

Mr. Chairman, I rise in strong support of the well fashioned Democratic alternative and to clarify my intentions with regard to H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act. On January 31, due to a clerical error, I was added as a cosponsor to H.R. 333. Evidently, it was intended to list my like-named colleague from Virginia. I was never contacted by the sponsor regarding cosponsorship and did not wish to do so.

It is somewhat rare that there are more members with the name Davis—five this term—than Smith, Lee or Jones, the usual winners.

With that confusion behind us, I want to express my strong support for the Democratic alternative fashioned and sponsored by several of my colleagues. There is no doubt that the bankruptcy system needs reform, however, we must ensure that we do not handicap well-meaning members of our society who have fallen on hard times. Most consumers who file for bankruptcy are not deadbeats, but instead are working families who have experienced a catastrophic event such as illness, job loss, or a recent divorce. The Democratic alternative seeks to remove many of the provisions of the original bill that may hurt lower and middle income families who are in financial difficulty by tilting the playing field against working families and small businesses in favor of creditors.

Mr. WATT of North Carolina. Would the chairman advise us of the amount of time remaining?

The CHAIRMAN pro tempore (Mr. LAHOOD). The gentleman from North Carolina (Mr. WATT) has 4 minutes remaining, and the gentleman from Wisconsin (Mr. SENSENBRENNER) has 14 minutes remaining.

Mr. WATT of North Carolina. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, earlier today I spoke of my general views on this terrible bill. I want to comment on a remark the chairman of the committee made during the debate on this technical amendment concerning language proposed by the gentleman from California (Mr. SCHIFF) and initially accepted by the majority that would protect legally separated spouses from having the income of their spouses attributed to them in calculating how much they can repay their creditors.

The gentleman from California (Mr. SCHIFF) testified in support of the Sensenbrenner amendment in front of the Committee on Rules yesterday because of the inclusion of his language and what he thought was a simple clarification. In fact, his language, unknown to him, had been dropped from the amendment. The members of the majority on the Committee on Rules sat silently while he testified in favor of the amendment and never once disclosed to him or to any member of the Committee on Rules minority or the Committee on the Judiciary minority that in fact that language was removed from the manager's amendment.

Now the chairman tells us the Schiff amendment is not technical or clarifying but is in fact a controversial and substantive change. That is a startling admission. Is it really his intent that a woman who has been abused and is now separated from her husband and is living in fear and poverty must still count her abuser's income as a resource to be given to her creditors? I can see why some people in the banking industry might support this, but is there a single member of the majority who thinks that making it clear that the victim cannot be charged with the income of her abuser is anything more than a clarification or that it in fact reflects a controversial proposition?

If they really do think so, why did they fail at least to do the minority the courtesy of being honest about dropping the Schiff amendment rather than allowing our colleague from California to testify in support of the manager's amendment thinking his language was still included within it?

Mr. Chairman, our substitute attempts to make this bill a little more humane, or a little less inhumane I should say, by softening the inflexible means test which the former chairman of the committee, the gentleman from Illinois (Mr. HYDE), objected to and attempted to change last year. Evidently, the IRS is more popular on the other side of the aisle than the rhetoric would indicate since they would put into this bill the IRS guidelines to determine how much a debtor can afford to repay, the same IRS guidelines they found too harsh and instructed the IRS not to use with respect to tax cheats.

The substitute amendment drops the special interest amendment that benefits those wealthy investors I mentioned earlier. It makes sure the debtor has funds to support a foster child and pay for needed medical care. It modifies the bill to take up provisions that were secretly inserted into last year's conference report without any hearings or discussion that would hinder business reorganizations at a time when many more businesses are turning to chapter 11 to stay alive and preserve jobs and communities. It protects the privacy of the public from having their personal information disclosed or resold when a company goes into bankruptcy.

Earlier, we agreed to an amendment to strike the names of children from online bankruptcy information. We did not have hearings on that. We have not had hearings on most of the special interest provisions in this bill. Why so much interest in hearings now? I sympathize with the chairman, who says he was not part of the deliberations in conference on this bill. Neither was I, and I was a conferee.

