Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Cox
Crenshaw
Cubin
Culberson
Cunningham
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayworth
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Otter
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Portman
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Stearns
Sullivan
Sweeney
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

NAYS—195

Abercrombie
Ackerman
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Hefley
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—21

Allen
Berkley
Brown, Corrine
Evans
Gillmor
Gordon
Hayes
Hyde
Johnson, E. B.
LaHood
Lofgren, Zoe
Myrick
Norwood
Olver
Oxley
Rangel
Solis
Souder
Tancredo
Taylor (NC)
Young (AK)

□ 1334

Mr. MORAN of Virginia changed his vote from ''yea'' to ''nay.''

Messrs. PRICE of Georgia, SAXTON, KNOLLENBERG, LEWIS of Kentucky, PETERSON of Pennsylvania, COLE of Oklahoma, RADANOVICH, WOLF, KING of New York, INGLIS of South Carolina, ENGLISH of Pennsylvania and HALL changed their vote from ''nay'' to ''yea.''

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Ms. SOLIS. Mr. Speaker, during rollcall vote No. 106, on motion to table the resolution, H. Res. 215, I was unavoidably detained. Had I been present, I would have voted "nay."

Ms. ZOE LOFGREN of California. Mr. Speaker, on rollcall No. 106, I had turned off my pager during a committee meeting and neglected to turn it back on. When the vote was called, therefore, I did not learn of it. Had I been present, I would have voted, "nay."

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 211, I call up the Senate bill (S. 256) to amend title 11 of the United States Code, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The text of S. 256 is as follows:

S. 256

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 2005''.

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

Sec. 1. Short title; references; table of contents.

TITLE I—NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion.
Sec. 102. Dismissal or conversion.
Sec. 103. Sense of Congress and study.
Sec. 104. Notice of alternatives.
Sec. 105. Debtor financial management training test program.
Sec. 106. Credit counseling.
Sec. 107. Schedules of reasonable and necessary expenses.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

Sec. 201. Promotion of alternative dispute resolution.
Sec. 202. Effect of discharge.
Sec. 203. Discouraging abuse of reaffirmation agreement practices.
Sec. 204. Preservation of claims and defenses upon sale of predatory loans.
Sec. 205. GAO study and report on reaffirmation agreement process.

Subtitle B—Priority Child Support

Sec. 211. Definition of domestic support obligation.
Sec. 212. Priorities for claims for domestic support obligations.
Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
Sec. 214. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 216. Continued liability of property.
Sec. 217. Protection of domestic support claims against preferential transfer motions.
Sec. 218. Disposable income defined.
Sec. 219. Collection of child support.
Sec. 220. Nondischargeability of certain educational benefits and loans.

Subtitle C—Other Consumer Protections

Sec. 221. Amendments to discourage abusive bankruptcy filings.
Sec. 222. Sense of Congress.
Sec. 223. Additional amendments to title 11, United States Code.
Sec. 224. Protection of retirement savings in bankruptcy.
Sec. 225. Protection of education savings in bankruptcy.
Sec. 226. Definitions.
Sec. 227. Restrictions on debt relief agencies.
Sec. 228. Disclosures.
Sec. 229. Requirements for debt relief agencies.
Sec. 230. GAO study.
Sec. 231. Protection of personally identifiable information.
Sec. 232. Consumer privacy ombudsman.
Sec. 233. Prohibition on disclosure of name of minor children.
Sec. 234. Protection of personal information.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

Sec. 301. Technical amendments.

Sec. 302. Discouraging bad faith repeat filings.
Sec. 303. Curbing abusive filings.
Sec. 304. Debtor retention of personal property security.
Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 306. Giving secured creditors fair treatment in chapter 13.
Sec. 307. Domiciliary requirements for exemptions.
Sec. 308. Reduction of homestead exemption for fraud.
Sec. 309. Protecting secured creditors in chapter 13 cases.
Sec. 310. Limitation on luxury goods.
Sec. 311. Automatic stay.
Sec. 312. Extension of period between bankruptcy discharges.
Sec. 313. Definition of household goods and antiques.
Sec. 314. Debt incurred to pay nondischargeable debts.
Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.
Sec. 316. Dismissal for failure to timely file schedules or provide required information.
Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.
Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.
Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
Sec. 320. Prompt relief from stay in individual cases.
Sec. 321. Chapter 11 cases filed by individuals.
Sec. 322. Limitations on homestead exemption.
Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.
Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.
Sec. 325. United States trustee program filing fee increase.
Sec. 326. Sharing of compensation.
Sec. 327. Fair valuation of collateral.
Sec. 328. Defaults based on nonmonetary obligations.
Sec. 329. Clarification of postpetition wages and benefits.
Sec. 330. Delay of discharge during pendency of certain proceedings.
Sec. 331. Limitation on retention bonuses, severance pay, and certain other payments.
Sec. 332. Fraudulent involuntary bankruptcy.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

Sec. 401. Adequate protection for investors.
Sec. 402. Meetings of creditors and equity security holders.
Sec. 403. Protection of refinance of security interest.
Sec. 404. Executory contracts and unexpired leases.
Sec. 405. Creditors and equity security holders committees.
Sec. 406. Amendment to section 546 of title 11, United States Code.
Sec. 407. Amendments to section 330(a) of title 11, United States Code.
Sec. 408. Postpetition disclosure and solicitation.
Sec. 409. Preferences.
Sec. 410. Venue of certain proceedings.
Sec. 411. Period for filing plan under chapter 11.
Sec. 412. Fees arising from certain ownership interests.
Sec. 413. Creditor representation at first meeting of creditors.
Sec. 414. Definition of disinterested person.
Sec. 415. Factors for compensation of professional persons.
Sec. 416. Appointment of elected trustee.
Sec. 417. Utility service.
Sec. 418. Bankruptcy fees.
Sec. 419. More complete information regarding assets of the estate.

Subtitle B—Small Business Bankruptcy Provisions

Sec. 431. Flexible rules for disclosure statement and plan.
Sec. 432. Definitions.
Sec. 433. Standard form disclosure statement and plan.
Sec. 434. Uniform national reporting requirements.
Sec. 435. Uniform reporting rules and forms for small business cases.
Sec. 436. Duties in small business cases.
Sec. 437. Plan filing and confirmation deadlines.
Sec. 438. Plan confirmation deadline.
Sec. 439. Duties of the United States trustee.
Sec. 440. Scheduling conferences.
Sec. 441. Serial filer provisions.
Sec. 442. Expanded grounds for dismissal or conversion and appointment of trustee.
Sec. 443. Study of operation of title 11, United States Code, with respect to small businesses.
Sec. 444. Payment of interest.
Sec. 445. Priority for administrative expenses.
Sec. 446. Duties with respect to a debtor who is a plan administrator of an employee benefit plan.
Sec. 447. Appointment of committee of retired employees.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

Sec. 501. Petition and proceedings related to petition.
Sec. 502. Applicability of other sections to chapter 9.

TITLE VI—BANKRUPTCY DATA

Sec. 601. Improved bankruptcy statistics.
Sec. 602. Uniform rules for the collection of bankruptcy data.
Sec. 603. Audit procedures.
Sec. 604. Sense of Congress regarding availability of bankruptcy data.

TITLE VII—BANKRUPTCY TAX PROVISIONS

Sec. 701. Treatment of certain liens.
Sec. 702. Treatment of fuel tax claims.
Sec. 703. Notice of request for a determination of taxes.
Sec. 704. Rate of interest on tax claims.
Sec. 705. Priority of tax claims.
Sec. 706. Priority property taxes incurred.
Sec. 707. No discharge of fraudulent taxes in chapter 13.
Sec. 708. No discharge of fraudulent taxes in chapter 11.
Sec. 709. Stay of tax proceedings limited to prepetition taxes.
Sec. 710. Periodic payment of taxes in chapter 11 cases.
Sec. 711. Avoidance of statutory tax liens prohibited.
Sec. 712. Payment of taxes in the conduct of business.
Sec. 713. Tardily filed priority tax claims.
Sec. 714. Income tax returns prepared by tax authorities.
Sec. 715. Discharge of the estate's liability for unpaid taxes.
Sec. 716. Requirement to file tax returns to confirm chapter 13 plans.
Sec. 717. Standards for tax disclosure.
Sec. 718. Setoff of tax refunds.
Sec. 719. Special provisions related to the treatment of State and local taxes.
Sec. 720. Dismissal for failure to timely file tax returns.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

Sec. 801. Amendment to add chapter 15 to title 11, United States Code.
Sec. 802. Other amendments to titles 11 and 28, United States Code.

TITLE IX—FINANCIAL CONTRACT PROVISIONS

Sec. 901. Treatment of certain agreements by conservators or receivers of insured depository institutions.
Sec. 902. Authority of the FDIC and NCUAB with respect to failed and failing institutions.
Sec. 903. Amendments relating to transfers of qualified financial contracts.
Sec. 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
Sec. 905. Clarifying amendment relating to master agreements.
Sec. 906. Federal Deposit Insurance Corporation Improvement Act of 1991.
Sec. 907. Bankruptcy law amendments.
Sec. 908. Recordkeeping requirements.
Sec. 909. Exemptions from contemporaneous execution requirement.
Sec. 910. Damage measure.
Sec. 911. SIPC stay.

TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN

Sec. 1001. Permanent reenactment of chapter 12.
Sec. 1002. Debt limit increase.
Sec. 1003. Certain claims owed to governmental units.
Sec. 1004. Definition of family farmer.
Sec. 1005. Elimination of requirement that family farmer and spouse receive over 50 percent of income from farming operation in year prior to bankruptcy.
Sec. 1006. Prohibition of retroactive assessment of disposable income.
Sec. 1007. Family fishermen.

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

Sec. 1101. Definitions.
Sec. 1102. Disposal of patient records.
Sec. 1103. Administrative expense claim for costs of closing a health care business and other administrative expenses.
Sec. 1104. Appointment of ombudsman to act as patient advocate.
Sec. 1105. Debtor in possession; duty of trustee to transfer patients.
Sec. 1106. Exclusion from program participation not subject to automatic stay.

TITLE XII—TECHNICAL AMENDMENTS

Sec. 1201. Definitions.
Sec. 1202. Adjustment of dollar amounts.
Sec. 1203. Extension of time.
Sec. 1204. Technical amendments.
Sec. 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
Sec. 1206. Limitation on compensation of professional persons.
Sec. 1207. Effect of conversion.
Sec. 1208. Allowance of administrative expenses.
Sec. 1209. Exceptions to discharge.
Sec. 1210. Effect of discharge.
Sec. 1211. Protection against discriminatory treatment.
Sec. 1212. Property of the estate.
Sec. 1213. Preferences.

Sec. 1214. Postpetition transactions.
Sec. 1215. Disposition of property of the estate.
Sec. 1216. General provisions.
Sec. 1217. Abandonment of railroad line.
Sec. 1218. Contents of plan.
Sec. 1219. Bankruptcy cases and proceedings.
Sec. 1220. Knowing disregard of bankruptcy law or rule.
Sec. 1221. Transfers made by nonprofit charitable corporations.
Sec. 1222. Protection of valid purchase money security interests.
Sec. 1223. Bankruptcy Judgeships.
Sec. 1224. Compensating trustees.
Sec. 1225. Amendment to section 362 of title 11, United States Code.
Sec. 1226. Judicial education.
Sec. 1227. Reclamation.
Sec. 1228. Providing requested tax documents to the court.
Sec. 1229. Encouraging creditworthiness.
Sec. 1230. Property no longer subject to redemption.
Sec. 1231. Trustees.
Sec. 1232. Bankruptcy forms.
Sec. 1233. Direct appeals of bankruptcy matters to courts of appeals.
Sec. 1234. Involuntary cases.
Sec. 1235. Federal election law fines and penalties as nondischargeable debt.

TITLE XIII—CONSUMER CREDIT DISCLOSURE

Sec. 1301. Enhanced disclosures under an open end credit plan.
Sec. 1302. Enhanced disclosure for credit extensions secured by a dwelling.
Sec. 1303. Disclosures related to ''introductory rates''.
Sec. 1304. Internet-based credit card solicitations.
Sec. 1305. Disclosures related to late payment deadlines and penalties.
Sec. 1306. Prohibition on certain actions for failure to incur finance charges.
Sec. 1307. Dual use debit card.
Sec. 1308. Study of bankruptcy impact of credit extended to dependent students.
Sec. 1309. Clarification of clear and conspicuous.

TITLE XIV—PREVENTING CORPORATE BANKRUPTCY ABUSE

Sec. 1401. Employee wage and benefit priorities.
Sec. 1402. Fraudulent transfers and obligations.
Sec. 1403. Payment of insurance benefits to retired employees.
Sec. 1404. Debts nondischargeable if incurred in violation of securities fraud laws.
Sec. 1405. Appointment of trustee in cases of suspected fraud.
Sec. 1406. Effective date; application of amendments.

TITLE XV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Sec. 1501. Effective date; application of amendments.
Sec. 1502. Technical corrections.

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 so 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 (or bankruptcy administrator, if any), 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 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. Such expenses shall include reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor. 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, 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, siblings, children, and grandchildren 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 less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

''(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

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

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

''(II) 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 60.

''(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

''(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such 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 itemize each additional expense or adjustment of income and to provide—

''(I) documentation for such expense or adjustment to income; and

''(II) 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 show how each such amount is calculated.

''(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or

convert a case based on any form of means testing, if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was—

''(i) on active duty (as defined in section 101(d)(1) of title 10); or

''(ii) performing a homeland defense activity (as defined in section 901(1) of title 32).

''(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 arise or is 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, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

''(i) a trustee files a motion for dismissal or conversion under this subsection; and

''(ii) the court—

''(I) grants such motion; and

''(II) finds that the action of the attorney for the debtor in filing a case 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, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—

''(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and

''(ii) the payment of such civil penalty to the trustee, the United States trustee (or the bankruptcy administrator, if any).

''(C) The signature of an attorney on a petition, pleading, or written motion 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, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) 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 filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

''(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made 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 fewer than 25 full-time employees as determined on the date on which 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 or United States trustee (or bankruptcy administrator, if any) may file 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;

''(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; 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, plus $525 per month for each individual in excess of 4.

''(7)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor, including a veteran (as that term is defined in section 101 of title 38), 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—

''(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(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; 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, plus $525 per month for each individual in excess of 4.

''(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if—

''(i)(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

''(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

''(ii) the debtor files a statement under penalty of perjury—

''(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

''(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.''.

(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 that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

''(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

''(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); 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 for 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, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism;''.

(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 a debtor who is an individual in a case under this chapter—

''(A) the United States trustee (or the bankruptcy administrator, if any) 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, if any) 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 the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) 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; 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.''.

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

''(d) In a case under chapter 7 of this title in which the debtor is an individual and in which the presumption of abuse arises 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 arisen.''.

(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 (or bankruptcy administrator, if any), or trustee.

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

''(c)(1) In this subsection—

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

''(B) the term 'drug trafficking crime' has the meaning given such 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 victim dismiss a voluntary case filed under this chapter by a debtor who is an individual if such individual was convicted of such 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 inserting after paragraph (6) 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)(i) 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

''(ii) 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 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;

''(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; 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, plus $525 per month for each individual in excess of 4.''.

(i) SPECIAL ALLOWANCE FOR HEALTH INSURANCE.—Section 1329(a) 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) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

''(A) such expenses are reasonable and necessary;

''(B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy; or

''(ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance, who has similar income, expenses, age, and health status, and who lives in the same geographical location with the same number of dependents who do not otherwise have health insurance coverage; and

''(C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title;

and upon request of any party in interest, files proof that a health insurance policy was purchased.''.

(j) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, is amended by striking ''and 523(a)(2)(C)'' each place it appears and inserting ''523(a)(2)(C), 707(b), and 1325(b)(3)''.

(k) DEFINITION OF 'MEDIAN FAMILY INCOME'.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (39) the following:

''(39A) 'median family income' means for any year—

''(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and

''(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year;''.

(k) 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 case under this title shall be subject to fine, imprisonment, or both; and

''(B) all information supplied by a debtor in connection with a case under this title 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 serve in cases 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 debtors who are individuals 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 the 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 such individual has, during the 180-day period preceding the date of filing of the petition by such 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 such 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 the bankruptcy administrator, if any) determines that the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from such agencies by reason of the requirements of paragraph (1).

''(B) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in subparagraph (A) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee (or the bankruptcy administrator, if any) 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.

''(4) The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and ''disability'' means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).''.

(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 filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.).''.

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

''(g)(1) 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.

''(2) Paragraph (1) shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

''(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually 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), a debtor who is an individual 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. Nonprofit budget and credit counseling agencies; financial management instructional courses

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

''(1) nonprofit budget and credit counseling agencies that provide 1 or more services described in section 109(h) currently approved by the United States trustee (or the bankruptcy administrator, if any); and

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

''(b) The United States trustee (or bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency or an instructional course concerning personal financial management as follows:

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

''(2) The United States trustee (or bankruptcy administrator, if any) shall have determined that such agency or such instructional course fully satisfies the applicable standards set forth in this section.

''(3) If a nonprofit budget and credit counseling agency or instructional course did not appear on the approved list for the district under subsection (a) immediately before approval under this section, approval under this subsection of such agency or such instructional course shall be for a probationary period not to exceed 6 months.

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

''(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), an interested person may seek judicial review of such decision in the appropriate district court of the United States.

''(c)(1) The United States trustee (or the bankruptcy administrator, if any) shall only approve a nonprofit budget and 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 relating to the quality, effectiveness, and financial security of the services it provides.

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

''(A) have a board of directors the majority of which—

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

''(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

''(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 a client, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by such client and how such costs will be paid;

''(E) provide adequate counseling with respect to a client's credit problems that includes an analysis of such client's current financial condition, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

''(F) provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services provided by such agency, 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 the bankruptcy administrator, if any) 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 instructional course;

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

''(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 instructional course, including any evaluation of satisfaction of instructional course requirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee (or the bankruptcy administrator, if any), or the chief bankruptcy judge for the district in which such instructional course is offered; and

''(E) if a fee is charged for the instructional course, charge a reasonable fee, and provide services without regard to ability to pay the fee.

''(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 the debtor's understanding of personal financial management.

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

''(f) The United States trustee (or the bankruptcy administrator, if any) shall notify the clerk that a nonprofit budget and 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 nonprofit budget and credit counseling agency may provide to a credit reporting agency information concerning whether a debtor has received or sought instruction concerning personal financial management from such agency.

''(2) A nonprofit budget and credit counseling agency 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. Nonprofit budget and credit counseling agencies; 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 an unsecured consumer debt 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 on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;

''(B) the offer of the debtor under subparagraph (A)—

''(i) was made at least 60 days before the date of 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 schedule between the debtor and any creditor of the debtor created by an approved nonprofit budget and 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, unless the order confirming the plan is revoked, the plan is 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 AGREEMENT PRACTICES.

(a) IN GENERAL.—Section 524 of title 11, United States Code, as amended section 202, 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;''; and

(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 specified in subsection (c), statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with entering into such agreement.

''(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 of debt that the debtor agrees to reaffirm by entering into an agreement of the kind specified in subsection (c), and

''(ii) the total of any fees and costs accrued as of the date of the disclosure statement, related to such total amount.

''(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 an extension of credit under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in section 103 of the Truth in Lending Act, then—

''(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to entering into an agreement of the kind specified in subsection (c) or, if no such periodic statement has been given to 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 to 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); or

''(ii) if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in section 103 of the Truth in Lending Act, then—

''(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the entering into an agreement of the kind specified in subsection (c) with respect to the debt, or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to 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 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, 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 debts the debtor is 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 agreement 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 debts 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 reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement 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 your 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 your 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 your 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 your 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 reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation 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 (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or 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 case. That means that if you default on your reaffirmed debt after your bankruptcy case 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 that 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 your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.'.

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

'' 'Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts 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 these debts:

'' 'Accepted by creditor:

'' 'Date of creditor acceptance:'.

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

''(A) The following certification:

'' '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; (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) If a presumption of undue hardship has been established with respect to such agreement, such 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 such 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 reaffirmation 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 an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, 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 reaffirmation 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 that may be used if approval of such agreement by the court is required in order for it to be effective, shall be signed and dated by the movant and shall consist of the following:

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

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

'' 'I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, 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 such agreement, shall consist of the following:

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

''(l) Notwithstanding any other provision of this title the following shall apply:

''(1) A creditor may accept payments from a debtor before and after the filing of an agreement of the kind specified in subsection (c) with the court.

''(2) A creditor may accept payments from a debtor under such agreement that 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 an agreement of the kind specified in subsection (c) is filed with the court (or such additional period as the court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that such 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 such 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 that identifies additional sources of funds to make the payments as agreed upon under the terms of such agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove such agreement. No agreement shall be disapproved without notice and a 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.''.

(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 ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION.—The individuals referred to in subsection (a) are—

''(1) the United States attorney for each judicial district of the United States; and

''(2) an agent of the Federal Bureau of Investigation 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 that may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.''.

(2) CLERICAL AMENDMENT.—The table of sections 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.''.

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OF PREDATORY LOANS.

Section 363 of title 11, United States Code, is amended—

(1) by redesignating subsection (o) as subsection (p), and

(2) by inserting after subsection (n) the following:

''(o) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2004), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.''.

SEC. 205. GAO STUDY AND REPORT ON REAFFIRMATION AGREEMENT PROCESS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the reaffirmation agreement process that occurs under title 11 of the United States Code, to determine the overall treatment of consumers within the context of such process, and shall include in such study consideration of—

(1) the policies and activities of creditors with respect to reaffirmation agreements; and

(2) whether consumers are fully, fairly, and consistently informed of their rights pursuant to such title.

(b) REPORT TO THE CONGRESS.—Not later than 18 months after the date of the 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 on the results of the study conducted under subsection (a), together with recommendations for legislation (if any) to address any abusive or coercive tactics found in connection with the reaffirmation agreement process that occurs under title 11 of the United States Code.

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, on, or after the date of the order for relief in a case 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, on, or after the date of the order for relief in a case 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 of the debtor, or such child's parent, legal guardian, or responsible relative 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 so redesignated, by striking ''First'' and inserting ''Second'';

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

(5) in paragraph (4), as so 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 so redesignated, by striking ''Fourth'' and inserting ''Fifth'';

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

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

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

''(1) First:

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

''(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.''.

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 by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.'';

(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 of the filing of the petition.'';

(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) in paragraph (10), by striking ''and'' at the end;

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

(C) 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 1228(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'';

(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) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.'';

(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, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such 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 by 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 of the filing of the petition.'';

(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 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.'';

(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 section 102, by inserting after paragraph (7) the following:

''(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; 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, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such 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 by 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) of 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 or a statute;

''(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

''(E) of 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;

''(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

''(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;''.

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;''; 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.

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.

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 of the filing of the petition'' 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 section 102, 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 the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c); and''; and

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

''(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

''(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency 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) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

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

''(2)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(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 by reason of making such 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 the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (a)(8) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

''(ii) include in the notice required by clause (i) the address and telephone number of such State child support enforcement agency;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice required by clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1141, provide written notice to such holder and to such State child support enforcement agency 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) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

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

''(2)(A) The holder of a claim described in subsection (a)(8) or the State child enforcement support agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(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 by reason of making such 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 the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

''(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1228, provide written notice to such holder and to such State child support enforcement agency 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) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

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

''(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(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 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 the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

''(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1328, provide written notice to such holder and to such State child support enforcement agency 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) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2) or (4) of section 523(a); or

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

''(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(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 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 defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;''.

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 ''or an employee of an attorney'' and inserting ''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 bankruptcy petition 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 which shall be on an official form prescribed by the Judicial Conference of the United States in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure.

''(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 the debtor and, under penalty of perjury, by the bankruptcy petition preparer; 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 bankruptcy petition 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 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 so 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 so redesignated—

(i) by striking ''Within 10 days after the date of the filing of 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 so 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 bankruptcy petition preparer during the 12-month period immediately preceding the date of the 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 so redesignated, by striking ''or the United States trustee'' and inserting ''the United States trustee (or the bankruptcy administrator, if any) 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 the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, 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 on the motion of the court, the trustee, or the United States trustee (or the bankruptcy administrator, if any).''; 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 bankruptcy petition preparer.

''(3) A debtor, trustee, creditor, or United States trustee (or the bankruptcy administrator, if any) may file a motion for an order imposing a fine on the bankruptcy petition preparer for any 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, as amended by section 212, is amended by inserting after paragraph (9) the following:

''(10) Tenth, allowed claims for death or personal injury 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 filing of the petition in a case under 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 such 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 such 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 such 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; and

(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(c) 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 under 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) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph 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 section 215, is amended by inserting after paragraph (17) 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 a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph 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; or''.

