

				dishonesty. Eliminating the chapter 13 tax discharge will remove an important opportunity for debtors to get back in the tax system and to make timely future tax payments.
REAFFIRMATION	Reed-Sessions amendment (#2650) would (1) require disclosures related to the underlying credit agreement rather than the reaffirmation agreement; (2) eliminate existing filing and disclosure requirements; and (3) protect creditors that fail to comply with the law by requiring debtors who choose to challenge a creditor practice to prove that the creditor acted in bad faith. §204 This provision is a step back from current law under which court filing requirements allow courts to oversee the reaffirmation process. At the same time, the leverage gained by creditors under other provisions of S. 625 will greatly increase the number of reaffirmations.	Minimal improvement over current law. Unlike S. 625, doesn't erode current protections. § 108. However, the separate prohibition on enforcing the discharge by class action contained in section 114 of the bill (discussed below) would preclude cases being brought to recover for systematic creditor abuses across the country (such as the Sears case). At the same time, the leverage gained by creditors under other provisions of H.R. 833 will greatly increase the number of reaffirmations.	Much better reaffirmation provision that would have required court approval of all unsecured and nominally secured reaffirmations. §211.	The Senate provision would (1) permit Sears-type abuses by removing the reaffirmation filing requirement; (2) prohibit courts from requiring disclosures they now require; and (3) preempt state unfair trade practices laws. Includes provisions about government enforcement, but there is no explicit private right of action. Because it is not at all clear that there are resources for additional government enforcement, it is unlikely that systemic abuses will be remedied. In addition, the disclosures required under S. 625 would be based on the underlying credit contract rather than the terms as reaffirmed. Unless the problems with S.625 are fixed, this provision is much worse than H.R. 833 or current law.
HOMESTEAD	Kohl amendment (# 2516) caps state homestead exemptions at \$100,000.	State can opt out of \$250,000 cap. §147	\$100,000 cap on homesteads.	H.R. 833 provisions will have no real effect, since states will opt out. The cap on unreasonably high homestead protections should be matched with a floor on unreasonably low state law protections.

HOUSEHOLD GOODS	Very restrictive definition of household goods that would not include many household items of little value. This will lead to creditor threats to property and more reaffirmations. §313	Much better definition of household goods, reflecting current law. §145 The House provision comports with a reasonable plain language definition of what a household "good" would be and protects property that every family expects to have for use in their home.	FTC to define "household goods" for bankruptcy purposes. If FTC failed to act within 180 days, definition like that in S.625 would apply. §317	H.R. 833 is significantly better. It is important to note that a broader definition would not permit debtors to keep items of significant value, because the items must still be within the low dollar limitations of state or federal exemption laws. S. 625 would allow creditors to threaten repossession of family heirlooms and children's toys to coerce reaffirmations.
LANDLORD TENANT	Eliminates the automatic stay for many tenant families facing eviction, even if they are paying rent after bankruptcy. §311	Slightly better, but still eliminates the stay in most eviction cases. §136	Same as H.R. 833. § 709.	Feingold amendment (# 2748) is still pending. It would provide better protections for landlords than current law without eliminating bankruptcy court oversight of the automatic stay as it affects the debtor's shelter.
TAX RETURNS	Requires filing of returns filed during case when requested by a party. (Leahy amendment #2529).	Requires all debtors to file last 3 years' returns with court. §603	Same as H.R. 833. §301(b).	S. 625 is significantly better.
	Requires chapter 13 debtors to file tax returns for last 6 years with taxing authorities, even if applicable tax law would not require the returns. §716	Same. §816	No similar provision.	Needs clarification that debtors need not file returns that tax laws do not require. Six year period is too long. Three years would be more reasonable.
ADEQUATE PROTECTION	Requires plan payments sufficient to protect secured creditors from depreciation and requires trustee	Unworkable requirement of contract amount payments by debtor to secured creditors	Similar to H.R. 833. §319	S. 625 is significantly better than H.R. 833.

Try this quiz. Do you know which presidential candidate said, "I want to cut middle income and lower income Americans' taxes. I don't want to cut rich people's taxes," to an audience of New Hampshire citizens? Which candidate told an audience at a Baptist church in Brooklyn on October 21st: "The foundation of our effort should be the guarantee that no one who works full time year round should have to live in poverty"? Another candidate told a group of reporters in Chicago on November 30th: "If you are a single mother with children, and you live on the outskirts of poverty, and you work hard, as you move toward the middle class, you pay an enormous [tax] rate." And which candidate told an audience in Iowa, "We have a challenge ... in helping hard-working families find the time that they want and need with their children-without sacrificing their standard of living"?

Answers: McCain, Bradley, Bush, Gore. Tough quiz, right? Everyone has a plan (or at least a rhetorical one) about how to help working poor families. The world has changed. Since federal welfare reform passed in 1996, the will to support poor working families seems to cross all political lines.

We applaud the candidates' various proposals to increase federal tax credits for working parents, expand federal programs for early childhood care and education, and extend federally-supported health insurance coverage. And there are other things the federal government can do such as increasing the minimum wage and the Earned Income Tax Credit, putting more child support collections directly in the hands of single mothers, and supporting non-custodial fathers to find work and pay child support. President Clinton's State of the Union address focused on many of these policies.

But, low-income families don't have to wait for a new president or an act of Congress. States now have the opportunity and the resources to design and fund work supports for low-income families.

The booming economy has lifted state finances in recent years, and budget surpluses will greet many states' lawmakers when they gather this spring. Maryland, for example, is looking at a budget surplus of more than \$ 1 billion this year.

Beyond surpluses in their own budgets, states have left billions of dollars in unspent federal welfare block grant funds in the federal treasury. When welfare was converted into a block grant, states were allocated as much federal funding as they got in the early 1990s, when caseloads were at their highest point in history.

What used to be a way to finance cash assistance is now a funding source that can support all low-income working families, and those moving to work. But, it won't help families if it doesn't get used. While saving some block grant dollars in a rainy day fund may be prudent, as of October 1, 1999, states had not spent almost \$2.6 billion in available block grant dollars. Another \$4.7 billion had been dedicated to state programs

	to send payments to secured creditors before confirmation and even if plan not confirmed. §309(c)	prior to confirmation of plan, despite the fact that debtors are also committed to pay all disposable income to trustee. §135		
NOTICE PROVISIONS	Adopts a court registry system for creditors to record the addresses they want used for notices. Still has technical flaws, including provisions that could permit a creditor to ignore bankruptcy even if the creditor is fully aware of it. §315	Includes counterproductive provisions requiring notice to an address contained in the creditor's last communication with the debtor, which debtor may not have and which counsel may know to be obsolete. Like S. 625, encourages creditor that has received actual notice to ignore the bankruptcy and argue later that the notice is not effective because it did not meet statutory requirements. §603.	More similar to H.R. 833. §309	S. 625 is significantly better than H.R. 833, but still needs technical fixes. A provision that notice actually received, sufficient for creditor to identify the debtor and protect its rights, is effective notice must be added to avoid meaningless disputes.
DISCHARGE PROTECTIONS FOR DEBTORS	Includes protection against misapplication of chapter 13 plan payments by creditors. §202	Includes protections against misapplication of plan payments and reaffirmation abuses. §114	Several protections against creditor abuses, including inflated claims, abusive dischargeability complaints and objections to discharge, reaffirmation abuses, and failure to credit plan payments. §§201-205	S. 625 provides less protection than H.R. 833, and significantly less protection than S. 1301 did.
	No private right of action. §202	Private right of action, with statutory damages, but prohibits class actions. §114	Private right of action, with statutory damages.	A private right of action and the ability to bring class actions are essential to meaningful enforcement of reaffirmation protections. A prohibition of class actions as in H.R. 833 means that debtors could not jointly pursue a claim like the

but not yet spent.

Even more money is available to states if they choose to take it. Recent changes in Medicaid, as well as adoption of the new children's health insurance program, now permit states to leverage billions of federal dollars to expand health insurance coverage to low-income parents and children.

As governors and state legislatures begin to meet this month, there are many things they can do to move in the direction of creating a new set of social policies that support work.

Here are just a few concrete steps states can take:

- * Tax credits: States can reward work by using unspent federal welfare block grant funds or available state surpluses to establish or expand refundable state earned income credits that use the tax system to directly supplement low wages. Eleven states now have such a benefit modeled on the federal Earned Income Tax Credit.
- * Child care: States can use unspent welfare block grant funds or budget surpluses to improve child care quality, expand services during non-traditional hours, or establish a child care subsidy program that serves all low-income working families, not just those receiving, or working their way off of, public assistance. For example, Illinois makes available subsidies to all families with income below 50% of the state's median income (\$28,861 for a family of three).
- * Health insurance: States can claim federal funding to cover virtually all low-income families without seeking permission from the federal government, as they had to in the past. State or local resources can match federal funds at very favorable rates. Depending upon the state or population to be covered, a state dollar can tap from one to five federal dollars to finance health insurance expansions. A number of states have expanded Medicaid coverage to both parents and children in low-income families, including Rhode Island which offers health insurance to adults and children with family incomes up to 185% of the federal poverty level (\$30,895 for a family of four).

And there are many other ways states can help low-income families. For example, states can help low-income adults get skills that lead to better jobs, ensure that families receive the Food Stamp and Medicaid benefits to which they are entitled, offer incentives for parents to save, and provide families with supports they need to succeed in the workplace.

Should the federal government cede responsibility for low-income working families, and especially their children, entirely to the states? No. But, states can help families now --

				Sears case stemming from illegal conduct. Creditors engaging in illegal conduct would be allowed to keep the bulk of their ill-gotten gains.
PETITION PREPARER ABUSES	Includes provisions that will help United States trustees go after abusive nonattorney petition preparers. §221	"Debtor's Bill of Rights" which would blur distinctions between attorneys and nonattorney petition preparers, thereby worsening the problems caused by abusive nonattorney petition preparers. §§ 154-155.	No similar provision.	S. 625 is significantly better.
MOBILE HOMES	Prohibits cramdown on mobile home liens, including nonpurchase-money security interests. §§306(a) and (c).	Same. §§122, 302(e).	Same. §§ 302(a), 321(g).	Would further erode the success rate of chapter 13 plans. Will result in loss of shelter for some low-income families who would have ability to repay under current law. See discussion of other cramdown prohibitions above. Eliminating ability to cramdown mobile home debts has a particular impact on the elderly, according to AARP and others.
REPEAT FILINGS AND FILINGS AFTER PRIOR DISCHARGE	Creates procedural hurdles to maintain or obtain automatic stay if a prior case was dismissed in past year. s §302	Same. §117. Also has a second provision (§412) completely denying the stay in repeat filing situations. (This could be a technical error. Corresponding S. 625 provision limited to chapter 11.)	Somewhat more moderate restrictions on repeat filings. §303	Assuming §412 in H.R. 833 is corrected, the bills are substantially the same. The new procedures for refiling would require a debtor to pay additional attorney costs to file a second case. Low and moderate income debtors are disproportionately affected by provisions that increase the costs of filing. Repeat filing already is unusual in chapter 7. The effects of the bills would thus be felt in chapter 13. Both bills would make it harder and more

- not months, or even years in the future, after presidential campaign promises have been painstakingly shaped into federal legislative reality.

Helping low-income, working Americans and their children is no longer a controversial idea --- not when presidential candidates are fighting over whose ideas are bigger and better for low income working Americans. So, why wait to do it? States can act now – and they should.

				expensive for many debtors to save their homes in chapter 13.
	Creates presumption of abuse for debtors who were unable to properly file papers or make chapter 13 plan payments.	Same.	Same	These presumptions apply to common problems of debtors who are not abusing the system, including those who have inadequate or no legal representation and those who experience continued misfortune after filing for chapter 13 relief. The effect of the presumption is to add costs for honest debtors by forcing them to pay for litigation to establish their good faith.
	Prohibits filing of chapter 13 case within 5 years of prior discharge, which could mean up to 10 years from prior chapter 13 case filing. §312	Same. §137	No similar provision.	Current law permits chapter 13 case filing at any time, except in some cases within 180 days of prior dismissal. Debtors sometimes need chapter 13 within a few years of an earlier case due to medical bills, etc.
	Prohibits chapter 7 case within 8 years of prior petition. §312	Same. §137.	No similar provision.	Current law is 6 years. There is no evidence of significant numbers of people filing repeat chapter 7 cases every six years.
AUDITS	Requires 1 audit in every 250 cases. Allows the attorney general to set procedures for auditing. § 601.	Requires 1 audit in every 250 cases. Requires uses of generally accepted accounting procedures. Appears to require that all high- and low- income debtors be audited. §602.	Required 1 audit in every 500 cases. § 307.	Although the Senate provision is better than the House provision, audits will be expensive and time-consuming for debtors and their counsel even under the Senate provision. The United States Trustee should have discretion to set procedures and to determine the number of audits that are reasonable given available funding.
DISMISSAL OF	Provides for dismissal of chapter			This amendment is a punitive attack on

SENATE NIGHTLY REPORT

Friday, February 11, 2000

Friday, February 11

- The Senate was not in session on Friday, February 11.
- The Senate will stand in recess for the week of February 14 in observance of President's Day, and will reconvene on Tuesday, February 22 at 11:00 AM.

Tuesday, February 22

- When the Senate reconvenes at 11:00 AM, Senator Moynihan (D-NY) will immediately be recognized to read Washington's farewell address in honor of the impending holiday.
- Following the annual Senate tradition, the Senate will immediately proceed to a period of morning business until 12:30PM.
- The Senate will stand in recess from 12:30 PM until 2:15 PM for the weekly policy luncheons.
- At 2:15 PM, the Senate will begin consideration of any executive or legislative items cleared for action.
- There will be no votes prior to 2:15PM.

Outlook

- Following the recess, the Senate could begin consideration of H.R. 1883, the Iran Nonproliferation Act of 1999.
- In addition, the Senate may also begin consideration of S.661, the Child Protection Custody Act, which proscribes the transportation of minors across state lines in circumvention of state parental abortion notification laws.

Brook
Stephen M. ...

CASES FOR DEBTORS CONVICTED OF CRIMES	7 case filed by anyone convicted of a crime of violence or drug trafficking unless the case is necessary to satisfy a support claim. Has no time limitation, or requirement that the crime be related to the debts in the bankruptcy case, so persons with criminal records are forever barred from filing chapter 7 cases, which has discriminatory impact on minority and poor households. (<i>Hatch amendment #1715</i>)	No similar provision.	No similar provision.	those who presumably have already been punished. The definition of a "crime of violence" is very broad. The amendment would be less problematic if it provided that the case could be dismissed only upon motion of the victim of the crime. Since debts arising from such crimes are normally nondischargeable, the victim usually is better off if the debtor files bankruptcy and eliminates competing debts that are unconnected to the crime.
RETIREMENT SAVINGS	Expands protection of retirement savings from creditors in bankruptcy. <i>§224.</i>	Very similar provisions. <i>§203.</i>	Very similar provisions. <i>§330.</i>	A useful provision, although contributions to retirement accounts made during bankruptcy still are not protected.
EDUCATIONAL SAVINGS	Protects most educational savings accounts in bankruptcy. (<i>Amendment #2515</i>)	More limited, covers only education IRAs up to certain limits. <i>§113.</i>	Similar to S. 625.	S. 625 is better.
PRIVACY	Creates requirement that detailed information regarding bankruptcy debtors be available on the Internet, with no privacy protections, even for domestic violence victims. <i>§602.</i>	Same. <i>§702</i>	No similar provision.	There should be a provision allowing courts, for cause, to protect personal information of debtors, including victims of domestic violence, from distribution on the Internet.

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FARM BANKRUPTCY	Expands number of farm families eligible for chapter 12. (<i>Feingold amendment # 2746</i>)	No similar provision.	Somewhat weaker than S. 625.	S. 625 is better.
	Prohibits retroactive determination of disposable income in chapter 12. (<i>Feingold amendment #2745</i>)	No similar provision.	Same as S. 625.	S. 625 is better.
PLAN LENGTH	Requires 5 year chapter 13 plan for debtors whose cases were converted from chapter 7 or dismissed under section 707(b). <i>§ 318.</i>	Requires 5 year chapter 13 plan for all debtors over national median income. <i>§606</i>	No similar provision.	S. 625 is significantly better, though it is not as good as S. 1301. But, S. 625's language includes debtors who converted to chapter 13 even if no section 707(b) motion was ever filed against them or could have been filed. It should be clarified to require converted cases to have 5 year plans only if the case was converted after a <i>§707(b)(2)</i> (means test) motion. Otherwise, the provision creates a disincentive for voluntary conversions to repay creditors.
FILING FEES AND IN FORMA PAUPERIS	Permits waiver of filing fee for chapter 7 debtors with income up to 125% of poverty level, in court's discretion. (<i>Amendment #1731</i>)	Permits waiver of filing fee for chapter 7 debtors, in court's discretion. <i>§148</i>	Same as H.R. 833. <i>§407</i>	H.R. 833 is better.
	Raises filing fees by \$30 for chapter 7 and \$25 for chapter 13 (presumably above the \$25 increase enacted in 1999). (<i>Feinstein amendment, #1695</i>)	No similar provision.	No similar provision.	H.R. 833 is better. It is unclear whether the proponents of the Senate amendment understood at the time the amendment was proposed that the filing fees would be increased for similar purposes as of 12/29/99 by the budget reconciliation act. If additional funds are required to administer the bankruptcy system, they

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				should not be raised solely from consumer debtors.
VALUATION OF COLLATERAL	No similar provision.	Valuation of collateral at retail value, overrules Supreme Court's <u>Rash</u> decision. §123.	No similar provision.	S. 625 is better. It involves no change from current law, under which collateral is valued at replacement value rather than retail value.