One last word on child support. I do not want to hear again that this bill makes child support the first priority. No bankruptcy practitioner thinks that this bill in any way benefits children. At worst it will hinder the administration of the case. At best, it will do nothing. In ch. 13, all priority debts must be paid in full. In ch. 7, 98 percent of all cases are zero asset cases, so priority debts are almost never paid. It does nothing to help women whose debts are made non-dischargeable by this bill, and it does nothing to help them compete in state court if the non-custodial parents' debts to Visa survive bankruptcy. It does give a new and perverse meaning to the phrase, ''women and children first.''

I urge adoption of this amendment which will somewhat improve this bill. I urge adoption of the motion to instruct which would provide basic privacy protections for individuals in the bankruptcy system while we wait for the bureaucracy to get off its keister, and I urge rejection of this terrible bill.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself the balance of my time.

□ 1345

Mr. Chairman, I am not going to belabor this. I do not have time to belabor it any further. There are a number of us who believe that the bankruptcy system has been abused, but we also know that it is abused by people who are above the means test in this bill and people who are below the means test in this bill. So why would

you impose an arbitrary means test rather than going directly for the abusers of the system? And if it is not about setting up an arbitrary system, then why would you not make an exception for those who really can show by whatever burden of proof you want to impose that they got into financial straits that result in bankruptcy by no fault of their own because that is what bankruptcy was always about, and that is what it should continue to be about.

We have tried to, in this amendment, soften the provisions. That has not occurred. The charade is over. We can now go forward.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, this bill has been percolated through the Congress for the last 4 years. It has probably been one of the most debated, amended and negotiated bills that have come before the Congress of the United States in the last 25 years. At the end of the last Congress, overwhelming majorities in both Houses approved this bill. It was a voice vote in the House, and the vote in the other body was 70–28. I think that shows that the vast majority of Members of both political parties are happy with the compromises that have been reached as a result of almost 4 years of painstaking and seemingly never ending negotiations.

We hear an awful lot about the fact that bankruptcy reform is necessary. My friends on the other side of the aisle say, yes, we support bankruptcy reform but not this bill. That argument to me seems to be that the perfect is the enemy of the good. In any legislative body where compromise is the rule in order to pass legislation, the perfect is probably never attainable. This bill is a good bill. It is a bill that will make a dent on the $400 that every family in this country who pays their bills has to pay in increased taxes, increased costs for goods, increased costs for services as a result of about $44 billion a year being written off in debt and bankruptcy.

I think probably the best statement that was made during the debate came early on several hours ago, where our present bankruptcy laws are now being used by some as a financial planning tool. Bankruptcy should never be an item of financial planning. What it should be is a system of last resort, to allow people who have gotten in over their heads in debts to wipe the slate clean and to have a fresh start. This bill takes care of most of the abuses in the present bankruptcy system. It is a good bill. It is one that has been vetted by practically everybody who has been interested in this piece of legislation. It is not a perfect bill. I will be the first one to admit it. But it is a significant improvement.

I would urge support for this bill and opposition to this last amendment that goes back to some of the practices of the bad old days.

The CHAIRMAN pro tempore (Mr. LAHOOD). The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, the Chair will reduce to 5 minutes the period of time within which a vote, if ordered, will be taken on amendment No. 1 offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The vote was taken by electronic device, and there were—ayes 160, noes 258, not voting 14, as follows:

[Roll No. 23]