(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.—

(1) 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 such Code or a simple retirement account under section 408(p) of such 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 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.''.

(2) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, are amended by inserting ''522(n),'' after ''522(d),''.

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 (9); 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 the filing of the petition in a case under this title, but—

''(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild 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 the filing of the petition in a case under this title, but—

''(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild 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 in a case under this title 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 section 106, 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 the value of whose nonexempt property is 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 case or 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 who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

''(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted 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 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) of title 11, United States Code, is amended by inserting ''101(3),'' after ''sections'' each place it appears.

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—

''(A) the services that such agency will provide to such person; or

''(B) 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 a 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 attorneys' fees as determined by the court.

''(4) The district courts of the United States for districts 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 the 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 after the item relating to section 525, the following:

''526. Restrictions on debt relief agencies.''.

SEC. 228. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 227, 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); 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 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 of this title, 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 case under this title or other sanction, including a criminal sanction.

''(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) 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 available under 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. 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 should 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.

''(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 section 227, 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 sections 227 and 228, 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 on which 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 use the following statement in such advertisement: '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 section 227 and 228, is amended by inserting after the item relating to section 527, the following:

''528. Requirements for debt relief agencies.''.

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 debtors who are individuals under such title, the names and social security account 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).

SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION.

(a) LIMITATION.—Section 363(b)(1) of title 11, United States Code, is amended by striking the period at the end and inserting the following:

'', except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

''(A) such sale or such lease is consistent with such policy; or

''(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

''(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

''(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.''.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (41) the following:

''(41A) 'personally identifiable information' means—

''(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

''(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

''(ii) the geographical address of a physical place of residence of such individual;

''(iii) an electronic address (including an e-mail address) of such individual;

''(iv) a telephone number dedicated to contacting such individual at such physical place of residence;

''(v) a social security account number issued to such individual; or

''(vi) the account number of a credit card issued to such individual; or

''(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)—

''(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or

''(ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically;''.

SEC. 232. CONSUMER PRIVACY OMBUDSMAN.

(a) CONSUMER PRIVACY OMBUDSMAN.—Title 11 of the United States Code is amended by inserting after section 331 the following:

''§ 332. Consumer privacy ombudsman

''(a) If a hearing is required under section 363(b)(1)(B), the court shall order the United States trustee to appoint, not later than 5 days before the commencement of the hearing, 1 disinterested person (other than the United States trustee) to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman.

''(b) The consumer privacy ombudsman may appear and be heard at such hearing and shall provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of personally identifiable information under section 363(b)(1)(B). Such information may include presentation of—

''(1) the debtor's privacy policy;

''(2) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court;

''(3) the potential costs or benefits to consumers if such sale or such lease is approved by the court; and

''(4) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

''(c) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.''.

(b) COMPENSATION OF CONSUMER PRIVACY OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended in the matter preceding subparagraph (A), by inserting ''a consumer privacy ombudsman appointed under section 332,'' before ''an examiner''.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

''332. Consumer privacy ombudsman.''.

SEC. 233. PROHIBITION ON DISCLOSURE OF NAME 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 name of minor children

''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. The debtor may be required to disclose the name of such minor child in a nonpublic record that is maintained by the court and made available by the court for examination by the United States trustee, the trustee, and the auditor (if any) serving under section 586(f) of title 28, in the case. The court, the United States trustee, the trustee, and such auditor shall not disclose the name of such minor child maintained in such nonpublic record.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, as amended by section 106, is amended by inserting after the item relating to section 111 the following:

''112. Prohibition on disclosure of name of minor children.''.

(c) CONFORMING AMENDMENT.—Section 107(a) of title 11, United States Code, is amended by inserting ''and subject to section 112'' after ''section''.

SEC. 234. PROTECTION OF PERSONAL INFORMATION.

(a) RESTRICTION OF PUBLIC ACCESS TO CERTAIN INFORMATION CONTAINED IN BANKRUPTCY CASE FILES.—Section 107 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

''(A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.

''(B) Other information contained in a paper described in subparagraph (A).

''(2) Upon ex parte application demonstrating cause, the court shall provide access to information protected pursuant to paragraph (1) to an entity acting pursuant to the police or regulatory power of a domestic governmental unit.

''(3) The United States trustee, bankruptcy administrator, trustee, and any auditor serving under section 586(f) of title 28—

''(A) shall have full access to all information contained in any paper filed or submitted in a case under this title; and

''(B) shall not disclose information specifically protected by the court under this title.''.

(b) SECURITY OF SOCIAL SECURITY ACCOUNT NUMBER OF DEBTOR IN NOTICE TO CREDITOR.—Section 342(c) of title 11, United States Code, is amended—

(1) by inserting ''last 4 digits of the'' before ''taxpayer identification number''; and

(2) by adding at the end the following: ''If the notice concerns an amendment that adds a creditor to the schedules of assets and liabilities, the debtor shall include the full taxpayer identification number in the notice sent to that creditor, but the debtor shall include only the last 4 digits of the taxpayer identification number in the copy of the notice filed with the court.''.

(c) CONFORMING AMENDMENT.—Section 107(a) of title 11, United States Code, is

amended by striking ''subsection (b),'' and inserting ''subsections (b) and (c),''.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

SEC. 301. TECHNICAL AMENDMENTS.

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 debtor who is an individual in a case 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) on the motion of 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 chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

''(II) a previous case under any of chapters 7, 11, and 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 that 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 a debtor who is an individual 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 a 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 the entry of the order allowing the stay to go into effect; and

''(D) 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) 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 provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

''(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under 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 such 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 property, if the court finds that the filing of the 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, such real property without the consent of the secured creditor or court approval; or

''(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title 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, as amended by section 224, is amended by inserting after paragraph (19), the following:

''(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move 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 case under this title; or

''(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;''.

SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521(a), as so designated by section 106—

(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 a case under chapter 7 of this title in which the debtor is an individual, 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 such personal property unless 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) with respect to the claim secured by such property; or

''(B) redeems such property from the security interest pursuant to section 722.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) 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 filed 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, as amended by section 106—

(A) in subsection (c), by striking ''(e), and (f)'' and inserting ''(e), (f), and (h)'';

(B) by redesignating subsection (h) as subsection (k) and transferring such subsection so as to insert it after subsection (j) as added by section 106; and

(C) by inserting after subsection (g) the following:

''(h)(1) In a case in which the debtor is an individual, 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)—

''(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

''(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such 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 personal 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 hearing on the motion.''; and

(2) in section 521, as amended by sections 106 and 225—

(A) in subsection (a)(2) by striking ''consumer'';

(B) in subsection (a)(2)(B)—

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

(ii) by striking ''forty-five day'' and inserting ''30-day'';

(C) in subsection (a)(2)(C) by inserting '', except as provided in section 362(h)'' 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), with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement that has the effect of placing the debtor in default under 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:

''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 910-day preceding the date of 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, 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 property 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) of title 11, United States Code, as so designated by section 106, is amended—

(1) in subparagraph (A)—

(A) by striking ''180 days'' and inserting ''730 days''; and

(B) 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''; and

(2) by adding at the end the following:

''If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).''.

SEC. 308. REDUCTION OF HOMESTEAD EXEMPTION FOR FRAUD.

Section 522 of title 11, United States Code, as amended by section 224, 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;

''(3) a burial plot for the debtor or a dependent of the debtor; or

''(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-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 case under chapter 13; 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) If the debtor in a case under chapter 7 is an individual, 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, as amended by section 306, 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 $500 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 terms 'consumer', 'credit', and 'open end credit plan' have the same meanings as in section 103 of the Truth in Lending Act; and

''(II) 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.

(a) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 224 and 303, is amended by inserting after paragraph (21), the following:

''(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

''(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

''(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;''.

(b) LIMITATIONS.—Section 362 of title 11, United States Code, as amended by sections 106 and 305, is amended by adding at the end the following:

''(l)(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

''(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

''(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

''(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankrupcty law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

''(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

''(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

''(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

''(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

''(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

''(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

''(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

''(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

''(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

''(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

''(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

''(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

''(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

''(m)(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

''(2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

''(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

''(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

''(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

''(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

''(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

''(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

''(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

''(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.''.

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 in the plan or disallowed under section 502, if the debtor has received a discharge—

''(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or

''(2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.''.

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;

(xii) medical equipment and supplies;

''(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

''(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; and

''(xv) 1 personal computer and related equipment.

''(B) The term 'household goods' does not include—

''(i) works of art (unless by or of the debtor, or any relative of the debtor);

''(ii) electronic entertainment equipment with a fair market value of more than $500 in the aggregate (except 1 television, 1 radio, and 1 VCR);

''(iii) items acquired as antiques with a fair market value of more than $500 in the aggregate;

''(iv) jewelry with a fair market value of more than $500 in the aggregate (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 subsection (a), 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 such section 522(f)(4) has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to such section 522(f)(4) 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 section 102, 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)(A) If, within the 90 days before the commencement of a voluntary case, a creditor supplies the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.

''(B) If a creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if such creditor supplies the debtor in the last 2 communications with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.''; and

(2) by adding at the end the following:

''(e)(1) In a case under chapter 7 or 13 of this title of a debtor who is an individual, a creditor at any time may both file with the court and serve on the debtor a notice of address to be used to provide notice in such case to such creditor.

''(2) Any notice in such case required to be provided to such creditor by the debtor or the court later than 5 days after the court and the debtor receive such creditor's notice of address, shall be provided to such address.

''(f)(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

''(2) In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

''(3) A notice filed under paragraph (1) may be withdrawn by such entity.

''(g)(1) Notice provided to a creditor by the debtor or the court other than in accordance with this section (excluding this subsection) shall not be effective notice until such notice is brought to the attention of such creditor. If such creditor designates a person or an organizational subdivision of such creditor to be responsible for receiving notices under this title and establishes reasonable procedures so that such notices receivable by such creditor are to be delivered to such person or such subdivision, then a notice provided to such creditor other than in accordance with this section (excluding this subsection) shall not be considered to have been brought to the attention of such creditor until such notice is received by such person or such subdivision.

''(2) A monetary penalty may not be imposed on a creditor for a violation of a stay in effect under section 362(a) (including a monetary penalty imposed under section 362(k)) or for failure to comply with section 542 or 543 unless the conduct that is the basis of such violation or of such failure occurs after such creditor receives notice effective under this section of the order for relief.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 106, 225, and 305, is amended—

(1) in subsection (a), as so designated by section 106, by amending paragraph (1) to read as follows:

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

''(i) a schedule of assets and liabilities;

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

''(iii) a statement of the debtor's financial affairs and, if section 342(b) applies, a certificate—

''(I) of an attorney whose name is indicated on the petition as the attorney for the debtor, or a bankruptcy petition preparer signing the petition under section 110(b)(1), indicating that such attorney or the bankruptcy petition preparer delivered to the debtor the notice required by section 342(b); or

''(II) if no attorney is so indicated, and no bankruptcy petition preparer signed the petition, of the debtor that such notice was received and read by the debtor;

''(iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

''(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 the filing of the petition;''; and

(2) by adding at the end the following:

''(e)(1) If the debtor in a case under chapter 7 or 13 is an individual and if a creditor files with the court at any time a request to receive a copy of the petition, schedules, and statement of financial affairs filed by the debtor, then the court shall make such petition, such schedules, and such statement available to such creditor.

''(2)(A) The debtor shall provide—

''(i) not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and

''(ii) at the same time the debtor complies with clause (i), a copy of such return (or if elected under clause (i), such transcript) to any creditor that timely requests such copy.

''(B) If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.

''(C) If a creditor requests a copy of such tax return or such transcript and if the debtor fails to provide a copy of such tax return or such transcript to such creditor at the time the debtor provides such tax return or such transcript to the trustee, then the court shall dismiss the case unless the debtor demonstrates that the failure to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.

''(3) If a creditor in a case under chapter 13 files with the court at any time a request to receive a copy of the plan filed by the debtor, then the court shall make available to such creditor a copy of the plan—

''(A) at a reasonable cost; and

''(B) not later than 5 days after such request is filed.

''(f) At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court—

''(1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

''(2) at the same time filed with the taxing authority, each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) that had not been filed with such authority as of the date of the commencement of the case and that was subsequently filed for any tax year of the debtor ending in the 3-year period ending on the date of the commencement of the case;

''(3) a copy of each amendment to any Federal income tax return or transcript filed with the court under paragraph (1) or (2); and

''(4) in a case under chapter 13—

''(A) on the date that is either 90 days after the end of such tax year or 1 year after the date of the commencement of the case, whichever is later, if a plan is not confirmed before such later date; and

''(B) annually after the plan is confirmed and until the case is closed, not later than the date that is 45 days before the anniversary of the confirmation of the plan;

a statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

''(g)(1) A statement referred to in subsection (f)(4) shall disclose—

''(A) the amount and sources of the 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 subsections (e)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

''(h) If requested by the United States trustee or by the trustee, 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; or

''(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.''.

(c)(1) Not later than 180 days after the date of the enactment of this Act, 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 540 days after the date of enactment of this Act, the Director of the Administrative Office of the United States Courts shall prepare and submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report that—

(A) assesses the effectiveness of the procedures established 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.

SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by sections 106, 225, 305, and 315, is amended by adding at the end the following:

''(i)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), 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 date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.

''(2) Subject to paragraph (4) and 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) Subject to paragraph (4) and upon request of the debtor made within 45 days after the date of the filing of the petition 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.

''(4) Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.''.

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), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.''.

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;

''(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; 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, 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;

''(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; 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, 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 section 102, 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;

''(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; 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, 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 attorneys be submitted only after the debtors or the debtors' attorneys have 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 a case under chapter 7, 11, or 13 in which the debtor is an individual, 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) such 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 in which the debtor is an individual, 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 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.''.

(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 in which the debtor is an individual, provide for the payment to creditors under 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, as amended by section 213, is amended by adding at the end the following:

''(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

''(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is 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 projected disposable income of the debtor (as 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 period for which the plan provides payments, 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 in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section''.

(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 who is an individual''; and

(2) by adding at the end the following:

''(5) In a case in which the debtor is an individual—

''(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

''(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

''(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and

''(ii) modification of the plan under section 1127 is not practicable; and''.

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

''(e) If the debtor is 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 and the requirements of section 1129 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. LIMITATIONS ON HOMESTEAD EXEMPTION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by sections 224 and 308, 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, 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 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $125,000 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;

''(C) a burial plot for the debtor or a dependent of the debtor; or

''(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

''(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 such 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 such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

''(q)(1) 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 an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $125,000 if—

''(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

''(B) the debtor owes a debt arising from—

''(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

''(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

''(iii) any civil remedy under section 1964 of title 18; or

''(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

''(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.''.

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, as amended by section 224, are amended by inserting ''522(p), 522(q),'' after ''522(n),''.

SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.

Section 541(b) of title 11, United States Code, as amended by section 225, is amended by adding after paragraph (6), as added by section 225(a)(1)(C), the following:

''(7) any amount—

''(A) withheld by an employer from the wages of employees for payment as contributions—

''(i) to—

''(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

''(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

''(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

''(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

''(B) received by an employer from employees for payment as contributions—

''(i) to—

''(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

''(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

''(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

''(ii) to a health insurance plan regulated by State law whether or not subject to such title;''.

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 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, 11, OR 13 OF TITLE 11, UNITED STATES CODE.—Section 1930(a) of title 28, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) For a case commenced under—

''(A) chapter 7 of title 11, $200; and

''(B) chapter 13 of title 11, $150.''; and

(2) in paragraph (3), by striking ''$800'' and inserting ''$1000''.

(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; and

''(B) 70.00 percent of the fees collected under section 1930(a)(1)(B);'';

(2) in paragraph (2), by striking ''one-half'' and inserting ''75 percent''; 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 all that follows through ''28 U.S.C. section 1931'' and inserting ''under section 1930(b) of title 28, United States Code, 31.25 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''.

(d) SUNSET DATE.—The amendments made by subsections (b) and (c) shall be effective during the 2-year period beginning on the date of enactment of this Act.

(e) USE OF INCREASED RECEIPTS.—

(1) JUDGES' SALARIES AND BENEFITS.—The amount of fees collected under paragraphs (1) and (3) of section 1930(a) of title 28, United States Code, during the 5-year period beginning on the date of enactment of this Act, that is greater than the amount that would have been collected if the amendments made by subsection (a) had not taken effect shall be used, to the extent necessary, to pay the salaries and benefits of the judges appointed pursuant to section 1223 of this Act.

(2) REMAINDER.—Any amount described in paragraph (1), which is not used for the purpose described in paragraph (1), shall be deposited into the Treasury of the United States to the extent necessary to offset the decrease in governmental receipts resulting from the amendments made by subsections (b) and (c).

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) If the debtor is an individual in a case under chapter 7 or 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 the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, 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 this paragraph;''; 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) 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 nonresidential 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''.

SEC. 329. 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—

''(i) wages, salaries, and commissions for services rendered after the commencement of the case; and

''(ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title;''.

SEC. 330. DELAY OF DISCHARGE DURING PENDENCY OF CERTAIN PROCEEDINGS.

(a) CHAPTER 7.—Section 727(a) of title 11, United States Code, as amended by section 106, is amended—

(1) in paragraph (10), by striking ''or'' at the end;

(2) in paragraph (11) by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (11) the following:

''(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

''(A) section 522(q)(1) may be applicable to the debtor; and

''(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

(b) CHAPTER 11.—Section 1141(d) of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

''(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

''(i) section 522(q)(1) may be applicable to the debtor; and

''(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

(c) CHAPTER 12.—Section 1228 of title 11, United States Code, is amended—

(1) in subsection (a) by striking ''As'' and inserting ''Subject to subsection (d), as'',

(2) in subsection (b) by striking ''At'' and inserting ''Subject to subsection (d), at'', and

(3) by adding at the end the following:

''(f) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

''(1) section 522(q)(1) may be applicable to the debtor; and

''(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking ''As'' and inserting ''Subject to subsection (d), as'',

(2) in subsection (b) by striking ''At'' and inserting ''Subject to subsection (d), at'', and

(3) by adding at the end the following:

''(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

''(1) section 522(q)(1) may be applicable to the debtor; and

''(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

SEC. 331. LIMITATION ON RETENTION BONUSES, SEVERANCE PAY, AND CERTAIN OTHER PAYMENTS.

Section 503 of title 11, United States Code, is amended by adding at the end the following:

''(c) Notwithstanding subsection (b), there shall neither be allowed, nor paid—

''(1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent a finding by the court based on evidence in the record that—

''(A) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;

''(B) the services provided by the person are essential to the survival of the business; and

''(C) either—

''(i) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or

''(ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred;

''(2) a severance payment to an insider of the debtor, unless—

''(A) the payment is part of a program that is generally applicable to all full-time employees; and

''(B) the amount of the payment is not greater than 10 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or

''(3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.''.

SEC. 332. FRAUDULENT INVOLUNTARY BANKRUPTCY.

(a) SHORT TITLE.—This section may be cited as the ''Involuntary Bankruptcy Improvement Act of 2005''.

(b) INVOLUNTARY CASES.—Section 303 of title 11, United States Code, is amended by adding at the end the following:

''(*l*)(1) If—

''(A) the petition under this section is false or contains any materially false, fictitious, or fraudulent statement;

''(B) the debtor is an individual; and

''(C) the court dismisses such petition,

the court, upon the motion of the debtor, shall seal all the records of the court relating to such petition, and all references to such petition.

''(2) If the debtor is an individual and the court dismisses a petition under this section, the court may enter an order prohibiting all consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) from making any consumer report (as defined in section 603(d) of that Act) that contains any information relating to such petition or to the case commenced by the filing of such petition.

''(3) Upon the expiration of the statute of limitations described in section 3282 of title 18, for a violation of section 152 or 157 of such title, the court, upon the motion of the debtor and for good cause, may expunge any records relating to a petition filed under this section.''.

(c) BANKRUPTCY FRAUD.—Section 157 of title 18, United States Code, is amended by inserting '', including a fraudulent involuntary bankruptcy petition under section 303 of such title'' after ''title 11''.

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, 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 or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934;''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by sections 224, 303, and 311, is amended by inserting after paragraph (24) the following:

''(25) 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 such securities self regulatory organization to enforce such organization's regulatory power; or

''(C) any act taken by such 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), 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 on the 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), 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 (g) (as added by section 222(a) of Public Law 103–394) as subsection (h);

(2) in subsection (h), as so redesignated, by inserting ''and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods'' after ''consent of a creditor''; and

(3) by adding at the end the following:

''(i)(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 State statute applicable to such lien 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 2005, or any successor to such section 7–209.''.

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.''.

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 debt (excluding a consumer debt) against a noninsider of less than $10,000,'' after ''$5,000''. Section 1409(b) of title 28, United States Code, is further amended by striking ''$5,000'' and inserting ''$15,000''.

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 otherwise applicable nonbankruptcy law, or any 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, 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) The court shall resolve any dispute arising out of an election described in subparagraph (A).''.

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) and (4), 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 the 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 the filing of the petition;

''(ii) the payment by the debtor of charges for utility service in a timely manner before the date of the 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 the 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 individual 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 fee 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 Judicial Conference of the United States, in accordance with section 2075 of title 28 of the United States Code and after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose amended Federal Rules of Bankruptcy Procedure and in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure shall prescribe official bankruptcy forms directing debtors under chapter 11 of title 11 of 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 25 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, 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 date of the order for relief in an amount not more than $2,000,000 (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 $2,000,000 (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''.

(c) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting ''101(51D),'' after ''101(3),'' each place it appears.

SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

Within a reasonable period of time after the date of enactment of this Act, the Judicial Conference of the United States shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure official 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 expenses 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 Judicial Conference of the United States shall propose in accordance with section 2073 of title 28 of the United States Code amended Federal Rules of Bankruptcy Procedure, and shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure official bankruptcy forms, directing 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 expenses 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) a 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 such debtor to understand such debtor's financial condition and plan the such debtor's future.

SEC. 436. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Subchapter I of chapter 11 of title 11, United States Code, as amended by section 321, 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, and 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, after notice and a hearing, waives that requirement 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 taxes entitled to administrative expense priority 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, as amended by section 321, is amended by inserting after the item relating to section 1115 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 a hearing; or

''(B) the court, for cause, orders otherwise;

''(2) the plan and a disclosure statement (if any) 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 court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with 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 date of the 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, 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 sections 106, 305, and 311, is amended—

(1) in subsection (k), as so redesignated by section 305—

(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:

''(n)(1) Except as provided in paragraph (2), subsection (a) does 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 acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

''(2) Paragraph (1) 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 the 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, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, 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 interests of creditors and the estate, if the movant establishes cause.

''(2) The relief provided in paragraph (1) shall not be granted absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest objects and establishes that—

''(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

''(B) the grounds for granting such relief include an act or omission of the debtor other than under paragraph (4)(A)—

''(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 a 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 such 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 and the absence of a reasonable likelihood of rehabilitation;

''(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 substantially harmful to 1 or more creditors;

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

''(F) unexcused failure to satisfy timely 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 without good cause shown by the debtor;

''(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

''(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of 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 of the filing of the petition.''.

(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 Executive Office for 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, on, or after the date of 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 a penalty provision, 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 an entity other than the debtor, 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);''.

SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) IN GENERAL.—Section 521(a) of title 11, United States Code, as amended by sections 106 and 304, is amended—

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

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

(3) by adding after paragraph (6) the following:

''(7) unless a trustee is serving in the case, continue to perform the obligations required of the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan if at the time of the commencement of the case the debtor (or any entity designated by the debtor) served as such administrator.''.

(b) DUTIES OF TRUSTEES.—Section 704(a) of title 11, United States Code, as amended by sections 102 and 219, is amended—

(1) in paragraph (10), by striking ''and'' at the end; and

(2) by adding at the end the following:

''(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and''.

(c) CONFORMING AMENDMENT.—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 paragraphs (2), (5), (7), (8), (9), (10), and (11) of section 704;''.

SEC. 447. APPOINTMENT OF COMMITTEE OF RETIRED EMPLOYEES.

Section 1114(d) of title 11, United States Code, is amended—

(1) by striking ''appoint'' and inserting ''order the appointment of'', and

(2) by adding at the end the following: ''The United States trustee shall appoint any such committee.''.