The Denver Post, November 28, 1999 Sunday

Source: Association for Supervision and Curriculum Development

GRAPHIC: The Denver Post/Jonathan Moreno

LOAD-DATE: December 01, 1999

ISSUE	S.625	DIFFERENCES FROM H.R. 833 (106TH)	DIFFERENCES FROM S.1301 (105TH)	COMMENTS
Consumer Credit Disclosure Minimum payment disclosures	Source: Amendment 2655 – sec. XX01 Requires disclosures concerning the consequences of making minimum payments. Cost of making minimum payments would be expressed based on an example rather than information about the specific terms of the consumer's loan. The lender would provide an 800 number for consumers who desire more specific and accurate information. Lenders regulated by the FTC (such as retailers offering credit cards) would not have to provide a toll free number, but could defer responsibility for providing such information to the FTC. PROBLEMS: a. it includes a provision (11)(J) that would allow any creditor that maintains a toll free number for consumer information to avoid making any disclosures whatsoever, including disclosure of the toll free number; b. the examples used have a tendency to mislead because they are not based on accurate information relevant to an individual consumer's actual account; c. the provision is included in the Truth in Lending Act in a section that does not carry important remedies for	Section 112 The House bill would allow consumer disclosures that are based on unrealistic examples that would not accurately reflect the consequence of making minimum payments on credit cards. The House disclosures would be required only upon opening the credit account and once a year thereafter. They could be made in a form other than on the billing statement The House disclosures make no provisions for consumers to get accurate information about their account. Like the Senate bill, the House bill contains no consumer remedies.	Sec. 209: Requires disclosure of minimum monthly payment on the borrower's balance in dollar amount and as a percentage of the balance. Requires disclosure of months/years to pay balance and total cost if borrower makes only minimum monthly payments and incurs no additional debt. Credit solicitations accompanied by (1) a worksheet to help consumers determine their ability to assume more debt; (2) a disclosure that "preapproval" does not mean the borrower can afford the credit; and (3) notification that the borrower is entitled to copy of credit report. Provides consumer remedies for failure to disclose.	The Senate provision in S. 1301 was by far better than that now in S. 625. The bill ought not to pass with the loophole for creditors that maintain a toll-free number. Any sensible creditor would have a toll free number, be free of the disclosures, and make no change to current practices. The bill ought to provide for consumer remedies when a lender fails to comply. If the latter two problems are fixed, the Senate provision is better on this issue than the House provision.

	consumers when a lender fails to comply. d. the provision would not become effective for at least two years from the effective date of the Act.			
Consumer Credit Disclosure Teaser Rates of Interest	Source: Amendment 2655 – sec. XX03 Requires prominent disclosure of the permanent rate in immediate proximity to first disclosure of the temporary (teaser) rate. Consumers could enforce if they obtain and use credit from a lender that failed to comply.	Section 112 The House provision would be no advance on current law. It merely takes inadequate rules that already are provided by the FRB (Reg. Z) and moves them to the statute.	No comparable provision.	The Senate provision is stronger than the meaningless House provision. In addition, to the provisions in S. 625, the law should require notice of expiration of the temporary rate, on the last billing statement that is more than 30 days before the temporary rate expires. This would help consumers plan for the higher rate.
Consumer Credit Disclosure Internet Disclosures	Source: Amendment 2655 – sec. XX04 This provision requires that disclosures with respect to an Internet solicitation be in “close proximity” to the solicitation. Although the provision requires that the disclosures be updated regularly to reflect the lender’s current policies, it does not require that they be accurate as of the time the solicitation is made.	Section 112(d) This provision puts the burden on a consumer to get accurate and updated information concerning an Internet credit card solicitation. It eviscerates consumer disclosures for internet-based solicitations.	No comparable provision.	The Senate provision is not the entire answer with respect to Internet disclosures, because it does not provide a mechanism to assure that an Internet user knows where the disclosures can be found. However, it is better than the House bill.

Consumer Credit Disclosure Termination for failure to incur finance charges	Source: Amendment 2655 – sec. XX05 This provision prohibits termination of a credit card account solely for the consumer's failure to incur finance charges (in other words, for paying the balance in full each month during the grace period).	No comparable provision.	Sec. 405: Lender may <u>not refuse to renew</u>, continue to offer credit, or <u>charge fee solely</u> because consumer has not incurred finance charges in connection with extension of credit.	S. 1301 was better than S. 625. House passed S. 1301 provision last year.
Consumer Credit Disclosure Other important issues addressed in the 105th Congress	No comparable provisions.	No comparable provisions.	S. 1301, as passed by the Senate in 1998, included additional important consumer protections that are not currently addressed at all in S. 625. These include: 1. disallowance of claims of predatory mortgage lenders that have violated federal law (sec. 206); 2. protections from excessive liability for consumers using debit cards (sec. 208); and 3. Treasury Department evaluation of security interests taken at point of purchase when a consumer uses a credit card (sec. 214).	Item 1 was offered in a Durbin amendment (#2521) that was tabled on November 9. Item 3 is part of a Sarbanes amendment (# 2517) that has not been acted upon.

COMPARISON OF CONSUMER BANKRUPTCY PROVISIONS IN VARIOUS VERSIONS OF LEGISLATION

ISSUE	S. 625 AS AMENDED THROUGH NOVEMBER, 1999	H.R. 833 (ENGROSSED) Bold print indicates provisions significantly better than S. 625	S. 1301 AS PASSED BY SENATE IN LAST CONGRESS Bold print indicates provisions significantly better than S. 625	COMMENTS
MEANS TEST USE OF IRS STANDARDS	Based on IRS standards but does not explicitly include actual costs for "other necessary expenses" (e.g., child care, union dues, tax withholding) that are separately allowed under IRS scheme. (Senate Report states they are included and Grassley stated same on the floor, but House bill expressly includes them.) <i>§102</i> .	IRS standards, clearly including actual other necessary expenses. Food and clothing may be adjusted upward 5% if reasonable and necessary. §102	Much better means test structure than either 1999 bill, based upon debtors' actual income and reasonable expenses, as well as feasibility of a chapter 13 plan. Means testing simplified by absence of reference to IRS expense standards. §102	S. 625 not nearly as good as S. 1301 was. At a minimum, it should be clarified to clearly include actual costs of "other necessary expenses." Schumer Amendment # 2759 is pending. It would create more workable standards for expenses pending EOUST action.
MEANS TEST SOCIAL SECURITY BENEFITS AS INCOME	Social security benefits not counted as income (<i>Kennedy amendment-- #2652</i>).	Same.	No similar provision.	
MEANS TEST ADJUSTMENTS TO EXPENSES FOR SPECIAL CIRCUMSTANCES	Other expenses and adjustments to income allowed if "special circumstances" proved.	Other expenses and adjustments to income if "extraordinary circumstances" proved.	Not necessary because IRS standards not used.	S. 625's "special circumstances" is somewhat better than "extraordinary circumstances" but significant problems remain. For example, would the expense of a three bedroom apartment be justified as "special circumstances" if children could share a bedroom and the family could manage with two bedrooms? Does the age or sex of the children matter?

MEANS TEST LONG-TERM CARE EXPENSES	Long term care expenses allowed. (Feingold amendment #2522)	No similar provision.	Not necessary because IRS standards not used.	
MEANS TEST DOMESTIC VIOLENCE EXPENSES	Domestic violence-related expenses allowed. (Leahy-Murray-Feinstein amendment #2528)	No similar provision.	Not necessary because IRS standards not used.	
MEANS TEST SECURED DEBT ARREARAGE EXPENSES	Arrearages on secured debts for necessary property allowed. (Schumer amendment—#2764)	No similar provision.	Not necessary because means test based on possible chapter 13 plan.	H.R. 833's failure to account for arrearages that would have to be paid in chapter 13 would leave many debtors dismissed from chapter 7 but unable to propose feasible chapter 13 plans.
MEANS TEST ADMINISTRATIVE EXPENSE COSTS	No provisions similar to H.R. 833.	Presumed chapter 13 administrative expenses of 10% allowed	Not necessary because means test based on possible chapter 13 plan.	S. 625's failure to account for administrative expenses that would have to be paid in chapter 13 would leave some debtors dismissed from chapter 7 but unable to propose feasible chapter 13 plans.
MEANS TEST STANDARD FOR PRESUMED ABUSE	Presumed abuse if, after application of test, the debtor is left with the lesser of \$15,000 or 25% of unsecured debts over 60 months.	Presumed abuse if, after application of test, the debtor is left with \$6,000 over 60 months.	Presumed abuse if debtor could pay an amount greater than or equal to 30 percent of unsecured claims in a 36 month chapter 13 plan	S. 1301 was better than S. 625, but S. 625 is better than H.R. 833.
MEANS TEST SPECIAL STANDARD FOR PRESUMED ABUSE FOR MODERATE- INCOME DEBTORS	For debtors between 100% and 150% of median income (no adjustment for families over four), US trustee <i>may</i> decline to file motion if debtor is left with less than the <i>greater of</i> \$15,000 or 25% of unsecured debts over 60 months, but excludes from calculation for this test "other necessary expenses" language	No similar provision.	Not necessary because means test was much narrower.	Not clear what this provision in S. 625 adds, since UST has discretion not to file motion to dismiss in any case. Presumably, it would make motions less likely if \$15,000 produced a very low percentage distribution or if 25% was a small amount of money.

	under IRS standards. (Durbin-Schumer-Kennedy Amendment #2661)			
MEANS TEST SCOPE OF SAFE HARBOR	Safe harbor <i>only from means test motions</i> for debtors below higher of state or national median income plus \$583 for each family member over four (appears \$583 is for six month period). Appears to count income of a separated spouse, even if he is not a debtor in the case. Unlike House bill, S. 625 provides no protections against non-means test abuse motions by creditors. U.S. trustee must file statement about abuse presumption in every case 10 days before the date of the meeting of creditors (i.e. without opportunity to investigate the facts even if the safe harbor protections are present).	Safe harbor from any creditor motion for debtors under national median income plus \$583 for each family member over four (apparently for 12 month period). Appears to count income of a separated spouse, even if he is not a debtor in the case. Safe harbor from means test motions same as S. 625. U.S. trustee need not file statement concerning abuse for debtors protected from means test.	Safe harbor from any creditor motion for debtors under national median income plus \$583 for each family member over four (apparently for 12 month period). Appears to count income of a separated spouse, even if he is not a debtor in the case. No absolute safe harbor from means test motions.	S. 625's lack of a safe harbor from creditor motions is a major problem because creditors could raise issues that are not covered under the means test in order to obtain leverage against the debtor. H.R. 833 protects lower income families from both means test motions and other creditor motions to dismiss based on "abuse". Definition of median income should add \$583/month for each family member over four, as originally intended when the \$583 figure was selected. Schumer/Durbin amendment # 2762 for full safe harbor and accurate definition of median income remains pending.
MEANS TEST IRS AUTHORITY TO CHANGE EXPENSE STANDARDS	Acknowledges IRS can change standards for bankruptcy purposes.	No similar provision.	Not necessary because IRS standards not used.	S. 625 is better in that it allows the IRS to deal with standards that do not "fit" the bankruptcy situation.
MEANS TEST WAR CRIMES COMPENSATION AS INCOME	No similar provision.	Excludes war crimes compensation from definition of income.	No similar provision.	H.R. 833 is better.
MEANS TEST	No similar provision.	Allows expenses up to \$10,000 for private school tuition, books and fees.	Not necessary because IRS standards not used.	H.R. 833 is better. Parochial school tuition is an important expense for many

TREATMENT OF PRIVATE SCHOOL EXPENSES				middle income families.
MEANS TEST SANCTIONS FOR IMPROPER CREDITOR MOTIONS	Sanctions against creditor who brings motion that is intended to coerce or is not substantially justified, <i>but not if creditor's claim is under \$1,000.</i>	Sanctions against creditor who brings motion that is intended to coerce or is not substantially justified. No immunity for creditors with small claims.	Same as S. 625.	H.R. 833 is better. The smaller the creditor's claim the more likely it is that an abusive motion would result in reaffirmation of that claim since paying a small claim is cheaper for the debtor than paying litigation costs. Economic power of the creditor (i.e., ability to afford nuisance litigation) has nothing to do with the size of the claim.
CREDIT COUNSELING AND EDUCATION	Counseling required within 180 days prior to filing <i>unless not available within 5 days of request</i> and exigent circumstances exist. 3105.	Counseling required within 90 days prior to filing unless debtor can show that exigent circumstances exist. 3302(a)	Same as S. 625, except counseling must have occurred within 90 days before bankruptcy. 3321	The 180 day time limit in S. 625 is better, but the potential 5 day waiting period could be a problem in emergency cases.
	Counseling may be done by telephone or Internet. (Durbin amendment #2659)	Silent on this issue.	Silent on this issue.	S. 625 clarification is helpful. If it were lost in conference it might create an implication that phone counseling is not allowed.
	Counseling agencies must be nonprofit and provide services to those unable to pay.	No requirement of nonprofit status or other protections that are in S. 625. The FTC is directed to set standards.	No requirement of nonprofit status or other protections that are found in S. 625.	S. 625 is better. For-profit debt counseling is insufficiently regulated and many agencies are involved in scams, such as high rate debt consolidation loans, that prey on debtors' lack of financial alternatives.
	Debtor must complete financial management course to receive discharge. No exceptions if	Same.	Same.	This requirement will pose serious problems for the homebound, those who live in rural areas, and those with

	debtor is unable to attend due to disability, cost, etc.			inadequate childcare. Unlike pre-bankruptcy counseling, there is no requirement that education be offered at no cost to those who can't afford to pay for it.
CRAMDOWNS	No cramdown for any transaction within 5 years secured by a car, 6 months secured by other property. §306	No cramdown for purchases of personal property within 5 years before bankruptcy. §122	No cramdown at all in chapter 13. §302(a)	Any of these provisions would cripple chapter 13 by redistributing a share of the debtors' limited income to undersecured creditors, even if it means that the case will fail and no creditor can be paid. Thousands of debtors who now use chapter 13 to save their homes from foreclosure or cars from repossession will be unable to do so. Many more debtors would sensibly choose chapter 7 over an unaffordable repayment plan if this provision passes. The result will be that fewer unsecured debts will be repaid. The pending Kohl amendment (# 2666) provides new protections for creditors with collateral purchased within 180 days of bankruptcy (based on the creditors' original proposal).
	Includes both purchase-money and nonpurchase-money security interest, as well as other liens.	Includes only purchase money security interests.	Same as S. 625.	The inclusion of nonpurchase-money security interests in S. 625's anti-cramdown provision is one of its worst features. This protects finance companies and other similar liens on nearly worthless personal property.
	Limited to chapter 13 cases.	Applicable in all chapters.	Limited to chapter 13 cases.	S. 625 is preferable on this issue.
CONSUMER CREDIT	SEE SEPARATE CHART.			

DISCLOSURES AND CONSUMER PROTECTIONS				
DISCHARGEABILITY OF DEBTS	Expands presumption of fraud to debtors who incur \$250 for "luxury goods" within 90 days or \$750 in cash advances within 70 days before bankruptcy. §310	Presumption of fraud for \$250 for "luxury goods" or \$250 cash advance within 90 days before bankruptcy. §133.	Presumption of fraud for \$400 for "luxury goods" purchased within 90 days before bankruptcy. No change on cash advances. §316	S. 625 is slightly better than H.R.833, but not nearly as good as S. 1301. Broader presumption will disproportionately hurt lower income families who can't plan their financial affairs or pay for litigation to rebut the presumption.
	Debts incurred to pay nondischargeable debts with intent not to pay the new debts is made nondischargeable. (These debts already are non-dischargeable, but the new provision doesn't provide procedural protections of current law.) § 314(a)	Same. §146	Same.	At a minimum, the procedural protections given to debtors for other fraud claims should be included. (Current Code sections 522(c) and (d) should be made applicable to this exception to discharge.)
	Debts incurred to pay nondischargeable debts within 70 days before bankruptcy presumed to be fraudulent.	Debts incurred to pay nondischargeable debts within 90 days before bankruptcy conclusively presumed to be fraudulent.	No similar provision.	S. 625 is better than H.R. 833, but the new presumption will hurt lower income families the most.
	Taxes and various other debts, including some credit card debts, made nondischargeable in chapter 13. §§ 314(b), 707	Same, except H.R. 833 slightly worse on taxes, in that S. 625 would excuse some debtors who pay priority taxes in chapter 13 from ongoing interest and penalties. §§ 127, 807	Same as H.R. 833, except tax dischargeability not affected. §314.	S. 625 is slightly better on taxes than H.R. 833. Eliminating the chapter 13 "superdischarge" removes a major incentive for some people to file chapter 13 cases. Because all of a debtor's income in chapter 13 is directed to necessities or plan payments to creditors, there are not funds available for debtors to defend against wrongful claims of

Statement of Senator Patrick Leahy
On Final Passage Of The Bankruptcy Bill
February 2, 2000

Mr. President, I intend to vote for the Bankruptcy Reform Act to send it to conference in the hope that we can continue to improve the bill so that a balanced bankruptcy reform bill can be signed into law by President Clinton this year.

During the course of our floor debate, Senators from both sides of the aisle have come forward to make bipartisan progress to improve this bill from that reported by the Judiciary Committee. I want to thank Chairman Hatch and Senator Grassley for working with us, with me and Senator Reid and Senator Torricelli, and with the proponents of many amendments. This debate has not been easy with more than 300 amendments filed to the bill back in November. We have worked through those amendments.

Let there be no confusion: This is certainly not the bill that I would have drafted, even now after the amendment process. This is not as good or as balanced a bill as that which the Senate passed by a 97 to one vote in 1998. Still, it has been significantly improved in its bankruptcy provisions through a bipartisan amendment process.

We have worked in good faith with the Republican managers to have an open debate. This is how the Senate works and how it should work. From a total of 320 amendments, we have now worked through them all. That is a bipartisan accomplishment of which we can all be proud.

I have tried during the course of this consideration to protect the rights of Democratic Senators to offer and debate their amendments. While we have not always prevailed after a vote, we have at least been faithful to our Senate tradition and preserved the opportunity to offer, debate and vote in relation to those amendments.

In some significant regard, we have been successful in improving this bill. Over the course of the last three years we have been able to help reshape the bill to protect child support payments as a priority in bankruptcy.

We added modest but essential credit industry reforms to the bill. The millions of credit card solicitations made to American consumers the past few years have caused, in part, the rise in

consumer bankruptcies. The credit card industry should bear some responsibility for these problems.

The improvements to the Truth In Lending Act that we have been able to add to this measure provide for more disclosure of information so that consumers may better manage their debts and avoid bankruptcy altogether.

We adopted other important amendments to improve the bill, as well. Indeed, we adopted 45 amendments during Senate debate on this bill. I want to list just a few of these important amendments for the record.

The Senate overwhelmingly voted to close the homestead exemption loophole in the Bankruptcy Code. By a vote of 76 to 22, the Senate adopted the Kohl-Sessions amendment to cap any homestead exemption at \$100,000. In States such as Florida and Texas, debtors have been permitted to take an unlimited exemption from their creditors for the value of their home. This has lead wealthy debtors to abuse their State laws to protect million dollar mansions from creditors. This has been a real abuse of bankruptcy's fresh start protection.

We adopted the Leahy-Murray-Feinstein amendment to clarify that expenses to protect victims of domestic abuse are necessary expenses in a bankruptcy proceeding. We adopted a Feingold amendment to clarify the long-term expenses of a debtor caring for a nondependent parent or relative are necessary expenses in a bankruptcy proceeding. We adopted the Kennedy amendment to protect a debtor's Social Security benefits in a bankruptcy proceeding. These are good amendments that improve the bill.

We adopted the Grassley-Torricelli-Specter-Feingold-Biden amendment to provide bankruptcy judges with the discretion to waive filing fees for low-income debtors. Bankruptcy is the only civil proceeding without in forma pauperis filing status and this amendment corrects that anomaly. And we adopted the Feingold-Specter amendment that struck the bill's requirement that a debtor's attorney must pay a trustee's attorney fees if the debtor is not "substantially justified" in filing for chapter 7.

That requirement could have discouraged honest debtors from filing for chapter 7 for fear of paying future attorney fees. Together these amendments improve the fairness of bankruptcy

BANKRUPTCY

February 2, 2000

The President supports responsible bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly.

It appears that the Senate will shortly complete its consideration of the bill and send the bill to a conference with the House.