AYES—158

Abercrombie	Hilliard	Napolitano
Allen	Hinchey	Neal
Andrews	Hinojosa	Oberstar
Baca	Hoeffel	Obey
Baldacci	Holden	Olver
Baldwin	Honda	Ortiz
Barcia	Hooley	Owens
Barrett	Israel	Pallone
Becerra	Jackson (IL)	Pascrell
Berkley	Jackson-Lee (TX)	Pastor
Berman	Jefferson	Payne
Bishop	Johnson, E. B.	Pelosi
Blagojevich	Jones (OH)	Pomeroy
Blumenauer	Kanjorski	Price (NC)
Bonior	Kaptur	Rahall
Borski	Kildee	Ramstad
Brady (PA)	Kilpatrick	Rangel
Brown (FL)	Kind (WI)	Reyes
Brown (OH)	Kleczka	Rivers
Capps	Kucinich	Rodriguez
Capuano	LaFalce	Roybal-Allard
Cardin	Lampson	Rush
Carson (IN)	Langevin	Sabo
Clay	Lantos	Sanders
Clayton	Larson (CT)	Sawyer
Clyburn	Lee	Schakowsky
Conyers	Levin	Schiff
Costello	Lewis (GA)	Scott
Coyne	Lowey	Serrano
Cummings	Luther	Sherman
Davis (CA)	Maloney (NY)	Slaughter
Davis (IL)	Markey	Solis
DeFazio	Mascara	Spratt
DeGette	Matsui	Stark
Delahunt	McCarthy (MO)	Stupak
DeLauro	McCarthy (NY)	Thompson (CA)
Deutsch	McCollum	Thompson (MS)
Dicks	McGovern	Thurman
Dingell	McIntyre	Tierney
Doggett	McKinney	Towns
Eshoo	McNulty	Udall (CO)
Etheridge	Meehan	Udall (NM)
Evans	Meek (FL)	Velazquez
Farr	Meeks (NY)	Visclosky
Fattah	Menendez	Waters
Filner	Millender-McDonald	Watt (NC)
Frank	Miller, George	Waxman
Gephardt	Mink	Weiner
Gonzalez	Moakley	Wexler
Green (TX)	Moore	Woolsey
Gutierrez	Murtha	Wu
Hall (OH)	Nadler	Wynn
Harman		
Hastings (FL)		

NOES—251

Aderholt	Blunt	Calvert
Akin	Boehlert	Camp
Armey	Boehner	Cantor
Bachus	Bonilla	Capito
Baker	Bono	Carson (OK)
Ballenger	Boswell	Castle
Barr	Boucher	Chabot
Bartlett	Boyd	Chambliss
Barton	Brady (TX)	Clement
Bass	Brown (SC)	Coble
Bentsen	Bryant	Collins
Bereuter	Burr	Combest
Berry	Burton	Condit
Biggert	Buyer	Cooksey
Bilirakis	Callahan	Cox
Crane	Johnson, Sam	Rogers (MI)
Crenshaw	Jones (NC)	Rohrabacher
Crowley	Keller	Ross
Cubin	Kelly	Roukema
Culberson	Kennedy (MN)	Royce
Cunningham	Kennedy (RI)	Ryan (WI)
Davis (FL)	Kerns	Ryun (KS)
Davis, Jo Ann	King (NY)	Sanchez
Davis, Tom	Kirk	Sandlin
DeLay	Knollenberg	Saxton
DeMint	Kolbe	Scarborough
Diaz-Balart	LaHood	Schaffer
Dooley	Largent	Schrock
Doolittle	Larsen (WA)	Sensenbrenner
Everett	Latham	Sessions
Ferguson	LaTourette	Shadegg
Flake	Leach	Shaw
Fletcher	Lewis (CA)	Shays
Foley	Lewis (KY)	Sherwood
Ford	Linder	Shimkus
Fossella	Lipinski	Shows
Frelinghuysen	LoBiondo	Simmons
Frost	Lofgren	Simpson
Gallegly	Lucas (KY)	Sisisky
Ganske	Lucas (OK)	Skeen
Gekas	Maloney (CT)	Skelton
Gibbons	Manzullo	Smith (MI)
Gilchrest	Matheson	Smith (NJ)
Gillmor	McCrery	Smith (TX)
Gilman	McHugh	Smith (WA)
Goode	McInnis	Souder
Goodlatte	McKeon	Spence
Gordon	Mica	Stearns
Goss	Miller (FL)	Stenholm
Graham	Miller, Gary	Strickland
Granger	Mollohan	Stump
Graves	Moran (KS)	Sununu
Green (WI)	Moran (VA)	Sweeney
Greenwood	Morella	Tancredo
Grucci	Myrick	Tanner
Gutknecht	Nethercutt	Tauscher
Hall (TX)	Ney	Tauzin
Hansen	Northup	Taylor (MS)
Hart	Nussle	Taylor (NC)
Hastings (WA)	Osborne	Terry
Hayes	Ose	Thomas
Hayworth	Otter	Thornberry
Hefley	Oxley	Thune
Herger	Paul	Tiahrt
Hill	Pence	Tiberi
Hilleary	Peterson (MN)	Traficant
Hobson	Peterson (PA)	Turner
Hoekstra	Petri	Upton
Holt	Phelps	Vitter
Horn	Pickering	Walden
Hostettler	Pitts	Walsh
Houghton	Platts	Wamp
Hoyer	Pombo	Watkins
Hulshof	Portman	Watts (OK)
Hunter	Pryce (OH)	Weldon (FL)
Hutchinson	Putnam	Weldon (PA)
Hyde	Quinn	Weller
Isakson	Radanovich	Whitfield
Issa	Regula	Wicker
Istook	Rehberg	Wilson
Jenkins	Reynolds	Wolf
John	Riley	Young (AK)
Johnson (CT)	Roemer	Young (FL)
Johnson (IL)	Rogers (KY)	