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.—apter 6 of title 28, United States Code, is amended by adding at the end the following:

''§ 159. Bankruptcy statistics

''(a) The clerk of the district court, or the clerk of the bankruptcy court if one is certified pursuant to section 156(b) of this title, shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a standardized format 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 July 1, 2008, 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 debtors;

''(B) the current monthly income, average income, and average expenses of 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 cases filed during 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 date of the filing of the petition and the closing of the case for cases closed during the reporting period;

''(E) for cases closed during the reporting period—

''(i) the number of cases in which a reaffirmation agreement was filed; and

''(ii)(I) the total number of reaffirmation agreements filed;

''(II) of those cases in which a reaffirmation agreement 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 agreement was filed, the number of cases in which the reaffirmation agreement 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 entered determining the value of property securing a claim;

''(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 attorney 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 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.—The uniform forms for final reports required under subsection (a) for use 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.—The uniform forms for periodic reports required under subsection (a) for use 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 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 for 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

that the debtor is required to provide under sections 521 and 1322 of title 11, United States Code, and, if applicable, section 111 of such title, in cases filed under chapter 7 or 13 of such title in which the debtor is an individual. 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 of schedules of income and expenses that 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 2005;''; 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 2005.

''(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 district court (or the clerk of the bankruptcy court if one is certified under section 156(b) of this title) 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 section 106, is amended in each of paragraphs (3) and (4) by inserting ''or an auditor serving 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 that arise after the date of the filing of the 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 such 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 (as defined in section 31701 of title 49) 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 shall maintain a list 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 such governmental unit does not designate an address and provide such address to the clerk under subparagraph (A), 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 such 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 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.''.

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 the filing of the petition'' after ''gross receipts'';

(B) in clause (i), by striking ''for a taxable year ending on or before the date of the 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 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 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, 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 sections 321 and 330, 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—

''(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

''(B) for a tax or customs duty with respect to which the debtor—

''(i) made a fraudulent return; or

''(ii) willfully attempted in any manner to evade or to defeat such tax or such customs 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 the tax liability of a debtor who is an individual for a taxable period ending before the date of 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 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 by 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 under section 554 of title 11, within a reasonable period of time after the lien attaches, by the trustee in a case under 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 or elected 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 sections 215 and 224, 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 section 703, 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 sections 102, 213, and 306, is amended by inserting after paragraph (8) 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) After notice and a 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 for 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.''.

(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 Judicial Conference of the United States should, as soon as practicable after the date of enactment of this Act, propose amended Federal Rules of Bankruptcy Procedure that provide—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, that 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, that no objection to a claim for 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, as amended by sections 224, 303, 311, and 401, is amended by inserting after paragraph (25) the following:

''(26) 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 date of the order for relief against an income tax liability for a taxable period that also ended before the date of 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, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);''.

SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.

(a) IN GENERAL.—

(1) SPECIAL PROVISIONS.—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 such 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 date of 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.''.

(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.''.

(b) CONFORMING AMENDMENTS.—Title 11 of the United States Code is amended—

(1) by striking section 728;

(2) in the table of sections for chapter 7 by striking the item relating to section 728;

(3) in section 1146—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively; and

(4) in section 1231—

(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 sections 106, 225, 305, 315, and 316, is amended by adding at the end the following:

''(j)(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

''Sec.

''1501. Purpose and scope of application.

''SUBCHAPTER I—GENERAL PROVISIONS

''1502. Definitions.

''1503. International obligations of the United States.

''1504. Commencement of ancillary case.

''1505. Authorization to act in a foreign country.

''1506. Public policy exception.

''1507. Additional assistance.

''1508. Interpretation.

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

''1509. Right of direct access.

''1510. Limited jurisdiction.

''1511. Commencement of case under section 301 or 303.

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

''1513. Access of foreign creditors to a case under this title.

''1514. Notification to foreign creditors concerning a case under this title.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

''1515. Application for recognition.

''1516. Presumptions concerning recognition.

''1517. Order granting recognition.

''1518. Subsequent information.

''1519. Relief that may be granted upon filing petition for recognition.

''1520. Effects of recognition of a foreign main proceeding.

''1521. Relief that may be granted upon recognition.

''1522. Protection of creditors and other interested persons.

''1523. Actions to avoid acts detrimental to creditors.

''1524. Intervention by a foreign representative.

''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

''1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.

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

''1527. Forms of cooperation.

''SUBCHAPTER V—CONCURRENT PROCEEDINGS

''1528. Commencement of a case under this title after recognition of a foreign main proceeding.

''1529. Coordination of a case under this title and a foreign proceeding.

''1530. Coordination of more than 1 foreign proceeding.

''1531. Presumption of insolvency based on recognition of a foreign main proceeding.

''1532. Rule of payment in concurrent proceedings.

''§ 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) courts of the United States, 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 pending 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 pending 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, pending 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 1517, 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, 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, such notification shall—

‘‘(1) indicate the time period for filing proofs of claim and specify the place for filing such proofs of claim;

‘‘(2) indicate whether secured creditors need to file proofs of claim; and

‘‘(3) contain any other information required to be included in such 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 proof of 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 a 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 such foreign proceeding and appointing the foreign representative;

‘‘(2) a certificate from the foreign court affirming the existence of such 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 such 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 and that the person or body is a foreign representative, 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) such 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; and

‘‘(3) the petition meets the requirements of section 1515.

''(b) Such foreign proceeding shall be recognized—

''(1) as a foreign main proceeding if it is pending 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. A 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 a 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 such 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 (27) of section 362(b) or pursuant to section 362(n) 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 the property of the debtor that is within the territorial jurisdiction of the United States;

''(2) sections 363, 549, and 552 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 (27) of section 362(b) or pursuant to section 362(n) 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), 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 a 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 a foreign court or a foreign representative, either directly or through the trustee.

''(b) The court is entitled to communicate directly with, or to request information or assistance directly from, a foreign court or a foreign representative, subject to the rights of a party 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 a foreign court or a foreign representative.

''(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 a foreign court or a foreign representative.

"§ 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 pending 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 pending at the time the petition for recognition of such foreign proceeding is filed—

"(A) any relief granted under section 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

"(B) section 1520 does not apply even if such foreign proceeding is recognized as a foreign main proceeding.

"(2) If a case in the United States under this title commences after recognition, or after the date of the filing of the petition for recognition, of such foreign proceeding—

"(A) 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 case in the United States; and

"(B) if such 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(n), 555 through 557, and 559 through 562 apply in a case under chapter 15"; and

(2) by adding at the end the following:

"(k) 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 such 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 of the United States 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.—Title 11 of the United States Code is amended—

(1) in section 109(b), by striking paragraph (3) and inserting the following:

"(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 in the United States.";

(2) in section 303, by striking subsection (k);

(3) by striking section 304;

(4) in the table of sections for chapter 3 by striking the item relating to section 304;

(5) in section 306 by striking ", 304," each place it appears;

(6) in section 305(a) by striking paragraph (2) and inserting the following:

"(2)(A) a petition under section 1515 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."; and

(7) in section 508—

(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.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(A) by striking "subsection—" and inserting "subsection, the following definitions shall apply:"; and

(B) in clause (i), by inserting '', resolution, or order'' after ''any similar agreement that the Corporation determines by regulation''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended—

(A) by striking ''subsection—'' and inserting ''subsection, the following definitions shall apply:''; and

(B) in clause (i), by inserting '', resolution, or order'' after ''any similar agreement that the Board determines by regulation''.

(b) DEFINITION OF SECURITIES CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—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, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage 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, mortgage 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, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(ii) of the Federal Credit Union Act (12 U.S.C. 1787(c)(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, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage 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 Board 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, mortgage 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, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(c) DEFINITION OF COMMODITY CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—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, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iii) of the Federal Credit Union Act (12 U.S.C. 1787(c)(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, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(d) DEFINITION OF FORWARD CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—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), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iv) of the Federal Credit Union Act (12 U.S.C. 1787(c)(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), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.''.

(e) DEFINITION OF REPURCHASE AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—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, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage 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), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

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).''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(v) of the Federal Credit Union Act (12 U.S.C. 1787(c)(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, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage 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 Board 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), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

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.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—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 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;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (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, 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;

''(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 subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection 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, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by adding at the end the following new clause:

''(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 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;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (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, 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;

''(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 subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection 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, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.''.

(g) DEFINITION OF TRANSFER.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—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 institution's equity of redemption.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) (as amended by subsection (f) of this section) is amended by adding at the end the following new clause:

''(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 institution's equity of redemption.''.

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(A) in subparagraph (A)—

(i) by striking ''paragraph (10)'' and inserting ''paragraphs (9) and (10)'';

(ii) in clause (i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration''; and

(iii) by striking clause (ii) and inserting the following new clause:

''(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

(B) 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);''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended—

(A) in subparagraph (A)—

(i) by striking ''paragraph (12)'' and inserting ''paragraphs (9) and (10)'';

(ii) in clause (i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration''; and

(iii) by striking clause (ii) and inserting the following new clause:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''; and

(B) in subparagraph (E), by striking clause (ii) and inserting the following new clause:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''.

(i) AVOIDANCE OF TRANSFERS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—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 or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Corporation''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(C)(i) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Board''.

SEC. 902. AUTHORITY OF THE FDIC AND NCUAB WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(A) 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

(B) 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.''.

(2) 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''.

(b) NATIONAL CREDIT UNION ADMINISTRATION BOARD.—

(1) IN GENERAL.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended—

(A) in subparagraph (E) (as amended by section 901(h)), by striking ''other than paragraph (12) of this subsection, subsection (b)(9)'' and inserting ''other than subsections (b)(9) and (c)(10)''; and

(B) 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 Board, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Board 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 (c)(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 credit union 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.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 207(c)(12)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(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) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

(1) 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 contracts 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 cleared by or 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) DEFINITIONS.—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, and the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.''.

(2) 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.''.

(3) RIGHTS AGAINST RECEIVER AND CONSERVATOR AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D); and

(B) 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 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 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.''.

(b) INSURED CREDIT UNIONS.—

(1) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 207(c)(9) of the Federal Credit Union Act (12 U.S.C. 1787(c)(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 credit union in default which includes any qualified financial contract, the conservator or liquidating agent for such credit union shall either—

''(i) transfer to 1 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 credit union in default;

''(II) all claims of such person or any affiliate of such person against such credit union 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 credit union);

''(III) all claims of such credit union 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 contracts and related claims and property under subparagraph (A)(i), the conservator or liquidating agent for the credit union 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 1 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 liquidating agent transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or 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) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, a credit union, or any other institution, as determined by the Board by regulation to be a financial institution; and

''(ii) the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.''.

(2) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 207(c)(10)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(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 liquidating agent 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 liquidating agent in the case of a liquidation, or the business day following such transfer in the case of a conservatorship.''.

(3) RIGHTS AGAINST LIQUIDATING AGENT AND CONSERVATOR AND TREATMENT OF BRIDGE BANKS.—Section 207(c)(10) of the Federal Credit Union Act (12 U.S.C. 1787(c)(10)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D); and

(B) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) LIQUIDATION.—A person who is a party to a qualified financial contract with an insured credit union 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 liquidating agent for the credit union institution (or the insolvency or financial condition of the credit union for which the liquidating agent has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent; 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 credit union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) 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 conservator for the credit union or the insolvency or financial condition of the credit union for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Board as conservator or liquidating agent of an insured credit union shall be deemed to have notified a person who is a party to a qualified financial contract with such credit union if the Board 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 credit union organized by the Board, for which a conservator is appointed either—

''(I) immediately upon the organization of the credit union; or

''(II) at the time of a purchase and assumption transaction between the credit union and the Board as receiver for a credit union in default.''.

SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—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;

(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).''; and

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

''(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''.

(b) INSURED CREDIT UNIONS.—Section 207(c) of the Federal Credit Union Act (12 U.S.C. 1787(c)) is amended—

(1) by redesignating paragraphs (11), (12), and (13) as paragraphs (12), (13), and (14), respectively;

(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 liquidating agent with respect to any qualified financial contract to which an insured credit union is a party, the conservator or liquidating agent for such credit union shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the credit union 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).''; and

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

''(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of

2000, the securities laws (as that term is defined in section (a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''.

SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—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.''.

(b) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by inserting after clause (vi) (as added by section 901(f)) the following new clause:

''(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 '', that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act, or that is a multilateral clearing organization (as defined in section 408 of this 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), so 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 close out 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, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union 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, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union 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, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union 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, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as section 407A; and

(2) by inserting after section 406 the following new section:

''SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.

''(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, 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, except that for such purpose—

''(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver 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;

''(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 appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator 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; and

''(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, 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.

''(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, 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, 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 the case of an uninsured national bank or uninsured Federal branch or agency and 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 that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

''(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each 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 LAW 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), including 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, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;'';

(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, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage 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), including 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, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; 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—

''(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

''(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

''(III) a currency swap, option, future, or forward agreement;

''(IV) an equity index or equity swap, option, future, or forward agreement;

''(V) a debt index or debt swap, option, future, or forward agreement;

''(VI) a total return, credit spread or 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 that is similar to any other agreement or transaction referred to in this paragraph and that—

''(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (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, 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;

''(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), including 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, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; 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, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000;'';

(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, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage 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, mortgage 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, including 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, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; 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, including 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, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;''.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(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, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, 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;'';

(2) by inserting after paragraph (22) the following:

''(22A) 'financial participant' means—

''(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date 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; or

''(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991);''; and

(3) 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 in a commodity (as defined 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 close out, 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, including any guarantee or reimbursement obligation related to 1 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 date of 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 sections 224, 303, 311, 401, and 718, is amended—

(A) in paragraph (6), by inserting '', pledged to, under the control of,'' after ''held by'';

(B) in paragraph (7), by inserting '', pledged to, 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 or financial 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 or financial participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, under the control of, or due from such swap participant or financial participant to margin, guarantee, secure, or settle any swap agreement;''; and

(D) by inserting after paragraph (26) the following:

''(27) 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, 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; and''.

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by sections 106, 305, 311, and 441, is amended by adding at the end the following:

''(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) 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, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement'';

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement''; and

(C) by inserting ''or financial participant'' after ''swap participant''; and

(2) by adding at the end the following:

''(j) 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'';

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''; and

(3) in the second sentence, by striking ''As used'' and all that follows through ''right,'' 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 securities clearing agency, 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,''.

(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'';

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''; and

(3) in the third sentence, by striking ''As used'' and all that follows through ''right,'' 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 securities clearing agency, 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,''.

(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'';

(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''; and

(4) in the second sentence, by striking ''As used'' and all that follows through ''right,'' 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 securities clearing agency, 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,''.

(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; proceedings under chapter 15

''(a) Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with 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)(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

''(2) If a debtor is a commodity broker subject to 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 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 against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under such subchapter; 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 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 against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

''(3) 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 or similar arrangement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under paragraph (1) or (2) of section 5c(c) of the Commodity Exchange Act and has not been abrogated or rendered ineffective by the Commodity Futures Trading Commission; 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) 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 securities clearing agency, 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, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

''(d) 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, 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; proceedings under chapter 15.".

(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, 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.".

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(B)(ii), by inserting before the semicolon the following: "(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)";

(2) 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)(27), 555, 556, 559, 560, or 561)"; and

(3) in subsection (b)(1), by striking "362(b)(14)," and inserting "362(b)(17), 362(b)(27), 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 sections 362(b)(7) and 546(f), by inserting "or financial participant" after "repo participant" each place such term appears;

(3) in section 546(e), by inserting "financial participant," after "financial institution,";

(4) in section 548(d)(2)(B), by inserting "financial participant," after "financial institution,";

(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";

(7) in section 555—

(A) by inserting "financial participant," after "financial institution,"; and

(B) by striking the second sentence and inserting the following: "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 securities clearing agency, 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, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.";

(8) in section 556, by inserting ", financial participant," after "commodity broker";

(9) in section 559, by inserting "or financial participant" after "repo participant" each place such term appears; and

(10) in section 560, by inserting "or financial participant" after "swap participant".

(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, financial participants, 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, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.".

SEC. 908. RECORDKEEPING REQUIREMENTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—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 by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).".

(b) INSURED CREDIT UNIONS.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended by adding at the end the following new subparagraph:

"(H) RECORDKEEPING REQUIREMENTS.—The Board, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured credit union with respect to qualified financial contracts (including market valuations) only if such insured credit union is in a troubled condition (as such term is defined by the Board pursuant to section 212).".

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 section 907, the following:

"§ 562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements

"(a) 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 or dates of such liquidation, termination, or acceleration.

"(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

"(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

"(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities

clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

''(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates.''; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by section 907) the following new item:

''562. Timing of 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 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, 741, and 761 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.''.

TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN

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), and as in effect on June 30, 2005, is hereby reenacted.

(2) EFFECTIVE DATE OF REENACTMENT.—Paragraph (1) shall take effect on July 1, 2005.

(b) AMENDMENTS—Chapter 12 of title 11, United States Code, as reenacted by subsection (a), is amended by this Act.

(c) 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, as amended by section 226, is amended by inserting ''101(18),'' after ''101(3),'' each place it appears.

SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, as amended by section 213, 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 section 719, is amended by striking ''a State or local governmental unit'' and inserting ''any governmental unit''.

(c) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall not apply with respect to cases commenced under title 11 of the United States Code before such date.

SEC. 1004. 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 ''$3,237,000''; and

(B) by striking ''80'' and inserting ''50''; and

(2) in subparagraph (B)(ii)—

(A) by striking ''$1,500,000'' and inserting ''$3,237,000''; and

(B) by striking ''80'' and inserting ''50''.

SEC. 1005. ELIMINATION OF REQUIREMENT THAT FAMILY FARMER AND SPOUSE RECEIVE OVER 50 PERCENT OF INCOME FROM FARMING OPERATION IN YEAR PRIOR TO BANKRUPTCY.

Section 101(18)(A) of title 11, United States Code, is amended by striking ''for the taxable year preceding the taxable year'' and inserting the following:

''for—

''(i) the taxable year preceding; or

''(ii) each of the 2d and 3d taxable years preceding;

the taxable year''.

SEC. 1006. PROHIBITION OF RETROACTIVE ASSESSMENT OF DISPOSABLE INCOME.

(a) CONFIRMATION OF PLAN.—Section 1225(b)(1) 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 value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.''.

(b) MODIFICATION OF PLAN.—Section 1229 of title 11, United States Code, is amended by adding at the end the following:

''(d) A plan may not be modified under this section—

''(1) to increase the amount of any payment due before the plan as modified becomes the plan;

''(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

''(3) in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.''.

SEC. 1007. FAMILY FISHERMEN.

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

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

''(7A) 'commercial fishing operation' means—

''(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

''(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A);

''(7B) 'commercial fishing vessel' means a vessel used by a family fisherman to carry out a commercial fishing operation;''; and

(2) by inserting after paragraph (19) the following:

''(19A) 'family fisherman' means—

''(A) an individual or individual and spouse engaged in a commercial fishing operation—

''(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

''(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

''(B) a corporation or partnership—

''(i) in which more than 50 percent of the outstanding stock or equity is held by—

''(I) 1 family that conducts the commercial fishing operation; or

''(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

''(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

''(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out

of a commercial fishing operation owned or operated by such corporation or such partnership; and

''(III) if such corporation issues stock, such stock is not publicly traded;

''(19B) 'family fisherman with regular annual income' means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title;''.

(b) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting ''or family fisherman'' after ''family farmer''.

(c) CHAPTER 12.—Chapter 12 of title 11, United States Code, is amended—

(1) in the chapter heading, by inserting ''**OR FISHERMAN**'' after ''**FAMILY FARMER**'';

(2) in section 1203, by inserting ''or commercial fishing operation'' after ''farm''; and

(3) in section 1206, by striking ''if the property is farmland or farm equipment'' and inserting ''if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel)''.

(d) CLERICAL AMENDMENT.—In the table of chapters for title 11, United States Code, the item relating to chapter 12, is amended to read as follows:

''12. Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income .... 1201''.

(e) APPLICABILITY.—Nothing in this section shall change, affect, or amend the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.).

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

SEC. 1101. DEFINITIONS.

(a) HEALTH CARE BUSINESS DEFINED.—Section 101 of title 11, United States Code, as amended by section 306, is amended—

(1) by redesignating paragraph (27A) 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 individual 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 most recent 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 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.''.

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 section 445, 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 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; and''.

SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PATIENT ADVOCATE.

(a) OMBUDSMAN TO ACT AS PATIENT ADVOCATE.—

(1) APPOINTMENT OF OMBUDSMAN.—Title 11, United States Code, as amended by section 232, is amended by inserting after section 332 the following:

''§ 333. Appointment of patient care ombudsman

''(a)(1) If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

''(2)(A) If the court orders the appointment of an ombudsman under paragraph (1), the United States trustee shall appoint 1 disinterested person (other than the United States trustee) to serve as such ombudsman.

''(B) If the debtor is a health care business that provides long-term care, then the United States trustee may appoint the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending to serve as the ombudsman required by paragraph (1).

''(C) If the United States trustee does not appoint a State Long-Term Care Ombudsman under subparagraph (B), the court shall notify the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending, of the name and address of the person who is appointed under subparagraph (A).

''(b) An ombudsman appointed under subsection (a) shall—

''(1) monitor the quality of patient care provided to patients of the debtor, 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 at 60-day intervals thereafter, report to the court after notice to the parties in interest, at a hearing or in writing, regarding the quality of patient care provided to patients of the debtor; and

''(3) if such ombudsman determines that the quality of patient care provided to patients of the debtor is declining significantly or is otherwise being materially compromised, file with the court a motion or a written report, with notice to the parties in interest immediately upon making such determination.

''(c)(1) An ombudsman appointed under subsection (a) shall maintain any information obtained by such ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. Such ombudsman may not review confidential patient records unless the court approves such review in advance and imposes restrictions on such ombudsman to protect the confidentiality of such records.

''(2) An ombudsman appointed under subsection (a)(2)(B) shall have access to patient records consistent with authority of such ombudsman under the Older Americans Act of 1965 and under non-Federal laws governing the State Long-Term Care Ombudsman program.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, as amended by section 232, is amended by adding at the end the following:

''333. Appointment of ombudsman.''.

(b) COMPENSATION OF OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended—

(1) in the matter preceding subparagraph (A), by inserting ''an ombudsman appointed under section 333, 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 sections 102, 219, and 446, is amended by adding at the end the following:

''(12) 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, as amended by section 446, is amended by striking ''and (11)'' and inserting ''(11), and (12)''.

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 (27), as amended by sections 224, 303, 311, 401, 718, and 907, the following:

''(28) 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 pursuant to title XI or XVIII of such Act).''.

TITLE XII—TECHNICAL AMENDMENTS

SEC. 1201. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by this Act, is further amended—

(1) by striking ''In this title—'' and inserting ''In this title the following definitions shall apply:'';

(2) in each paragraph (other than paragraph (54A)), 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 and inserting a semicolon;

(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;'';

(7) in paragraph (54A)—

(A) by striking ''the term'' and inserting ''The term''; and

(B) by indenting the left margin of paragraph (54A) 2 ems to the right; and

(8) in each of paragraphs (1) through (35), in each of paragraphs (36), (37), (38A), (38B) and (39A), 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(b) of title 11, United States Code, as amended by this Act, is further amended—

(1) by inserting ''101(19A),'' after ''101(18),'' each place it appears;

(2) by inserting ''522(f)(3) and 522(f)(4),'' after ''522(d),'' each place it appears;

(3) by inserting ''541(b), 547(c)(9),'' after ''523(a)(2)(C),'' each place it appears;

(4) in paragraph (1), by striking ''and 1325(b)(3)'' and inserting ''1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28''; and

(5) in paragraph (2), by striking ''and 1325(b)(3) of this title'' and inserting ''1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28''.

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 redesignated by section 221, 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 sections 215 and 314, 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)(14A);

(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 section 201, 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, 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. 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. 1220. 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. 1221. 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 OF REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by sections 213 and 321, 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 section 225, is amended by adding at the end the following:

''(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same 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 filing 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. 1222. 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. 1223. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 2005''.

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENTS.—The following bankruptcy judges shall be appointed 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 judge for the eastern district of California.

(B) Three additional bankruptcy judges for the central district of California.

(C) Four additional bankruptcy judges for the district of Delaware.

(D) Two additional bankruptcy judges for the southern district of Florida.

(E) One additional bankruptcy judge for the southern district of Georgia.

(F) Three additional bankruptcy judges for the district of Maryland.

(G) One additional bankruptcy judge for the eastern district of Michigan.

(H) One additional bankruptcy judge for the southern district of Mississippi.

(I) One additional bankruptcy judge for the district of New Jersey.

(J) One additional bankruptcy judge for the eastern district of New York.

(K) One additional bankruptcy judge for the northern district of New York.

(L) One additional bankruptcy judge for the southern district of New York.

(M) One additional bankruptcy judge for the eastern district of North Carolina.

(N) One additional bankruptcy judge for the eastern district of Pennsylvania.

(O) One additional bankruptcy judge for the middle district of Pennsylvania.