During Senate floor consideration, some important improvements were made so that the Senate bill is now somewhat better than the flawed and unbalanced House bill. While we still have some serious reservations, the Senate is sending a signal that balance is important. We hope that that signal will be respected in conference and that we get – from the conference – a product that reflects the key improvements in the Senate bill. For example:

- The Senate bill would cap the homestead exemption – to ensure that the wealthy don't benefit from a large loophole to avoid their creditors while we ask middle income families to repay the debts that they can.
- We understand that the Senate bill will include a provision sought by Senator Schumer that would protect low-income debtors from motions brought by creditors that too often might be used to threaten or coerce debtors to forego their rights (so-called "motions safe harbor").
- Similarly, the Senate bill has some (albeit too limited we think) new important credit card disclosures for consumers sought by Senator Torrecelli.
- Finally, the Senate bill has a new "reaffirmation" provision that require courts to look closely for coercion when a debtor says they want to reaffirm a debt (that they are entitled to discharge) but it is clear they do not have the income to repay. (However, here there is an important technical improvement on filing deadlines that Senator Sessions and Reed have agreed to work together to fix during conference.)
- Note also that there are some aspects of the House bill that are better too, and we will work to preserve those improvements in final bill.

Given that President has a veto threat on the House bill, will the president veto the bill that returns from conference?

I won't answer a hypothetical. We strongly hope that we won't be presented with the need for that. We want balanced bankruptcy reform. The Senate has taken some important steps here to achieve balance. Not all our concerns have been resolved but it is getting better. We strongly hope that the Conference will produce a bill that maintains that balance and that the President could sign. (Of course, also we hope that the bill contains no extraneous and controversial other amendments – like the minimum wage/tax package now attached).

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LENGTH: 865 words

HEADLINE: WE'RE INTERRUPTING U.S. EDUCATION FOR COMMERCIAL BREAKS

BYLINE: Elizabeth Chang

BODY:

In the Washington suburb of Montgomery County, Md., where I live, the school board has decreed that communities aren't creative enough about naming their schools. Too many buildings, it says, are named after dead white men or bland neighborhood locales.

This is certainly the case in my end of the county, where the only diversity consists of a high school named for a dead white European man, and where the elementary schools are named for suburbs or subdivisions, or landmarks that don't seem to exist anymore.

I'd be happy to see these schools renamed -- but only if I can get something out of it.

Consider how the Redskins, who seem to positively revel in their politically incorrect name, handled the apparently more nettlesome issue of what to call their football field. Jack Kent Cooke Stadium became embarrassingly inappropriate when Dan Snyder outbid Cooke's son to become the landlord. Redskins Stadium, a perfectly logical, serviceable name, wasn't good enough because there was nothing lucrative in it. So it has been ringingly renamed FedEx Field, which has the great disadvantage of making the place so geographically indistinct it could be in Dallas, but the apparently greater advantage of adding more than \$ 200 million to team coffers.

Anyone besides me see the connection? If naming schools after diverse people is difficult and divisive -- and, more important, doesn't gain our needy system a dime in compensation -- then the solution is obvious: The school board should sell the naming rights to new schools. And while it's at it, to the old ones. All hail Barbie Elementary or Pokemon Middle.

This is necessary because schools in Montgomery County, one of the nation's richest public systems, seem to be alarmingly, appallingly short of money. How else to explain the weekly fund-raising appeals that my kindergartner totes home? In the first few months of school, my husband and I have paid for supplies (paper towels, even), contributed to the building fund, purchased a calendar, ponied up PTA dues, attended fund-raisers, collected grocery store receipts to redeem computer equipment, bought books from a book club and book fair, and ordered school pictures. We couldn't muster the nerve to peddle wrapping paper to anyone else, so we bought some ourselves.

And we thought public school was, well, free.

Minimum Wage and Tax Amendments

February 2, 2000

- In last year's political maneuvering, the Republicans attached to the bankruptcy bill a provision that would have raised the minimum wage too slowly and contained unacceptable, imbalanced, and unpaid for tax breaks for high income individuals and businesses. The President made clear last year that he would veto the bill if that amendment were attached. If the Republicans are serious about accomplishing bankruptcy reform this year, these regressive tax provisions will be striped before it is sent to his desk.

Background: In the SAP that we sent last November on Bankruptcy, we said:

"On November 4, 1999, in a letter to the Majority Leader, the President made clear that he strongly supports an increase in the minimum wage of \$1 over the next two years; however, if Congress sends him a bill delaying the increase, repealing overtime protections for certain workers, adding costly and unnecessary tax cuts that threaten fiscal discipline and direct benefits away from working families, and thwarting ongoing efforts to enforce pension law, he will veto it."

However, the Democrats (Leahy and Daschle) have asked WH Legislative Affairs not to make a big deal about amendments now; Leahy and others will make clear that they vote for the bill now, but would not do so if it returns from Conference with these provisions attached.

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Schumer Amendment on Access to Abortion Clinics
February 2, 2000

The Administration's SAP last year indicated that we supported the Schumer amendment to ensure that no one takes advantage of the bankruptcy code to avoid their civil or criminal liability under this act. There was concern that clinic protestors were violating the law flagrantly with the plan and intent of filing for bankruptcy to avoid the penalties. Specifically, the SAP said:

“[We support] an amendment by Senator Schumer that would make court-ordered fines and debts resulting from abortion clinic violence nondischargeable. As the Justice Department noted in a May 14, 1999 letter to Senator Schumer, the Administration generally opposes the expansion of nondischargeable debt unless there is an overriding public policy objective and no other way to achieve that objective, but believes this amendment is a necessary tool in current efforts to end clinic violence and intimidation.”

Note: Schumer announced this morning that the VP would be available to break a tie if a vote were held on this issue. The Republicans complained that it was an election year gimmick. They just announced that they would urge members to adopt the “flawed” amendment – to avoid a political circus and deal with it in conference.



Bethany Little

02/07/2000 01:02:26 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Hispanic Education whatever we're calling it

Just a quick note to follow up on our Friday meeting to be sure I did not misunderstand where we left off...

Maria has done her first wave of calls (Sarita, John Guerra, Hector Garza), and it looks likely that these conferences will be de-coupled to some extent, since the outside groups are not comfortable with our timeline. That actually fits quite well with the points made by Carlos Rodriguez (who wrote "Our Nation on the Fault Line") regarding the need for some more high-level, strategic discussion/identification of the National Goals followed by a more detailed effort to organize implementation strategies and follow up. Also, I am less concerned about the political impact of their agenda if the conference is not immediately connected with the White House. It will still allow us to move forward, working with this group in a constructive way.

Brian, I believe that in addition to setting up the outreach meetings, you would begin to compile a potential list of people who must/might be invited to the conference (possibly related to the folks invited to the meeting).

Andy, Kendra, JB, Brian K, Ann and I were going to nail down the proposed goals for early childhood education, LEP students and higher ed, and work with Brian B to incorporate the proposed policy goals and the talking points into one document. Ray and I were going to continue to work on possible conference agendas for discussion purposes.

Does this look right to everyone? We'll do a status check at our meeting on Friday. This is a great group to be working with, so thanks very much!

Message Sent To:

Andy Rotherham/OPD/EOP@EOP
John B. Buxton/OPD/EOP@EOP
Kendra L. Brooks/OPD/EOP@EOP
Reynaldo Valencia/WHO/EOP@EOP
Brian A. Barreto/WHO/EOP@EOP
Brian V. Kennedy/OPD/EOP@EOP
Ann O'Leary/OPD/EOP@EOP

Talking Points on Levin Gun Amendment

February 2, 2000

Note: The Administration has tried to avoid speaking to this issue. While we are generally sympathetic to the concerns that motivate the amendment – fear that gun manufacturers will use bankruptcy system to avoid their liability for suits being brought – we have significant bankruptcy policy concerns with how the amendment works and the precedent it set. So, we have promised to be silent.

Background on Schedule

- There will be votes scheduled beginning at 12:00. Probably only 3:
 - Schumer amendment to make nondischargeable in bankruptcy fines that result from judgements for violating FACE Act which protects access to **abortion clinics**
 - Levin amendment to make nondischargeable in corporate bankruptcy judgements involving the manufacture or sale of **guns**
 - **Final passage**
 - Note: Possible landlord tenant amendment by Feingold might also be voted before final passage.

Finally, recall that attached to this already bill is an amendment attached last November on **minimum wage and taxes**.

SCHEDULING PROPOSAL

TODAY'S DATE: 2/3/00

_____ACCEPT

_____REGRET

_____PENDING

TO: Stephanie Streett
Assistant to the President
Director of Presidential Scheduling

FROM: Bruce Reed
Assistant to the President for Domestic Policy and
Director of the Domestic Policy Council

REQUEST: Meeting and Event with the National Campaign Against
Youth Violence's Board of Directors

PURPOSE: To meet with the first Board Members to join the National
Campaign Against Youth Violence, including Oprah
Winfrey, Steve Case, CEO of America OnLine, and Bob
Iger, President of ABC, and for the President to hear of
their commitments to the National Campaign. Also to
publicly announce the Board and report on a series of
actions by the National Campaign.

BACKGROUND: On May 10, 1999 the President announced a proposal to
launch a National Campaign Against Youth Violence, and
on August 17, 1999 he announced that Jeff Bleich would
serve as the Campaign's Executive Director. Since this
official launch the campaign has made strides in gaining
commitments from new board members and in planning a
15 city tour in 2000.

PREVIOUS PARTICIPATION: On May 10, 1999 the President announced a proposal to
launch a National Campaign Against Youth Violence, and
on August 17, 1999 he announced that Jeff Bleich would
serve as the Campaign's Executive Director.

DATE AND TIME: February 22, 2000

BRIEFING TIME: 30 minutes

proceedings.

We adopted the Leahy amendment that struck the bill's mandate for all debtors to file past tax returns and instead permits parties in interest to request tax information if needed. The wasteful provision stricken by my amendment should save taxpayers an estimated \$24 million over the next five years by cutting down on unnecessary storage costs and paperwork burdens.

We adopted the Reed-Sessions amendment to protect debtors by giving them adequate information for decisions about reaffirmations of unsecured and low-value secured debt. We adopted the Sarbanes-Durbin amendment on disclosure of consumer credit information.

Forty-three amendments were adopted to the Committee bill, many made important improvements, many on a bipartisan basis.

Unfortunately, while we made progress on the underlying bill in many regards, it still lacks the balance that it needs to become good law and remains tilted too far toward making taxpayers and the bankruptcy courts pay for the excesses of the credit industry. It is my hope that with the help of the Administration and the continuing cooperation of Chairman Hatch and Senator Grassley and our House counterparts that we can continue to improve this measure during the course of a House-Senate conference and report a consensus bill that we can all proudly support.

Most threatening to the prospects of this bill becoming law are the nonrelevant, nongermane amendments adopted last November to this bill. Last year, Senate adoption of those nonrelevant, nongermane amendments quite properly led to a presidential veto threat. I will work in the House-Senate conference to have those amendments removed from the conference report and final bill. If they are not, I have grave doubt whether any bankruptcy reform bill can become law this year.

Regrettably the Senate rejected the Kennedy amendment to provide a real minimum wage increase and, on a virtual party line vote, chose to adopt an amendment that includes unpaid tax breaks and a watered down increment in the minimum wage for working people. The President noted that the Republican majority used its amendment "as a cynical tool to advance special interest tax breaks."

Last year, the Senate also adopted by a

one-vote margin, a poison pill amendment regarding sentencing policy. I opposed this amendment because it attempted to solve the unfair discrepancy between sentences for powder and crack cocaine in precisely the wrong way – by increasing the use of mandatory minimums for those who possess, import, manufacture, or distribute powder cocaine, without taking any steps to reduce the use of disproportionate mandatory minimums for those who commit crack cocaine offenses.

I have repeatedly stated my objections to the shortsighted use of mandatory minimums in the battle against illegal drugs, and my objections are all the more grave when an attempt is made to increase the use of mandatory minimums through provisions placed in the middle of a unrelated bill offered at the end of a session. Returning to the failed drug policies of the recent past is not the way to enact a fair and balanced bankruptcy reform bill.

The bipartisan methamphetamine legislation included in that amendment was passed separately at the end of the last session. Accordingly, the only portion of that amendment worth voting for has already been passed separately. That nonrelevant, nongermane amendment should also be jettisoned in conference.

The Senate's actions last year in adopting the two Republican nonrelevant and nongermane amendments were both unfortunate and unwise. I hope the House-Senate conference committee will discard these two poison pill amendments as we craft a final bankruptcy reform bill that can become law.

I look forward to working with the Senate and House conferees to improve the Bankruptcy Reform Act in conference. I hope the majority has learned from the mistakes made during the bankruptcy reform conference in the last Congress two years ago. This year, we should work together to make further improvements and add balance to the Bankruptcy Reform Act.

Finally, I want to commend Chairman Hatch and Senator Grassley for their management of this bill and thank Senator Reid, our Assistant Democratic Leader, for all his effort and assistance in connection with this matter.

Senator Grassley has persevered in this effort when lesser men would have given up and he continues to work with us in good faith to craft reform legislation.

Chairman Hatch has returned to his important leadership responsibilities in the Senate without missing a step. He is a legislator of the first order with whom I am glad to work on many matters. Today we culminate our work together on initial Senate passage of the Bankruptcy Reform Act so that we can continue our efforts in a House-Senate conference.

Senator Reid has worked with me to protect the rights of Democratic Senators and to improve the bill. I have thanked him many times in the days and weeks that we have been on the Senate floor together working to improve this bill and do so, again, today.

I look forward to working together with Chairman Hatch, Senator Grassley, Senator Torricelli, the House conferees, and the Clinton Administration on a conference report that leads to enactment of a fair and balanced Bankruptcy Reform Act.

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
MEANS TEST	Sec. 102 amends 707(b) and provides in redesignated 707(b)(1) change of "substantial abuse" to "abuse" which any party can file. Under 707(b)(2), court shall presume abuse exists if debtor's income less certain expenses leaves \$6,000 over five years. Current monthly income ~ all income received in 180 days excluding payments to victims of war crimes, and social security benefits For purposes of the presumption, debtor's expenses "shall be...applicable monthly expense amounts specified under" National Standards, Local Standards and the debtor's actual monthly expenses for the categories "specified as Other Necessary Expenses" issued by IRS. Add allowance for - · Actual necessary expenses; · Food & clothing can be adjusted upward 5% if reasonable & necessary; · Chapter 13 admin. expenses of 10%; · Private school tuition up to \$10,000. Less - Monthly payments on secured debts - Monthly payments on priority debts Can't take charitable contributions into account in any motion under "this section" - ?? - A family or HH includes debtor's spouse, and dependents but not legally separate spouse unless files a joint case with the debtor. Presumption can be rebutted only by demonstrating "extraordinary" circumstances and showing that adjustment to expenses or income "is required."	Sec. 102 generally the same but a lot of amendments to 11 U.S.C. 707(b) are misplaced as amendments to 704 Same 707(b)(2) presumption of abuse except standard is \$15,000 or 25% over 5 yrs Current monthly income ~ all income received in 180 days <u>excluding social security benefits</u> (Kennedy #2652 11/17) Debtor's monthly expenses "<u>shall be ...applicable monthly (excluding payments for debts) expenses under standards issued by the IRS</u>" less secured debt (& arrearage payable in chapter 13 divided by 60 (Shumer #2764 11/17) and priority debt. <u>Less expenses for care & support of elderly, chronically ill or disabled HH member or or member of the debtor's immediate family (parents, g'parents, siblings of the debtor and children of the debtor and the spouse in a joint case) who is not a dependent and is unable to pay for expenses.</u> (Feingold #2522 11/17/99) <u>Less expenses to maintain safety of debtor and family from family violence. Keep confidential by court.</u> Leahy, Murray, Feinstein #2528 (S14386). Presumption can be rebutted by demonstrating "special circumstances" that "justify" adjustments to expenses or income - expenses must be "necessary and reasonable."	Both House and Senate amend chapter 7 dismissal for "substantial abuse" to "abuse" and add a "presumed abuse" standard. To be presumed abusive, House requires only \$6,000 disposable income over five years (or \$100/month); Senate looks for repayment of at least \$15,000 or 25% of unsecured debt over 5 years which is far more reasonable. For presumed abuse analysis, income is avg of amounts rec'd over preceeding 180 days. House & Senate basically same income except House excludes payments to victims of war crimes. With regard to expenses, both House & Senate use same IRS standards with deductions varying somewhat. Largest deductions are probably in House with regard to private school tuition (\$10,000) and charitable contributions. Both account for chapter 13 repayment capacity but in different ways. House for admin expenses, and Senate for arrearages. Once presumed abusive, standard for rebutting the presumption differs. Senate is more flexible than House.