NOT VOTING—13

Ackerman	Inslee	Rothman
Baird	Kingston	Snyder
Cannon	McDermott	Toomey
Cramer	Norwood	
Deal	Ros-Lehtinen	

□ 1415

Mrs. KELLY, Ms. GRANGER, Messrs. BASS, GOSS, SHOWS, PORTMAN, CUNNINGHAM, TANCREDO, GARY MILLER of California, OSE, HOLT and SMITH of Michigan changed their vote from ''aye'' to ''no.''

Messrs. BLAGOJEVICH, CUMMINGS, COSTELLO and HOLDEN changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. RAMSTAD. Mr. Chairman, on rollcall No. 23 I inadvertently pressed the ''yea'' button. I meant to vote ''no.''

AMENDMENT NO. 1 OFFERED BY MR. SENSENBRENNER

The CHAIRMAN pro tempore (Mr. LAHOOD). The pending business is the demand for a recorded vote on amendment No. 1 offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

□ 1415

Mr. CONYERS. Mr. Chairman, I withdraw my demand for a recorded vote.

The CHAIRMAN pro tempore (Mr. LAHOOD). The demand for a recorded vote on amendment No. 1 is withdrawn and the amendment is adopted by the previous voice vote.

So the amendment was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HANSEN) having assumed the chair, Mr. LAHOOD, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 333) to amend title 11, United States Code, and for other purposes, pursuant to House Resolution 71, he reported the bill back to the House with sundry amendments adopted in the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer a motion to recommit the bill, H.R. 333, with instructions.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CONYERS. Yes, sir.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CONYERS moves to recommit the bill (H.R. 333) to the Committee on the Judiciary, with instructions to report the bill back to the House forthwith, with the following amendment.

Page 393, strike line 16 and all that follows through page 403, line 3, and insert the following (and conform the table of contents accordingly):

SEC. 1301. ISSUANCE OF CREDIT CARDS TO UNDERAGE CONSUMERS.

Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by inserting after paragraph (6) (as added by section 1303 of this title) the following new paragraph:

''(7) APPLICATIONS FROM UNDERAGE CONSUMERS.—

''(A) PROHIBITION ON ISSUANCE.—No credit card may be issued to, or open end credit plan established on behalf of, any consumer who has not attained the age of 21, except in response to a written request or application to the card issuer that meets the requirements of subparagraph (B).

''(B) APPLICATION REQUIREMENTS.—An application to open a credit card account by a consumer who has not reached the age of 21 as of the date of submission of the application shall require—

''(i) the signature of the parent or guardian of the consumer indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has reached the age of 21; or

''(ii) submission by the consumer of financial information indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.''.

Mr. CONYERS (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes in support of the motion.

Mr. CONYERS. Mr. Speaker, I offer the motion to recommit on behalf of myself and the gentleman from New York (Mr. LAFALCE).

Our amendment would simply prohibit the issuance of credit cards to persons under age 21 unless a parent acts as co-signer or the minor can demonstrate an independent source to pay the debt.

Right now, our credit card companies are sending millions of credit card solicitations to teenagers every year with sometimes $10,000 lines of credit. The credit cards offer these young people free gifts, toys, tee shirts. It is outrageous.