(P) One additional bankruptcy judge for the district of Puerto Rico.

(Q) One additional bankruptcy judge for the western district of Tennessee.

(R) One additional bankruptcy judge for the eastern district of Virginia.

(S) One additional bankruptcy judge for the district of South Carolina.

(T) One additional bankruptcy judge for the district of Nevada.

(2) VACANCIES.—

(A) DISTRICTS WITH SINGLE APPOINTMENTS.—Except as provided in subparagraphs (B), (C), (D), and (E), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1) to such office; and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(B) CENTRAL DISTRICT OF CALIFORNIA.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the central district of California—

(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(C) DISTRICT OF DELAWARE.—The 1st, 2d, 3d, and 4th vacancies in the office of bankruptcy judge in the district of Delaware—

(i) occurring 5 years or more after the respective 1st, 2d, 3d, and 4th appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(D) SOUTHERN DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of bankruptcy judge in the southern district of Florida—

(i) occurring 5 years or more after the respective 1st and 2d appointment dates of the bankruptcy judges appointed under paragraph (1)(D); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(E) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—

(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary office of bankruptcy judges authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), 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 5 years after the date of the enactment of this Act.

(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 the temporary office of bankruptcy judges 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 court of appeals of the United States 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 DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1224. 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 case 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. 1225. 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 date of the filing of the petition;''.

SEC. 1226. 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 under section 707(b), and reaffirmation agreements under section 524, of title 11 of the United States Code, as amended by this Act.

SEC. 1227. 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 in section 507(c), and subject to the prior rights of a holder of a security interest 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, within 45 days before 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)(9).''.

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by sections 445 and 1103, is amended by adding at the end the following:

''(9) the value of any goods received by the debtor within 20 days before 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. 1228. PROVIDING REQUESTED TAX DOCUMENTS TO THE COURT.

(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual who is a debtor in a case 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 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. 1229. 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. 1230. PROPERTY NO LONGER SUBJECT TO REDEMPTION.

Section 541(b) of title 11, United States Code, as amended by sections 225 and 323, is amended by adding after paragraph (7), as added by section 323, the following:

''(8) 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); or''.

SEC. 1231. 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 district court of the United States for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the district court of the United States 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 district court of the United States for 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. 1232. 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. 1233. DIRECT APPEALS OF BANKRUPTCY MATTERS TO COURTS OF APPEALS.

(a) APPEALS.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c)(1), by striking ''Subject to subsection (b),'' and inserting ''Subject to subsections (b) and (d)(2),''; and

(2) in subsection (d)—

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

(B) by adding at the end the following:

''(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

''(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

''(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

''(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

''(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

''(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

''(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

''(C) The parties may supplement the certification with a short statement of the basis for the certification.

''(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal in pending, issues a stay of such proceeding pending the appeal.

''(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.''.

(b) PROCEDURAL RULES.—

(1) TEMPORARY APPLICATION.—A provision of this subsection shall apply to appeals under section 158(d)(2) of title 28, United States Code, until a rule of practice and procedure relating to such provision and such appeals is promulgated or amended under chapter 131 of such title.

(2) CERTIFICATION.—A district court, a bankruptcy court, or a bankruptcy appellate panel may make a certification under section 158(d)(2) of title 28, United States Code, only with respect to matters pending in the respective bankruptcy court, district court, or bankruptcy appellate panel.

(3) PROCEDURE.—Subject to any other provision of this subsection, an appeal authorized by the court of appeals under section 158(d)(2)(A) of title 28, United States Code, shall be taken in the manner prescribed in subdivisions (a)(1), (b), (c), and (d) of rule 5 of the Federal Rules of Appellate Procedure. For purposes of subdivision (a)(1) of rule 5—

(A) a reference in such subdivision to a district court shall be deemed to include a reference to a bankruptcy court and a bankruptcy appellate panel, as appropriate; and

(B) a reference in such subdivision to the parties requesting permission to appeal to be served with the petition shall be deemed to include a reference to the parties to the judgment, order, or decree from which the appeal is taken.

(4) FILING OF PETITION WITH ATTACHMENT.—A petition requesting permission to appeal, that is based on a certification made under subparagraph (A) or (B) of section 158(d)(2) shall—

(A) be filed with the circuit clerk not later than 10 days after the certification is entered on the docket of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken; and

(B) have attached a copy of such certification.

(5) REFERENCES IN RULE 5.—For purposes of rule 5 of the Federal Rules of Appellate Procedure—

(A) a reference in such rule to a district court shall be deemed to include a reference to a bankruptcy court and to a bankruptcy appellate panel; and

(B) a reference in such rule to a district clerk shall be deemed to include a reference to a clerk of a bankruptcy court and to a clerk of a bankruptcy appellate panel.

(6) APPLICATION OF RULES.—The Federal Rules of Appellate Procedure shall apply in the courts of appeals with respect to appeals authorized under section 158(d)(2)(A), to the extent relevant and as if such appeals were taken from final judgments, orders, or decrees of the district courts or bankruptcy appellate panels exercising appellate jurisdiction under subsection (a) or (b) of section 158 of title 28, United States Code.

SEC. 1234. INVOLUNTARY CASES.

(a) AMENDMENTS.—Section 303 of title 11, United States Code, is amended—

(1) in subsection (b)(1), by—

(A) inserting ''as to liability or amount'' after ''bona fide dispute''; and

(B) striking ''if such claims'' and inserting ''if such noncontingent, undisputed claims''; and

(2) in subsection (h)(1), by inserting ''as to liability or amount'' before the semicolon at the end.

(b) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply with respect to cases commenced under title 11 of the United States Code before, on, and after such date.

SEC. 1235. FEDERAL ELECTION LAW FINES AND PENALTIES AS NONDISCHARGEABLE DEBT.

Section 523(a) of title 11, United States Code, as amended by section 314, is amended by inserting after paragraph (14A) the following:

''(14B) incurred to pay fines or penalties imposed under Federal election law;''.

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 2005, 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), 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 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 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 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 cases filed under title 11 of the 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.

TITLE XIV—PREVENTING CORPORATE BANKRUPTCY ABUSE

SEC. 1401. EMPLOYEE WAGE AND BENEFIT PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by section 212, is amended—

(1) in paragraph (4) by striking ''90'' and inserting ''180'', and

(2) in paragraphs (4) and (5) by striking ''$4,000'' and inserting ''$10,000''.

SEC. 1402. FRAUDULENT TRANSFERS AND OBLIGATIONS.

Section 548 of title 11, United States Code, is amended—

(1) in subsections (a) and (b) by striking ''one year'' and inserting ''2 years'',

(2) in subsection (a)—

(A) by inserting ''(including any transfer to or for the benefit of an insider under an employment contract)'' after ''transfer'' the 1st place it appears, and

(B) by inserting ''(including any obligation to or for the benefit of an insider under an employment contract)'' after ''obligation'' the 1st place it appears, and

(3) in subsection (a)(1)(B)(ii)—

(A) in subclause (II) by striking ''or'' at the end,

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

(C) by adding at the end the following:

''(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.''.

(4) by adding at the end the following:

''(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

''(A) such transfer was made to a self-settled trust or similar device;

''(B) such transfer was by the debtor;

''(C) the debtor is a beneficiary of such trust or similar device; and

''(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

''(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by—

''(A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or

''(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 781 and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).''.

SEC. 1403. PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Section 1114 of title 11, United States Code, is amended—

(1) by redesignating subsection (l) as subsection (m), and

(2) by inserting after subsection (k) the following:

''(l) If the debtor, during the 180-day period ending on the date of the filing of the petition—

''(1) modified retiree benefits; and

''(2) was insolvent on the date such benefits were modified;

the court, on motion of a party in interest, and after notice and a hearing, shall issue an order reinstating as of the date the modification was made, such benefits as in effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification.''.

SEC. 1404. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

(a) PREPETITION AND POSTPETITION EFFECT.—Section 523(a)(19)(B) of title 11, United States Code, is amended by inserting '', before, on, or after the date on which the petition was filed,'' after ''results''.

(b) EFFECTIVE DATE UPON ENACTMENT OF SARBANES-OXLEY ACT.—The amendment made by subsection (a) is effective beginning July 30, 2002.

SEC. 1405. APPOINTMENT OF TRUSTEE IN CASES OF SUSPECTED FRAUD.

Section 1104 of title 11, United States Code, is amended by adding at the end the following:

''(e) The United States trustee shall move for the appointment of a trustee under subsection (a) if there are reasonable grounds to suspect that current members of the governing body of the debtor, the debtor's chief executive or chief financial officer, or members of the governing body who selected the debtor's chief executive or chief financial officer, participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or the debtor's public financial reporting.''.

SEC. 1406. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—cept as provided in paragraph (2), the amendments made by this title shall apply only with respect to cases commenced under title 11 of the United States Code on or after the date of the enactment of this Act.

(2) AVOIDANCE PERIOD.—The amendment made by section 1402(1) shall apply only with respect to cases commenced under title 11 of the United States Code more than 1 year after the date of the enactment of this Act.

TITLE XV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1501. 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.—

(1) IN GENERAL.—Except as otherwise provided in this Act and paragraph (2), 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.

(2) CERTAIN LIMITATIONS APPLICABLE TO DEBTORS.—The amendments made by sections 308, 322, and 330 shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act.

SEC. 1502. TECHNICAL CORRECTIONS.

(a) CONFORMING AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.—Title 11 of the United States Code, as amended by the preceding provisions of this Act, is amended—

(1) in section 507—

(A) in subsection (a)—

(i) in paragraph (5)(B)(ii) by striking ''paragraph (3)'' and inserting ''paragraph (4)''; and

(ii) in paragraph (8)(D) by striking ''paragraph (3)'' and inserting ''paragraph (4)'';

(B) in subsection (b) by striking ''subsection (a)(1)'' and inserting ''subsection (a)(2)''; and

(C) in subsection (d) by striking ''subsection (a)(3)'' and inserting ''subsection (a)(1)'';

(2) in section 523(a)(1)(A) by striking ''507(a)(2)'' and inserting ''507(a)(3)'';

(3) in section 752(a) by striking ''507(a)(1)'' and inserting ''507(a)(2)'';

(4) in section 766—

(A) in subsection (h) by striking ''507(a)(1)'' and inserting ''507(a)(2)''; and

(B) in subsection (i) by striking ''507(a)(1)'' each place it appears and inserting ''507(a)(2)'';

(5) in section 901(a) by striking ''507(a)(1)'' and inserting ''507(a)(2)'';

(6) in section 943(b)(5) by striking ''507(a)(1)'' and inserting ''507(a)(2)'';

(7) in section 1123(a)(1) by striking ''507(a)(1), 507(a)(2)'' and inserting ''507(a)(2), 507(a)(3)'';

(8) in section 1129(a)(9)—

(A) in subparagraph (A) by striking ''507(a)(1) or 507(a)(2)'' and inserting ''507(a)(2) or 507(a)(3)''; and

(B) in subparagraph (B) by striking ''507(a)(3)'' and inserting ''507(a)(1)'';

(9) in section 1226(b)(1) by striking ''507(a)(1)'' and inserting ''507(a)(2)''; and

(10) in section 1326(b)(1) by striking ''507(a)(1)'' and inserting ''507(a)(2)''.

(b) RELATED CONFORMING AMENDMENT.—Section 6(e) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff(e)) is amended by striking ''507(a)(1)'' and inserting ''507(a)(2)''.

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to House Resolution 211, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

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

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 S. 256.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield by myself such time as I may consume.

Mr. Speaker, I rise in support of S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This legislation consists of a comprehensive package of reform measures pertaining to consumer and business bankruptcy cases. The current system has created a set of incentives that encourage opportunistic personal filings and the abuse of a bankruptcy system originally intended to strike a delicate balance between debtor and creditor rights. These abuses ultimately hurt debtors as well as creditors, consumers as well as businesses, suppliers as well as purchasers. The only winners in the current bankruptcy system are those who game the system for personal gain.

S. 256 restores personal responsibility and integrity to the bankruptcy system and ensures that the system is fair

to both debtors and creditors. This legislation represents the most comprehensive reform of the bankruptcy system in more than 25 years.

As many of us know, bankruptcy reform has been subject to exhaustive congressional review for more than a decade, beginning with the establishment of a National Bankruptcy Review Commission in 1994. It is important to note that over the course of the last four Congresses, the House has passed bankruptcy reform on eight separate occasions by overwhelming and bipartisan margins.

This bill will help stop fraudulent, abusive, and opportunistic bankruptcy claims by closing various loopholes and incentives that have produced steadily cascading claims.

Central to these reforms is a merit-based test that reflects the common-sense proposition that those who are capable of repaying their debts after seeking bankruptcy relief must actually repay their debts. S. 256 will also give the courts greater powers to dismiss abusive bankruptcy cases and to punish attorneys who encourage their clients to file such claims. In addition, the bill prevents violent criminals or drug traffickers from using bankruptcy relief to evade their creditors.

The bill closes the ''millionaire's mansion'' loophole in the current bankruptcy code that permits corporate criminals to shield their multi-million dollar homesteads from deserving creditors. Of critical importance, the legislation prevents deadbeat parents from abusing the bankruptcy system to shirk their child support obligations. With respect to these reforms, the National Child Support Enforcement Association stated that S. 256 is ''crucial to the collection of child support during bankruptcy.''

Some might ask why Congress has been so concerned about abuse in the bankruptcy system. The answer to this question should be obvious. It is estimated that every American household bears an annual $400 hidden tax for profligate and abusive bankruptcy filings. That is a $400 tax on every household that no politician has to vote for, but gets paid anyhow.

As a result, every abusive bankruptcy filing impacts hard-working Americans in the form of higher interest rates and increased costs of goods and service. Our economy and the hard-working Americans who sustain it should not suffer any longer from the billions of dollars in losses associated with abusive bankruptcy filings.

Mr. Speaker, this legislation not only deals with abuse in the bankruptcy system; it includes many vital consumer protections as well. S. 256 will provide the tools to crack down on bankruptcy petition mills, which often misrepresent the benefits and risks of bankruptcy relief. It will impose heightened standards of professional responsibility for attorneys who represent debtors. It will require certain credit card solicitations, monthly billing statements, and related materials to include important disclosures and explanatory statements on a broad range of credit terms and conditions, including introductory interest rates and minimum payments.

The bill also helps America's family farmers and fishermen confronting economic hard times by providing more tools to assist in their bankruptcy reorganization. The bill includes protections for medical patients in bankruptcy health care facilities and pro-privacy provisions that protect against the unwanted disclosure of personal information.

There are several other critical reforms contained in this comprehensive legislation, but the limits of time prevent an exhaustive recitation.

Mr. Speaker, the time for bankruptcy reform is long overdue. Bankruptcy reform legislation has been subject to more process, more consideration, more deliberation, more debate, and more voting than virtually any other legislative item in the past decade. We have before us legislation that represents the culmination of a decade of legislative toil and persistence. It is the product of extensive bicameral and bipartisan compromise and was approved by the other body by a vote of 74 to 25.

We also have before us a historic opportunity to return a measure of fairness and accountability to the bankruptcy system in a manner that will curb bankruptcy abuse while rewarding the vast majority of hard-working Americans who play by the rules and pay their bills as agreed upon.

Mr. Speaker, I urge my colleagues to seize this opportunity to join me in supporting this legislation.

Mr. Speaker, before closing, I include for the RECORD a supplemental statement acknowledging the hard work of many Members and staff who have helped make this legislation possible, as well as a summary of the principal provisions of this bill.

Mr. Speaker, over the many years this legislation has been pending in the Congress, many Members, Senators, and staff members have devoted themselves to making S. 256 a reality. I would like to take this opportunity to recognize these individuals.

Beginning with my colleagues in the House, I would like to mention the many contributions of the Chairman of the Subcommittee on Commercial and Administrative Law (Mr. Cannon) for his hard work on behalf of this legislation. The Chairman of the Financial Services Committee (Mr. OXLEY) has also been a great resource. I also appreciate the contributions of my colleagues on the other side of the aisle, the Ranking Member of the Judiciary Committee (Mr. CONYERS) and the gentleman from Virginia (Mr. BOUCHER). Former Members should also be recognized for their contributions. Bill McCollum is to be commended for being the first to introduce comprehensive bankruptcy reform and George Gekas deserves our gratitude for his tireless efforts.

In addition, I would like to mention the following staff on the Judiciary Committee for their contributions: Phil Kiko, Majority Committee General Counsel and Chief of Staff; Rob Tracci, Chief Legislative Counsel and Parliamentarian; Raymond Smietanka, Chief Counsel, Subcommittee on Commercial and Administrative Law; Perry Apelbaum; David Lachmann; Matt Iandoli, Legislative Director for Representative CANNON; Todd Thorpe, Chief of Staff for Representative CANNON; Laura Vaught, Deputy Chief of Staff for Representative BOUCHER; Jean Harmann, House Legislative Counsel and Dina Ellis, Counsel for the House Financial Services Committee.

Former staffers who should also be recognized, include Will Moschella, Joe Rubin, Alan Cagnoli, and Liz Trainer.

The vital and indispensable efforts of one staff member have uniquely contributed to the bankruptcy reform legislation we consider today. From her service as general counsel on the congressionally-created National Bankruptcy Review Commission to her often behind the scenes work on bankruptcy reform legislation extending to the 105th Congress, Susan Jensen, counsel to the Judiciary Subcommittee on Commercial and Administrative Law, deserves special recognition. Her technical expertise in a complex area of law has resulted in dramatic improvements in successive drafts of bankruptcy reform legislation and helped establish a record of legislative history that elucidates the legislation we consider today. Her professionalism, attention to detail, and commitment to serving the House of Representatives deserves the recognition and commendation of this House.

I would also like to acknowledge the countless contributions of our colleagues in the other body. These include Senators GRASSLEY, HATCH, SESSIONS, SPECTER, BIDEN and LEAHY.

This legislation has also benefitted from the hard work and devoted assistance of numerous Senate staff members. These include, Rita Lari, counsel for Senator GRASSLEY, who has been a wonderful resource for our staff. In addition, the following individuals must also be acknowledged: Harold Kim and Tim Strachan, counsels for Senator SPECTER; Perry Barber, Rene Augustine, and former staffer Makan Delrahim, counsels for Senator HATCH; and Ed Pagano, Chief of Staff for Senator LEAHY.

SUMMARY OF PRINCIPAL PROVISIONS OF S. 256, ''THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005''

CONSUMER BANKRUPTCY REFORMS

Abuse prevention: S. 256 instills a greater level of personal responsibility by closing various loopholes and eliminating incentives in the current bankruptcy system that encourage opportunistic consumer bankruptcy filings and abuse. The bill's needs-based provisions target, for example, those debtors who have a demonstrated ability to repay their debts and channels them into a form of bankruptcy relief that requires debt repayment. Courts, under S. 256, are given greater powers to dismiss abusive bankruptcy cases and to punish attorneys who encourage their clients to file such cases. Debtors who have committed crimes of violence or engaged in drug trafficking will no longer be able to use bankruptcy to hide from their creditors. Likewise, deadbeat parents will be prevented from using bankruptcy to shirk their child support obligations. In addition, this legislation prevents debtors from avoiding their responsibility to pay for luxury goods and services purchased on the eve of filing for bankruptcy.

Needs-based reforms: S. 256 implements an income and expense analysis to determine

whether a debtor has a demonstrated ability to repay a significant portion of his or her debts. If a debtor has the ability to repay debts, he or she must either be channeled into a form of bankruptcy relief that requires repayment or risk having the bankruptcy case dismissed as an abusive filing. This needs-based test specifies certain expense amounts—derived from IRS expense standards and other specified expenses—that are deducted from the debtor's income. These include expenses for food, clothing, housing, and transportation as well as certain educational expenses for the debtor's children. The debtor may rebut the presumption of abuse by demonstrating special circumstances warranting additional expenses or income adjustment.

Spousal and child support protections: S. 256 prioritizes the collection and payment of spousal and child support in bankruptcy cases by giving these claims the highest payment priority (current law gives these claimants an only 7th level payment priority). The bill requires bankruptcy trustees to give child support claimants important information about the availability of state child support enforcement assistance and to notify the proper state child support enforcement authorities of the deadbeat parent's bankruptcy filing. S. 256 allows various enforcement actions to be brought against a bankrupt deadbeat parent, including the withholding of his or her driver's license, or the suspension of the debtor's professional or occupational license. It also allows state child support enforcement agencies to intercept a debtor's tax refund for nonpayment of spousal or child support. In addition, it ensures that a deadbeat parent do not escape responsibility to pay a child's medical bills. The National Child Support Enforcement Association says S. 256's reforms are "crucial to the collection of child support during bankruptcy."

Closes the "mansion loophole" for greedy corporate culprits: Under current bankruptcy law, debtors living in certain states can shield from their creditors virtually all of the equity in their homes. In light of this, some debtors actually move to these states just to take advantage of their "mansion loophole" laws. S. 256 closes this loophole for abuse by requiring a debtor to reside in the state for at least 2 years before he or she can claim that state's homestead exemption—the current residency requirement is only 91 days! The bill further reduces the opportunity for abuse by requiring a debtor to own the homestead for at least 40 months before he or she can use state exemption law—current law imposes no such requirement. In addition, S. 256 requires a debtor's homestead exemption to be reduced for to the extent attributable to the debtor's fraudulent conversion of nonexempt assets (e.g., cash) into a homestead exemption. Most importantly, the bill stops securities law violators and other culprits from hiding their homestead assets from those whom they have defrauded or injured If a debtor was convicted of a felony, violated a securities law, or committed a criminal act, intentional tort, or engaged in reckless misconduct that caused serious physical injury or death, S. 256 overrides state homestead exemption law and caps the debtor's homestead exemption at $125,000.

Debtor protections: S. 256 requires debtors to receive credit counseling before they can be eligible for bankruptcy relief so that they will make an informed choice about bankruptcy—its alternatives and consequences. The bill also requires debtors, after they have filed for bankruptcy, to participate in financial management instructional courses so they can hopefully avoid future financial distress. S. 256 penalizes creditors who unreasonably refuse to negotiate a pre-bankruptcy debt repayment plan with a debtor. The bill strengthens the disclosure requirements for reaffirmation agreements so that debtors will be better informed about their rights and responsibilities. In addition, S. 256 requires certain monthly credit card billing statements to include specified disclosures regarding the increased interest and repayment time associated with making minimum payments. The bill also requires certain home equity loan and credit card solicitations to include enhanced consumer disclosures. S. 256 prohibits a creditor from terminating an open end consumer credit plan simply because the consumer has not incurred finance charges on the account. Further, the bill cracks down on bankruptcy petition mills and imposes heightened standards of professional responsibility for attorneys who represent debtors.

BUSINESS BANKRUPTCY AND OTHER REFORMS

Protections for small business owners: Under current bankruptcy law, a business can be sued by a bankruptcy trustee and forced to pay back monies previously paid to it by a firm that later files for bankruptcy protection. S. 256 contains provisions making it easier—particularly for small businesses—to successfully defend against these suits.

Promotes greater certainty in the financial market place: S. 256 reduces systemic risk in the banking system and financial marketplace by minimizing the risk of disruption when parties to certain financial transactions become bankrupt or insolvent. Federal Reserve Board Chairman Alan Greenspan says these reforms are "extremely important."

Family farmers: S. 256 helps small family farmers facing financial distress. While current bankruptcy law has a specialized form of bankruptcy relief—Chapter 12—that is specifically designed for family farmers, its benefits for farmers are limited because of its restrictive eligibility requirements. The bill responds to this problem in several key respects: it more than doubles the debt eligibility limit and requires it to be periodically adjusted for inflation; it lowers the requisite percentage of a farmer's income that must be derived from farming operations; and it gives farmers more flexibility with respect to how certain creditors can be repaid. As a result, many more deserving family farmers facing financial hard times will be able to avail themselves of Chapter 12. In addition, S. 256 makes Chapter 12 a permanent component of the bankruptcy laws and extends the benefits of this form of bankruptcy relief to family fishermen.

Small business debtors: S. 256 addresses the special problems presented by small business debtors by instituting firm deadlines and enforcement mechanisms to weed out those debtors who are not likely to reorganize. It also requires the court and other designated entities to monitor these cases more actively.

Transnational insolvencies: In response to the increasing globalization of business dealings and operations, S. 256 establishes a separate chapter under the Bankruptcy Code devoted to transnational insolvencies. These provisions are intended to provide greater legal certainty for trade and investment as well promote the fair and efficient administration of these cases.