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
MEANS TEST (cont'd)	Debtor can recover reasonable costs against a creditor if the motion is denied and court finds that motion not substantially justified or filed solely to coerce the debtor to waive a right under title 11 (no immunity for small claims) If panel trustee or BA files motion and wins, court may assess damages against debtor's counsel for costs and atty fees, civil penalty. Same attorney certification	Debtor can recover reasonable costs against creditor if motion denied and court finds motion not substantially justified or filed to coerce the debtor to waive a right under title 11 (but creditors with small claims < \$1,000 have immunity) Panel trustee can recover reasonable costs from debtor's counsel if wins 707(b) motion and counsel's action "in filing under this chapter was not ~~substantially justified~~ <u>frivolous</u>" (Feingold #2743 11/9) If debtor's attorney violates FRBP 9011, can assess civil penalty & payment to panel trustee or UST. Attorney's signature certifies that counsel has "performed reasonable investigation into the circumstances that gave rise to the petition" and "well grounded in fact" and "warranted by existing law." Nothing limits ability of creditor to provide information to judge, UST or trustee.	Debtor can recover costs against creditor ~ prefer House ~ creditors with small claims should not be immune from sanctions for filing coercive or unjustified motions. Trustee can recover costs from debtor's attorney ~ prefer Senate standard. (See also other provisions under Trustee Compensation which allow recovery against debtor and/or chapter 13 estate if trustee prevails) Senate provision simply codifies existing case law.
MEANS TEST ~ Procedure	Procedure ~ amends 704 (1) trustee to review all materials for by each individual debtor, consider info presented at 341 mtg, then (2) within 10 days after mtg. file statement with court as to whether case is presumed abuse; (3) court to copy all creditors within 5 days. (4) If presumed abuse and > highest nat'l	Procedure ~amends 704 (trustee duties) (1) for each individual debtor UST to review all materials; (2) 10 days before 341 meeting UST to file statement with court as to whether case presumed abuse under 707(b); (3) court to copy all creditors within 5 days; (4) if case presumed abuse & income above median (national or State). UST must file 707(b)	Main procedural difference is that House calls for trustee to perform functions while Senate vests duties in UST. Prefer Senate since UST brings 707(b) motions under current law. Trustee compensation provision only good in those few cases with money or attorney misconduct; not enough incentive to rely on private

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	median family income for equal or < size, the trustee shall within 30 days of filing statement, file either a motion to dismiss or statement why motion not be appropriate. ----- Amends debtor's duties in 521(a)(1)(B) to require debtor to file: statement of debtor's current monthly income and calculations which determine whether a presumption arises under 707(b)(2)(A)(i) showing how each amount is calculated	motion or statement why motion not appropriate within 30 days of "receiving" the statement. <u>If motion "required" UST may decline to file if income > 100% but <150% of nat'l or applicable State median HH income and income less expenses times 60 is < 25% or \$15,000 (Durbin #266) 11/17)</u> Same but placed as amendments to 707(b)(2)(C)	trustees to pursue dismissal over keeping case and and administering assets. (If Conference opts for House make clear that trustee's role does not foreclose the UST from acting.) Also, initial statement of abuse must be filed 10 days <i>before</i> 341 meeting in Senate whereas, House allows 10 days <i>after</i> which is far more realistic & therefore preferred. Because of the safe harbors, these statements would only be necessary in cases where debtor makes above median income (10-15% of cases). If presumed abusive in initial screen, UST /trustee must file motion within 30 days ~ 60 is preferable. (Make sure than action by trustee does not foreclose UST from acting).
MEANS TEST ~ Safe Harbor	Safe Harbor Summary ~ If debtor makes < <i>regional</i> median, is totally exempt from a presumed abuse motion under 707(b)(2), but is still subject to a 707(b)(1) motion which can only be brought by the court, UST or trustee if income is below <i>nat'l median family</i>. Subject to the above, anyone can bring a motion under 707(b) over nat'l median family. (Gap debtor ? ~ two references are very confusing). <i>No one</i> can file motion under "this paragraph" - meaning 707(b)(2) - the presumed abuse paragraph, if debtor makes < "regional median household monthly income calculated on a	Safe Harbor ~ Not clear because it appears as an amendment to 704 (which deals with trustee duties) rather than 707. See page 14, 704(b)(5). ~~As written, only judge, UST & panel trustee can bring a motion under "this section" if debtor makes less than median income (using nat'l or State).~~ The reference to "this section" is to 704 - not 707 - so needs correction. <u>No one (including judge, UST or trustee) can bring a motion under "707(b)(2)" if debtor makes < national or applicable State median HH income (Hatch #1715 11/9) (same Mgr Am #2515 11/10)</u> <u>Amendment #2762 (Schumer 2/2/00) only judge,</u>	Both bills create two safe harbors for debtors under median income: (1) they are not subject to a presumed abuse motion brought by anyone; and (2) they are not subject to general abuse motion by creditor (but remain subject to one filed by UST, judge and - for first time - the private trustee) NOTE: House bill often references "regional" median income for "household" calculated on "semiannual" basis ~ need to

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	semiannual basis for a household of equal size." For HH > 4, use median income for HH of 4 plus \$583/additional member. [p. 10, § 707(b)(2)(C)] Plus, only court, UST or trustee can file a motion under this "subsection" - meaning 707(b) - if debtor's income < than highest nat'l median family income last reported by Bureau of Census for family of equal or < size, or in the case of HH of 1 person, the nat'l median HH income for 1 earner. If family >4, add \$583/additional member [p.12-13, § 707(b)(6)] Director, EOUST to file report and recommendations within 3 years on use of IRS standards for determining debtors' monthly expenses.	<u>UST, or trustee can bring a 707(b) motion if debtor makes less than national/state median (or if 1 person, < national/State median HH last reported by Bureau of Census for 1 earner).</u> <u>New Sec. 103 — (a) Congress finds that Secretary of Treasury has "inherent" authority to alter IRS standards to set guidelines for repayment plans as used under 707(b). (b) Secretary of Treasury in consultation with Director, EOUST, to report within 3 years on utilization of IRS standards and impact on courts & debtors and makes include recommendations for amendments to title 11. (Mgr Am #2515 11/10)</u>	conform so all references are the same, whether "national" or "State" median and "family" or "household" (altho generally for 1 person use of HH is appropriate) NOTE: The \$583 figure cited in both bills for each family member over four is a monthly figure but neither bill makes that clear. Both bills incorporate some latitude to deviate from IRS standards in the future but requires report in 3 years. In House, recommendation from Director EOUST, which seems appropriate; in Senate, it is Treasury. In either event, both agencies would consult with other. NB Treasury GC does not agree it has "inherent" authority" or that this reference is enough to create it.
MEANS TEST TRAINING		<u>Sec. 1434 Director AOUSC in consultation with Director EOUST shall develop training as may be useful to the courts to including 707(b).</u>	
DISMISSAL OF CRIMINALS		<u>New 707(c) provision: on motion of a victim of violent crime or drug trafficking crime, or party in interest, court "shall" dismiss an individual's case "if that individual was convicted of that crime" unless debtor shows by preponderance that filing necessary to satisfy domestic support obligation. (Hatch #1715 UC 11/9)</u>	New provision just added in the Senate.
DEBTOR EDUCATION	Sec. 104 (a) Same as S.625 (b) Same except 6 districts instead of 3 and study runs for 18 months instead of 12 (d) Same as S.625 (but incorrectly refers to 1	Sec. 105 (a) Director EOUST to consult experts and develop a financial management training curriculum and materials to educate individual debtors on how to better manage their finances.	Both bills basically the same. Create new requirement for all individuals in chapter 7 and 13 to receive debtor education before they can get a discharge. (Could be 15 minutes or 5

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	year study instead of 18 month study) Sec. 107 (same) Sec. 302(b)-(c) amends 727 & 1328 (same) Sec. 302(e) also provides in new 111(c) that the UST shall only approve programs or courses that satisfy standards promulgated by EOUST and authorizes EOUST to set standards.	(b) Director to select 3 district to test effectiveness of curriculum. For 1 year, starting 270 days after enactment, curriculum & materials shall be made available by the Director, directly or indirectly, on request to individual debtors in 7 & 13. (c) During 1 year period Director to evaluate effectiveness of (A) curriculum & materials and (B) existing consumer education programs, e.g., cited in BRC Report, by credit industry & chapter 13 trustees and consumer counseling groups and make report within 3 months to Congress. Sec. 222 Sense of Congress that States develop curricula relating to personal finance for elementary and secondary schools Sec. 106(b)-(c) amend 727 & 1328 no discharge unless complete instructional course of personal financial management as described in new sec. 111 (n/a in district where UST determines courses not adequate). No comparable provision	hours). EOUST to develop the curriculum and materials. Director EOUST to conduct study, 12 months in 3 districts n the Senate; 18 months in 6 districts in House. NOTE: requirement takes effect immediately & does not wait for study to be completed ~ therefore, USTs will have to identify & approve available curriculum. If none currently adequate, UST will report & requirement does not go into effect.
DEBT RELIEF ENFORCEMENT AGENCY	Sec. 105 amends 11 USC 101 to define "debt relief agency" and "bankruptcy assistance" and "assisted person" Sec. 106 adds new 527 imposing requirements on a debt relief agency that can't be waived. Makes agency liable for actual damages, atty fees and costs for certain intentional or negligent acts. Sec. 154 creates new 527 which requires	These provisions were struck from Senate bill during Committee (previously Sec. 221 - 224)	The House provisions would add a new category of bankruptcy service providers - a debt relief agency - which includes everyone including attorneys and impose fairly stringent requirements on what they must do and must say. Apparently designed to "help" debtors, these provisions do not seem to add much except complexity and confusion, and may dilute protections afford to debtors

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	agency to give certain notice Sec. 155 creates new 528 regarding debtor's bill of rights.		under the bankruptcy petition preparer provisions of section 110.
PETITION PREPARERS		Sec. 221 amends 110	Clarifies more protection for debtors by specifying who should act for a corporate bankruptcy petition preparer (bpp), by requiring bpp to give debtor notice written in plain language promulgated by Judicial Conference that bpp is not an attorney and cannot give legal advice, gives examples of legal advice; notice to be signed by bpp and debtor and filed; prohibits bpp from giving legal advice and gives examples in statute. Judicial Conference to promulgate fee guidelines for bpp. Provides for treble damages if bpp violates. Also, changes existing law that bankruptcy court must certify facts to district court - allows bankruptcy court to adjudicate. NOTE: there is one technical problem in the definition which must be corrected in Conference or it undoes the whole provision.
CREDIT COUNSELING	Sec. 302 (a) amends 109 all individuals must receive credit counseling within 90 days of filing- otherwise basically same as Senate (except for underlined text). (b)-(c) (see debtor education same) (d) (same) (e) same but further states that UST shall only approve agencies which satisfy standards set in	Sec. 405 106 (a) amends 109 all individuals must receive within 180 days of filing from approved nonprofit counseling service an individual or group briefing (<u>telephonic or by Internet</u> Durbin 11/17) or can file by submitting certification of exigent circumstances and complete within 30 days after filing (<u>except court for cause may order extra 15 days</u> Durbin 11/17) (<u>The credit counseling service</u>	Both bills create new requirement as a condition of filing that all individuals (all chapters) must receive credit counseling. All credit counseling services to be approved by UST and put on a list that is available at the clerk's office. In House, counseling must occur within 90 days of filing; in Senate it is 180

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	regulations promulgated by FTC and which are accredited by the Council on Accreditation or an equivalent third party nonprofit accrediting organization. FTC is authorized to issue regulations. Sets out a list of factors that are quite good. Also, specifically indicates that all the UST has to do is notify clerk in order to remove an agency or program or course from the approved list. We have to issue regulations within 180 days of enactment. (f) amends 362 (same)	<u>may be disapproved by the UST at any time)</u> (b)-(c) see debtor education above (d) amends 521 to require debtor to file certificate of credit counseling with court and copy of debt repayment plan. (e) creates new § 111 that clerk to maintain list of credit counseling services and instructional courses on personal financial management that have been approved by the UST: <u>For inclusion on list must (1) be nonprofit and majority of board (A) not employed by the agency (B) will not benefit; (2) reasonable, if any, fee; (3) annual audit & employee bonding; (4) provide full disclosure to clients; (5) provide adequate counseling; (6) provide trained counselors no commissions or bonuses. Credit counseling services mean a service approved under (a), a consumer education program carried out by chapter 13 trustee or any public or private entity but not debtor's attorney or agent ***.</u> Can't report debtor info to credit reporting agency and makes them liable for damages. (f) amends 362, if case dismisses due to creation of debt repayment plan. for purposes of 362(c)(3), any subsequent case shall not be presumed to be filed not in good faith.	days which is far more preferable. In both bill you can file without taking provided you submit certification of exigent circumstances that is approved by the court and then you must complete within 30 days after filing (Senate allows court to give additional 15 days). In both bills, UST can disapprove at any tiime. House bill interjects FTC requirements (which they do not want) and accreditation by third party. Much prefer Senate bill <i>except</i> NOTE need to delete consumer education programs & chapter 13 trustees. More appropriate under debtor education. Chapter 13 trustees have conflict * but this appears to have been dropped from printed version of bill so don't know how to react at this point????
REAFFIRMATIONS	Sec. 108 amends 524 to provide (1) that in the case of wholly unsecured consumer debt (except credit unions) the agreement must advise debtor that entitled to hearing which can be waived in writing if debtor is represented; and (2) adds another requirement in paragraph (6)(A) that agreement not entered into as "result of a threat by the creditor to take any action that cannot be legally taken or that is not intended to be taken."	Sec. 204 (a) ~~Amends 524~~ ~~same as H.R. 833.~~ (Reed #2650) (b) Amends title 18 to require AG to designate a USA in each district and a FBI agent in each field office to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 and 157 relating to abusive reaffirmation of debt. <u>Expanded to include materially fraudulent statements in bankruptcy schedules. In addition, directs bankruptcy court to establish procedures to refer such cases (#1714</u>	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
		11/9) (c) ~~Amends 523 to make clear that nothing preempts any State law relating to unfair trade practices.~~ (Reed #2650) #2650 also strikes existing 524(c)(2) and inserts instead a requirement that debtor receives the disclosures described in (i) at or before time signs reaffirmation agreement. New (i) describes what the disclosures consist of "which shall be the only disclosures required in connection with the reaffirmation." New (j) notwithstanding any other provisions of this title, creditor can accept payments from debtor before & after filing, which the creditor believes in good faith to be effective and disclosures must be given in good faith. New (k) presume undue hardship until 60 days after filing if income less than expenses. Presumption "must" be reviewed by the court but court shall not disapprove without notice & hearing concluded before entry of debtor's discharge. Judicial education..	
VIOLATION OF DISCHARGE INJUNCTION	Sec. 114 (1) Provides that a creditor's willful failure to credit payments under a confirmed plan violates the discharge injunction. (2) It creates an individual cause of action to redress willful failure of a creditor to comply with reaffirmation requirements as well as any other willful violation of the discharge injunction. (3) Prohibits class actions	Sec. 202 only addresses creditor's willful failure to credit payments under confirmed plan as a violation of discharge injunction.	House prohibits class actions; Senate does not. House creates private cause of action; Senate does not.
VIOLATION OF AUTOMATIC STAY		~~Sec. 203 amends 362(a) to make clear that any communication—other than a recitation of creditor's legal rights—threatening a debtor for the purpose of coercing an agreement for reaffirmation of debt at any time after commencement of case & before discharge of an intention to file a 523 motion or 707(b) motion or~~	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
		to repossess collateral- Reed Am.#2650	
ADR & PREPETITION PAYMENTS PER CREDIT COUNSELING PLAN	Sec. 109 amends 502 to permit court, on motion of the debtor, to reduce a claim based on wholly unsecured consumer debt by not more than 20%, if creditor unreasonably refused to negotiate reasonable repayment schedule proposed by approved credit counseling agency within 60 days of filing. Also amends 547 to provide that trustee cannot avoid transfers made as part of alternative repayment plan created by an approved credit counseling agency.	Sec. 201 ~ same as HR 833	This is not really ADR but is presumably designed to encourage a creditor to engage in pre-bankruptcy negotiations vis-a-vis credit counseling. Many credit counselors report certain creditors never negotiate or waive interest, i.e., Sears. It also provides another incentive in that it protects a creditor from having to disgorge prepetition payments as a preference.
TRUSTEE LIABILITY	Sec. 115(a) amends 322 to insulate trustee from any personal liability except for gross negligence. Sec. 115(b) amends 323 to insulate trustee from any liability for "dissemination of statistics and other information regarding a case or cases, unless trustee has actual knowledge that information is false."		Gross negligence may be too high a standard for breach of fiduciary duties. For good discussion see Judge Seyla's decision in With regard to dissemination of information, this provision is overly broad and affords no safeguards for privacy which is of increasing concern in an age of electronic data transfers.
TRUSTEE DUTY TO RELEASE INFORMATION TO ANY NON PROFIT		Sec. --- #1722 11/9 amends 704 to add new duty for trustee to "provide information relating to the administration of cases that is practical to any not-for-profit entity which shall provide information to parties in interest in a timely and convenient manner including telephonic and Internet access, at no cost or nominal cost. An entity described in paragraph (7) shall provide parties in interest with reasonable information about each case on behalf of the trustee of that case, including the status of the debtor's payments to the plan. the unpaid	Same privacy concerns as above for trustee liability. Imposes no consideration for safeguards on use of sensitive information by the nonprofit. While trustee has duty under existing law, 11 USC 704(6), to provide info to parties in interest, this imposes a somewhat repetitive, but affirmative, duty on trustee to give to any non-profit.

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
		<u>balance payable to each creditor treated by the plan, and the amount and date of payments made under the plan. The trustee shall have no duty to provide information under paragraph (7) if no such entity has been established."</u>	Also, since this creates a mandatory duty, it could increase trustee's liability if unable to provide to everyone who asks. Will also increase costs, e.g., for weekly or monthly transmissions. Who should bear those costs remains unanswered.
TRUSTEE DUTIES RE: DOMESTIC & CHILD SUPPORT	Sec. 148 amends 704 and 1302 to impose duties to chapter 7 and chapter 13 trustees to notify holder of claim of right to use services of State child support enforcement agency Sec. 613 Comptroller General to study in 300 days feasibility, effectiveness and cost of requiring trustees or the courts to provide names & ssns of debtors to the Office of Child Support Enforcement	Sec. 219 Seems basically same except applies to chapter 11 too.	
TRUSTEE COMPENSATION	Sec. 209 ~ same	Sec. 409 amends 330(a)(3) by limiting (a)(3)(A) to examiner, chapter 11 trustee or professional person and by adding (a)(3)(B) which specifies that <i>"In determining the reasonable compensation to be awarded a trustee, the court shall treat such compensation as a commission based on the results achieved."</i>	Sec. 209 and 409 are poorly written and could significantly change the way trustees are compensated. Today trustees get reasonable compensation up to a maximum (it is not unusual to get the maximum). Congress has repeatedly raised the maximum limits, most recently in 1996. While reasonable compensation is appropriate, this suggests trustee has

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	Sec. 614 amends 104(b)(1) to insert 1326(b)(3) as an amount subject to periodic adjustment; amends 326 to insert new (e) allowing reasonable comp if chapter 7 trustee commences a 707(b) motion which is granted or (in any case) demonstrates that case dismissed/converted because of trustee's actions; and amends 1326(b) to provide for payment of chapter 7 trustee's fee - prorated over life of plan but not to exceed greater of \$25 or 5% of payments to unsecured divided by plan months.	Sec. 1427 # 2654 (11/9) also amends 104(b)(1) to include 1326(b)(3); adds new 326(e) if ch 7 trustee commences 707(b) motion which is granted, court shall allow reasonable comp under 330 for services & expenses of trustee & "trustee's counsel in preparing and presenting such motion and any related appeals." Same changes as House to 1326(b)(3) regarding repayment in chapter 13. Sec. 327 #2620 (11/16) amends to add new 326(e) that if case converts under 706, 707 or if debtor denied a discharge under 727, court can award reasonable compensation for trustee services without regard to 326(a) cap.	"an entitlement" to max comp or works for a fixed percentage without regard to time or effort expended. Does not inure to the benefit of efficient and effective case administration and creates potential windfall situations. Sec. 614 & 1427 tend to prefer House because it requires at least some showing of entitlement to fee; Senate requires none so could imply automatic fee award. Senate Sec. 327 provides a reasonable way to compensate trustees for their efforts. As written, however, not clear that trustee's services must necessarily contribute to the conversion, dismissal or denial of discharge. NOTE: See also means test discussion ~ trustee can also recover fees from debtor's attorney for 707(b).
BAD FAITH FILINGS	Sec. 117 amends 362 Sec. 412 amends 362 to address serial filers	Sec. 302 amends 362(c)	
CURBING ABUSIVE FILINGS	Sec. 118 amends 362(d)	Sec. 303 amends 362(d) and 362(b) in granting stay relief, if court finds filing was part of scheme to delay, hinder or defraud & involved transfers of all or part ownership w/o consent of secured creditor or multiple filings can enter in rem order, which if recorded, binding on other cases for two years.	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES	Sec. 610 amends 362(c) (same)	Sec. 320 amends 362(e). Stay in a case concerning an individual in 7, 11 or 13 is to terminate 60 days after request unless court entered final decision or extends the 60 days by agreement of the parties or to a date certain for "good cause, as described in findings made by the court."	
DEBTOR'S RETENTION OF PERSONAL PROPERTY SUBJECT TO A PMSI	Sec. 119 amends 521 to clarify that a chapter 7 debtor cannot retain personal property in which a creditor holds a purchase money security interest unless reaffirms debt or redeems within 45 days of 341 meeting. (Changed to 30 days by Sec. 120.) If debtor fails to do so, 362(a) stay 'is terminated;' creditor can retake property unless trustee files motion and court determines that property has consequential value or benefit for the estate and orders adequate protection of creditors interest. Also amends 722 to provide that redemption amount must be paid in full at the time of redemption.	Sec. 304 amends 521 ~ generally same as HR 833 except it doesn't specifically reference 362 Amends 722 ~ same as HR 833	This clarifies existing law to require debtors to make decision about secured personal property - must reaffirm the debt; redeem the property, or surrender. This would eliminate split in circuits. Half do not require debtors to make decision so long as they are current on all their payments ~ the so-called "fourth" option. Clarifies existing law.
RELIEF FROM AUTOMATIC STAY IF DEBTOR FAILS TO SURRENDER CONSUMER DEBT COLLATERAL	Sec. 120 amends 362 to provide that in an individual case in chapter 7, 11 or 13, stay is terminated on personal property that secures a claim or is subject to unexpired lease if debtor — fails to file timely statement of intention as required by 521(a)(2) Further amends 521 so that statement must be performed within 30 days of first date set for 341(a) meeting.	Sec. 305 amends 362 ~ same as HR 833 Same change in timing	
RETENTION OF LEASED PERSONAL PROPERTY BY ASSUMPTION	Sec. 134 amends 365. If lease of personal property is rejected or not timely assumed, property is no longer property of estate and stay is automatically terminated. Individual in chapter 7 may notify creditor in writing that wishes to assume lease and	Sec. 309(b) amends 365 ~ same as HR 833 Sec. 134.	Interesting. Allows chapter 7 debtors to assume lease but unless involves prepetition debt that would have been discharged, it's probably not subject to reaffirmation