Financial troubles caused by reckless lending to teens haunt some of them for the rest of their lives, costing them far more when they try to buy a car or home or take out future loans as they become responsible citizens.

So this is not about fingerpointing. It is all our moral responsibility, our children's, ours as parents, Congress', and yes, even the credit card companies, too. This is a moral responsibility that none of us can shirk.

So this commonsense amendment imposes a reasonable requirement on credit card companies that will help our young people immeasurably.

Mr. Speaker, I yield to the gentleman from New York (Mr. LAFALCE), the ranking member of the Committee on Financial Services.

Mr. LAFALCE. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, motions to recommit are usually considered fairly partisan in nature, and usually there are enormous differences between a motion to recommit and the main bill.

This is not partisan, and the differences are not enormous. I hope Members would vote their consciences on this.

We take the main bill, and I do not like the main bill, I think it is pretty bad. I think there are dozens of predatory practices of the credit card industry we should have dealt with and we did not.

But there is one in particular that is particularly offensive. That is preying on our youth, entering into agreements with colleges where the colleges will get money so they can come onto campus and market to these youth, flooding them with credit card solicitations, $3.5 billion totally. I cannot tell the Members exactly how many went to our college students under 21.

These students are going to gambling establishments, they are going into their rooms using their laptop computers, they are engaging in Internet gambling. They are suffering enormous stress, financial and emotional, and there have been suicides, dropouts from colleges, because the credit card industry deviated from the standards they had just a few years ago: that is, show sufficient income yourself, or have your parents sign the applications. It is as simple as that.

That is all we do. That is all we do in this motion to recommit, say if one is under 21, show independent means or have your parent co-sign. That is the least we could do to deal with the multitudinous predatory practices that exist in the credit card industry.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the motion to recommit and ask the Members to vote no on this motion.

This motion to recommit proposes an amendment that does not deal with the Bankruptcy Code whatsoever, but amends the truth-in-lending act, as has been described by its proponents.

In most States of this country, including my home State of Wisconsin, the age of majority is 18. When one achieves the age of 18, one is responsible for one's contracts, one can sue and be sued, one can vote, and in many cases can run for and be elected to public office.

What this amendment proposes to say is that in terms of receiving solicitations for credit cards and receiving applications for credit cards, these adults are considered children for 3 more years. What it does is it paints with a broad brush every 18-, 19-, and 20-year-old and says, ''You have to go run to your parents or show independent financial means before you can apply for a credit card.''

So the good kids who would use credit responsibly and learn how to use credit responsibly are not able to get credit cards, just like the bad kids who would use credit irresponsibly.

I would submit to each Member of the House of Representatives that we

should not be tarring kids with this broad brush; we should not be telling 18-, 19-, and 20-year-olds that they are adults for every purpose except just this one.

I think what we should be doing is empowering our young people and giving them the educational tools to make good credit decisions, rather than simply saying, The door is shut for you.

Mr. Speaker, I yield to the gentleman from Ohio (Mr. OXLEY).

Mr. OXLEY. I thank the gentleman for yielding.

Mr. Speaker, I also rise in opposition to the motion.

First let me associate myself with the remarks of the gentleman from Wisconsin, the chairman of the Committee on the Judiciary. As chairman of the Committee on Financial Services, I find some of the same concerns that the gentleman from Wisconsin has. We are again talking about people who are of legal age, 18.

I thought it was interesting that the title is, issuance of credit cards to underage consumers. By whose definition are they under age? By Federal law, they can vote. By most State laws, as the gentleman from Wisconsin (Mr. SENSENBRENNER) indicated, they can engage in contracts.

These are, for the most part, responsible people. We are really dealing here with stereotypes that are unfortunate because many of these people are responsible and treat credit in a responsible way, and they learn from their experience.

In Ohio, we had a young fellow just elected to the Ohio General Assembly just out of high school; he was 18 years old, a member of the Ohio General Assembly. Can Members imagine if he wanted to get a credit card to use, he would have to get his parents' consent. Here is a person who was duly elected by the people of Ohio to serve in the General Assembly.