Privacy protections: Under current law, nearly every item of information supplied by a debtor in connection with his or her bankruptcy case is made available to the public. S. 256 prohibits the disclosure of the names of the debtor's minor children and requires such information to be kept in a nonpublic record, which can be made available for inspection only by the court and certain other designated entities. In addition, if a business debtor had a policy prohibiting it from selling "personally identifiable information" about its customers and the policy was in effect at the time of the bankruptcy filing, then S. 256 prohibits the sale of such information unless certain conditions are satisfied.

Protections for employees: S. 256 requires certain back pay awards granted as a result of the debtor's violation of Federal or State law to receive one of the highest payment priorities in a bankruptcy case. In addition, S. 256 streamlines the appointment of an ERISA administrator for an employee benefit plan, under certain circumstances, to minimize the disruption that results when an employer files for bankruptcy relief. In light of the disaterous impact that bankruptcy cases like WorldCom and Enron have had on their employees, reforms that more than double current the monetary cap on wage and employee benefit claims entitled to priority under the Bankruptcy Code. Other provisions would protect retirees in cases where Chapter 11 debtors unilaterally modify their benefits, such as health insurance. These reforms would also make it easier to recover excessive pre-petition compensation, such as bonuses, paid to insiders of a debtor that can then be used to pay unpaid employee wage claims.

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

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

Mr. Speaker, this is the most special interest-vested bill that I have ever dealt with in my career in Congress. It massively tilts the playing field in favor of banks and credit card companies and against working people and their families. I have never, ever faced such a piece of legislation. That explains to me why it took 8 years to get this thing up here, because they kept fixing it up, making it wrong.

Mr. Speaker, all I want to say as we open this debate is that to those who assert that this bill cracks down on creditor abuse, I would ask them to realize that this bill does absolutely nothing to discourage abusive, underage lending; nothing to discourage reckless lending to the developmentally disabled; nothing to regulate the practice of sub-prime lending to persons with no means or little ability to repay their debts; nothing to crack down on the sharks, the lenders, that charge members of the Armed Forces up to 500 percent interest per year or more. They hang around the bases and lure them in.

What this is is something that we should all be truly embarrassed about. This bill is opposed by every consumer group, by all the bankruptcy judges, the trustees, law professors, by all of organized labor, by the military groups, by the civil rights organizations, and by every major group concerned about seniors, women, and children.

Please, if we do not do anything else in the 109th Congress, let us not let this bill get out of the House of Representatives.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman

from Virginia (Mr. BOUCHER) to show that this is truly a bipartisan effort.

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

Mr. BOUCHER. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, the reform of the nation's bankruptcy laws which our actions today will accomplish is well justified. This reform is strongly in the interests of consumers. It will significantly reduce the annual hidden tax of approximately $400 that the typical consumer pays because others are misusing the bankruptcy laws. That amount represents the increased cost of credit and the increased price of goods and services caused by bankruptcy law misuse. This reform will lower that hidden tax.

The reform also helps consumers by requiring clearer disclosures of the cost of credit on credit card statements, and the reform will be a major benefit to single parents who receive alimony or child support. That person today is fifth in priority for the receipt of payment under the bankruptcy laws. The reform before us today elevates the spouse support recipient to number one in priority.

This reform proceeds from the basic premise that people who can afford to repay a substantial portion of what they owe should do so. The bill requires that repayment while allowing a discharge in bankruptcy of the debts that cannot be repaid. In so doing, it responds to the broad misuse of chapter 7's complete liquidation provisions that we have observed in recent years.

The reform measure sets a threshold for the use of chapter 7. Debtors who can make little or no repayment can use its provisions and discharge all of their debts. Debtors whose annual income is below the national mean of about $50,000 per year are untouched by this reform. They can make full use of chapter 7 and discharge all of their debts, whether or not they can afford to make repayments.

This reform imposes a modest measure of personal responsibility that is well justified, and I urge its approval by the House.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2½ minutes to the gentleman from Massachusetts (Mr. DELAHUNT), a distinguished member of the committee.

Mr. DELAHUNT. Mr. Speaker, let me just suggest the following, with all due respect to my friend from Wisconsin and my friend from Virginia.

□ 1345

The figure of $400 is a mythical figure. It is inaccurate.

In addition to that, be rest assured, if you are a consumer, you will not benefit one penny from this bill. Do my colleagues know who is going to benefit? The credit card industry. Anyone familiar with the history of this bill knows that it was written by and for the credit card industry, and they spent north of $40 million to make sure that they got what they wanted.

The American people are the losers here, unless you happen to be a senior executive of a credit card company or an investor in credit card companies, because they are going to make a good score here today, but the American taxpayer is going to pay for it.

According to the CBO, the bill will cost taxpayers $392 million over a 5-year period and simultaneously reduce tax revenue by $456 million, increasing the budget deficit, by the way, that we are all so concerned about. The bill is nothing more than a public subsidy for one of the most profitable businesses in our economy.

What is sad is that we could have produced legislation which would have been fair and balanced. We continue to hear that fair and balanced theme, but the credit card industry would not allow it. They would not tolerate any effort to make them accountable, no matter how minimal.

To cite just one example, myself and the gentleman from North Carolina (Mr. WATT) proposed an amendment to limit the interest charged on a credit card to 75 percent. I said 75 percent. The credit card industry said, no; and, of course, their supporters defeated our amendment; and this amendment is not before us today. I would suggest 75 percent is not bad, even by Mafia standards. Loan sharking used to be a crime in this country. Maybe this bill should be renamed as the Loan Sharking Decriminalization Act of 2000.

We hear the term personal responsibility, but when it comes to the concept of corporate responsibility, silence.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Utah (Mr. CANNON), the chairman of the Subcommittee on Commercial and Administrative Law.

Mr. CANNON. Mr. Speaker, I rise in support of Senate bill 256 and urge its adoption by the House.

Whether or not we have a cost of $400 per household or some other cost, I think it is clear to all Americans that we pay a cost if we have excessive bankruptcies in America. What we are looking for here is workable markets where consumers have the opportunity to borrow money at the lowest cost. Hopefully, they are not above 18 percent; certainly not at 75 percent. The market does a remarkable job for that purpose.

For more than 7 years now, almost as long as I have been in Congress, we have struggled with the rising tide of bankruptcy abuse which threatens the delicate balance in this country between creditors and debtors. As this reform measure has developed, slowly, inexorably, we have dealt with each issue: framing, debating, considering, and ultimately resolving each controversy. Progressive Congresses have moved toward ultimate resolution, until finally today the House has been presented with a bill that it can send directly to the President for signature.

As chairman of the Subcommittee on Commercial and Administrative Law, I take considerable satisfaction that, through collective effort, we would be able to achieve what many said would never happen. We have crafted fair and balanced legislation dealing in a straightforward manner with a problem that has vexed the Nation for the past decade and threatens economic growth and stability. By the way, the Bankruptcy Act has not been amended for 25 years in a serious way.

The American people will truly be well served by this effort. This bill is a rare achievement of reducing disparity in the bankruptcy system. It establishes more uniform and predictable standards. It strengthens the integrity of the bankruptcy process. It deals with the continuing wave of bankruptcy filings and abuse of State homestead exemptions. It will reinforce the public perception that the system is fair for all participants. It improves the administration of the bankruptcy process. And, finally, it restores a measure of personal responsibility to the bankruptcy system that is spiraling out of control.

Mr. Speaker, my constituents need this legislation, and America needs this legislation, and I urge support today for S. 256.

I would also note that the need for additional bankruptcy judgeships may need to be considered to reflect the numbers submitted by the Judicial Conference's most recent report. Additional judgeships are sorely needed in a number of districts across the country, including my State of Utah. I was heartened by the assurance of the chairman of the Committee on the Judiciary during the markup of Senate 256 that this matter will be considered later this year. In that regard, I would like to thank the gentleman from Georgia (Mr. KINGSTON) who has worked tirelessly on the issue of expanding the number of bankruptcy judges we have to meet this need.

Mr. Speaker, at this point I will place additional information on the bill in the RECORD.

During the course of the Senate Judiciary Committee's consideration of S. 256, a provision was added to deal with excessive retention bonuses, severance payments and other forms of inducements paid by a debtor to retain key personnel or otherwise induce a debtor's management to remain with the debtor.

This provision addresses serious conserns and I support the intent of its drafters. Nevertheless, this provision should not be construed to invalidate all key employee retention programs for companies that may someday wind up in Chapter 11. It is very important that a Chapter 11 debtor be able to retain management that is dedicated to maintaining the company's value for the benefit of its creditors, investors, employees, and other stakeholders. All too often, companies that fail to reorganize successfully are converted to Chapter 7 for liquidation, where creditors receive pennies on the dollar and employees face job dislocation.

Where appropriate, key employee retention programs may be necessary to bring a company in financial distress successfully through the Chapter 11 process. Accordingly, section 331 of S. 256 should not be applied to invalidate such programs where there is no evidence of insider negligence, mismanagement, or fraudulent conduct contributed to a company's insolvency—in whole or in part.

Given the possibility that the intent of the Congress with respect to this provision and the interpretation of Section 331's text may not be consistent, legislation clarifying language may be necessary. If so, I will work with my colleagues in the House and Senate to address any such inconsistencies.

I ask that a letter from the Association of Insolvency and Restructuring Advisors be printed at this point in the RECORD.

ASSOCIATION OF INSOLVENCY, AND RESTRUCTURING ADVISORS,
Medford, OR, March 1, 2005.

Senator ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The undersigned are financial and legal professionals who serve as the Board of Directors of the Association of Insolvency and Restructuring Advisors (AIRA). As board members we work to further the AIRA's goal of increasing industry awareness of the organization as an important educational and technical resource for professionals in business turnaround, restructuring, and bankruptcy practice, and of the Certified Insolvency and Restructuring Advisor (CIRA) designation as an assurance of expertise in this area.

We write to make you aware of serious concerns we have regarding a provision contained in S. 256, the ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.'' The provision in question effectively prohibits the use of key employee retention plans in Chapter 11 reorganizations. It was added during the Judiciary Committee mark-up of the bill and elicited little attention at the time. However, we believe this provision will cause considerable harm to a number of companies that will become subject to bankruptcy proceedings, and, most importantly, to their employees, customers, and creditors.

When a company is operating in Chapter 11, a primary responsibility of management is to maintain and grow the company's value for the benefit of all of its stakeholders. A company that is well-managed through its restructuring benefits its creditors, employees, retirees, unions and the local communities of which the company is a part. Companies that fail to successfully reorganize in Chapter 11 are liquidated. Creditors receive pennies on the dollar and employees see their jobs and retirement savings destroyed.

When companies enter Chapter 11, it is critical that they attract and retain top management talent. But Chapter 11 is also the most difficult time to attract and retain such talent. Managers of Chapter 11 companies are faced with intense scrutiny, stress, insecurity, and an enormously complex process. Compensation and incentive tools used by non-bankrupt companies such as equity compensation programs are not available to assist with attracting and retaining the type of management talent necessary to bring the company successfully through the Chapter 11 process—this is because the pre-petition equity is almost always without value. Key employee retention plans (''KERPs'') have become common practice since the early 1990's and have been viewed by courts, debtors, and creditors alike as an important and useful way to help reorganization by retaining key employees.

Bankruptcy courts have agreed with this reasoning, and many judges have used their judicial discretion to approve KERPs. For a court to approve a KERP under existing law, however, a debtor must use proper business judgment in formulating the program, and the court must find the program to be reasonable and fair. Creditors have the right to object to proposed KERPs, and judges are presented with a full evidentiary record upon which to make a determination. If a KERP is not appropriate or if it is not in the best interest of the company's creditors, the judge can refuse to approve it.

In the last few years, there has been a trend, with which we agree, towards stricter judicial scrutiny of proposed KERPs by bankruptcy judges. Such a trend seems appropriate in the wake of numerous high profile bankruptcy filings where management's misconduct or mismanagement has led to the Chapter 11 filing. Judges have discretion to deny KERPs in these circumstances, and they do so when the facts and circumstances warrant.

Unfortunately, S. 256 as reported by the Senate Judiciary Committee includes an amendment authored by Senator Edward M. Kennedy (the Kennedy amendment) that places significant limits on retention bonuses and severance payments to employees of companies in Chapter 11. It would prohibit a bankruptcy judge from approving retention bonuses in every Chapter 11 case unless he or she finds that the company in question has proven that the employee has a bona fide job offer at the same or greater rate of compensation; was prepared to accept the job offer; and the services of that employee are ''essential to the survival of the business.'' The amendment also places significant caps on the amount of such bonus and payments.

The Kennedy amendment appears to be motivated by a desire to combat KERPs in Chapter 11 cases where employee-related fraud substantially contributed to the bankruptcy of the company. Yet, by painting with such a broad brush, the Kennedy amendment will, if enacted, effectively eliminate all companies' ability to ever receive court approval for a KERP. Federal bankruptcy judges would have little or no discretion to approve KERPs. In turn, bankrupt companies would have less flexibility in trying to retain or attract necessary employees. This result will cause considerable harm to companies in bankruptcy, their employees, and their creditors.

It is apparent that the Kennedy amendment is designed to prevent abuses of the system, where creditors', employees' and retirees' monies are unnecessarily expended for the enrichment of management. Whether there currently is or is not sufficient judicial scrutiny of KERPs is a valid question, insofar as the overall bankruptcy system allows debtors a fair amount of flexibility in exercising reasonable judgment—but there must be an approach better than handcuffing the judiciary and stakeholders in bankruptcy cases by essentially precluding all use KERPs. The proper use of KERPs requires an analysis of all facts and circumstances of the case, and not what is essentially a blanket proscription of these tools.

Senator Kennedy has advanced an important public policy discussion with his amendment. Managers who have had responsibility for driving a company into bankruptcy should not be paid a bonus to remain. Similarly, if the retention of an employee would not enhance a company's value for its stakeholders, they should not be paid a bonus to stay. Current law provides bankruptcy judges with the discretion necessary to deny a KERP in such circumstances and bankruptcy judges do deny KERP payments in these circumstances. Still, if the Congress wishes to improve the operation of current law while still safeguarding the ability of the courts to approve legitimate KERPs, we would welcome a discussion on how best to achieve that end. Unfortunately, S. 256, as reported by the Committee, goes too far and should be amended so as not to unnecessarily limit the bankruptcy court's ability to determine what is in the best interest of each individual bankruptcy estate.

Mr. Chairman, we thank you for considering our views on this important matter. We would be pleased to address any questions you or other members of the Committee on the Judiciary may have.

Sincerely,

The members of the board and management of the Association of Insolvency and Restructuring Advisors.

Soneet R. Kapila, CIRA, Kapila & Company; President, AIRA.

James M. Lukenda, CIRA, Huron Consulting Group; Chairman, AIRA.

Grant Newton, CIRA, Executive Director, AIRA.

Daniel Armel, CIRA, Baymark Strategies LLC.

Dennis Bean, CIRA, Dennis Bean & Company.

Francis G. Conrad, CIRA, ARG Capital Partners LLP.

Stephen Darr, CIRA, Mesirow Financial Consulting LLC.

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Gina Gutzeit, FTI Palladium Partners.

Alan Holtz, CIRA, Giuliani Capital Advisors LLC.

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David Judd, Neilson Elggren LLP.

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Kenneth Lefoldt, CIRA, Lefoldt & Company.

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Matthew Schwartz, CIRA, Bederson & Company LLP.

Keith Shapiro, Esq., Greenberg Traurig LLP.

Grant Stein, Esq., Alston & Bird LLP.

Peter Stenger, CIRA, Stout Risius Ross Inc.

Michael Straneva, CIRA, Ernst & Young LLP.

Mr. Speaker, I urge again the adoption of S. 256.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from North Carolina (Mr. WATT), the ranking member of the Subcommittee on Commercial and Administrative Law.

Mr. WATT. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, those of us who started this process 6 years or so ago in the good faith belief that there were problems with the bankruptcy system, in the sense that people were gaming the system, and felt that there needed to be genuine reform cannot help but be disappointed today because, in the process, we have lost sight of the objective of reforming to do away with the sinister influences and the advantageous corruption that is going on in the system.

I have never seen a bill that has violated more principles throughout this process. The first one was that the consumers and the lenders got together and decided that, because the lenders were not sure that they could do bankruptcy reform without reaching a compromise and the consumer groups realized that they might not be able to stop bankruptcy reform, they set up this system called the means test, which effectively exempted from the whole bankruptcy reform system those who fall below the means test threshold. The result is that individuals who fall below the means test threshold can continue with impunity to game the system without any kind of responsibility, and those who fall above the threshold get subjected to a set of arbitrary rules that, even if they are not gaming the system, they are taken advantage of. So we have lost sight of that.

The second thing is we have built in a set of perverse incentives for easy credit now. For people who fall below the means test, there is really no disincentive for them to go out and get as much credit as they can. And for people above the means test there is no incentive for lenders to be responsible in their lending practices, because they know now they have this system that is going to protect them from people that they have made irresponsible loans to.

The third problem is that, as we have gone through this process, the more we have bought into this means test philosophy and debated this, we now get to a point at the end of the process where it has corrupted even our democratic process. Because we are here on the floor with 30 minutes of debate on our side to tell the public the problems with this bill.

This is irresponsible legislating at its worst, and I encourage my colleagues to reject this bill and vote no.

Mr. SENSENBRENNER. Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. NADLER), the former ranking member of the Subcommittee on Commercial and Administrative Law. This is an 8-year-old bill, and the gentleman has been foremost in this process for all of those years.

Mr. NADLER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, this bill is the worst giveaway to special interests, the worst rip-off of the public, of the middle class than I have ever seen in my public life. The people who understand how bankruptcy law functions in the real world, the scholars, judges, trustees and lawyers, whether they represent debtors, creditors, businesses or individuals, have all told us this bill will not work, that it will be costly, and that it will produce unfair and irrational results. But we are ignoring them, trusting instead lobbyists, credit card companies, banks, and anyone else who wants a special favor; and, boy, are there special favors galore.

The credit card companies are the big winners, but so are shopping centers, car lenders, crooked debt collectors, investment bankers, credit unions, and assorted sub-prime lenders.

Those credit counseling operations that we have investigated for dishonest activity, they now get a monopoly on granting access to bankruptcy. Credit card companies that want their debts to survive the bankruptcy and compete with child support claims, they get their wish. Landlords who want to boot tenants out of their apartments, it is easier.

Did you buy a trailer home or a car on credit? Now you will have to pay the lender more than the home or car is worth to keep it.

Are you a tax collector? There is an entire title in the bill just to squeeze more money out of debtors.

Are you a pawnbroker? Section 1230 is for you. You get to keep the pawned property, and it cannot be sold to pay other debts like child support or medical expenses. That is right. Congress is more worried about the rights of pawnbrokers than about the rights of children.

So what is going on here? Why are bankers and bureaucrats telling us this bill is great for single parents with children while children and family advocates are telling us that it is not? Why does Congress believe studies paid for by the credit card industry that label millions of Americans crooks, while ignoring our own Congressional Budget Office, the independent and nonpartisan American Bankruptcy Institute, and the Government Accountability Office, all say these studies are bunk?

The supporters say if we help the banks collect more money from bankrupt families, we will not have to pay that $400 bankruptcy tax. Our interest rates will go down because the banks will be able to collect more money. But the Republican leadership would not allow us to consider an amendment that would sunset the bill in several years if no savings are passed on to consumers, and they will not be. Interest rates have come down over the last 10 years on mortgages, on cars, on everything, but not on credit cards.

Does anyone here trust VISA and MasterCard? Because we are writing them a blank check paid for with taxpayer money and trusting them to share the benefits with American consumers. Trust the banks. Trust the lobbyists. Do not trust the people who do these cases for a living. Do not trust the advocates for women and kids. Do not trust the civil rights community. Do not trust the laboring community. Do not trust disabled veterans and military family advocates. Do not trust crime victims organizations.

Trust the banks. Trust the credit card companies. Trust VISA card. Trust MasterCard. They are the beneficiaries. The public will be the victims, and we will rue the day in a few years when the 60 or 70 different ways in which this bill enables the credit card companies to stick their hands in the pockets of low- and middle-income people and extremists going bankrupt because of a medical emergency, and take more money out of that. Then the voters will know who really owns this place.

Mr. Speaker, this bill is the worst giveaway to special interests, the worst rip-off of the public, of the middle class, I have ever seen in my public life.

Mr. Speaker, it is fitting that this House take up this 512-page goodie bag for every special interest in town. Just yesterday, the Republican majority rammed through a bill that would eliminate the estate tax for the very wealthiest Americans. At least the Republican majority is consistent: more for the very wealthy, no responsibility for big banks, and squeeze the middle class.

This bill, which can only be described as the poster-child for campaign finance reform, will soon shoot through this House and to a President who has vowed that he would sign it.

Mr. Speaker, bankruptcy is notoriously complicated, but the members of this House have certainly never let the complexity of a problem get in the way of a good deal. The people who understand how bankruptcy law functions in the real world: the scholars, judges, trustees, and lawyers—whether they represent debtors, creditors, businesses or individuals—have all told us this bill won't work, that it will be costly, that it will produce unfair and irrational results. But we are ignoring them, trusting instead lobbyists, credit card companies, banks, and anyone else who wants some special favor.

And boy, are there favors galore. The credit card companies are the big winners, but so are shopping centers, car lenders, crooked debt collectors, investment bankers, credit unions, and assorted sub-prime lenders.

Those credit counseling operations that we've investigated for dishonest activity? They now get a monopoly on granting access to bankruptcy. Credit card companies that want their debts to survive the bankruptcy and compete with child support claims? They get their wish?

Landlords who want to boot tenants out of their apartments? This bill makes it easier.

Did you buy a trailer home or a car on credit? Now you will have to pay the lender more than the home or car is worth to keep it.

Are you a tax collector? There is an entire title in this bill just for you to squeeze more money out of debtors.

Are you a pawn broker? Section 1230 is for you! You get to keep the pawned property and it can't be sold to pay other debts, like child support, or medical expenses. That's right, Congress is more worried about the rights of pawn brokers than about the rights of children.

So what's going on here? Why are bankers and bureaucrats telling us that this bill is great for single parents with children while children and family advocates are telling us that it is not? More to the point—why are so many members of Congress so willing to believe bankers over the people who we work with day in and day out to protect the rights of children?

Why does Congress believe studies paid for by the credit card industry that label millions of Americans crooks, while ignoring our own Congressional Budget Office, the independent and non-partisan American Bankruptcy Institute, and the Government Accountability Office, all of whom tell us these studies are bunk?

Why are we willing to spend so much public money to collect private debts for banks? According to the Congressional Budget Office, this bill will cost the government $392 million over the first 5 years, increasing the deficit by $280 million. It will impose new costs on the private sector of more than $123 million per year, in violation of the Unfunded Mandate Reform Act. That number does not include increased costs to debtors.

What are we spending this money on?

Means testing alone will cost the government $150 million over the first 5 years.

The government will be a private collection agency for credit card companies. Government funded audits will cost $66 million. The government will collect and store debtors' tax returns for another $10 million.

Just to administer this whole mess, we will spend another $26 million on extra judges—and no one here thinks that will be enough.

So why should taxpayers spend all these millions to collect private debts for MasterCard and Visa? I asked George Wallace, the representative of the creditor coalition, that question. I asked whether he was aware that current law gives creditors the right to challenge the discharge of debts, examine debtors under oath, demand any documents from the debtors, seek dismissal of a case, and many other legal remedies.

He said "I have done these things and they do take a fair amount of time and I bill my clients for them. They are expensive." So I asked him why the government should pay to collect these debts if the banks think it's too expensive to collect their debts themselves.

His response explains this whole bill. "Because it's a governmental program, sir. Because it is not the job of the creditor."

A governmental program? We need to spend millions of taxpayer dollars to help the nation's biggest banks collect money from bankrupt families? Is this the new welfare?

I want to thank Mr. Wallace for his honesty. He may be the only honest lobbyist left in Washington.

Some will say that if we help the banks collect more money from bankrupt families, then we won't have to pay that $400 "bankruptcy tax." Our interest rates will go down because the banks will be able to collect more money.

The distinguished chairman of the Judiciary Committee has made this the cornerstone of the legislation. He recently told the Financial Times of London, "The responsible thing for the credit card issuers to do would be to reduce interest rates because there is less risk. If they don't they will play into the hands of the opponents of the bill—it would reduce their credibility."

I agree, but the Republican leadership wouldn't allow us to consider an amendment that would sunset the bill in 2 years if no savings are passed on to consumers. So I guess we're being asked to trust the biggest banks in America not to pocket the extra money. And they won't be. Interest rates have come down. Mortgage rates, car loans, but not credit card rates.

Ask yourself: Where's my $400? Does any one here trust Visa and MasterCard? Because you are writing them a blank check, paid for with taxpayer money, and trusting them to share the benefits with American consumers.

Anyone who really trust them to do this, raise your hand. Anyone?