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	creditor may condition assumption on cure. <i>Other provisions are made for assumption or rejection by individual debtors in chapter 11 and 13 cases.</i>		
STRIP-DOWN PROVISIONS	Sec. 122 amends 506. Prohibits strip down in chapter 7, 11, 12 and 13, of a pmsi in personal property acquired by the debtor within 5 years of filing.	See Sec. 306 (later) under preservation of lien in chapter 13. Senate bill does not modify 506. strip down only applies in chapter 13 (5years for cars; 6 months for other)	
VALUATION OF COLLATERAL	Sec. 123 amends 506. In chapter 7 & 13, value personal property securing allowed claim by replacement value as of date of filing without reduction for costs of sale. If it's property acquired for personal, family or household purpose, replacement value is what a retail merchant would charge considering age and condition at the time value is considered.		
EXEMPTIONS	Sec. 124. Residence requirements changed from 180 days to 730 days Sec. 125. Restrictions...	Sec. 307 ~ same as HR 833 Sec. 308 amends 522 ~ think same as HR 833	
RETIREMENT SAVINGS	Sec. 203 amends (a) 522 (b) 362(b) (c) 523(a) (d) 1322 ~ plan can't materially alter terms of a loan described in 362(b)(29).	Sec. 224 protects retirements savings by amending (a) 522 (b) 362(b) and (c) 523(a)	
ERISA	Sec. 150 amends 541(b) to exclude any property withheld or received by employer for ERISA plan as property of the estate.	<u>Sec. 322 #2664 (11/9) amends 541(b) to exclude amount employer receives from debtor or withholds from wages as contribution to ERISA benefit plan or health insurance regulated by State law.</u>	Senate does more - protects health insurance premiums.
EDUCATION IRA		<u>Sec. 225 Mgr's Am 11/10 amends 541(b) to exclude funds placed in an educational IRA or contributed to a state tuition program not later than</u>	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
		<u>365 days before filing but subject to several limits including a \$5,000 cap per beneficiary.</u>	
ADMINISTRATIVE EXPENSES ~ POST-PETITION WAGES & BENEFITS	Sec. 151 amends 503(b)(1)(A) to add that any wages & benefits attributable to any post-petition period as a result of debtor's violation of Federal law, regardless of when unlawful act occurred and whether services actually rendered.	<u>Sec. 323 Amendment #2665 (11/9) basically same but clearer language that covers back pay awards)</u>	
LIMITATION ON EXEMPT PROPERTY	Sec. 147 amends 522 Imposes a \$250,000 cap but allows states to opt-out.	<u>Sec. 324 Amendment #2516 & 2518 (11/10) adds new 522(n). Caps at \$100,000 debtor's ability to exempt under state/local law, interest in real or personal property or coop that debtor or dep. of debtor uses as a residence; or burial plot. N/A to principal residence of family farmer.</u>	
HOUSEHOLD GOODS & ANTIQUES	Sec. 145 creates 101(27A) definition that it "includes tangible personal property normally found in or around a residence but does not include motorized vehicles use for transportation purposes."	Sec. 313 amends 522(f) to define more specifically what HHG include and exclude, e.g., works of art, electronic entertainment equipment with certain exceptions, antiques, jewelry except wedding rings and computer (other than 1 for education entertainment of minor children). This is done to further clarify the property on which s debtor can avoid the fixing of lien if impairs an exemption.	
PRIORITY & DISCHARGEABILITY OF CLAIMS RESULTING FROM DUI		Sec. 223 amends 507 to give these claims tenth priority status. Also amends 523(9) to insert "vessel" after "vehicle" Sec.1409 further amends 523(9) by striking "motor vehicle or vessel" and inserting " <i>motor vehicle, vessel, or aircraft.</i> "	
DISCHARGEABILITY ~ LUXURY GOODS	Sec. 133 amends 523(a)(2)(C). Consumer debts is subject to the same \$250 and 90 day period as Senate bill. Cash advances also limited to \$250 and 90 day	Sec. 310 consumer debts owed to a single creditor aggregating more than \$250 for luxury goods or services incurred within 90 days of filing are presumed nondischargeable. Cash advances aggregating more than \$750	Current law provides \$1075 and 60 days for both luxury goods and cash advances.

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	period.	obtained within 70 days of filing presumed to be nondischargeable.	
DISCHARGEABILITY ~ DEBT INCURRED TO PAY A NONDISCHARGEABLE DEBT	Sec. 146 amends 523(a) to add (14A). Any debt incurred to pay a debt that is nondischargeable if debtor incurred the debt with intent to discharge it in bankruptcy except that all debts incurred to pay nondischargeable debt are nondischargeable without regard to intent if incurred within 90 days of filing.	Sec. 314 (a) basically the same except shortens nondischargeable period to 70 days (instead of 90 days) and, in addition, seems to say that in any case in which there is an allowed claim for child or spousal support entitled to priority, then no debts will be presumed nondischargeable under this provision. (Correct?)	
DISCHARGEABILITY ~ STUDENT LOANS	Sec. 218 amends 523(a)(8) to add to nondischargeable education loans "any other education loan incurred by a debtor that meets the definition of "qualified education loan" under IRS 221(e)(1).	<u>Sec. 220 #1727(11/9) amends 523(a)(8) (same as House)</u>	
DISCHARGEABILITY ~ PRISONER FEES		Sec. 301 amends 523(a)(17) to strike "by a court" and inserting "on a prisoner by any court" and other amendments.	
DISCHARGEABILITY ~ CLAIMS ARISING FROM ABORTION CLINIC BOMBINGS		<u>Sec. 328 Amendment #2763 2/2/00 amends 523(a) to add this new category.</u>	
DISCHARGE ~ FREQUENCY	Sec. 137 amends 727 and 1328. Change period between chapter 7 discharges from 6 years to 8 years and to add new provision that chapter 13 debtor cannot get a discharge if debtor received a discharge in any case under titel 11 within 5 years of the order for relief.	Sec. 312 ~ Same	
CHP 13 ~ MEANS TEST	Sec. 130 amends 1325 (1) appears to require all disposable income to be used to pay unsecured creditors; (2) in determining disposable income. don't include child support payments or other		

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	payments for dependent child: and (3) expenses " <i>as determined in accordance with section 707(b)(2)(A) and if applicable 707(b)(2)(B)</i> "		
CHP 13 ~ DISCHARGE	Sec. 127 amends 1328(a)	Sec. 314(b) amends 1328(a) to narrow the chapter 13 discharge -- In addition to 523(a)(5), (8), (9), would except 523(a)(2), (4), (3)(B) and "restitution or damages awarded in civil action v. debtor as a result of willful or malicious injury by debtor that cause personal injury or death."	
CHP 13 ~ CODEBTOR STAY			
CHP 13 ~ ADEQUATE PROTECTION	Sec. 135 creates new 1307A that require debtor to commence adequate protection payments to creditors within 30 days of filing. Payments to continue until creditor starts receiving plan payments or debtor relinquishes property. Debtors must also provide evidence of insurance within 60 days of filing.	Sec. 309 (c) amends 1325(a)(5)(B)	
CHP 13 ~ DEADLINE FOR CONFIRMATION AND FOR FILING PLAN	Sec. 605 amends 1324 to provide that hearing on confirmation occur at earlier than 20 days and not later than 45 days after meeting of creditors. No comparable filing deadline amendment.	Sec. 317(a) amends 1324(b) to provide that hearing on confirmation may not be held later than 45 days after meeting of creditors. Sec. 317(b) amends 1321 which permits debtor to file plan within 90 days; gives court discretion to extent the time.	Plan filing deadline should NOT be extended.
CHP 13 ~ DURATION	Sec. 606 amends 1322(d). If debtor's income > nat'l median family income last reported by Bureau of Census, plan cannot be any longer than 5 years. If debtor's income < nat'l median, plan cannot be any longer than 3 years unless court for cause approves a longer period not to exceed 5 years. Similar amendments re: time period to	Sec. 318 amends 1322(d). Plan can't go beyond 3 years unless case converted to chapter 13 from chapter 7 or the debtor's case was dismissed under 707(b) in which case plan "shall" provide for payments over 5 years or, as provided under current law, the court find cause to approve over 3years but not longer than 5.	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	1325(b)(1)(B), and 1329		
PRESERVATION OF LIEN IN CHAPTER 13	Sec. 121 amends 1325(a)(5)(B)(i)	Sec. 306 (a) Same as Sec. 121 in HR 833 (b) Amends 1325(a) to provide that for purposes of paragraph (5), section 506 doesn't apply to debt incurred within 5 years secured by a motor vehicle acquired for the debtor's personal use or to any secured debt that was incurred within 6 months of filing.	
CHP 13 ~ CONVERSION	Sec. 611 amends 348(f)(1) (basically same)	Sec. 309(a) amends 348(f)(1) to provide in (B) that if a chapter 13 case is converted to chapter 11 and 12 - but not to chapter 7 - valuations of property and of allowed secured claims shall apply in 11 & 12 with allowed secured claims reduced to extent paid in 13. Also adds new (C) for cases that convert from chapter 13 any security interest continues unless full amount determined under nonbankruptcy law is paid in full when converted notwithstanding any valuation or determine in chapter 13; and any prebankruptcy default that is not fully cured under the plan has same effect as under applicable nonbankruptcy law.	
AUTOMATIC STAY EXCEPTIONS	Sec. 136 also amends 362(b) to except (22) any transfer not avoidable under 544 , 549; (23) continuation of any eviction, unlawful detainer against debtor lease of residential property for which debtor has not paid rent after commencement and during case; (24) commencement or continuation of any eviction, unlawful detainer or similar act by lessor against debtor involving residential real estate under rental agreement that has terminated under state law or by its terms; (25) of any eviction, unlawful detainer if debtor previously filed within last year or	Sec. 311 amends 362(b) to except (23) continuation of any eviction, unlawful detainer or similar action against debtor lease of residential property in which debtor is a tenant under a rental agreement; (24) commencement of any eviction, unlawful detainer or similar act by lessor against debtor involving residential real estate under rental agreement that has terminated under state law or by the lease terms; (25) eviction based on endangerment to property or person or the use of illegal drugs.	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	failed to pay postpetition rent during course of case (26) eviction based on endangerment to property or person or the use of illegal drugs.		
DOMESTIC SUPPORT OBLIGATIONS	Sec. 138 Definition Sec. 139 Priorities Sec. 140 Requirements to Confirm Chapter 13 & 12 Plan Sec. 141 Exceptions to Automatic Stay Sec. 142 Nondischargeability of Certain Debts Sec. 143 Continued Liability of Property Sec. 144 Protection of Claims to Preferential Transfers Sec. 152 Exception to Auto Stay Sec. 153 Exceptions to Auto Stay	Sec. 211 Definition Sec. 212 Priorities Sec. 213 Requirements to Confirm Chapter 13 & 12 Plan (<u>Mgr Am makes number of changes to include req. as confirm of Chapter 11; also makes nonpayment grounds for conversion or dismissal 11/12/13; and expands and clarifies treatment of claims in chapter 12 and 13.</u>) Sec. 214 Exceptions to Automatic Stay (362) Sec. 215 Dischargeability of Certain Debts (523) Sec. 216 Continued Liability of Property (522) Sec. 217 Protection of Claims to Preferential Transfers (547) Sec. 218 Disposable Income in Chapter 12 & 13	
IFP	Sec. 148 allows court to waive chapter 7 filing fee if debtor unable to pay in installments; also allows waiver of other fees for other debtors and creditors.	<u>Sec. 420 Amendment #1731 11/9/99. Allows court to waive chapter 7 filing fee if individual whose income < 125% of "income official poverty line" applicable to corresponding family size is unable to pay fee in installments. Court can also waive other fees under (b) or (c) if individuals with similar income are unable to pay.</u>	
FUNDING		<u>Sec. 326 Amendment #1695 (11/17) amends 1930(a) to increase chapter 7 filing fee to \$160 and chapter 13 filing fee to \$150; and percentages changed.</u>	
NOTICE	Sec. 603 amends 342(c) (examine differences??) Sec. 802 amends 342 regarding notice to government.	Sec. 315(a) amends 342 to establish a procedure whereby creditors may file an address with the court on where future notice should be given. (b) amends 521 — see Debtor Duties	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
DEBTOR'S DUTIES UNDER 521	Sec. 603(b) amends 521 to expand what the debtor must file: (seem same as Senate but double check) (c) amends 1324, whenever notice is given of a hearing on confirmation or modification of a plan, notice includes information provided by the debtor on the most recent statement filed pursuant to 521(a)(1)(B)(ii) or (f)(4) Sec. 604 amends 521(same as Senate)	Sec. 315(b) amends 521 to expand the list of items that must be filed including notice required by 342(b); ~~copies of federal tax returns for past 3 years (#2529 11/16)~~ copies of payment advices from any employer within the 60 day period prior to filing statement of monthly net income statement of any reasonably anticipated increase in income or expenses over 12 month period Director AOUSC to establish procedures to safeguard confidentiality of tax information within 90 days. Provides that upon request by UST or trustee, debtor to provide verification of identity. <u>Sec. 1436. Individual debtor to file tax returns with court on request of party; no discharge shall be entered in a chapter 7 case and no plan shall be confirmed in a chapter 11 or 13 case unless tax docs filed. (#2529)</u> Sec. 316 amends 521. If chapter 7 or 13 debtor fails to file all info required in (a)(1) within 45 days, case is to be automatically dismissed on 46th day. Alternatively, any party in interest can request dismissal and court must enter order within 5 days. If debtor asks for more time within 45 days, court can allow extension not to exceed 45 days.	
FRBP 9011	Sec. 607 (same)	Sec. 319 expresses sense of Congress that Rule 9011 should be modified to cover all documents including schedules submitted to a court or to a trustee.	
PREFERENCES ~ NON CONSUMER DEBT		Sec. 411 amends 547(c) to add a new provision that could not be attacked as a preference, i.e., in the case of a debtor whose debts not primarily consumer debts, the aggregate value of all property	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	Sec. 212 amends 1409(b) ~ same	transferred is less than \$5,000. Sec. 412 amends 28 USC 1409(b) so that any action to recover money or property worth less than \$10,000 for a nonconsumer debt against a noninsider must be brought where the defendant resides.	
UTILITY SERVICE		Sec. 419 amends 366 to add additional safeguards for payment of utilities	
341 MEETINGS	Sec. 202 same as Sec. 403 Sec. 601 (same)	Sec. 403 amends 341 to permit the court, on motion, to order the UST not to convene 341 meeting if debtor has filed a plan as to which acceptances were solicited prior to the commencement. Sec. 415 amends 341(c) to allow creditor to participate at 341 meeting without attorney.	
DISINTERESTEDNESS	Sec. 301 same	Sec. 416 amends 101(14) to exclude investment banker relationship as indicative of an prohibited interest.	
COMPENSATION (see also Trustee Compensation Provisions)	Sec. 216 amends 504 to allow sharing of compensation with a bona fide public service attorney referral program Sec. 1106 amends 328(a) to add "on a fixed or percentage fee basis" after "hourly basis."	Sec. 417 amends 330(a)(3)(A) to add "(v) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field." Sec. 1406 amends 328(a)(same)	
JURISDICTION		<u>Sec. 325 Amendment #2478 inserts new sec. 322 which amends 28 USC 1334 to provide that district</u>	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
		court has exclusive jurisdiction over all claims or causes of action that involve construction of 327 or rules relating to disclosure requirements under section 327.	
CHP 11~INDIVIDUALS		Sec. 321 amends 541(a)(6). ~~In the case of an individual that files a voluntary chapter 11, post-petition earnings from personal services are not excluded from property of the estate~~ Mgr's Amendment creates new 1115 which further provides that when individual files chapter 11, all after-acquired property is property of estate including earnings from services; 1123(a) individual must provide for payment to creditors thru plan of all earnings from personal services as necessary for execution of plan; 1129(a) includes chapter 13 disposable income for chapter 11 individuals; 1129 amended to permit individual debtor to retain property; 1141(d) individual can't get discharge until completion of plan or if debtor can't complete plan, court can grant if creditors got more than in chp 7.	
CHP 11 ~ CREDITORS COMMITTEES	Sec. 206(a) same as Sec. 406 as amended. Sec. 206(b) amends 1102(b) to require committee to provide access to information	Sec. 406 amends 1102(a)(2) to change committee membership if "necessary to ensure adequate representation of creditors or equity security holders." Mgr's Am adds small business language as contained in House and requirement to provide information.	
CHP 11 ~ POST PETITION DISCLOSURE & SOLICITATION	Sec. 210 ~ same	Sec. 410 amends 1125. An acceptance or rejection of the plan may be solicited from holder of a claim if solicitation complies with applicable nonbankruptcy law.	
CHP 11 ~ DEADLINE FOR FILING PLAN	Sec. 213 ~ same	Sec. 413 amends 1121(d) to limit the extensions that may be granted under 1121. Exclusivity may not be extended beyond 18 month from date order for relief. The 180-day period may not be	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
		extended beyond 20 months from date order for relief.	
CHP 11 ~ TRUSTEE ELECTION	---	Sec. 418 amends 1104(b) to clarify some procedural aspects of trustee elections.	
CHP 11 ~ CONVERSION OR DISMISSAL	Sec. 413 amends 1112(b)		
CHP 11 ~ ELIMINATION OF POSTCONFIRMATION FEES FOR SMALL CASES	Sec. 608 amends 28 U.S.C. 1930(a)(6) to eliminate fees payable to UST in certain confirmed chapter 11 cases.		NOTE: Oppose this House provision as it reduces fee revenue to USTP by an estimated \$9 million.
CHP 11 ~ SMALL BUSINESS BANKRUPTCY	Sec. 401 (same) Sec. 402 Definition of small business debtor is person (including affiliate) with < \$4 million secured & unsecured debt excluding debt owed to affiliates. Sec. 404 (generally same reporting requirements) Sec. 406 adds basically same requirements except Senate deleted separate account requirement and added government filings. Sec. 407. Creates shortened 90-day deadline for small biz debtor to file plan. Time does not apply if UST appoints creditors committee and court determines within that period that committee is "sufficiently active & representative to provide effective oversight of	Sec. 431 ~ Amends 1125 to allow court in a small business case to be flexible and to dispense with separate disclosure, to adopt standard form disclosure, to conditionally approve a disclosure statement, and to combine hearing on disclosure with confirmation of plan. Sec. 432 small business debtor defined as a person (including affiliate) <u>(and excepting a person whose principal activity is owning operating real estate, Mgr's Amendment)</u> with < \$4 <u>3</u> million in noncontingent, liquidated secured & unsecured debt (excluding debt owed to affiliates) in a case with a committee that court has determined is sufficiently active and representative to provide effective oversight of the debtor. Sec. 434 debtor reporting requirements for small business debtors - periodic and other reports. Sec. 436 adds 1116 to require of small business case, new filing reqmts for balance sheet, tax return and other financials, attend initial debtor interview, maintain insurance, timely file tax returns <u>and other required government filings</u>, pay all administrative expense tax claims, ~~establish separate account~~, allow UST to inspect debtor's premises and books	Comment: Senate definition significantly narrower than House. Senate would not cover many debtors - only those that have an active committee.