This is I think a well-meaning amendment, but certainly wrongly directed. I would ask that the motion be defeated.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of final passage.

The vote was taken by electronic device, and there were—ayes 165, noes 253, not voting 14, as follows:

[Roll No. 24]

AYES—165

Abercrombie	Hill	Nadler
Allen	Hilliard	Napolitano
Andrews	Hinchey	Neal
Baca	Hoeffel	Oberstar
Baldacci	Holden	Obey
Barcia	Holt	Olver
Becerra	Honda	Ortiz
Berkley	Hooley	Owens
Berman	Hoyer	Pallone
Blagojevich	Israel	Pascrell
Blumenauer	Jackson (IL)	Pastor
Bonior	Jackson-Lee (TX)	Payne
Borski	Jefferson	Pelosi
Brady (PA)	Johnson, E. B.	Peterson (MN)
Brown (FL)	Jones (OH)	Phelps
Brown (OH)	Kanjorski	Pomeroy
Capps	Kaptur	Price (NC)
Capuano	Kildee	Rahall
Cardin	Kilpatrick	Rangel
Carson (IN)	Kleczka	Reyes
Clay	Kucinich	Rodriguez
Clayton	LaFalce	Roemer
Clyburn	Lampson	Roybal-Allard
Conyers	Langevin	Rush
Costello	Lantos	Sabo
Coyne	Larson (CT)	Sanders
Cummings	LaTourette	Sawyer
Davis (CA)	Lee	Schakowsky
Davis (FL)	Levin	Schiff
Davis (IL)	Lewis (GA)	Scott
DeFazio	Lipinski	Serrano
DeGette	Lowey	Sherman
Delahunt	Luther	Slaughter
DeLauro	Maloney (NY)	Solis
Deutsch	Markey	Stark
Dicks	Mascara	Strickland
Dingell	Matsui	Stupak
Doggett	McCarthy (MO)	Thompson (CA)
Doyle	McCarthy (NY)	Thompson (MS)
Duncan	McCollum	Thurman
Edwards	McGovern	Tierney
Emerson	McIntyre	Towns
Engel	McKinney	Udall (CO)
Eshoo	McNulty	Udall (NM)
Etheridge	Meehan	Velazquez
Evans	Meek (FL)	Visclosky
Farr	Meeks (NY)	Waters
Fattah	Millender-McDonald	Watt (NC)
Filner	Miller, George	Waxman
Frank	Mink	Weiner
Frost	Moakley	Weldon (PA)
Gonzalez	Moore	Wexler
Green (TX)	Moran (VA)	Woolsey
Gutierrez	Murtha	Wu
Hall (OH)		Wynn
Hastings (FL)		