Go ahead and vote for this. Why not? It's a done deal. Trust the banks. Trust the lobbyists. Don't trust the people who do these cases for a living. Don't trust the advocates for women and kids. Don't trust the civil rights community. Don't trust labor. Don't trust disabled veterans' and military family advocates. Don't trust crime victims organizations. Trust the banks. Trust Visa. Trust MasterCard.

At least the voters will know who really runs this place.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. PUTNAM). The Chair reminds Members that they should heed the gavel.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. GOODLATTE).

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

Mr. GOODLATTE. Mr. Speaker, bankruptcy filings are at an all-time high. When bankruptcy filings increase, every American must pay more for credit, goods, and services through higher rates and charges. It is time that we relieve consumers from the burden of paying for the debts of others.

Since the 105th Congress, the House has passed bankruptcy reform legislation eighty times. S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act, is the culmination of years of work and bicameral as well as bipartisan negotiations.

A key aspect of S. 256 is retention of the income-based means test. The means test applies clear and well-defined standards to determine whether a debtor has the financial capability to pay his or her debts. The application of such objective standards will help ensure that the fresh start provisions of Chapter VII will be granted to those who need them, while debtors that can afford to repay some of their debts are steered toward filing chapter 13 bankruptcies.

S. 256 is good for America's family farmers. As Chairman of the House Committee on Agriculture, I am pleased that we are finally making the chapter 12 provisions of the Bankruptcy Code permanent. Bankruptcy relief for family farmers will be made easier for those to obtain a discharge of their indebtedness. In addition, the bill allows more family farmers to qualify for chapter 12 relief by doubling the debt limit and lowering the percentage of income that must be derived from farming operations.

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In addition, S. 256 prevents fraud. Under the current system, irresponsible people filing for bankruptcy could run up their credit card debt immediately prior to filing knowing that their debts will soon be wind away. What these people may not realize or care about is that these debts do not just disappear. They are passed along in higher charges and rates to hard working people.

Mr. Speaker, I rise in strong support of the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005."

Bankruptcy filings are at an all time high. When Bankruptcy filings increase every American must pay more for credit, goods, and services through higher rates and charges. It is time that we relieve consumers from the burden of paying for the debts of others.

Since the 105th Congress, the House has passed bankruptcy reform legislation eight times. S. 256, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" is the culmination of years of work and bicamerla, as well as bi-partisan negotiations.

A key aspect of S. 256 is the retention of the income-based means test. The means test applies clear and well-defined standards to determine whether a debtor has the financial capability to pay his or her debts. The application of such objective standards will help ensure that the fresh start provisions of Chapter 7 will be granted to those who need them, while debtors that can afford to repay some of their debts are steered toward filing Chapter 13 bankruptcies.

S. 256 is good for America's family farmers, who are the backbone of our agriculture industry. The bill permanently extends Chapter 12 bankruptcy relief for family farmers and makes it easier for family farmers to obtain discharges of their indebtedness. In addition, the bill allows more family farmers to qualify for Chapter 12 relief by doubling the debt limit and lowering the percentage of income that must be derived from farming operations.

In addition, S. 256 prevents fraud. Under the current system, irresponsible people filing for bankruptcy could run up their credit card debt immediately prior to filing, knowing that their debts will soon be wiped away. What these people may not realize or care about is that these debts do not just disappear—they are passed along in higher chargers and rates to hard-working folks who pay their bills on time. S. 256 ends this fraudulent practice by requiring bankruptcy filers to pay back nondischargable debts made in the period immediately preceding their filing.

S. 256 also helps consumers. For example, this legislation helps children by strengthening the protections in the law that prioritize child support and alimony payments. In addition, it protects consumers from "bankruptcy mills" that encourage people to file for bankruptcy without fully informing them of their rights and the potential harms that bankruptcy can cause.

S. 256 also ensures the fair treatment of those that administer our bankruptcy laws. Specifically, this legislation restores fairness and equity to the relationship between the U.S. trustee and private standing bankruptcy

trustees by providing that in certain circumstances, after an administrative hearing on the record, private trustees may seek judicial review of U.S. trustee actions related to trustee removal. This compromise, worked out between the U.S. trustee's office and representatives of the private bankruptcy trustees, will ensure fairness for 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.

Bankruptcy should remain available to people who truly need it, but those who can afford to repay their debts should repay their debts. S. 256 provides bankruptcy relief for those who truly cannot pay their debts, but also clearly demonstrates to those who would abuse our system that the free ride is over. I believe that S. 256 strikes the appropriate balance between these two important goals. I want to commend Chairmen SENSENBRENNER and CANNON for their tremendous work on this legislation, and I urge each of my colleagues to support this fair and reasonable overhaul of the U.S. bankruptcy system.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentlewoman from Houston, Texas (Ms. JACKSON-LEE), a member of the committee.

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

Ms. JACKSON-LEE of Texas. Mr. Speaker, I think it is important as we debate this question that the opponents of this bill not be defined or classified as opposing responsibility and opposing the responsibility of being a good citizen and adhering to the debt that you accrue. I think that is a wrong-headed definition of the opponents.

We have been described as nonpatriot in other debates; in war and peace, scoundrels and socialists. But I think it is important for the American people to understand that we are engaging in a democratic process to be able to allow a voice of opposition to be heard for a tainted, stale and stagnant piece of legislation that has been bought and paid for by special interests.

Our desire is to possibly encourage our colleagues in the House to take a serious and deliberative review of S. 256.

Now, we have heard already that we were refused and denied amendments and one would ask the question why. If we are a deliberative body, why not make a bill that is as dated almost as the Gulf War, not the Iraq war, to make it better.

Now, I hear my colleagues talking about $400 that will go to each household. What a misnomer. Someone said that there was a tax refund a couple of years ago, $350, $400. I can tell you that the constituents in the 18th Congressional District never saw that money. I would like to suggest to you that really what is happening is what Professor Elizabeth Warren has said, that this is an overreaching problem, the overreaching problem with this bill this time is that the American economy has passed it by.

We are in the depth almost of a deficit that is about to stagnate and stifle us. This bill will close the door to working and middle class persons. Since this bill was written, Mr. Speaker, Enron, WorldCom, Adelphia, United Airlines, LTV Steel, M-Mart, Polaroid, Global Crossing have filed bankruptcy and they did not have to use a means test.

So let me suggest to you as I look at the medical conditions, I would ask my colleagues on the other side of the aisle does their stale old bill, this stack of old papers respond to the medical causes of bankruptcy that shows that because there is death in the family, illness or injury, people who go try to repay their bills and they fall into bankruptcy and this old stale 1998 bill does not respond to that.

My next question, Mr. Speaker, is whether or not this old stale bill deals with the military, the military who is in Iraq right now, does this old stale bill deal with it? Does the old stale bill deal with the loan sharks. That is a travesty and should be defeated.

TESTIMONY OF ELIZABETH WARREN BEFORE THE SENATE COMMITTEE ON THE JUDICIARY

My name is Elizabeth Warren. I teach bankruptcy law. As some of you know, I have followed this issue with interest for some time.

The overarching problem with this bill is that time and the American economy have passed it by. It was drafted—never mind by whom—eight years ago. Even if it had been a flawless piece of legislation then, and it surely was not, the events of the past eight years have dramatically changed the economic and social environment in which you must consider this bill.

In the eight years since this bill was introduced, new cases have burst on the scene. The names are burned in our collective memories: Enron, Worldcom, Adelphia, United Airlines, USAirways and TWA, LTV Steel, K-Mart, Polaroid, Global Crossing.

While the actual number of consumer bankruptcy cases has declined slightly in the past year, many of the largest corporate bankruptcy cases in American history have occurred since the Senate last reevaluated the bankruptcy laws, and some of those cases are already legend for the corporate scandals that accompanied them. Because it was written eight years ago, this bill has nothing to deal with these abuses, with these dangers, with the needs that these cases have made so painfully clear.

Problems not even on the horizon when this bill was written are now front and center.

Companies in Chapter 11 that cancel pension plans and health benefits, leaving thousands of families economically devastated.

Companies that continue to pay executives and insiders tens of millions of dollars, while they demand concessions from their creditors.

Military families targeted for payday loans at 400% interest, insurance scams, and other forms of financial chicanery.

Scandals have rocked the so-called nonprofit credit counseling industry, exposing how tens of thousands of consumers struggling desperately to pay their bills and not file for bankruptcy were cheated.

Sub-prime mortgage companies, financed by some of the best names in American banking, have unlawfully taken millions of dollars from homeowners, then fled to the bankruptcy courts to protect their insiders and bank lenders.

In the eight years since this bill was introduced, there has been a revolution in the data available to us. Unlike eight years ago, we need not have a theoretical debate about who turns to the bankruptcy system. We now know:

One million men and women each year are turning to bankruptcy in the aftermath of a serious medical problem—and three-quarters of them have health Insurance.

A family with children is nearly three times more likely to file for bankruptcy than an individual or couple with no children.

More children now live through their parents' bankruptcy than through their parents' divorce.

Unlike eight years ago, we need not have a theoretical debate about the homestead exemption because we have had example after example of abuse tied directly to the failure of American companies. Millions of jobs have been lost but not the Florida and Texas fortunes of their corporate executives. Others are welcome to use the unlimited homestead exemption as well.

After he lost a $33 million lawsuit in California, O.J. Simpson moved to Florida, explaining to a reporter that the unlimited exemption would permit him to protect a multimillion-dollar house.

Abe Grossman ran up $233 million in debts in Massachusetts and Rhode Island, then fled to Florida to purchase a 64,000 square foot home valued at $55 million.

Some physicians are reportedly dropping their malpractice insurance and putting all their assets in their homes—where they can't be touched by bankruptcy.

Under S. 256, they would still be welcome to file for bankruptcy and to keep their fortunes and properties intact while leaving their creditors with nothing.

Unlike eight years ago, we need not have a theoretical debate about the effects of the proposed legislation on small business.

It takes time to negotiate a reorganization, even for a small company. The timelines in S. 256 would have denied reorganization to more than a third of the small businesses that eventually saved themselves—destroying value for the companies, their creditors, their employees and their communities.

This bill would be the first in American history to discriminate affirmatively against small businesses. For the first time ever, Congress would pass a law that says companies like Enron and Worldcom don't have to file extra forms, Enron and Worldcom don't have to schedule meetings with the Office of the United States Trustee, and Enron and Worldcom don't have to meet fixed deadlines that a judge cannot waive for any reason—but every troubled small business in the Chapter 11 system would have to file those papers, undergo that supervision and meet those deadlines or be liquidated. No exceptions allowed for small companies.

Unlike eight years ago, we need not have a theoretical debate about the economic impact of bankruptcies on credit card company profits.

In the eight years since this bill was introduced, credit has not been curtailed. Minors—under 18 years of age—with no incomes and no credit history are now described as an ''emerging market'' for the credit industry. Credit card solicitations have doubled to 5 billion a year. Bankruptcy filings have increased 17 percent, while credit card profits have increased 163 percent, from $11.5 billion to $30.2 billion.

Some courts have demanded that credit card companies disclose how much of their claims are the amounts actually borrowed and how much are fees, penalties and interest. Companies have admitted that for every

dollar they claim the customer borrowed, they are demanding two more dollars in fees and interest.

With increased fees and universal default clauses that drive up interest rates even for customers paying on time, a growing number of people have no option but to declare bankruptcy. Cases continue to surface like In re McCarthy, in which a woman borrowed $2200, paid back $2010 in the two years before bankruptcy, and was told by her credit card company that she still owed $2600 more. Ms. McCarthy had two choices: She could either declare bankruptcy or she could pay $2000 every year for life—and die owing as much as she owes today.

The means test in this bill, Section 102, has been one of its most controversial provisions. Proponents like to say that the means test will put pressure only on the families that can afford to repay. And yet, the bill has 217 sections that run for 239 pages. The means test aside, virtually every consumer provision aims in the same direction. The bill increases the cost of bankruptcy protection for every family, regardless of income or the cause of financial crisis, and it decreases the protection of bankruptcy for every family, regardless of income or the cause of financial crisis.

There are provisions that will make Chapter 13 impossible for many of the debtors who would file today, provisions that make it easier than ever to abuse the unlimited homestead provisions in some states and yet at the same time hurt people with more modest homesteads in those same states. Other provisions will compromise the privacy of millions of families by putting their entire tax returns in the court files and potentially on the Internet, making them easy prey for identity thieves. Women trying to collect alimony or child support will more often be forced to compete with credit card companies that can have more of their debts declared non-dischargeable. All these provisions apply whether a person earns $20,000 a year or $200,000 a year.

But the means test as written has another, more basic problem: It treats all families alike. It assumes that everyone is in bankruptcy for the same reason—too much unnecessary spending. A family driven to bankruptcy by the increased costs of caring for an elderly parent with Alzheimer's disease is treated the same as someone who maxed out his credit cards at a casino. A person who had a heart attack is treated the same as someone who had a spending spree at the shopping mall. A mother who works two jobs and who cannot manage the prescription drugs needed for a child with diabetes is treated the same as someone who charged a bunch of credit cards with only a vague intent to repay. A person cheated by a subprime mortgage lender and lied to by a credit counseling agency is treated the same as a person who gamed the system in every possible way.

If Congress is determined to sort the good debtors from the bad, then it is both morally and economically imperative that they distinguish those who have worked hard and played by the rules from those who have shirked their responsibilities. If Congress is determined to sort the good from the bad, then begin by sorting those who have been laid low by medical debts, those who lost their jobs, those whose breadwinners have been called to active duty and sent to Iraq, those who are caring for elderly parents and sick children from those few who overspend on frivolous purchases.

This Congress wants to set a new moral tone. Do it with the bankruptcy bill. Don't press "one-size-fits-all-and-they-are-all-bad" judgments on the very good and the very bad. Spend the time to make the hard decisions. Leave discretion with the bankruptcy judges to evaluate these families. Based on the Harvard medical study and other research, I think you will find that most debtors are filing for bankruptcy not because they had too many Rolex watches and Gameboys, but because they had no choice.

You have a choice. It's a choice that you're making for the American people. Adopt new bankruptcy legislation. Establish a means test that targets abuse. But do not enact a proposal written to address myth and mirage more than reality. Do not enact a proposal written for 1997 when the problems of the American corporate economy in 1997 deserve far more attention and the problems of the American middle class can no longer be ignored.

Overwhelmingly, American families file for bankruptcy because they have been driven there—largely by medical and economic catastrophe—not because they want to go there. Your legislation should respect that harsh reality and the families who face it.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. PUTNAM). The gentlewoman is out of order in defying the gavel.

The gentlewoman's time has expired.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, it is about great pleasure that I rise today to express my strong support for the Bankruptcy Abuse Prevention and Consumer Protection Act.

A Chinese proverb says, Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime. And that is exactly what this bill before us does today.

There are many reasons to support this bankruptcy reform bill, but I want to focus on one that is important to many of my colleagues, to me, and to the American people.

We should support the bill because it contains important financial literacy provisions. Financial literacy goes hand in hand with helping our citizens of all ages and walks of life to negotiate the complex world of personal finance. Financial literacy can help Americans avoid or survive bankruptcy.

We pass many laws that require the disclosure of the terms and conditions of the rich mix of financial products and services that are available to consumers. Unfortunately for too many Americans, knowing the terms and conditions of financial products and services is challenging enough. However, understanding those terms and conditions is often an even greater challenge.

Recognizing this fact, Congress included provisions in the Fair and Accurate Credit Transactions Act to address the issue of financial literacy. The Bankruptcy Abuse Prevention and Consumer Protection Act also contains important provisions addressing economic education and financial literacy. These provisions are designed to ensure that those who enter the bankruptcy system will learn the skills to more effectively manage their money in an increasingly complicated marketplace.

Last week we passed House Resolution 148, a bill that supports the goals and ideals of Financial Literacy Month, which is this month, April 2005. H. Res. 148 was co-sponsored by 82 Members of this body, and 409 Members of this body voted for it.

Mr. Speaker, the number of bankruptcies remain at a historic high, over 1.6 million bankruptcy cases were filed in Federal courts in 2004. With this in mind, I urge my colleagues to support this bill.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. ZOE LOFGREN), a distinguished member of the committee.

Ms. ZOE LOFGREN of California. Mr. Speaker, this bill hurts Americans. One group who will be especially hurt are family forced into bankruptcy because of a medical crisis.

A recent study conducted by professors at Harvard Medical and Law School showed that about half of all personal bankruptcies can be attributed to medical costs.

Among those who cited illnesses as a cause of bankruptcy, the average unreimbursed medical costs totaled nearly $12,000 even though more than three-quarters had health insurance.

How does the bill hurt the families? Under the bill for the first time there will be a presumption that many of these families abuse the bankruptcy system. Under current law, people facing a medical bankruptcy can seek several forms of relief. Chapter 7 is by far the most common. Under 7 debtors are required to forfeit all of their property other than the exempt assets in exchange for having their debts extinguished.

Current law already gives bankruptcy courts discretion to deny chapter 7 relieve where the filing is found to be a substantial abuse. But unlike this bill, current law provides a presumption in favor of granting relief to the debtor.

The other option is chapter 13 where a debtor is required to continue paying creditors. This makes it more difficult for debtors to get back on their feet.

This bill will hurt families facing medical bankruptcy because it will force many of them into chapter 13. That is because it presumes that these families are abusing the bankruptcy system if they fail the means test. The means tests starts with a family's income and then subtracts monthly expenses permitted by IRS guidelines. But instead of using a debtor's actual projected income, the means tests uses the debtor's average income over the prior 6 months. Thus, if a family's bankruptcy was triggered by a loss of income resulting from a serious illness, the means test would still attribute the lost income for the purpose of determining whether the family is abusing the bankruptcy system.

Further, the means test uses the median income for a State. My constituents in Santa Clara County live in a

high-cost area. Almost nobody will be able to discharge their debts in bankruptcy from Santa Clara County because of that high cost, no matter how meritorious for their claim for relief.

Similarly, instead of using the debtor's actual expenses, the inflexible guidelines developed by the IRS is used. As a result, more families facing medical bankruptcy will be presumed to be abusing the system, will be forced into chapter 13 and will never be able to stand on their feet again. That is not right.

The Harvard study found that these struggling families did everything they could to pay their medical bills to avoid bankruptcy. One in five skipped meals. One-third had their electricity cut off. Almost half lost their phone service. One in five was forced to move.

Incredibly, they also cut back on needed medications to try to avoid bankruptcy. In fact, half went without needed prescriptions. And a full 60 percent went without a needed doctor appointment.

Please join me in opposing this unfair bill.

[From Market Watch]

ILLNESS AND INJURY AS CONTRIBUTORS TO BANKRUPTCY

(By David U. Himmelstein, Elizabeth Warren, Deborah Thorne, and Steffie Woolhandler)

ABSTRACT: In 2001, 1.458 million American families filed for bankruptcy. To investigate medical contributors to bankruptcy, we surveyed 1,771 personal bankruptcy filers in five federal courts and subsequently completed in-depth interviews with 931 of them. About half cited medical causes, which indicates that 1.9–2.2 million Americans (filers plus dependents) experienced medical bankruptcy. Among those whose illnesses led to bankruptcy, out-of-pocket costs averaged $11,854 since the start of illness; 75.7 percent had insurance at the onset of illness. Medical debtors were 42 percent more likely than other debtors to experience lapses in coverage. Even middle-class insured families often fall prey to financial catastrophe when sick.

''If the debtor be insolvent to serve creditors, let his body be cut in pieces on the third market day. It may be cut into more or fewer pieces with impunity. Or, if his creditors consent to it, let him be sold to foreigners beyond the Tiber.''

—Twelve Tables, Table III, 6 (ca. 450 B.C.)

Our bankruptcy system works differently from that of ancient Rome; creditors carve up the debtor's assets, not the debtor. Even so, bankruptcy leaves painful problems in its wake. It remains on credit reports for a decade, making everything from car insurance to house payments more expensive. Debtors' names are often published in the newspaper, and the fact of their bankruptcy may show up whenever someone tries to find them via the Internet. Potential employers who run routine credit checks (a common screening practice) will discover the bankruptcy, which can lead to embarrassment or, worse, the lost chance for a much-needed job.

Personal bankruptcy is common. Nearly 1.5 million couples or individuals filed bankruptcy petitions in 2001, a 360 percent increase since 1980. Fragmentary data from the legal literature suggest that illness and medical bills contribute to bankruptcy. Most previous studies of medical bankruptcy, however, have relied on court records—where medical debts may be subsumed under credit card or mortgage debt—or on responses to a single survey question. None has collected detailed information on medical expenses, diagnoses, access to care, work loss, or insurance coverage. Research has been impeded both by the absence of a national repository for bankruptcy filings and by debtors' reticence to discuss their bankruptcy, in population-based surveys, only half of those who have undergone bankruptcy admit to it.

The health policy literature is virtually silent on bankruptcy, although a few studies have looked at impoverishment attributable to illness. In his 1972 book, Sen. Edward Kennedy (D–MA) gave an impressionistic account of ''sickness and bankruptcy.'' The likelihood of incurring high out-of-pocket costs was incorporated into older estimates of the number of underinsured Americans: twenty-nine million in 1987. About 16 percent of families now spend more than one-twentieth of their income on health care. Among terminally ill patients (most of them insured), 39 percent reported that health care costs caused moderate or severe financial problems. Medical debt is common among the poor, even those with insurance, and interferes with access to care. At least 8 percent, and perhaps as many as 21 percent of American families are contacted by collection agencies about medical bills annually.

Our study provides the first extensive data on the medical concomitants of bankruptcy, based on a survey of debtors in bankruptcy courts. We address the following questions: (1) Who files for bankruptcy? (2) How frequently do illness and medical bills contribute to bankruptcy? (3) When medical bills contribute, how large are they and for what services? (4) Does inadequate health insurance play a role in bankruptcy? (5) Does bankruptcy compromise access to care?

A BRIEF PRIMER ON BANKRUPTCY

''Bankrupt'' is not synonymous with ''broke.'' ''Bankrupt'' means filing a petition in a federal court asking for protection from creditors via the bankruptcy laws. A single petition may cover an individual or married couple. The instant a debtor files for bankruptcy, the court assumes legal control of the debtor's assets and halts all collection efforts.

Shortly after the filing, a court-appointed trustee convenes a meeting to inventory the debtor's assets and debts and to determine which assets are exempt from seizure. States may regulate these exemptions, which often include work tools, clothes, Bibles, and some equity in a home.

About 70 percent of all consumer debtors file under Chapter 7 of the Bankruptcy Code; most others file under Chapter 13. In Chapter 7 the trustee liquidates all nonexempt assets—although 96 percent of debtors have so little unencumbered property that there is nothing left to liquidate. At the conclusion of the bankruptcy, the debtor is freed from many debts. In Chapter 13 the debtor proposes a repayment plan, which extends for up to five years. Chapter 13 debtors may retain their property so long as they stay current with their repayments.

Under both chapters, taxes, student loans, alimony, and child support remain payable in full, and debtors must make payments on all secured loans (such as home mortgages and car loans) or forfeit the collateral.

STUDY DATA AND METHODS

This study is based on a cohort of 1,771 bankruptcy filings in 2001. For each filing, a debtor completed a written questionnaire at the mandatory meeting with the trustee, and we abstracted financial data from public court records. In addition, we conducted follow-up telephone interviews with about half (931) of these debtors.

Sampling strategy. We used cluster sampling to assemble a cohort to households filing for personal bankruptcy in five (of the seventy-seven total) federal judicial districts. We collected 250 questionnaires in each district, representative of the proportion of Chapters 7 and 13 filings in that district. These 1,250 cases constitute our ''core sample.'' For planned studies on housing, we collected identical data from an additional 521 homeowners filing for bankruptcy. We based our analyses on all 1,771 bankruptcies with responses weighted to maintain the representativeness of the sample.

Data collection. With the cooperation of the judges in each district, we contacted the trustees who officiate at meetings with debtors. The trustees agreed to distribute, or to allow a research assistant to distribute, a self-administered questionnaire to debtors appearing at the bankruptcy meeting. Questionnaires (which were available in English and Spanish) included a cover letter explaining the research project and human subjects protections and encouraging debtors to consult their attorneys (who were almost always present) before participating.

The questionnaire asked about demographics, employment, housing, and specific reasons for filing for bankruptcy, it also asked whether the debtor had medical debts exceeding $1,000, had lost two or more weeks of work-related income because of illness, or had health insurance coverage for themselves and all dependents at the time of filing, and whether there had been a gap of one month or more in that coverage during the past two years. In joint filings, we collected demographic information for each spouse.

During the spring and summer of 2001 we collected questionnaires from consecutive debtors in each district until the target number was reached.