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
	the debtor." Can extend filing deadline upon request but not more than 60 days show no cause to convert or dismiss and reasonable possibility that court will confirm plan. Can extend further if show no cause to appoint trustee/examiner and more likely than not that plan will be confirmed. Sec. 408 Confirmation deadline is 150 days unless UST appoints committee and court determines sufficiently active or the 150 day deadline is extended as provided in Sec. 407.	Sec. 437 in small biz case, only debtor can file plan in first ~~90~~ <u>180</u> days; plan & any disclosure shall be filed not later than ~~90~~ <u>300</u> days after filing; can be extended only if debtor demonstrates by preponderance more likely than not that court will confirm plan; a new deadline is set; and order is signed before current deadline expires. Sec. 438 small business plan must be confirmed within ~~450~~ <u>175</u> days after order for relief but not later than 300 days unless extended as provided in Sec. 437.	Senate amendments are confusing & substantially dilute the fast pace of the small business provisions. 180-day filing deadline is same as today. Confirmation deadline of 175 days conflicts with 180 day plan filing deadline.
SMALL BUSINESS (cont'd)	Sec. 409 amends 105(d) to prohibit extension of time. Sec. 410 amends 586 duties of UST (same) Sec. 411 amends 105 (same) Sec. 412 amends 362 slightly different provisions that to all cases, not limited to small business case.	~~Sec. 429 amends 105(d) to prohibit court's ability to extend time frames except as provided in law.~~ Sec. 439 amends 586 re UST duties to conduct initial debtor interview in small business case; if appropriate, to visit business premises of small business case Sec. 440 amends 105 so court "shall" rather than "may" hold status conferences; and modifies court's authority to enter any orders the court deems appropriate at the conference by striking "unless inconsistent with another provision of this title or applicable Federal Rules of Bankruptcy Procedure" - note these amendments to the courts' equitable powers will apply to all cases. Sec. 441 amends 362 to address serial filing appears limited to cases that are or were small business. Sec. 442 amends 1112(b) to clarify grounds for dismissal of <i>all</i> chapter 11 debtors; hearing must be held within 30 days and decided within 15 days; amends 1104 if court finds grounds to convert or dismiss may also appoint trustee or examiner. Sec. 443 directs Administrator or Small Business Administration in consultation with EOUST & AOUSC to conduct study of small business debtors	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
		within 2 years.	
AUDITS	Sec. 602 amends 586, 521 and 727 Exactly the same as Senate except still retains requirement that audit be conducted by a CPA or independent licensed public accountant according to GAAS standard. This will significantly increase cost of the audit.	Sec. 601 amends 586, 521 and 727 ·UST in each district to contract with qualified persons to randomly audit not less than 1/250 cases in each district; ·audit cases that deviate from variances; ·provide annual public information on audits results. Not effective until 18 months after enactment.	Debtors will be subject to audit for first time. Cost will be a major factor, therefore, prefer Senate over House because less restrictive.
STATISTICS	Sec. 701 creates new 28 USC 159 (same)	Sec. 602 creates new 28 USC 159 to require clerk of court to compile statistics of individual debtors with primarily consumer debt in 7, 11 and 13	
DATA, FORMS & REPORTS	Sec. 702 creates new 28 USC 589b (same as Senate Sec. 603). Sec. 403 Advisory Committee to develop standard form disclosures and plans for small business debtors Sec. 405 Advisory Committee to develop small business periodic financial and other reports. (Not as all inclusive as Senate language). Sec. 704 Sense of Congress (same)	Sec. 603 creates new 28 USC 589b which authorizes the AG to issue rules requiring uniform forms for TFRs by trustees in 7, 12, and 13 and periodic reports by DIPs/trustees in chapter 11. Physical inspection at 1 site & Internet access required. <u>Mgr Am. 11/10 inserts Sec. 421 directing Advisory Comm. On Bankr. Rules (considering views of Director, EOUST) to develop forms for all chapter 11 debtors to disclose information & periodic financial and other reports regarding value, operations and profitability of any closely held corp, partnership or other entity in which debtor holds a substantial or controlling interest.</u> Sec. 433 directs Advisory Committee to propose for adoption standard form disclosure statements and plans for small business debtors. Sec. 435 Advisory Committee on Bankruptcy Rules to adopt official forms for small business debtors	Prefer House.

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
		Sec. 604 Sense of Congress that all data held by bankruptcy clerks in electronic form as public record should be released to public in electronic form subject to appropriate privacy and safeguards; and there should be single set of data definitions and form used to collect data nationwide and data for any particular case to be aggregated in same electronic record.	
TAX PROVISIONS	Sec. 801. 803~818 (Sec. 802 ~ see Notice above)	Sec. 701 ~ 718 <u>Amendment #2514 (11/9) to 362(b)(18) to permit a government unit to create or perfect statutory lien for ad valorem property tax or special tax or assessment on realty that comes due after filing.</u> Amendment#2758 (11/9) replaces 701 ~718 with 701 Treatment of Liens 702 Treatment of Fuel Tax Claims 703 Notice of Request for Determination of Taxes 704 Rate of Interest on Tax Claims 705 Priority of Tax Claims 706 Priority Property Taxes Incurred 707 No Discharge of Fraudulent Taxes in 13 708 No Discharge of Fraudulent Taxes in 11 709 Stay of Tax Proceedings Limit to Prepet. Taxes 710 Periodic Tax Payments in Chapter 11 711 Avoidance of Statutory Tax Liens Prohibited 712 Payment of Taxes in Conduct of Business 713 Tardily Filed Priority Tax Claims 714 Tax Returns Prepared by Tax Authorities 715 Discharge of Estate Liability for Unpaid Tax 716 File Tax Returns to Confirm Chapter 13 Plan 717 Standards for Tax Disclosure 718 Setoff of Tax Refunds 719 Special Treatment for State & Local Taxes 720 Dismissal for Failure to File Tax Returns Mgr's amendment 11/10 deletes original 702 re effective notice to government (but appears 11/9	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
		amendment already deleted) Compare with notes under "Notice"	
MUNICIPAL BANKRUPTCIES	Sec. 501 - 502	Sec. 501 - 502	
CROSS-BORDER CASES	Title IX, Sec. 901~902	Sec. 801 ~803	
FINANCIAL CONTRACT PROVISIONS	Title X, Sec. 1001~1014	Sec. 901 ~ 904	
CHAPTER 12	Sec. 201 just says it "is hereby reenacted."	Sec. 1001 ~ makes chapter 12 permanent. Sec. 1002 ~ provides for adjustment of dollar limits (amends 104(b). Sec. 1003 amends 101(18)(A) so that requirement to receive over 50% of income from farming operations is changed from 1 year prior to filing to at least 1 of the 3 years prior to filing. Sec. 1004 amends 1222(a)(2) to address claims owed to governmental units Sec. 1005 amends 1225(b) ostensibly to prohibit retroactive assessment of disposable income.? <u>Sec. 1006 Amendment #1726 (11/9) ~ Family fishermen added to chapter 12</u> <u>Sec. 1426 Mgr's Amendment (11/10) ~ More provisions regarding family fisherman (same or different?)</u> <u>Sec. 1437 Amendment #2746 (11/17) ~ 101 definition of family farmer increases from \$1.5 million to \$3 million.</u>	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
ADMINISTRATIVE EXPENSES	Sec. 1109 (same)	Sec. 1109 fixes 503(b)(4) problem by specifically describing subparagraphs (A)-(E) of paragraph (3) as applicable.	GOOD TECHNICAL FIX
ALABAMA & NORTH CAROLINA	Sec. 303	Sec. 1424	
TRUSTEE DUE PROCESS	Sec. 1129 inserts provision regarding judicial review		
VENUE	Sec. 304 amends 1408. If debtor is a corporation, its domicile & residence are conclusively presumed to be principal place of business.		
APPEALS	Sec. 612 creates 28 USC 1293		
HEALTH CARE & EMPLOYEE BENEFITS		<u>Amendment #1730 (Grassley) - insert TITLE XI. Sec. 1101 Re: health care business; 1102 establishes procedure for disposal of patient records & notice to patients; cost to move or dispose is admin. expenses; 1104 in every case "court shall appoint" an ombudsman within 30 days; ombudsman can be compensated; 1105 amends trustee duties "to use reasonable & best efforts" to transfer patients to facility in the area with substantially similar services and reasonable quality of care; 1106 AG & HHS to establish protocol to coordinate; 1107 362(b) amended to permit HHS to exclude debtor from participation in medicare program or other Federal health care program.</u>	
POLITICAL		<u>Sec. 1430 Amendment # 2749 (11/9) renders a political committee subject to FEC ineligible to file</u>	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
COMMITTEES		<u>bankruptcy.</u> <u>Sec. 1431 Amendment #2750 (11/9) renders any FEC fine or penalty nondischargeable.</u>	
CREDIT	Sec. 110 Board of Governors to study whether open end/closed end transactions secured by residence give adequate disclosure of tax deductability of interest. If not, Board can issue regs. Section 111 Study of protection provided to customers to limit liability for unauthorized use of dual use debit card. Section 112. Amends TILA to provide disclosures of effect of minimum payments and give examples of how long to repay; disclosure regarding teaser rates; disclosure regarding internet solicitation of credit cards. Sec. 609 Comptroller General to conduct 1 year study of credit extended to dependent students Sec. 1127 amends TILA to prohibit cancellation of credit account prior to expiration because incurred no finance charges	<u>Sec. 1429 #2530 amends TILA to require that any application to open a credit card account under an open end consumer credit plan or solicitation or ad to open such an account without application that is sent electronically shall be accompanied by FTC pamphlet on choosing & using credit cards.</u> <u>Amend #2749 amends banking & securities laws with re to financial contracts.</u> <u>Sec. 1432 #2768 (11/9) amends TILA to prohibit retroactive finance charges.</u> <u>Sec. 1433 #2772 Federal Reserve to Report to Congress within 6 months as to how location of residence relates to credit worthiness.</u> <u>Sec. 1438 #2756 (11/17) Federal Reserve to report to Congress within 12 months about indiscriminate solicitation and extension of credit</u> <u>Amendment #2655 (11/17) TILA amended to :</u> <u>·1901 require minimum payment warning on billing statement minimum payments increases interest & time; give example and toll free number.</u> <u>Board of Governors to promulgate regs and conduct a study of financial disclosures; ·1902 Enhanced Disclosure for Credit Extensions Secured by a Dwelling; ·1903 Teaser Rates; ·1904 Internet-Based Credit Card Solicitations; ·1905 Disclosure of Late Payment Deadlines and Penalties; · 1906 Prohibit termination for failure to incur finance charges; · 1907 Study of dual use debit cards; · 1908 Study bankruptcy impact of credit extended to dependent students and report within 1 year.</u>	

TOPIC	H.R. 833 AS PASSED	SENATE	COMMENTS
		<u>Sec. 1440 #2517 (1/26/00) further amends TILA if creditor maintains toll free line that provides customers with actual number of months it will take to repay - need only insert a limited disclosure</u> ddfjfklsd	
METHAMPHETAMINE & OTHER CONTROLLED SUBSTANCES		<u>Amendment #2771 (Hatch & others) (11/10 - Nonbankruptcy</u>	
MINIMUM WAGE		<u>Title XII, XII, Amendment #2547 (Domenici) - raises minimum wage \$1 over 3 years & gives "great opportunity to small business peopel and other who have been denied relief under the Tax Code of this country." Kenney claims gives \$75 million in tax breaks to wealthy. (Where's text??)</u>	
EMERGENCY IMPORTED ELECTRIC POWER PRICE REDUCTION ACT OF 1999		<u>Title XVIII Amendment #2648 (11/10)</u>	

Senate, Sec. 309 CHP 11

EXCLUDED

ROLLING STOCK EQUIPMENT. Senate Sec. 401

ADEQUATE PROTECTION FOR INVESTORS. Senate Sec. 402

WAREHOUSEMAN'S LIEN FOR STORAGE & TRANSPORTATION. Senate Sec. 407 (Same HOUSE Sec. 207)

RECLAMATION DEMAND Senate Sec. 408 (compared House Sec. 208)

AMENDMENTS OF HO FEE (523(a)(16)). Senate Sec. 414. (Same HOUSE Sec. 214)

Amendments to 546(c) regarding trustee's rights and powers re reclamation (Mgr's Am. 11/10)

Amendment #2651 (1/26/2000) - debtor can't redeem pawned property in some circumstances but also has no personal liability.

Sec. 444 amends 362(d)(3) re payment of interest
Sec. 445 amends 365(b)(2)(D) technical language change

HOUSE

Sec. 204 amends 547(c)(2) to protect refinance of security interest?
Sec. 205 amends 365(d)(4) unexpired lease of nonresidential real property where debtor is lessee
Sec. 215 amends 365 re defaults based on nonmonetary obligations and 1124(2) re Impairment of claims or interests
Sec. 217 amends 503(b) priority of expenses re nonresidential real property lease previously assumed and then rejected
Sec. 302(e) & (g) contains lots of miscellaneous amendments just stuck in there.
Sec. 305 amends 365(c) regarding assumption of contracts
Sec. 415 amends 362(d)(3) regarding payment of interest.
Sec. 609 Comptroller General Study

SENATE APPROVES A BILL TO TOUGHEN BANKRUPTCY RULES

HIGHER BAR FOR DEBTORS

But Prospects for Enactment
Are Clouded by Provision
Raising Minimum Wage

A1

By ERIC SCHMITT

WASHINGTON, Feb. 2 — The Senate approved a sweeping overhaul of the nation's bankruptcy laws today, decisively passing a measure that would make it harder for people to seek legal protection from payment of their debts.

But in a move that could complicate final passage of the legislation, it also included in the measure a \$1 increase over three years in the minimum wage to \$6.15 per hour.

Major differences still exist in the details of the bankruptcy overhaul passed today and a rival House version approved last year. But lawmakers from both parties and Clinton administration officials expressed confidence today that Congress can produce a compromise bankruptcy bill that Mr. Clinton can sign into law this year.

Less certain is how Democrats and Republicans will resolve their differences over the minimum wage. Democrats had wanted the \$1 increase be phased in over two years.

The Senate vote today passing the Bankruptcy Reform Act came after Democrats summoned Vice President Al Gore from the campaign trail in Manhattan to break a possible tie vote on a contentious abortion rights amendment to the bill. The measure would bar people convicted of crimes against abortion clinics from using bankruptcy protection to avoid paying civil judgments.

Republicans, who had vigorously opposed the amendment, abandoned their opposition once Mr. Gore took his seat as president of the Senate, letting the measure pass handily. [Page A18.]

Senators later voted 83 to 14 to approve the overarching legislation that was proposed by the nation's largest banks and credit-card companies, but opposed by consumer and civil rights groups. One reason the outcome was so lopsided was that the campaign contributions and lobbying muscle come mainly from the politically powerful financial community, concentrated in New York.

The banking industry has grown increasingly concerned that too many people with money are taking advantage of the bankruptcy laws and skipping out on mountains of debt. "Despite their ability to pay, wealthier filers walk away from an estimated \$3 billion per year in debt," said Edward L. Yingling, chief lobbyist for the American Bankers Association.

The measure imposes new income requirements on people seeking a fresh start by using the nation's debt-forgiveness laws and limits a loophole used by the wealthy to shield their homes. And the bill requires credit-card companies to disclose interest rates and fees more prominently on monthly statements.

"It was time for Congress to close the loopholes that let big spenders walk away from debts and update

the code to achieve a healthier balance between consumers and creditors," said Senator Charles E. Grassley, an Iowa Republican who sponsored the bill.

Negotiators from the Senate will now meet with their counterparts from the House to reconcile competing bills. Last year, the House approved, 313 to 108, a bill with even stricter provisions on debtors. The White House said both versions are unacceptable, calling the House version too harsh and inflexible and the tax breaks attached to the minimum-wage provision in the Senate measure unacceptable.

A spokeswoman for Hillary Rodham Clinton, who in her campaign for the Senate in New York has criticized the bankruptcy legislation for being unfair to women and children, declined to comment today on the Senate's action.

Under the Senate bill, the minimum wage would increase to \$6.15 from \$5.15 over three years, instead of over two years as Democrats want. Senate Democrats also object to \$76 billion in tax breaks over 10 years that Republicans say would help small businesses adjust to the rising minimum wage. Democrats had proposed \$29 billion package over 10 years. The House bill does not have a minimum-wage provision.

"The amendment in the bill includes a poorly targeted tax package with tax breaks that are skewed disproportionately to upper income people," said a letter signed by all 45 Senate Democrats to the lawmakers who will negotiate the House-Senate compromise.

The thrust of both House and Senate bills is to make it more difficult for people to discharge their debts. Both measures try to make debtors accept more responsibility by making it more difficult to file Chapter 7 bankruptcies, which allows consumers to discharge unsecured debts that remain after assets are liquidated. Lawmakers aim to make Chapter 13, which requires reorganization of debt under a repayment plan, the bankruptcy of choice.