NOES—253

Aderholt	Carson (OK)	Gekas
Akin	Castle	Gibbons
Armey	Chabot	Gilchrest
Bachus	Chambliss	Gillmor
Baker	Clement	Gilman
Baldwin	Coble	Goode
Ballenger	Collins	Goodlatte
Barr	Combest	Gordon
Barrett	Condit	Goss
Bartlett	Cooksey	Graham
Barton	Cox	Granger
Bass	Crane	Graves
Bentsen	Crenshaw	Green (WI)
Bereuter	Crowley	Greenwood
Berry	Cubin	Grucci
Biggert	Culberson	Gutknecht
Bilirakis	Cunningham	Hall (TX)
Bishop	Davis, Jo Ann	Hansen
Blunt	Davis, Tom	Harman
Boehlert	DeLay	Hart
Boehner	DeMint	Hastings (WA)
Bonilla	Diaz-Balart	Hayes
Bono	Dooley	Hayworth
Boswell	Doolittle	Hefley
Boucher	Dreier	Herger
Boyd	Ehlers	Hilleary
Brady (TX)	Ehrlich	Hinojosa
Brown (SC)	English	Hobson
Bryant	Everett	Hoekstra
Burr	Ferguson	Horn
Burton	Flake	Hostettler
Buyer	Fletcher	Houghton
Callahan	Foley	Hulshof
Calvert	Ford	Hunter
Camp	Fossella	Hutchinson
Cannon	Frelinghuysen	Hyde
Cantor	Gallegly	Isakson
Capito	Ganske	Issa
Istook	Nussle	Simpson
Jenkins	Osborne	Sisisky
John	Ose	Skeen
Johnson (CT)	Otter	Skelton
Johnson (IL)	Oxley	Smith (MI)
Johnson, Sam	Paul	Smith (NJ)
Jones (NC)	Pence	Smith (TX)
Keller	Peterson (PA)	Smith (WA)
Kelly	Petri	Souder
Kennedy (MN)	Pickering	Spence
Kennedy (RI)	Pitts	Spratt
Kerns	Platts	Stearns
Kind (WI)	Pombo	Stenholm
King (NY)	Portman	Stump
Kirk	Pryce (OH)	Sununu
Knollenberg	Putnam	Sweeney
Kolbe	Quinn	Tancredo
LaHood	Radanovich	Tanner
Largent	Ramstad	Tauscher
Larsen (WA)	Regula	Tauzin
Latham	Rehberg	Taylor (MS)
Leach	Reynolds	Taylor (NC)
Lewis (CA)	Riley	Terry
Lewis (KY)	Rivers	Thomas
Linder	Rogers (KY)	Thornberry
LoBiondo	Rogers (MI)	Thune
Lofgren	Rohrabacher	Tiahrt
Lucas (KY)	Ross	Tiberi
Lucas (OK)	Roukema	Traficant
Maloney (CT)	Royce	Turner
Manzullo	Ryan (WI)	Upton
Matheson	Ryun (KS)	Vitter
McCrery	Sanchez	Walden
McHugh	Sandlin	Walsh
McInnis	Saxton	Wamp
McKeon	Scarborough	Watkins
Menendez	Schaffer	Watts (OK)
Mica	Schrock	Weldon (FL)
Miller (FL)	Sensenbrenner	Weller
Miller, Gary	Sessions	Whitfield
Mollohan	Shadegg	Wicker
Moran (KS)	Shaw	Wilson
Morella	Shays	Wolf
Myrick	Sherwood	Young (AK)
Nethercutt	Shimkus	Young (FL)
Ney	Shows	
Northup	Simmons	

NOT VOTING—14

Ackerman	Gephardt	Ros-Lehtinen
Baird	Inslee	Rothman
Cramer	Kingston	Snyder
Deal	McDermott	Toomey
Dunn	Norwood	

□ 1449

Messrs. HORN, MCCRERY and REGULA changed their vote from ''aye'' to ''no.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. HANSEN). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 306, nays 108, not voting 18, as follows:

[Roll No. 25]

YEAS—306

Aderholt	Bereuter	Boyd
Akin	Berkley	Brady (TX)
Andrews	Berry	Brown (FL)
Armey	Biggert	Brown (SC)
Baca	Bilirakis	Bryant
Bachus	Bishop	Burr
Baker	Blumenauer	Burton
Ballenger	Blunt	Buyer
Barcia	Boehlert	Callahan
Barr	Boehner	Calvert
Bartlett	Bonilla	Camp
Barton	Bono	Cannon
Bass	Boswell	Cantor
Bentsen	Boucher	Capito

Capps
Carson (OK)
Castle
Chabot
Chambliss
Clement
Clyburn
Coble
Collins
Combest
Condit
Cooksey
Costello
Cox
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis (FL)
Davis, Jo Ann
Davis, Tom
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dooley
Doolittle
Dreier
Duncan
Edwards
Ehlers
Ehrlich
Emerson
English
Etheridge
Everett
Ferguson
Flake
Fletcher
Foley
Ford
Fossella
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Israel
Issa
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kind (WI)
King (NY)
Kirk
Kleczka
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Largent
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Maloney (CT)
Manzullo
Matheson
McCarthy (MO)
McCarthy (NY)
McCrery
McHugh
McInnis
McIntyre
McKeon
Meek (FL)
Meeks (NY)
Menendez
Mica
Miller (FL)
Miller, Gary
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Nussle
Ortiz
Osborne
Ose
Otter
Oxley
Pallone
Pascrell
Pastor
Paul
Pence
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ross
Roukema
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Scarborough
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Simmons
Simpson
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solis
Souder
Spence
Spratt
Stearns
Stenholm
Strickland
Stump
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Tiberi
Traficant
Turner
Upton
Velazquez
Vitter
Walden
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NAYS—108