Follow-up telephone interviews. The written questionnaire distributed at the time of bankruptcy filing invited debtors to participate in future telephone interviews, for which they would receive $50; 70 percent agreed to such interviews. We ultimately completed follow-up telephone interviews with 931 of the 1,771 debtor families, a response rate of 53 percent. The telephone interviews, conducted between June 2001 and February 2002 using a structured, computer-assisted protocol, explored financial, housing, and medical issues. Many debtors also provided a narrative description of their bankruptcy experience.

Detailed medical questions. Each of the 931 interviewees was asked if any of the following had been a significant cause of their bankruptcy: an illness or injury; the death of a family member; or the addition of a family member through birth, adoption, custody, or fostering. Those who answered yes to this screening question were queried about diagnoses, health insurance during the illness, and medical care use and spending. Interviewers collected information about each household member with medical problems. In total, we collected in-depth medical information on 391 people with health problems in 332 debtor households.

Data analysis. We used data from the self-administered questionnaires (and court records) obtained from all 1,771 filters to analyze demographics, health coverage at the time of filing, and gaps in coverage in the two years before filing.

We also used the questionnaire to estimate how frequently illness and medical bills contributed to bankruptcy. We developed two summary measures of medical bankruptcy. Under the rubric ''Major Medical Bankruptcy'' we included debtors who either (1) cited illness or injury as a specific reason for bankruptcy, or (2) reported uncovered medical bills exceeding $1,000 in the past years,

or (3) lost at least two weeks of work-related income because of illness/injury, or (4) mortgaged a home to pay medical bills. Our more inclusive category, ''Any Medical Bankruptcy,'' included debtors who cited any of the above, or addiction, or uncontrolled gambling, or birth, or the death of a family member.

Data from the 931 follow-up telephone interviews were used to analyze hardships experienced by debtors in the period surrounding their bankruptcy, including problems gaining access to medical care. The in-depth medical interviews regarding 391 people with medical problems are the basis for our analyses of which household members were ill, diagnoses, health insurance at onset of illness, and out-of-pocket spending. Two physicians (Himmelstein and Woolhandler) coded the diagnoses given by debtors into categories for analysis.

SAS and SUDAAN were used for statistical analyses, adjusting for complex sample design. To extrapolate our findings nationally, we assumed that our sample was representative of the 1,457,572 households filing for bankruptcy during 2001. Human subject committees at Harvard Law School and the Cambridge Hospital approved the project.

STUDY FINDINGS

Who files for bankruptcy? Exhibit 1 displays the demographic characteristics of our weighted sample of 1,771 bankruptcy filers. The average debtor was a forty-one-year-old woman with children and at least some college education. Most debtors owned homes; their occupational prestige scores place them predominantly in the middle or working classes.

On average, each bankruptcy involved 1.32 debtors (reflecting some joint filings by married couples) and 1.33 dependents. Extrapolating from our data, the 1.5 million personal bankruptcy filings nationally in 2001 involved 3.9 million people: 1.9 million debtors, 1.3 million children under age eighteen, and 0.7 million other dependents.

Medical causes of bankruptcy. Exhibit 2 shows the proportion of debtors (N = 1,771) citing various medical contributors to their bankruptcy and the estimated number of debtors and dependents nationally affected by each cause. More than one-quarter cited illness or injury as a specific reason for bankruptcy; a similar number reported uncovered medical bills exceeding $1,000. Some debtors cited more than one medical contributor. Nearly half (46.2 percent) (95 percent confidence interval = 43.5, 48.9) of debtors met at least one of our criteria for ''major medical bankruptcy.'' Slightly more than half (54.5 percent) (95 percent CI = 51.8, 57.2) met criteria for ''any medical bankruptcy.''

A lapse in health insurance coverage during the two years before filing was a strong predictor of a medical cause of bankruptcy (Exhibit 3). Nearly four-tenths (38.4 percent) of debtors who had a ''major medical bankruptcy'' had experienced a lapse, compared with 27.1 percent of debtors with no medical cause ($p < .0001$). Surprisingly, medical debtors were no less likely than other debtors to have coverage at the time of filing. (More detailed coverage and cost data for the subsample we interviewed appears below.)

Medical debtors resembled other debtors in most other respects (Exhibit 1). However, the ''major medical bankruptcy'' group was 16 percent ($p < 03$) less likely than other debtors to cite trouble managing money as a cause of their bankruptcy (data not shown).

Privations in the period surrounding bankruptcy. In our follow-up telephone interviews with 931 debtors, they reported substantial problems. During the two years before filing, 40.3 percent had lost telephone service; 19.4 percent had gone without food; 53.6 percent had gone without needed doctor or dentist visits because of the cost, and 43.0 percent had failed to fill a prescription, also because of the cost. Medical debtors experienced more problems in access to care than other debtors did; three-fifths went without a needed doctor or dentist visit, and nearly half failed to fill a prescription.

Medical debt was also associated with mortgage problems. Among the total sample of 1,771 debtors, those with more than $1,000 in medical bills were more likely than others to have taken out a mortgage to pay medical bills (5.0 percent versus 0.8 percent). Fifteen percent of all homeowners who had taken out a second or third mortgage cited medical expenses as a reason. Follow-up phone interviews revealed that among homeowners with high-risk mortgages (interest rates greater than 12 percent, or points plus fees of at least 8 percent), 13.8 percent cited a medical reason for taking out the loan.

Following their bankruptcy filings, about one-third of debtors continued to have problems paying their bills. Medical debtors reported particular problems making mortgage/rent payments and paying for utilities. Although our interviews occurred soon after the bankruptcy filings (seven months, on average), many debtors had already been turned down for jobs (3.1 percent), mortgages (5.8 percent), apartment rentals (4.9 percent), or car loans (9.3 percent) because of the bankruptcy on their credit reports.

Medical diagnoses, spending, and type of coverage. Our interviews yielded detailed data on diagnoses, health insurance coverage, and medical bills for 391 debtors or family members whose medical problems contributed to bankruptcy. In three-quarters of cases, the person experiencing the illness/injury was the debt or spouse of the debtor; in 13.3 percent, a child; and in 8.2 percent, an elderly relative.

Illness begot financial problems both directly (because of medical costs) and through lost income. Three-fifths (59.9 percent) of families bankrupted by medical problems indicated that medical bills (from medical care providers) contributed to bankruptcy; 47.6 percent cited drug costs; 35.3 percent had curtailed employment because of illness, often (52.8 percent) to care for someone else. Many families had problems with both medical bills and income loss.

Families bankrupted by medical problems cited varied, and sometimes multiple, diagnoses. Cardiovascular disorders were reported by 26.6 percent; trauma/orthopedic/back problems by nearly one-third; and cancer, diabetes, pulmonary, or mental disorders and childbirth-related and congenital disorders by about 10 percent each. Half (51.7 percent) of the medical problems involved ongoing chronic illnesses.

Our in-depth interviews with medical debtors confirmed that gaps in coverage were a common problem. Three-fourths (75.7 percent) of these debtors were insured at the onset of the bankrupting illness. Three-fifths (60.1 percent) initially had private coverage, but one-third of them lost coverage during the course of their illness. Of debtors, 5.7 percent had Medicare, 8.4 percent Medicaid, and 1.6 percent veterans/military coverage. Those covered under government programs were less likely than others to have experienced coverage interruptions.

Few medical debtors had elected to go without coverage. Only 2.9 percent of those who were uninsured or suffered a gap in coverage said that they had not thought they needed insurance; 55.9 percent said that premiums were unaffordable, 7.1 percent were unable to obtain coverage because of preexisting medical conditions, and most others cited employment issues, such as job loss or ineligibility for employer-sponsored coverage.

Debtors' out-of-pocket medical costs were often below levels that are commonly labeled catastrophic. In the year prior to bankruptcy, out-of-pocket costs (excluding insurance premiums) averaged $3,686 (95 percent CI = $2,693, $4,679) (Exhibit 5). Presumably, such costs were often ruinous because of concomitant income loss or because the need for costly care persisted over several years. Out-of-pocket costs since the onset of illness/injury averaged $11,854 (95 percent CI = $8,532, $15,175). Those with continuous insurance coverage paid $734 annually in premiums on average over and above the expenditures detailed above. Debtors with private insurance at the onset of their illnesses had even higher out-of-pocket costs than those with no insurance. This paradox is explained by the very high costs—$18,005—incurred by patients who initially had private insurance but lost it. Among families with medical expenses, hospital bills were the biggest medical expense for 42.5 percent prescription medications for 21.0 percent, and doctors' bills for 20.0 percent. Virtually all of those with Medicare coverage, and most patients with psychiatric disorders, said that prescription drugs were their biggest expense.

The human face of bankruptcy. Debtors' narratives painted a picture of families arriving at the bankruptcy courthouse emotionally and financially exhausted, hoping to stop the collection calls, save their homes, and stabilize their economic circumstances. Many of the debtors detailed ongoing problems with access to care. Some expressed fear that their medical care providers would refuse to continue their care, and a few recounted actual experiences of this kind. Several had used credit cards to charge medical bills they had no hope of paying.

The co-occurrence of medical and job problems was a common theme. For instance, one debtor underwent lung surgery and suffered a heart attack. Both hospitalizations were covered by his employer-based insurance, but he was unable to return to his physically demanding job. He found new employment but was denied coverage because of his preexisting conditions, which required costly ongoing care. Similarly, a teacher who suffered a heart attack was unable to return to work for many months, and hence her coverage lapsed. A hospital wrote off her $20,000 debt, but she was nevertheless bankrupted by doctor's bills and the cost of medications.

A second common theme was sounded by parents of premature infants or chronically ill children; many took time off from work or incurred large bills for home care while they were at their jobs.

Finally, many of the insured debtors blamed high copayments and deductibles for their financial ruin. For example, a man insured through his employer (a large national firm) suffered a broken leg and torn knee ligaments, He incurred $13,000 in out-of-pocket costs for copayments, deductibles, and uncovered services—much of it for physical therapy.

DISCUSSION

Bankruptcy is common in the United States, involving nearly four million debtors and dependents in 2001; medical problems contribute to about half of all bankruptcies. Medical debtors, like other bankruptcy filer, were primarily middle class (by education and occupation). The chronically poor are less likely to build up debt, have fewer assets (such as a home) to protect, and have less access to the legal resources needed to navigate a complex financial rehabilitation. The medical debtors we surveyed were demographically typical Americans who got sick. They differed from others filing for bankruptcy in one important respect: They were more likely to have experienced a lapse in

health coverage. Many had coverage at the onset of their illness but lost it. In other cases, even continuous coverage left families with ruinous medical bills.

Study strengths and limitations. Our study's strengths are the use of multiple overlapping data sources; a large sample size; geographic diversity; and in-depth data collection. Although our sample may not be fully representative of all personal bankruptcies, the Chapter 7 filers we studied resemble Chapter 7 filers nationally (the only group for whom demographic data has been complied nationally from court records). Several indicators suggest that response bias did not greatly distort our findings.

As in all surveys, we relied on respondents' truthfulness. Might some debtors blame their predicament on socially acceptable medical problems rather than admitting to irresponsible spending? Several factors suggest that our respondents were candid. First, just prior to answering our questionnaire, debtors had filed extensive information with the court under penalty of perjury—information that was available to use in the court records and that virtually never contradicted the questionnaire data. They were about to be sworn in by a trustee (who often administered our questionnaire) and examined under oath. At few other points in life are full disclosure and honesty so aggressively emphasized.

Second, the details called for in our telephone interview—questions about out-of-pocket medical expenses, who was ill, diagnoses, and so forth—would make a generic claim that "we had medical problems" difficult to sustain. Third, one of us (Thorne) interviewed (for other studies) many debtors in their homes. Almost all specifically denied spend-thrift habits, and observation of their homes supported these claims. Most reflected the lifestyle of people under economic constraint, with modest furnishings and few luxuries. Finally, our findings receive indirect corroboration from recent surveys of the general public that have found high levels of medical debt, which often result in calls from collection agencies.

Even when data are reliable, making casual inferences from a cross-sectional study such as ours is perilous. Many debtors described a complex web of problems involving illness, work, and family. Dissecting medical from other causes of bankruptcy is difficult. We cannot presume that eliminating the medical antecedents of bankruptcy would have preventing all of the filings we classified as "medical bankruptcies." Conversely, many people financially ruined by illness are undoubtedly too ill, too destitute, or too demoralized to pursue formal bankruptcy. In sum, bankruptcy is an imperfect proxy for financial ruin.

Trends in medical bankruptcy. Although methodological inconsistencies between studies preclude precise quantification of time trends, medical bankruptcies are clearly increasing. In 1981 the best evidence available suggests that about 25,000 families filed for bankruptcy in the aftermath of a serious medical problem (8 percent of the 312,000 bankruptcy filings that year). Our findings suggest that the number of medical bankruptcies had increased twenty-threefold by 2001. Since the number of bankruptcy filings rose 11 percent in the eighteen months after the completion of our data collection, the absolute number of medical bankruptcies almost surely continues to increase.

Policy implications. Our data highlight four deficiencies in the financial safety net for American families confronting illness. First, even brief lapses in insurance coverage may be ruinous and should not be viewed as benign. While forty-five million Americans are uninsured at any point in time, many more experience spells without coverage. We found little evidence that such gaps were voluntary. Only a handful of medical debtors with a gap in coverage had chosen to forgo insurance because they had not perceived a need for it; the overwhelming majority had found coverage unaffordable or effectively unavailable. The privations suffered by many debtors—going without food, telephone service, electricity, and health care—lend credence to claims that coverage was unaffordable and belie the common perception that bankruptcy is an "easy way out."

Second, many health insurance policies prove to be too skimpy in the face of serious illness. We doubt that such underinsurance reflects families' preference for risk; few Americans have more than one or two health insurance options. Many insured families are bankrupted by medical expenses well below the "catastrophic" thresholds of high-deductible plans that are increasingly popular with employers. Indeed, even the most comprehensive plan available to us through Harvard University leaves faculty at risk for out-of-pocket expenses as large as those reported by our medical debtors.

Third, even good employment-based coverage sometimes fails to protect families, because illness may lead to job loss and the consequent loss of coverage. Lost jobs, of course, also leave families without health coverage when they are at their financially most vulnerable.

Finally, illness often leads to financial catastrophe through loss of income, as well as high medical bills. Hence, disability insurance and paid sick leave are also critical to financial survival of a serious illness.

Only broad reforms can address these problems. Even universal coverage could leave many Americans vulnerable to bankruptcy unless such coverage was much more comprehensive than many current policies. As in Canada and most of western Europe, health insurance should be divorced from employment to avoid coverage disruptions at the time of illness. Insurance policies should incorporate comprehensive stop-loss provisions, closing coverage loopholes that expose insured families to unaffordable out-of-pocket costs. Additionally, improved programs are needed to replace breadwinners' incomes when they are disabled or must care for a loved one. The low rate of medical bankruptcy in Canada suggests that better medical and social insurance could greatly ameliorate this problem in the United States.

In 1591 Pope Gregory XIV fell gravely ill. His doctors prescribed pulverized gold and gems. According to legend, the resulting depletion of the papal treasury is reflected in his unadorned plaster sarcophagus in St. Peter's Basilica. Four centuries later, solidly middle-class Americans still face impoverishment following a serious illness.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, unfortunately what the gentlewoman from California (Ms. ZOE LOFGREN) said is not correct. There is a means test that is contained in this bill, but 11 United States Code, section 1307 which permits the conversion of a chapter 13 case to a chapter 7 case is not amended at all in any respect.

I would just like to read 11 U.S.C. 1307(a): "A debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable."

So if chapter 13 is such a straight jacket, the way out is through the conversion as provided for in section 1307.

Mr. Speaker, I yield 4 minutes to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in strong support for this long overdue legislation. I want to thank the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for his leadership and his efforts in making this bill a reality. It represent years of work, compromise and what I believe to be necessary reforms.

Our bankruptcy laws have shifted away from what was their original purpose. In 1915 the Supreme Court wrote that our bankruptcy laws were intended to give honest debtors a chance to "start afresh, free from obligations and responsibilities consequent upon business misfortunes."

This view was later reaffirmed in the 1934 case, Local Loan Company v. Hunt, in which the court wrote that "the purpose of the act has been again and again emphasized by the courts in that it gives to the honest but unfortunate debtor a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."

Over the last several decades, bankruptcy protections have expanded to cover basically anyone and everyone, not just those who truly need it. Statistics reveal that in 2004 approximately 1.5 million individuals sought bankruptcy protection. Increasingly, this protection is being sought for the consumer debt that has skyrocketed out of control as a result of the misuse of credit cards and other credit options. This expansive coverage comes at a price.

Personal bankruptcy filing cost businesses and our economy tens of billions of dollars every year. It is basically a $500 per family annual tax on each and every American family. H.R. 685 the Bankruptcy Abuse and Consumer Protection Act of 2005, the bill that is here before us today, strikes a balance. It requires those who have the means to repay debts to do so while protecting those who truly need the assistance provided by chapter 7, such as those with serious medical conditions, the men and women of our armed services who are on active duty, as well as those disabled veterans who served in years past.

Decisions to seek the protection of bankruptcy should be taken seriously. The consequences of filing are not just personal but impact our economy and society as a whole. As I mentioned, it is $600 per family that we are essentially taxed this year for everybody who is paying their debts from those who are not.

□ 1415

Personal filings cannot continue at the current rate. This bill represents a long overdue, much necessary first step; and I urge my colleagues to support this legislation.

Mr. CONYERS. Mr. Speaker, I yield 20 seconds to my friend, the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, what the gentleman suggested was, if someone has overwhelming medical bills, hundreds of thousands in medical bills, that they can file under Chapter 7. That is not true. If they have a job and they have $100 a month left over after essential expenses, they are going to have to go under a wage earner plan for the next 5 years. Every dime they have got after food and rent will go to all of their bills. They cannot file under Chapter 7.

Mr. CONYERS. Mr. Speaker, I yield to the gentleman from Ohio (Mr. KUCINICH) for a unanimous consent request.

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

Mr. KUCINICH. Mr. Speaker, almost half of the bankruptcies in the United States are connected to an illness in the family, whether people had health insurance or not. Middle-class Americans, who had the misfortune of either experiencing a medical emergency themselves or watching a family member suffer, were then forced to face the daunting task of pulling themselves out of debt. Bankruptcy law has allowed them to start over. It has given hope. Now this new law will put people on their own. Illness or emergency creates medical bills. We are telling the people that they themselves are to blame. At the same time, we are removing protections that would stay an eviction, that would keep a roof over the head of a working family. We allow the credit industry to trick consumers into using subprime cards, with exorbitant interest rate hikes and fees. Then we hand those same consumers over to an unforgiving prison of debt, to be put on a rack of insolvency and squeezed dry by the credit card industry. We are protecting the profits of the credit card industry instead of protecting the economic future of the American people. Americans are left on their own. That's what this Administration's "Ownership Society" is all about—you're on your own—and your ship is sinking.

Mr. CONYERS. Mr. Speaker, I am now pleased to break the line of members of the committee. I yield 1 minute and 15 seconds to a distinguished friend of mine, the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Speaker, you would not even exempt our brothers and sisters coming back from war, and you want me to believe that this is reasonable legislation?

Rising debt levels in turn reflect a shift in our economy away from a time when families could afford to save and into a time when their wages are stagnant. The costs of their health premiums increased 163 percent since 1988. Their tuitions have increased 170 percent. Their mortgages, their child care. This is not a stable economy.

They are not crooks. They are not evil people. The American Bankruptcy Institute says that 96.3 percent of the people filing Chapter 7 just do not have the money. Now we are not saying forget about all of this, but we are saying let us be reasonable.

Who should we help? Who should be first on the list of congressional priorities? The families who are in financial straits or the credit card companies who made a record $30 billion in profits last year and whose profits have soared almost triple in the last decade?

This legislation does nothing to put caps on interest rates or late fees or the overtime limits and other penalties, even those among reasonable people.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1½ minutes to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Speaker, I rise today in strong support of S. 256, the Bankruptcy Abuse and Consumer Prevention Act.

Mr. Speaker, we have seen a sharp increase in bankruptcies in the past 25 years. In 2003, consumer filings peaked at over 1.6 million filings, a 465 percent increase from 1980. Those who believe credit card companies, mortgage lenders and other financial institutions are bearing the cost of consumers filing for bankruptcy do not understand how business works. These costs will be shifted to American families who are paying the price for this debt, some studies reflect $400 per year in every household, by higher interest rates on their credit cards, auto loans, school loans and mortgages. When the legislation passes today it will be the American families who are the real winners.

This legislation balances the consumer's challenge of debt repayment with the needs of businesses that collect money rightfully owed to them. In an effort to better educate consumers and improve financial literacy, the legislation requires many filers of bankruptcy to attend financial counseling. This change coupled with congressional encouragement for schools to incorporate personal finance curricula in elementary and secondary education programs are both useful methods of curbing future debt. As chairman of the Subcommittee on Education Reform, which has jurisdiction over K through 12, I feel strongly that educating future spenders can prevent debts incurred as adults.

Again, Mr. Speaker, I want to thank Chairman SENSENBRENNER for his years of strong and tenacious support for this legislation and thank him for not giving up on these important, commonsense changes to our bankruptcy system. I urge my colleagues to support this bipartisan legislation.

Mr. CONYERS. Mr. Speaker, before I recognize the gentleman from Massachusetts, I want to go back and yield 10 seconds to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Speaker, I want to make sure that everybody quite understands that I will no longer support this legislation. I am changing my vote this year to a no vote. This is terrible legislation, and we have only made it worse.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2 minutes to my friend, the gentleman from Massachusetts (Mr. MEEHAN), an excellent member of the committee.

Mr. MEEHAN. Mr. Speaker, this bankruptcy bill is but the latest attempt by the Republican Congress to undermine the economic security of the middle class. Health care costs, not spending sprees, are the single largest causes of bankruptcies in America. Health care costs. Medical bankruptcies have gone up by more than 2,000 percent in the last 25 years. Why are we here trying to increase the profits of credit card companies while doing nothing to lower the cost of health care for middle-class American families?

It is disgraceful that this bill is being considered under a closed rule, with just an hour of debate, with no opportunity for amendment.

Supporters of this bill claim to have exempted service members who become disabled on active duty, but to be exempted you have to go into debt while on active duty.

A veteran who returns home from Iraq or Afghanistan and then goes into debt because of the injuries sustained on active duty is still subject to the punitive means test. What a way to treat the men and women in uniform fighting on behalf of the United States. It is an unfair loophole that we should have had the opportunity to close here on the House floor.

Another blatant unfairness is that this bill allows millionaires to shield their assets in estates in Florida and Texas, but no such homestead exemption exists for middle-class families who suffer serious medical expenses. We tried to offer an amendment allowing a limited homestead exemption for families with crushing medical debts. Unfortunately, no amendments were allowed.

It is an outrage that we cannot debate these issues here on the House floor. This bill is simply an attempt to reward credit card companies by removing a last resort available to middle-class families who fall on hard times.

I urge Members to oppose this terrible bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself a minute and a half.

Mr. Speaker, once again the opponents of this legislation are not correct. My friend, the gentleman from Massachusetts, says that someone who

is injured in Iraq and comes home is not going to be protected from medical expenses. The United States Government has stood behind everybody who has a service-connected injury or disability and pays for the medical treatment out of taxpayers' money because that is the right thing to do.

Secondly, he says that this bill continues the millionaires' exemption in the eight States that have unlimited exemption. Wrong. It plugs that exemption.

And if this bill goes down, a corporate crook can build a multimillion dollar mansion on the Intercostal waterway in Florida and be able to shield that asset from bankruptcy. What this bill does is it does plug that unlimited exemption and it plugs it in a way that was negotiated out in a bipartisan manner in the conference committee two Congresses ago with a motion that was made in that conference committee by my senior Senator, HERB KOHL, who is a Democrat.

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

Mr. CONYERS. Mr. Speaker, I yield 10 seconds to the gentleman from Massachusetts (Mr. MEEHAN).

Mr. MEEHAN. Mr. Speaker, I did not say the bill did not pay for service members' medical expenses who are injured in Iraq or Afghanistan. I said if they incur debt after they come back from serving this country and are forced to bankruptcy, they get the punitive means test. That is wrong. We should not do it to people serving in Iraq and Afghanistan.

Mr. CONYERS. Mr. Speaker, how much time remains on either side?

The SPEAKER pro tempore (Mr. PUTNAM). The gentleman from Michigan (Mr. CONYERS) has 9 minutes and 20 seconds. The gentleman from Wisconsin (Mr. SENSENBRENNER) has 8 minutes remaining.