With Americans filing a record 1.4 million bankruptcies in 1998, Senator Jeff Sessions, an Alabama Republican, said the bill "closes loopholes and ends unfairness in provisions that are totally being abused and making a mockery out of legitimate bankruptcy law."

But critics of the measure, like Senator Edward M. Kennedy, Democrat of Massachusetts, said today "the industry's cure is worse than the disease." Bankruptcy filings dropped by 112,000 in 1999 from 1998, Mr. Kennedy said, and the bill's provisions make it more difficult for thousands of debtors who file for bankruptcy because of corporate layoffs and downsizing because of mergers.

At issue in several days of floor debate and outside Capitol Hill today, was whether it is the banks or their customers who are responsible for the growth in bankruptcy filings.

The chairman of the Consumer Federation of America, Howard M. Metzenbaum, a former Democratic senator from Ohio, said the Senate bill "will deny many families in financial crisis a fresh start while spurring more reckless and irresponsible lending by credit-card issuers."

House and Senate negotiators have a tough road ahead. There are several crucial differences between the two bills. Both measures impose a new income requirement. The Senate bill generally says that anyone with the ability to make at least \$15,000 in payments over five years would not be able to have their debts forgiven. Under the House bill, the threshold is \$6,000 over five years.

than the House in shielding, or creating "safe harbors" for debtors who make less than the median income in their state or regions.

For Chapter 7 bankruptcy filers, the Senate puts a \$100,000 cap on housing equity they can exempt from creditors' motions. The House bill has a cap of \$250,000, but allows states to opt out, an important distinction for wealthy bankruptcy filers in Texas and Florida.

Finally, the Senate bill provides new consumer protections, like the disclosures on credit cards. The House protection is more limited and more generic.

Senator Robert G. Torricelli, Dem-

ocrat of New Jersey, said of the bill, "The proverbial small type that hides fees and interest costs will be converted to large font so that consumers can make informed purchases, determine the best repayment schedule and manage family expenses."

While adopting the abortion rights amendment, senators rejected several others, including one offered by Senator Carl Levin, Democrat of Michigan, that would have prohibited gun makers and dealers from using bankruptcy to escape debts incurred in civil lawsuits.

The New York Times

THURSDAY, FEBRUARY 3, 2000

U.S. MOVES TO HALT \$30 BILLION UNION OF OIL COMPANIES

COMPETITION IS CONCERN

BP Amoco-ARCO Deal Could
Raise Gas Prices in West,
Trade Commission Says

By STEPHEN LABATON

WASHINGTON, Feb. 2 — Moving to stem the trend of huge consolidation in the oil industry, the federal government decided today to try to block BP Amoco's \$33 billion proposed acquisition of the Atlantic Richfield Company.

By a vote of 3 to 2, the Federal Trade Commission chose to seek a preliminary injunction against the deal. Commission officials asserted, and the companies denied, that the merger would be strongly anti-competitive and could lead to significant rises in the price of crude oil for refiners in California and other West Coast states, where prices at the gas pump far exceed the national average.

BP Amoco and ARCO together control about 70 percent of the production of oil on Alaska's North Slope, much of which ends up in the gas tanks of West Coast drivers. Last year, the companies agreed with Alaska state officials to reduce their control to about 55 percent.

Commission officials said that the F.T.C. vote made the proposed merger the largest in American history — both in terms of revenue, \$100 billion in the year ending Sept. 30, and purchase price — to be challenged by the government. It is the first in the oil industry since the commission blocked the Mobil Corporation's \$6.5 billion bid to buy Marathon Oil in the early 1980's.

"This deal will cement market power and harm competition by creating a significant risk that crude oil prices would be higher on the West Coast than they would without the deal," said Richard G. Parker, the director of the bureau of competition at the commission. "What this case is about is a fundamental level is a dominant firm that is already exercising market power by being the one firm, ARCO, that is the one threat to that market power."

"Competition in the past has caused these firms to claw each other's eyes out to get oil in Alaska," Mr. Parker said at a news conference here this afternoon. "Now that competition is disappearing unless

Continued on Page C2

Few Women Achieve Fire Dept. Standards

Despite an intensive recruiting effort, New York City officials said only 11 women have scored high enough on tests, especially a rough physical exam, to qualify to be firefighters. There are only 36 women in the 11,000-member Fire Department, whose failure to hire female recruits has led to lawsuits and left it grappling with how to draw more women to a force known for male bravado.

Article, Page A25

Ordered to Protect Gay Couples, Vermont Finds Itself Deeply Split

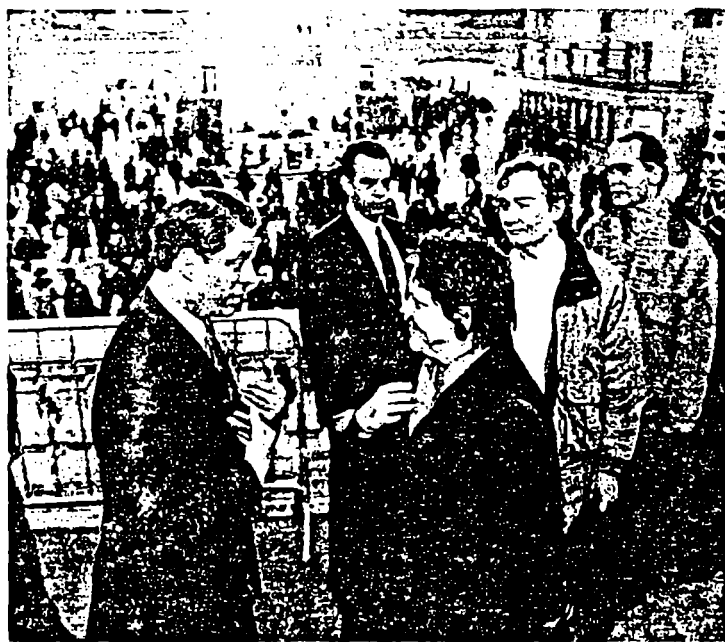
By CAREY GOLDBERG

MONTPELIER, Vt., Feb. 2 — In her piping soprano, 10-year-old Courtney Dozetos told hundreds of Vermonters crammed into the state House here late Tuesday night: "It would make me feel special and good if my moms could get married. I don't and probably never will understand why they can't."

Linda Pastelnick, representing the opposite side, quoted a verse from Leviticus calling sex between men "an abomination," and argued, "God made Adam and Eve, he didn't make Adam and Steve."

Henry Hisey probably summed up the situation best, saying, "It seems we're a state divided."

Six weeks after the Vermont Supreme Court ruled that gay couples deserved the same rights and benefits as heterosexual spouses and must be granted them, Vermont is undeniably a state divided, even polarized, as it takes its new position at



FOR GORE, A NEW YORK MINUTE Al Gore met commuters at Grand Central Terminal early yesterday, hours after winning the New Hampshire primary. His rival, Bill Bradley, was also in New York. Articles, Page A21.

McCain and Bush Revving Up Their Campaigns

After Upset, Challenger
Eyes South Carolina

By ALISON MITCHELL
with FRANK BRUNI

COLUMBIA, S.C., Feb. 2 — Riding the wave of his decisive victory in New Hampshire, Senator John McCain tore across South Carolina today arguing that he is the candidate who can "attract people to our party who have been alienated and disenfranchised" and carry Republicans to victory in November.

Only hours after Mr. McCain's double-digit victory in the New Hampshire primary dramatically altered the Republican race, Mr. McCain and a humbled Gov. George W. Bush shifted their battle for the nomination to this conservative state.

And both wasted little time positioning themselves. While Mr. McCain presented himself as a centrist Republican who could attract new converts to the party, Mr. Bush planted himself firmly on the right.

This morning Mr. Bush spoke in front of more than 5,000 students at Bob Jones University, a bastion of Christian conservatism, where he promised to keep "our ideas, Republican ideas, conservative ideas, at the top of the national agenda."

But the day clearly belonged to Mr. McCain, who emerged from New Hampshire with not only an 18-percentage-point margin over Mr. Bush but also a surge of much needed campaign contributions. Every few hours, Mr. McCain's aides ticked off new fund-raising totals from his campaign Web site. By late in the day, they said, Mr. McCain had taken in \$550,000 over the Internet since the primary ended. [Page A21]

Although Mr. Bush has been lead-

Continued on Page A20

Bruised Front-Runner Rethinks Strategy

By RICHARD L. BERKE

MANCHESTER, N.H., Feb. 2 — Hours after his stinging defeat in the New Hampshire primary, Gov. George W. Bush and his advisers began moving today to contain the damage, imploring supporters and donors to remain on their side and trying to tamp down a controversy in New York State over whether Senator John McCain would be on the primary ballot.

The advisers say they now must win the next big primary, in South Carolina, on Feb. 19. And while polls there have shown Mr. Bush with a healthy lead over Mr. McCain, the campaign began moving today to avoid a replay of the jolt it suffered in New Hampshire.

As a start, Karl Rove, Mr. Bush's chief strategist, talked this morning with New York Republican leaders, who have been seeking ways to quell the publicity over the party's efforts to remove Mr. McCain from the ballot in many congressional districts.

Some party members in the state have begun to fear that the effort, led by Gov. George E. Pataki and other Bush supporters, was backfiring, and Republican leaders said today that they were considering abandoning a court fight with Mr. McCain over the issue. [Page A21]

Karen Hughes, Mr. Bush's spokes-

woman, acknowledged that Mr. Rove had signaled to the New York Republican leadership that if Mr. McCain won his ballot fight in federal court, the Bush campaign would be content to see the issue dropped. "If they decided not to appeal," she said, "we welcome the opportunity to defeat Mr. McCain in New York."

Other Bush advisers said the issue had been playing to Mr. McCain's favor because it fueled his image as a campaign reformer. "We're giving him an issue to beat us over the head with," said one aide.

In another move to contain repercussions from the outcome on Tuesday, Bush campaign officials have begun calling and e-mailing major donors and supporters on Capitol Hill, insisting that they are pressing ahead and that Mr. Bush is not in grave trouble. One senior adviser called it "a massive campaign of reassurance of everyone on the finance side and inside the Beltway."

As part of the drive to stop Mr. McCain, Bush advisers said they also were planning to be tougher on the senator on the stump and in television commercials.

They said they were weighing such moves as pounding away at Mr. Mc-

Continued on Page A20

Federal Reserve Gives a Nudge To 2 Key Rates

Central Bank Suggests
More Rises Lie Ahead

By RICHARD W. STEVENSON

WASHINGTON, Feb. 2 — The Federal Reserve raised interest rates by a quarter of a percentage point today and signaled that further rate increases would probably be needed to keep the persistently strong economy from generating inflation.

The move, the fourth rate increase since June, was in line with what most economists and investors had expected. Financial markets took the announcement in stride.

Stocks ended mixed. Bond prices rose, in part because the Treasury Department announced a plan to buy back some of the government's long-term debt as part of an effort to deal with growing budget surpluses. [Market Place, Page C1]

The central bank allowed the economy to expand for the last several years at rates well above what conventional wisdom once thought could be sustained without igniting inflation, betting that huge investments in technology would allow companies to absorb cost increases without raising prices.

In the process the Fed discovered that the United States was less susceptible to an upward spiral in wages and prices than almost anyone previously believed, even with unemployment at its current level of 4.1 percent, a 30-year low.

But in raising rates today, the Fed and its chairman, Alan Greenspan, made clear once more that the central bank's growth experiment had its limits. The message today was that the Fed was increasingly reverting to its traditional posture of stamping out any inflationary pressures before they could endanger an expansion that on Tuesday became the longest on record.

In increasing its benchmark Federal funds target rate on overnight loans among banks by a quarter-point today, to 5.75 percent, the central bank pushed rates above where they had been in mid-1998, when the Fed cut rates three times to help

Continued on Page C25

Blame for Fusillade Is Placed on Victim

While acknowledging that Amadou Diallo was a victim who did not deserve to die, a lawyer for one of the four police officers accused of murder for killing Mr. Diallo outside his Bronx apartment building a year ago told jurors in opening statements that Mr. Diallo's own actions led to his death.

Article, Page A25

Lama's Escape Inflames Buddhist Rivalry

By BARRY BEARAK

RUMTEK, India — Doshin Shekpa was born in the year of the male wood mouse (1384), and it is said he could be heard chanting a mantra and reciting the alphabet while still inside his mother's womb. At the moment of his birth, he boldly proclaimed himself to be the fifth incarnation of the Karmapa, one of Tibetan Buddhism's holiest figures.

Ancient texts describe the fifth Karmapa as a conjurer of miracles, able to light the clouds with iridescent colors and summon flowers to fall from the sky. But his many teachings, while a source of soothing wisdom, also included a dark prophecy: centuries in the distance, during the time of his own 16th and 17th incarnations, the demonic power of "perverse aspirations" would bring the entire Karmapa lineage close to destruction.

This vision seems to have been eerily prescient, for now, as the world enters the Tibetan year of the male iron dragon, there is not one claimant to the title of Karmapa but two, both of them teenage boys whose mentors find the aspirations of the other wickedly perverse.

On Dec. 28, one of those boys, 14-year-old Ugyen Trinley Dorje, fled Chinese-controlled Tibet, enduring an overland journey across the snowbound Himalayas. On Jan. 5, he arrived in Dharmasala, the picturesque Indian hill station that is home to the Tibetan government-in-exile.

His sudden presence, while a ticklish matter between India and China, which have been working to overcome long-frained relations,



Ugyen Trinley Dorje, right, a high-ranking lama, has fled Tibet for India, where a rival, Trinley Thaye Dorje, left, has been enthroned.



has been a cause for rejoicing among most Tibetans. The Karmapa is usually considered the third most revered figure in Tibetan Buddhism, after the Dalai Lama and the Panchen Lama, and the newly arrived boy had the unusual distinction of having been endorsed as the 17th incarnation by both the Dalai Lama and the Chinese government.

But there has been significantly less joy in New Delhi, home to a rival faction that insists it is the one with the genuine Karmapa. Shamar Rinpoche, a high lama also known as the Shamarpa, has been championing this second contender since 1994.

At stake is not only the leadership of one of the oldest branches

of Tibetan Buddhism but one of its richest monasteries as well. And that has kept the Shamarpa desperately busy denouncing the newly arrived teenager and his patrons as perpetrators of fraud.

"Buddha would not be laughing right now," the Shamarpa said. "This is all about politics. It's a story filled with many traitors and betrayals."

Such intrigue is hardly uncommon to the Buddhism of Tibet, which, before the Chinese occupation in the 1950's, was a theocratic state where spiritual passions often bumped up against worldly ambitions. The highest lamas are believed to be so spiritually ad-

Continued on Page A12

SENATE APPROVES A BILL TO TOUGHEN BANKRUPTCY RULES

HIGHER BAR FOR DEBTORS

But Prospects for Enactment
Are Clouded by Provision
Raising Minimum Wage

By ERIC SCHMITT

WASHINGTON, Feb. 2 — The Senate approved a sweeping overhaul of the nation's bankruptcy laws today, decisively passing a measure that would make it harder for people to seek legal protection from payment of their debts.

But in a move that could complicate final passage of the legislation, it also included in the measure a \$1 increase over three years in the minimum wage to \$6.15 per hour.

Major differences still exist in the details of the bankruptcy overhaul passed today and a rival House version approved last year. But lawmakers from both parties and Clinton administration officials expressed confidence today that Congress can produce a compromise bankruptcy bill that Mr. Clinton can sign into law this year.

Less certain is how Democrats and Republicans will resolve their differences over the minimum wage. Democrats had wanted the \$1 increase be phased in over two years.

The Senate vote today passing the Bankruptcy Reform Act came after Democrats summoned Vice President Al Gore from the campaign trail in Manhattan to break a possible tie vote on a contentious abortion rights amendment to the bill. The measure would bar people convicted of crimes against abortion clinics from using bankruptcy protection to avoid paying civil judgments.

Republicans, who had vigorously opposed the amendment, abandoned their opposition once Mr. Gore took his seat as president of the Senate, letting the measure pass handily. [Page A18]

Senators later voted 83 to 14 to approve the overarching legislation that was proposed by the nation's largest banks and credit-card companies, but opposed by consumer and civil rights groups. One reason the outcome was so lopsided was that the campaign contributions and lobbying muscle came mainly from the politically powerful financial community, concentrated in New York.

The banking industry has grown increasingly concerned that too many people with money are taking advantage of the bankruptcy laws and skipping out on mountains of debt. "Despite their ability to pay, wealthier filers walk away from an estimated \$1 billion per year in debt," said Edward L. Yingling, chief lobbyist for the American Bankers Association.

The measure imposes new income requirements on people seeking a fresh start by using the nation's debt-forgiveness laws and limits a loophole used by the wealthy to shield their homes. And the bill requires credit-card companies to disclose interest rates and fees more prominently on monthly statements.

"It was time for Congress to close the loopholes that let big spenders walk away from debts and update

Continued on Page A18

INSIDE

Rocket Attack Kills Serbs

Two people were killed and three wounded in a rocket attack on a bus filled with Kosovo Serbian civilians under NATO escort. PAGE A6

'Black Box' Recovered

A "black box," the cockpit voice recorder, was recovered from the Alaska Airlines jet that crashed on Monday. PAGE A16

Top-Ranked UConn Loses

Connecticut's women's basketball team, ranked No. 1, lost to Tennessee, 72-71, for its first defeat. SPORTS THURSDAY, PAGE C27

News Summary

	A2
AFIS	B1-10
Business Day	C1-26
Circuits	E1-12
Educational Op-Ed	A28-29
House & Home	D1-14
International	A3-13
National	A16-23
New York	A22-27
Sports Thursday	C27-31
Obituaries	A23-24
Real Estate	D12-13
Classified Ads	A11

Updated news: www.nytimes.com



Continued on Page A14

Minimum Wage and Tax Amendments February 2, 2000

- In last year's political maneuvering, the Republicans attached to the bankruptcy bill a provision that would have raised the minimum wage too slowly and contained unacceptable, imbalanced, and unpaid for tax breaks for high income individuals and businesses. The President made clear last year that he would veto the bill if that amendment were attached. If the Republicans are serious about accomplishing bankruptcy reform this year, these regressive tax provisions will be striped before it is sent to his desk.

Background: In the SAP that we sent last November on Bankruptcy, we said:

"On November 4, 1999, in a letter to the Majority Leader, the President made clear that he strongly supports an increase in the minimum wage of \$1 over the next two years; however, if Congress sends him a bill delaying the increase, repealing overtime protections for certain workers, adding costly and unnecessary tax cuts that threaten fiscal discipline and direct benefits away from working families, and thwarting ongoing efforts to enforce pension law, he will veto it."

However, the Democrats (Leahy and Daschle) have asked WH Legislative Affairs not to make a big deal about amendments now; Leahy and others will make clear that they vote for the bill now, but would not do so if it returns from Conference with these provisions attached.