Abercrombie
Allen
Baldacci
Baldwin
Barrett
Becerra
Berman
Blagojevich
Bonior
Borski
Brady (PA)
Brown (OH)
Capuano
Cardin
Carson (IN)
Clay
Clayton
Conyers
Coyne
Cummings
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dingell
Doggett
Doyle
Engel
Eshoo
Evans
Farr
Fattah
Filner
Frank
Gutierrez
Hall (OH)
Hilliard
Hinchey
Hoeffel
Honda
Jackson-Lee (TX)
Jones (OH)
Kanjorski
Kaptur
Kildee
Kilpatrick
Kucinich
LaFalce
Lantos
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney (NY)
Markey
Mascara
Matsui
McCollum
McGovern
McKinney
McNulty
Meehan
Millender-McDonald
Miller, George
Mink
Moakley
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Owens
Payne
Pelosi
Rahall
Rangel
Rodriguez
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sawyer
Schakowsky
Schiff
Scott
Serrano
Slaughter
Stark
Stupak
Thompson (MS)
Thurman
Tierney
Udall (CO)
Udall (NM)
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Woolsey

NOT VOTING—18

Ackerman
Baird
Cramer
Deal
Dunn
Gephardt
Gilman
Inslee
Jackson (IL)
Kingston
McDermott
Norwood
Peterson (MN)
Ros-Lehtinen
Rothman
Snyder
Toomey
Towns

□ 1457

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. GILMAN. Mr. Speaker, earlier today, I was unavoidably delayed by official business during the vote on final passage for H.R. 333. Accordingly, I was unable to vote on rollcall No. 25. If I had been present I would have voted ''yea.''

Mr. KINGSTON. Mr. Speaker, regrettably, I was unable to be in Washington on March 1, 2001 to cast a vote on H.R. 333, The Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, when it came to the House floor. At President Bush's request, I was attending an event in my home state of Georgia with the President. Had I been here, however, I would have voted in favor of the Bankruptcy Reform bill.

PERSONAL EXPLANATION

Mr. MCDERMOTT. Mr. Speaker, due to the 6.8 magnitude earthquake that struck my district yesterday I have returned to Seattle with the FEMA Director and was unable to vote today.

I would have voted against agreeing to the resolution to consider H. Res. 71 (rollcall No. 22).

I would have voted in favor of the Jackson-Lee amendment (rollcall No. 23).

I would have voted in favor of the motion to recommit (rollcall No. 24).

I would have voted against passage of H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act (rollcall No. 25).

PERSONAL EXPLANATION

Ms. DUNN. Mr. Speaker, I was detained due to being with FEMA Director Joe Allbaugh to assess the damage caused by the earthquake in the Puget Sound. Had I been present, I would have voted ''yea'' on rollcall No. 22, ''no'' on rollcall No. 23, ''no'' on rollcall No. 24, and ''yea'' on rollcall No. 25.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 333.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Wanda Evans, one of his secretaries.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that, in the engrossment of the bill, H.R. 333, the Clerk be authorized to correct section numbers, punctuation, citations and cross references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. BONIOR asked and was given permission to address the House for 1 minute.)

Mr. BONIOR. Mr. Speaker, I ask to take this time to inquire from the distinguished majority leader and ask him to clarify the schedule for the remainder of the day, the week, and next week.

I yield to my colleague, the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, I thank the gentleman for yielding.

I am pleased to announce that the House has completed its legislative business for the week. The House will next meet for legislative business on Tuesday, March 6 at 12:30 p.m. for morning hour and at 2:00 p.m. for legislative business. No recorded votes are expected before 6 p.m. The House will consider a number of measures under suspension of the rules, a list of which will be distributed to Member's offices tomorrow.

On Wednesday, March 7, and Thursday, March 8, the House will consider the following measures: H.R. 624, the Organ Donation Improvement Act of 2001; and H.R. 3, the Economic Growth and Tax Relief Act of 2001.