Mr. CONYERS. Mr. Speaker, I am now pleased to yield 2 minutes to the gentlewoman from California (Ms. LINDA T. SÁNCHEZ), who is an able member of the committee.

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, I rise in strong opposition to the so-called Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Contrary to its name, this bill does not protect consumers and it certainly does not help honest, hard-working families with financial problems. The only thing that this bill does is distort our bankruptcy laws so that working families are treated more like criminals than people in need of relief.

Our bankruptcy laws must strike a fair and practical balance between debtors and creditors. This means that honest people with financial troubles can make a fresh start by getting creditors off their backs.

But this bill does the exact opposite of that. Instead of helping struggling families in debt, this bill erects harsh legal and monetary roadblocks for people who are trying to file bankruptcy.

The vast majority of people who file for bankruptcy, 9 out of 10, do so because they have either lost their job, suffered a medical emergency, or there has been a divorce or separation in their family. These are not people who are abusing the bankruptcy system.

We are talking about recently divorced, single working mothers trying to support their children who may not be getting their child support. We are talking about young men and women in our Armed Forces returning home after serving their country in Iraq. We are talking about some of the 1.6 million families who have lost their private-sector jobs since 2001 when a Republican administration took over the White House. These are honest, hard-working families who have resorted to bankruptcy to find some relief for their debts and a chance to start their lives anew.

This is a terrible bill. It is harmful to struggling families and goes against the basic policy of our bankruptcy laws, helping families in financial trouble get a fresh start.

I urge every Member of the House to stand by America's working families by voting no for passage of S. 256.

Mr. SENSENBRENNER. Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentlewoman from Los Angeles, California (Ms. WATERS), a member of the committee.

Ms. WATERS. Mr. Speaker, the passing of this bill would be a complete detriment to the American people. For many Americans find themselves, usually through no fault of their own, facing bankruptcy. This scenario could happen to almost anyone.

Mr. Speaker, the main reasons Americans file for bankruptcy is not to abuse the system and avoid paying their bills. Americans file for bankruptcy usually due to catastrophic medical expenses, divorce, or the loss of their jobs.

Many important, common-sense amendments on subjects such as alimony, child support, exemptions for medical emergencies, and job loss, underage credit card lending, predatory lending and protection for disabled veterans, just to name a few, were all rejected by the Judiciary Committee.

Mr. Speaker, amendments should have been made to this bill to carve out exemptions for certain basic needs so Americans can still have some equity or resources should they be forced into bankruptcy.

More specifically, one loophole in the bankruptcy bill leaves the victims of domestic violence and their children left with no resources should they file for bankruptcy. This is so unfair. The bill should have been allowed to be modified to secure better protection for domestic abuse victims by granting them relief from summary eviction from their houses.

Please note, this relief would have only been available if a domestic violence debtor is certified, under penalty of perjury, that the debtor was in fact a victim of domestic abuse and that their physical well-being or the physical well-being of the debtor's child would be threatened if this debtor were evicted.

Mr. Speaker, this amendment would have provided a safe harbor for those victims who faced the great threat of more violence and extreme danger if their homes are taken as a result of bankruptcy.

We also tried to do something about this underage credit card lending. It is a travesty. These credit card companies set up on the college campuses. They have vendors from the day these kids walk into college. They send them all of this unsolicited mail, and they telephone them unrelentlessly to get them involved in taking these credit cards.

They do it. They run up the debt. Some of them are now 30, 35 years old, out of college for years, still paying on these credit cards because they allowed their minimum payments that do not even take into account all of the interest on the debt.

□ 1430

It is outright unreasonable that we did not have an amendment allowed by my friends on the opposite side of the aisle to try and protect families and future young families from this kind of exploitation.

Also, I want to point out that the means test includes disaster assistance and veterans benefits. This is a rip-off.

Mr. SENSENBRENNER. Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself 5 seconds to let the gentlewoman from California know that the credit card companies solicit five billion mailings every year to college kids and others.

Mr. Speaker, may I ask the chairman how many speakers he may have remaining.

Mr. SENSENBRENNER. Mr. Speaker, if the gentleman will yield, just me at the present time.

Mr. CONYERS. Mr. Speaker, I yield 1 minute to the dynamic gentlewoman from California (Ms. WOOLSEY).

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, over the last 18 months the House leadership has passed bills that are windfalls for the pharmaceutical industry, big oil, and they have given massive tax breaks to corporations while the deficit in this country continues to grow by records.

Now lining up for their share and licking their lips is the credit card industry who stands to make billions of dollars at the expense of American consumers.

With the hope of helping to protect veterans from these regulations, I offered an amendment to this bill to simply waive any fee charged for credit counseling for any servicemember returning from a combat area for a period of 2 years. Do my colleagues think that was allowed to come down here on the House floor for a vote? Absolutely not.

Many of these men and women have been away from their families, from their homes, their jobs for long periods of time because of unethical procedures that keep them overseas. Many of these individuals have lost their businesses, they have lost their homes and they have bills and are going to suffer. Our veterans, they will suffer because of this bankruptcy bill.

Mr. Speaker, over the last eighteen months, the House leadership has passed bills that are windfalls to the pharmaceutical industry and big oil and, have given massive tax breaks to corporations, while the deficit continues to break records.

Now lining up for their share and licking their lips is the credit card industry, that stand to make billions of dollars at the expense of the American consumer.

With the hope of helping to protect Veterans from these new regulations, I offered an Amendment to this bill to simply waive any fee charged for credit counseling for any service member returning from a combat area, for a period of two years. Unfortunately, the majority didn't allow any.

Many of these men and women have been away from their families, homes and jobs for long periods of time because of unethical procedures that keep them overseas. This is resulting in severe economic hardships, business closures, homes foreclosures and bills unpaid.

We must not penalize our troops for serving our country. It is appalling that any Veteran would face bankruptcy because of their sacrifice.

Mr. Speaker, I urge my colleagues to vote against this bill to protect American families and maintain a core American value to allow people a fresh start.

Mr. CONYERS. Mr. Speaker, I yield myself 1 minute.

We should all be embarrassed that instead of repealing the biggest loophole in the bankruptcy code, we have had 8 years to study it, the homestead exemption, the bill places only weak obstacles in its path. Instead of protecting women and health care providers from those who would terrorize abortion clinics, we lay out a blueprint for them to avoid their debts. Instead of helping individuals who have lost their job or faced a health care emergency, we deny them the chance for a fresh start.

By passing this measure in this form, the majority is telling the American people, Republicans are telling the American people, it is more important to help credit card companies than innocent spouses and children; that it is more important to protect corporate scam artists than workers losing their pension; that it is more important to protect unscrupulous lenders than disabled veterans.

Mr. Speaker, I yield the remainder of my time to the gentlewoman from California (Ms. PELOSI), the distinguished minority leader.

(Ms. PELOSI asked and was given permission to revise and extend her remarks, and include extraneous material.)

Ms. PELOSI. Mr. Speaker, I thank the gentleman for yielding me time and thank him for his distinguished leadership as the ranking member on the Committee on the Judiciary and his important statements on this bankruptcy bill today.

Mr. Speaker, we all agree that every person in our country must be financially responsible, that we take responsibility for our action, for our debts and we do so in a way that is honorable.

In the course of our country's history, our economy, our government has always provided for people to get a fresh start under the bankruptcy law to enable them to go forward to make a contribution to our economy and our society. Recognizing that tradition and recognizing the appreciation that we have for personal responsibility, I regretfully rise in opposition to this bill because this bankruptcy bill seeks to squeeze even more money for credit card companies from the most hard-pressed Americans.

It would bind hardworking and honest Americans to credit card companies and other lenders as modern day indentured servants. I think it is our duty to speak up for those who would be hurt by this bill.

This duty is paramount because we have been shut out of the process here, the legislative process to bring any amendments to the floor. That would have been an amendment on identity theft, which this week's news accounts demonstrate there are real problems of identity theft, and an amendment was rejected.

We tried to take a legislative course of action in our previous question, which is a technicality, is a procedure here on the floor; but we were not able to get any Republican support to address the issue of identity theft and how individuals can be protected from identity theft under the bankruptcy bill.

According to the sponsors of this bill, 1.6 million Americans who filed for bankruptcy last year are deadbeats who are avoiding their debts. That is really the essence of what they are saying with this bill. Proponents claim that there is a bankruptcy tax in which honest Americans are footing the bill for abusive users of credit cards.

We should be vigilant for any abuse of any legal process. There is no evidence, however, of widespread bankruptcy abuse. In fact, a recent study indicated that 45 percent of those filing for bankruptcy had skipped a needed doctor's visit, 25 percent had utilities shut off, 20 percent went without food. They are not using this money that they should be paying in for luxuries. They just simply do not have money to survive.

As a distinguished group of law professors wrote: ''Some people do abuse the bankruptcy system, but the overwhelming majority of people in bankruptcy are in financial distress as a result of job loss, medical expense, divorce, or a combination of those causes. This bill attempts to kill a mosquito with a shotgun.''

I have a problem with the bill on several counts as to what is contained in the bill. The bankruptcy bill fails miserably, I believe, on its merits. It employs, for the first time, a stringent and unworkable means test that limits access to chapter 7 and forces individuals into payment plans that will fail.

It frustrates a key goal of the bankruptcy code, to give individuals who suffer economic misfortunes through no fault of their own a fresh start. That is an American tradition.

The bill neglects the real causes of bankruptcies, as I just mentioned, medical concerns, divorce, in some cases death, while rewarding irresponsible corporate behavior.

It lets those who truly abuse and game the bankruptcy system, the wealthy debtors who shield their assets in asset trusts and homestead exemptions, keep their loopholes and get off, in some cases, scot-free.

It is wholly unnecessary. Current law already allows a bankruptcy judge to deny a discharge in chapter 7 to prevent abuses. That is why bankruptcy judges are uniformly opposed to the bill.

I just would like to quote Keith Lundin, a Federal bankruptcy judge in Tennessee and an authority on bankruptcy repayment plans. Judge Lundin says, ''The folks who brought you 'those who can pay, should pay' are pulling the stuffing out of the very part of the bankruptcy law where debtors do pay.'' He says, ''The advocates aren't trying to fix the bankruptcy law; they're trying to mess it up so much that nobody can use it.''

They interviewed dozens of bankruptcy judges, whose names have been suggested by proponents and opponents of this legislation, for their standing on this issue, to speak out; and the reasons why these judges are opposed are several reasons.

One is the judges now have broad discretion to determine how much a debtor must pay to creditors and on what schedule, and the schedule is very important, after declaring bankruptcy under what is known as chapter 13; but under the legislation, that discretion would be substantially curtailed.

The new legislation would bar courts from reducing the amount that many debtors would have to repay on their cars and other big-ticket items. It

would also extend the length of time people would have to make repayments and impose repayment schedules that critics describe as so onerous that debtors would fall behind. It just prescribes that they would.

The bankruptcy judges say the result would be the collapse of more repayment plans, forcing debtors out of bankruptcy court protection. Creditors could then force debtors to pay the full amount owed, not the reduced amount, and by moving to repossess their belongings. Many people would have to pay creditors far into the future and thus be unable to restart their economic lives, a long-held aim of bankruptcy.

I will submit this article from the Los Angeles Times for the RECORD at this point.

[From the Los Angeles Times, Mar. 29, 2005]

JUDGES SAY OVERHAUL WOULD WEAKEN BANKRUPTCY SYSTEM.

(By Peter G. Gosselin)

For nearly a decade, proponents of overhauling the nation's bankruptcy laws have described their aim as ensuring that Americans who enter bankruptcy court do not escape bills that they can truly afford to pay.

But only weeks before Congress is likely to approve the long-sought overhaul, bankruptcy judges across the country warn that the measure would undermine the very section of the law under which debtors are now repaying more than $3 billion annually to their creditors.

These judges say the effect of the overhaul would be to discourage most forms of personal bankruptcy, which—for nearly two centuries has served as a safety net for people in economic trouble.

''The folks who brought you 'those who can pay, should pay' are pulling the stuffing out of the very part of the bankruptcy law where debtors do pay,'' said Keith Lundin, a federal bankruptcy judge in the eastern district of Tennessee in Nashville and an authority on bankruptcy repayment plans.

''The advocates aren't trying to fix the bankruptcy law; they're trying to mess it up so much that nobody can use it,'' Lundin charged.

In interviews, a dozen current or former bankruptcy judges, whose names were suggested by proponents as well as opponents of the overhaul legislation, described what they saw as the problems that could result from key provisions of the new measure.

Judges now have broad discretion to determine how much a debtor must pay to creditors and on what schedule after declaring bankruptcy under what is known as Chapter 13. But under the legislation, that discretion would be substantially curtailed.

The new legislation would bar courts from reducing the amount that many debtors would have to repay on their cars and other big-ticket items. It would also extend the length of time people would have to make repayments and impose repayment schedules that critics describe as so onerous that many debtors would fall behind.

The result, the judges said, would be the collapse of more repayment plans, forcing debtors out of bankruptcy court protection. Creditors then could try to force debtors to pay the full amount owed—not the reduced amount a judge had ordered—by moving to repossess their belongings or bringing legal actions. Many people would have to pay creditors far into the future, the critics said, and thus be unable to restart their economic lives, a long-held aim of bankruptcy.

Repayment plans ''are pretty fragile documents to begin with, but they're going to get a lot more fragile under these conditions,'' said Ronald Barliant, a former bankruptcy judge from the northern district of Illinois in Chicago.

''It's going to take away a lot of the incentives'' for people to enter repayment plans, said David W. Houston III, a bankruptcy judge from the northern district of Mississippi in Aberdeen.

Overhaul proponents respond to such criticisms by contending that the current bankruptcy system is rife with fraud and abuse and is stacked against creditors. Many proponents are deeply scornful of bankruptcy judges, who they charge have let the system spin out of control.

''They're part of the . . . problem,'' declared Jeff Tassey, a Washington lobbyist who heads the coalition of credit card companies, banks and others that has spearheaded the overhaul drive.

''They're not real judges, not Article 3 judges,'' Tassey said. He was referring to Article 3 of the U.S. Constitution, under which judges in the regular federal court system are appointed for life. Bankruptcy judges are appointed under Article 1 to 14-year renewable terms.

As matters now stand, financially distressed Americans generally have two options in bankruptcy. They can file a Chapter 7 case, in which they forfeit most of their assets in return for cancellation of most debts and a debt-free ''fresh start.'' Or, they can file a Chapter 13 case, in which they get to keep most of their property but must agree to repay a portion of their debts over a period of time.

Some advocates for changing the system have contended that these provisions should be rewritten to address a kind of moral laxness in bankruptcy practices.

''When you have seen a system that has gone from a few hundred thousand cases to 1.5 million last year—most of that increase during the fat years of the Clinton administration—you must conclude something is not right,'' said Edith H. Jones, a federal appellate court judge in Houston who served on a blue-ribbon panel to review bankruptcy law in the 1990s and is widely believed to be seen as on President Bush's short list for a position on the Supreme Court.

''People have been encouraged to see bankruptcy as an easy way out of uncomfortable situations,'' Jones said.

Overhaul proponents have also said that the new measure is so narrowly cast that it would affect no more than 15 pecent of bankruptcy filers.

The legislation would require courts to check whether people make more than their state's median income and can pass a ''means test,'' which gauges whether they have enough to cover allowable living expenses, pay secured creditors such as mortgage lenders and still have some left over for unsecured creditors such as credit card companies. Those who are above the median and have the means would no longer be allowed to file under Chapter 7 and wipe out most of their debts, but would have to file Chapter 13 cases and agree to a repayment plan.

Nearly all congressional Republicans, together with many Democrats, support the overhaul measure, which the president has warmly endorsed and said he would sign. The Senate passed the measure this month in a 74–25 vote. Approval from the House is expected next month.

However, largely overlooked in the debate has been a series of proposed changes in Chapter 13 that critics say would make it harder for debtors to stick with repayment plans—the opposite effect of what supporters say they want.

Critics, including bankruptcy judges in California, North Carolina, Massachusetts, and Florida say there is nowhere near the fraud in the system that advocates claim.

They cite a study by the nonpartisan American Bankruptcy Institute, which concludes that only about 3 percent of those who wipe out their debts in Chapter 7 could afford to repay a portion in Chapter 13. Lobbyists for the credit card and banking industries estimate that 10 percent or more would be able to pay.

Those opposed to the changes contend that most people who file for bankruptcy are truly distressed finanacially—and say the success that courts have in collecting as much as they do under Chapter 13 shows the system is working.

According to figures from the U.S. Trustee Program, a Justice Department agency, Chapter 13 debtors repaid almost $3.6 billion in 2003, the latest year for which figures are available.

But critics say the courts' success with Chapter 13 is threatened by several little-noticed elements of the proposed legislation:

Under current law, those who file under Chapter 13 must repay car loans only up to the amount the car is worth at the time they enter court, or they risk losing the vehicle. A debtor who bought a $24,000 sport utility vehicle and filed for bankruptcy two years later, for example, might have to pay far less because the vehicle had depreciated.

By reducing what debtors owe auto lenders in this fashion, the law ensures more money for other creditors. And, according to bankruptcy experts, it means that auto lenders are treated on an equal footing with other ''secured'' creditors—they are promised repayment only to the value of the item they could repossess.

Under the new measure, debtors would have to pay the full amount on any vehicle purchased within 2½ years of bankruptcy, or risk losing the vehicle. The change may seem minor to an outsider, but not to Chapter 13 debtors or bankruptcy judges. ''That's going to be a big deal,'' predicted A. Thomas Small, a bankruptcy judge for the eastern district of North Carolina in Raleigh. It would mean that many repayment plans that work now would fail under the new measure, he said.

Under current law, the debtor and his lawyer work out a repayment plan that they think represents the most the debtor can pay and still cover basic living expenses. A bankruptcy judge must eventually approve the plan, which usually has reduced or stretched-out payments to creditors. In the meantime, the debtor immediately begins making payments to a court-appointed trustee.

Under the legislation, many debtors would have to make full payments on such big-ticket items as houses, furniture and appliances. They would have to make those payments directly to the lenders. And at the same time, they would have to start paying the court-appointed trustee for debts to doctors, credit card companies and other unsecured creditors.

Many bankruptcy judges say debtors who come before them often do not have enough income to make both sets of payments.

The result, they warned, would be that many debtors' plans would quickly fail.

Under current bankruptcy law, two guiding principles are that debtors should not be required to repay indefinitely, or they effectively become indentured servants to their creditors, and that they should eventually be given a debt-free ''fresh start'' on their economic lives.

The legislation would require debtors to agree to repayment plans with a five-year minimum repayment schedule, up from the current three-year minimum. It would also

boost the chances that debtors would be required to continue paying some debts even after a plan's successful completion.

Todd Zywicki, a law professor at George Mason University in Virginia, said the shift away from the "fresh start" philosophy is justified because another bedrock American value—that people who incur debts should pay them—is being sullied under the current system.

But many bankruptcy judges and independent experts warn that equally compelling values would be lost if the proposed measure becomes law.

Practically, they warn, debtors who would no longer qualify for Chapter 7 and fail to complete Chapter 13 repayment plans would either have to keep paying creditors indefinitely or drop out.

"If you're confronted with a mountain of debt and have no hope of getting out from under it, you're either going to go underground or turn to crime," said Kenneth N. Klee, a former Republican congressional staffer who was one of the chief authors of the last major bankruptcy law change in 1978 and now teaches law at UCLA.

More broadly, say judges and others, the ability to start over after running into financial problems should not be discounted.

"Loads of people have filed bankruptcy—Mark Twain, Buster Keaton, Walt Disney," said Lundin, the Nashville-based bankruptcy judge. "Bankruptcy is a very American safety net.

"It's part and parcel of the American dream."

Mr. Speaker, while this bill fails to improve the bankruptcy system, the bill succeeds in being harsh, punitive and mean-spirited.

The bill is particularly harsh on women who are often the primary care givers for their children or their parents and are the largest single group in bankruptcy; on older Americans who are the fastest growing group in bankruptcy due to medical costs; and on children. Parents seeking child support will compete with credit card companies and other lenders in State courts, but will have little protection and fewer resources than the large credit card companies they are up against.

Finally, the bill does a disservice to those who serve our Nation, especially our National Guard troops and Reservists who are not protected by an amendment passed by the other body.

National Guard and Reservists make up nearly 40 percent of those serving in the Iraqi theater. They often leave behind small businesses and jobs and incur debt, but they do not have the benefits and services offered to active duty Armed Forces.

This bill would not stop abusive creditors who are stalking down military families while their loved ones are serving our Nation bravely and heroically.

I would hope that our Republican colleagues would join us in a bipartisan way to support our motion to recommit that would give some opportunities for the National Guard not to be treated this way under the bankruptcy bill.

As for the bill, instead of addressing real causes of bankruptcy, this bill rewards irresponsible corporate behavior and fattens the already large profits of the credit card industry.

While bankruptcy filings have increased 17 percent in the last 8 years, credit card profits have increased more than 160 percent, from $11 billion to more than $30 billion. There are now 5 billion credit card solicitations a year stuffed into our mail boxes and many targeted at teenagers with no jobs, no income, no visible means of support to pay these credit card bills.

It is an industry with little oversight and loose underwriting that charges enormous fees and unfair interest payments. The legislation does nothing to address these failings. In fact, the other body rejected an amendment to tell customers how much it would cost in additional interest if they make only minimum payments on their credit card bills.

For these and other reasons, Mr. Speaker, I sadly oppose this bill. I say sadly because this is an area where there should not be any major disagreement. If the point is to honor a tradition in our country where people are entitled to a fresh start so they can begin contributing back to our economy and to our society, then we should uphold that; and if people are abusing the system, existing law already covers that.

Instead, we have a situation where it is mean and harsh to those who can least afford to pay back and gives opportunity to the wealthiest, the wealthiest, and corporate abusers of the system.

With that, Mr. Speaker, I am giving my reasons for why I oppose the bill.

□ 1445

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, one does not need to get a good grade in Economics 101 to realize that those who pay their bills as agreed end up having to pay for the cost of debts that are ripped off in bankruptcy. The number of bankruptcy filings has exploded. The number of proven instances of people gaming the system and using bankruptcy as a financial planning tool has gone up, and this bill stops those types of abuses.

I would like to quote from page 4 of the committee report from testimony that was given by Professor Todd Zywicki, and he said, "Like all other business expenses, when creditors are unable to collect debts because of bankruptcy, some of those losses are inevitably passed on to responsible Americans who live up to their financial obligations. Every phone bill, electric bill, mortgage, furniture purchase, medical bill and car loan contains an implicit bankruptcy tax that the rest of us pay to subsidize those who do not pay their bills. Exactly how much of these bankruptcy losses is passed on from lenders to consumer borrowers is unclear, but economics tell us that at least some of it is. We all pay for bankruptcy abuse in higher down payments, higher interest rates and higher costs for goods and services."

The Credit Union National Association, which is a national organization of nonprofit credit unions that are owned by their members, said that, as of 2002, they lost over $3 billion from bankruptcies since Congress started its consideration of bankruptcy reform legislation in 1998; and CUNA estimates that over 40 percent of all credit union losses in 2004 will be bankruptcy related, and those losses will total approximately $900 million.

Now the credit unions are not the big issuers of credit cards. They are owned by their members, and those members have to pay additional costs of the services of their own credit unions because of the huge write-offs that have been described in this report.

Now if my friends on the other side of the aisle were so concerned about bankruptcy abuse and the fact that this bill does not deal with the problem, they could have spent the time drafting an amendment in the nature of a substitute. They were offered by the Committee on Rules and I requested the Committee on Rules to make such a substitute in order, but, no, all they want to do is criticize, attack and come up with no positive alternatives.

If that is their position, then the bankruptcy tax that everybody realizes is passed on to people who pay their bills as agreed to is on their shoulders, because we are trying to stop the abuse.

I have heard an awful lot about the homestead exemption. If this bill goes down, eight States and the District of Columbia will continue to have an unlimited homestead exemption where corporate crooks can hide their assets from bankruptcy in a homestead and, once they get their discharge, sell that mansion and go off on their merry way. They want to keep that. Our bill closes it.

We have heard an awful lot about asset protection trusts that become the law in a number of States. Page 506 of the bill contains a new section on fraudulent transfers and obligations that says that anybody who creates one of these trusts within 10 years of the date of filing can have that transfer voided if such a transfer was made to a self-settled trust or similar device, such transfer was made by the debtor, the debtor is the beneficiary of the trust or similar device, and the debtor made the transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date such transfer was made, indebted. Our bill closes those asset protection trusts. If the other side votes this bill down, they continue on and the blame for that is on their shoulders.

We have heard an awful lot about medical bills. Well, the people who are complaining about medical bills put a tin ear on to the testimony that has been submitted in this extensive hearing record.

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