Schumer Amendment on Access to Abortion Clinics February 2, 2000

The Administration's SAP last year indicated that we supported the Schumer amendment to ensure that no one takes advantage of the bankruptcy code to avoid their civil or criminal liability under this act. There was concern that clinic protestors were violating the law flagrantly with the plan and intent of filing for bankruptcy to avoid the penalties. Specifically, the SAP said:

"[We support] an amendment by Senator Schumer that would make court-ordered fines and debts resulting from abortion clinic violence nondischargeable. As the Justice Department noted in a May 14, 1999 letter to Senator Schumer, the Administration generally opposes the expansion of nondischargeable debt unless there is an overriding public policy objective and no other way to achieve that objective, but believes this amendment is a necessary tool in current efforts to end clinic violence and intimidation."

Note: Schumer announced this morning that the VP would be available to break a tie if a vote were held on this issue. The Republicans complained that it was an election year gimmick. They just announced that they would urge members to adopt the "flawed" amendment – to avoid a political circus and deal with it in conference.

Talking Points on Levin Gun Amendment

February 2, 2000

Note: The Administration has tried to avoid speaking to this issue. While we are generally sympathetic to the concerns that motivate the amendment – fear that gun manufacturers will use bankruptcy system to avoid their liability for suits being brought – we have significant bankruptcy policy concerns with how the amendment works and the precedent it set. So, we have promised to be silent.

Background on Schedule

- There will be votes scheduled beginning at 12:00. Probably only 3:
 - Schumer amendment to make nondischargeable in bankruptcy fines that result from judgements for violating FACE Act which protects access to **abortion clinics**
 - Levin amendment to make nondischargeable in corporate bankruptcy judgements involving the manufacture or sale of **guns**
 - **Final passage**
 - Note: Possible landlord tenant amendment by Feingold might also be voted before final passage.

Finally, recall that attached to this already bill is an amendment attached last November on **minimum wage and taxes**.

BANKRUPTCY

February 2, 2000

The President supports responsible bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly.

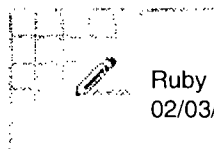
It appears that the Senate will shortly complete its consideration of the bill and send the bill to a conference with the House.

During Senate floor consideration, some important improvements were made so that the Senate bill is now somewhat better than the flawed and unbalanced House bill. While we still have some serious reservations, the Senate is sending a signal that balance is important. We hope that that signal will be respected in conference and that we get – from the conference – a product that reflects the key improvements in the Senate bill. For example:

- The Senate bill would cap the homestead exemption – to ensure that the wealthy don't benefit from a large loophole to avoid their credits while we ask middle income families to repay the debts that they can.
- We understand that the Senate bill will include a provision sought by Senator Schumer that would protect low-income debtors from motions brought by creditors that too often might be used to threaten or coerce debtors to forego their rights (so-called "motions safe harbor").
- Similarly, the Senate bill has some (albeit too limited we think) new important credit card disclosures for consumers sought by Senator Torrecelli.
- Finally, the Senate bill has a new "reaffirmation" provision that require courts to look closely for coercion when a debtor says they want to reaffirm a debt (that they are entitled to discharge) but it is clear they do not have the income to repay. (However, here there is an important technical improvement on filing deadlines that Senator Sessions and Reed have agreed to work together to fix during conference.)
- Note also that there are some aspects of the House bill that are better too, and we will work to preserve those improvements in final bill.

Given that President has a veto threat on the House bill, will the president veto the bill that returns from conference?

I won't answer a hypothetical. We strongly hope that we won't be presented with the need for that. We want balanced bankruptcy reform. The Senate has taken some important steps here to achieve balance. Not all our concerns have been resolved but it is getting better. We strongly hope that the Conference will produce a bill that maintains that balance and that the President could sign. (Of course, also we hope that the bill contains no extraneous and controversial other amendments – like the minimum wage/tax package now attached).



Ruby Shamir
02/03/2000 12:07:40 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP

cc:

Subject: bankruptcy

even though it is too little too late, do we want to include this anywhere?

- The Senate **passed (83-14-1) S. 625, the Bankruptcy Reform Bill** with the following Senators voting against the bill: Senators Boxer (D-CA), Brownback (R-KA), Dodd (D-CT), Feingold (D-WI), Graham (D-FL), Harkin (D-IA), Hutchison (R-TX), Kennedy (D-MA), Lautenberg (D-NJ), Moynihan (D-NY), Reed (D-RI), Sarbanes (D-MD), Schumer (D-NY) and Wellstone (D-WI). Senator Fitzgerald (R-IL) voted present. While under consideration, the Senate took the following action:

--passed (80-17-1) a Schumer (D-NY) amendment. The amendment would prevent people found guilty of violence at abortion clinics from discharging debts related to those activities. Senators Allard (R-CO), Brownback (R-KS), Bunning (R-KY), DeWine (R-OH), Enzi (R-WY), Gramm (R-TX), Grams (R-MN), Helms (R-NC), Hutchinson (R-AR), Kyl (AZ), Lugar (R-IN), Nickles (R-OK), Roberts (R-KS), Sessions (R-AL), Smith (R-NH), Thomsson (R-TN) and Voinovich (R-OH) voted against the amendment. Senator Fitzgerald (R-IL) voted present.

--tabled (54-43-1) a Feingold (D-WI) amendment. The amendment would prevent families from being evicted during bankruptcy if they pay rent. Senators Feinstein (D-CA) and Lieberman (D-CT) voted in favor of tabling the amendment while Senators Jeffords (R-VT) and Specter (R-PA) voted against tabling the amendment. Senator Fitzgerald (R-IL) voted present.

--failed (29-68-1) a Levin (D-MI) amendment. The amendment bars gun manufacturers from discharging debts arising from lawsuits. Senators Baucus (D-MT), Bayh (D-IN), Bingaman (D-NM), Bryan (D-NV), Byrd (D-WV), Conrad (D-ND), Dodd (D-CT), Edwards (D-NC), Feingold (D-WI), Kerrey (D-NE), Landrieu (D-LA), Lieberman (D-CT) and Robb (D-VA) voted against the amendment. Senator Fitzgerald (R-IL) voted present.

Add info. about Democratic members' votes to the amendment
Notes:

Today the Senate passed S. 625, the Bankruptcy Reform Act, despite the Administration's opposition to the measure. Although the Administration does not have a veto threat on the

substantive bankruptcy provisions of the Senate bankruptcy bill (there is a Senior Advisors level veto threat on the House companion bill), it does have a veto threat on the Senator Domenici minimum wage and tax amendment that was attached to the bill on the floor. More specifically, the amendment would raise the minimum wage by \$1.00 over three years and provide \$18.4 billion in tax cuts over five years. The amendment also includes a provision that would undermine overtime pay for hourly employees by excluding bonuses and commissions from the rate of pay used to determine overtime pay. In addition, the bill contains an amendment with a bad "fix" to the crack v. cocaine sentencing disparity issue, a school voucher program for "victims of school violence," and a measure requiring an investigation into the threat posed to US' national security by the former FALN members who were pardoned by the President earlier this year.

**TO: DIRECTOR JACK LEW
DEPUTY DIRECTOR SYLVIA MATHEWS
COUNSELOR TO THE DIRECTOR SALLY KATZEN
ACTING DEPUTY DIRECTOR FOR MANAGEMENT DEE LEE
EXECUTIVE ASSOC. DIRECTOR and CONTROLLER JOSH GOTBAUM**

FROM: OMB LEGISLATIVE AFFAIRS

DATE: February 2, 2000

SUBJECT: LEGISLATIVE REPORT

Highlights

Ways and Means Marriage Penalty Markup. Today, the House Ways and Means Committee reported H.R. 6, with the Marriage Tax Penalty Relief Act of 2000 as a substitute. The bill was reported on a 23-13 party line vote. The bill would cost \$50.7B over five years and \$182B over ten years. There are no offsets and no provisions related to PAYGO. During the markup, Democrats echoed the concerns in the Treasury Secretary's letter about considering a tax bill outside of an overall budget framework and argued that the Committee's action was premature. Rep. Rangel argued that the only reason the Committee was acting was to give the House something to vote on for Valentine's Day. Committee Democrats also objected strongly to the bill's providing roughly half its benefits to couples who already receive marriage bonuses.

Hearings:

o Senate Budget Committee, February 3: Joint hearing with Senate Transportation Appropriations Subcommittee: Modernizing the Federal Aviation Administration: Challenges and Solutions; Witnesses: FAA Administrator, Jane Garvey; Inspector General, Department of Transportation, Ken Mead; and Chief Financial Officer, NAV Canada, John Crichton.

CONGRESS - Today 2/2

SENATE

Wednesday, February 2:

Passed (83-14) S. 625 - the Bankruptcy Reform bill. *Note: this legislation includes the GOP alternative minimum wage/small business tax cut amendment that passed during the bill's consideration last fall.*

[SAP sent 11/8/99: serious concerns with underlying bill; veto threat on minimum wage and class size amendments]

The following action took place on the bill during today's consideration:

- o Adopted (80-17, 1 present) Schumer amendment regarding debts arising from unlawful acts of clinic violence
- o Tabled (54-43, 1 present) Feingold amendment regarding eviction
- o Failed (29-68, 1 present) Levin amendment regarding gun manufacturers

The roll call vote on cloture on the motion to proceed to S. 1287, the Nuclear Waste bill was vitiated.

Began debate on the Greenspan nomination. Vote is scheduled for 10:30am Thursday morning.

HOUSE

Wednesday, February 2:

Passed (222-194) HR 2005 - Workplace Goods Job Growth And Competitiveness Act
[SAP sent 2/2: senior advisors veto threat]

CONGRESS - THIS WEEK

Senate - This Week and Next

Thursday, February 3:

The Senate will convene at 10:30 am and immediately proceed to vote on the nomination of Alan Greenspan to continue as Federal Reserve Chairman.

Following this vote, the Senate will be in a period for morning business.

Friday, February 4:

The Senate will not be in session.

Next Week

On Monday, February 7, the Senate is expected to begin consideration of S. 1052, the Northern Mariana Islands Legislation, and on Tuesday, February 8, the Senate may begin debate on the Nuclear Waste bill. **[SAP sent 2/2: POTUS will veto]**

House - This Week

Thursday, February 3 and Friday, February 4:

No votes - no legislative business.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 8, 1999
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 625 - Bankruptcy Reform Act of 1999
(Grassley (R) Iowa and eight cosponsors)

The President supports bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly. Last year, the Senate produced such a balanced bill with overwhelming bipartisan support. The President is disappointed that, this year, the House failed to produce legislation that he could support. S. 625 reflects some improvements over H.R. 833 as passed by the House. The Administration, however, continues to have serious reservations about S. 625 and strongly opposes some of its provisions. For example, we are deeply concerned about a provision of the manager's amendment that adds an important "safe harbor" that protects low-income debtors from motions to deny them access to Chapter 7 under the means test, but also eliminates an essential "safe harbor" that would protect low-income debtors from coercive creditor motions that might be brought under a vague "totality of the circumstances" test more appropriately enforced by bankruptcy trustees and courts. The latter protection eliminated by the managers' amendment was included in the reported version of the Senate bill, the House-passed bill, and last year's conference report. The Administration's other objections to this bill are explained in detail in the Attachment.

Most of the Administration's concerns would be addressed by relevant amendments that the Administration understands will be offered on the Senate floor. The Administration's views on the anticipated amendments are also contained in the Attachment. The Administration remains hopeful that bipartisan cooperation will result in responsible bankruptcy legislation that the President can enthusiastically sign.

Finally, the Administration understands that certain non-relevant amendments will be offered as well. On November 4, 1999, in a letter to the Majority Leader, the President made clear that he strongly supports an increase in the minimum wage of \$1 over the next two years; however, if Congress sends him a bill delaying the increase, repealing overtime protections for certain workers, adding costly and unnecessary tax cuts that threaten fiscal discipline and direct benefits away from working families, and thwarting ongoing efforts to enforce pension law, he will veto it.

In addition, the Administration strongly opposes the inclusion of an unrelated education amendment, a version of the Teacher Empowerment Act. When similar legislation passed the House this summer, the President indicated that he would veto it. The Administration's position on this legislation has not changed. The amendment would eviscerate the class size reduction program passed on a bipartisan basis last year and replace it with a block grant that fails to guarantee that any funds will be used to support the crucial work of reducing class sizes in the early grades. In addition, the block grant does not target funds toward the neediest students and does not include important provisions to improve teacher quality. If this amendment is attached to S. 625, the President will veto the bill.

The Administration opposes the drug-related amendment because it would reduce the current disparity between crack and powder cocaine sentences solely by increasing powder cocaine penalties dramatically instead of addressing both crack and powder cocaine penalties. Decreasing the threshold amount of powder cocaine necessary to obtain 5- and 10-year mandatory minimum sentences may be counterproductive because it could significantly redirect Federal law enforcement resources from the highest level offenders. In addition, this amendment would actually exacerbate the disproportionate impact of cocaine sentencing on minorities because, according to U.S. Sentencing Commission statistics, approximately 31% of defendants sentenced at the Federal level for powder cocaine offenses in 1998 were African American, 48% were Hispanic, and only 19% were white.

Winners | FALN

* * * * *

AttachmentDetailed Administration Views on S. 625 and Anticipated Floor Amendments

Access to Chapter 7. Any means test used in bankruptcy proceedings should deny access to Chapter 7 bankruptcy procedures only to those debtors who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. Debtors who may be denied a discharge of their debts must be given a meaningful opportunity to have their specific circumstances considered by bankruptcy courts with the authority to determine whether they genuinely have the capacity to repay a portion of their debts. In its current form, S. 625 would use a relatively inflexible and arbitrary means test to limit access to Chapter 7. The

Administration strongly opposes this provision.

As reported, S. 625 would apply rough guidelines, developed by the Internal Revenue Service (IRS) for tax repayment plans, as standards for determining debtors' ability to repay, with exceptions only for expenses that are both "reasonable and necessary." While some expense standards should be used to guide the determination of ability to repay, they should be tailored for bankruptcy. We should not simply import standards that were developed for a different purpose -- tax collection -- and which are applied for that purpose with far more discretion than S. 625 would allow for bankruptcy. We note that the Congress has criticized the IRS for inadequate flexibility in using these standards for tax collection, yet this bill would use them far more rigidly for bankruptcy purposes. The Administration believes that the IRS expense formulas can be used as a starting point for developing appropriate bankruptcy guidelines, but that each system would be best served by its own appropriate standards. As House Judiciary Committee Chairman Henry Hyde has said, the use of IRS guidelines without flexibility "depriv[es] debtors and their families of the means to pay for their basic needs." As Chairman Hyde noted on the House floor, "The cost of food in Omaha, Nebraska, or Boise, Idaho, is different than in downtown Manhattan. So what is realistic about an inflexible standard?"

The Senate bill creates a largely self-executing mechanism under which elaborate debtor filings will be reviewed by United States trustees, who, based on the filings, will file a motion to deny access to Chapter 7, if the debtor has the capacity to repay or her use of Chapter 7 is abusive. As modified by the managers' amendment, the bill also gives creditors the ability to file motions to challenge the debtors' use of Chapter 7 as abusive under a vague "totality of the circumstances" test. Creditor motions alleging abuse could be used by creditors against low and moderate income debtors -- who have few resources for legal advice -- to coerce or threaten them to forgo their rights. The bill should provide below-median-income debtors with a "safe harbor" from general abuse motions by creditors, as well as with the "means-test safe harbor" that the managers' amendment provides. Both are essential.

Finally, since the bill as amended by the managers' amendment precludes any party from filing a 707(b) motion alleging that a below-median income debtor has the capacity to repay under the means test, there is no justification for requiring that these debtors fulfill the elaborate means test paperwork requirements. The courts will bear unnecessary costs for collection and storage of these useless filings and they impose an unnecessary cost (and increased legal fees) on the debtor as well. These debtors should be required to provide only the information sufficient to verify their income eligibility for the "safe harbor." Similarly, a more streamlined system could screen out those with no capacity to repay before additional paperwork requirements are imposed. All parties should be able to agree that any means test should be implemented efficiently. Burdensome filing and hearing requirements that lead to little or no additional debt repayment are not in the interest of debtors, creditors, or taxpayers.

The Administration understands that a series of amendments will be offered to improve the fairness and efficiency of the means test. The Administration strongly supports these amendments, including:

- An amendment by **Senator Feingold** to clarify that the long-term care expenses of a debtor caring for a non-dependent parent or relative are necessary expenses under the means test;
- A similar amendment by **Senator Leahy** to clarify that certain expenses for victims of domestic abuse are necessary expenses under the means test;
- A similar amendment by **Senator Schumer** to clarify that retraining expenses of displaced or unemployed workers are necessary expenses under the means test;
- An amendment by **Senator Dodd** to address special concerns of children and families, which includes a provision to clarify that the expenses associated with adopting a child are necessary expenses under the means test;
- An amendment by **Senators Schumer and Durbin** to provide an appropriate safe harbor from all types of creditor motions and unnecessary paperwork requirements for below-median-income debtors;
- An amendment by **Senator Durbin** to reduce unnecessary costs and inefficiency in the reformed bankruptcy system by streamlining application of the means test and reducing costly paperwork collections without affecting debt repayment under the system;
- An amendment by **Senator Schumer** to authorize the Treasury Department, in consultation with the Executive Office for United States Trustees, to modify certain of the IRS guidelines for use in bankruptcy to account for variations in the cost of living; and

- An amendment by **Senator Schumer** to improve the accuracy of the means test calculation by counting all required Chapter 13 expenses (administrative costs, reasonable attorneys fees, and arrearages on other debt) in calculating capacity to repay under the means test.

Abusive Creditor Reaffirmation Practices. Much evidence shows that debtors often reaffirm unsecured debt and low-value secured debt on unfavorable terms even though they do not have the means to meet their own necessary expenses and make more important debt payments, placing such priority debts as child support and alimony obligations at risk. Such reaffirmations frequently are the result of insufficient or misleading information or threats from creditors. S. 625 as reported does little to address these abuses. If we are to provide substantial new opportunities for creditors to challenge debtors' use of the bankruptcy system under Chapter 7 of the Bankruptcy Code, we must limit abusive creditor practices such as coercive reaffirmations and violations of the automatic stay against collection actions. We understand Senator Sessions may offer an amendment to provide some protections against abusive reaffirmations. However, we believe the amendment has significant loopholes, allowing debtors to reaffirm debts they cannot afford and failing to provide creditors with all the information that bankruptcy judges deem necessary and which many are already requiring be provided in their courts. The Administration strongly supports:

- An amendment by **Senator Reed**, that protects debtors by giving them adequate information for decisions about significant reaffirmations of unsecured and low-value secured debt.

We understand, however, that Senators Reed and Sessions continue to discuss ways to reconcile their two amendments in a way that might address our concerns.

Credit Card Information and Protection. The Administration continues to believe that reform must address the factor that is most strongly correlated with the rise in personal bankruptcy: rising levels of consumer debt. Americans now receive more than 3.5 billion credit card solicitations per year, many of which are marketed to encourage consumers to carry high balances and incur large interest charges. One of the most effective ways to reduce the number of bankruptcies in this new financial era is to give consumers the information they need to manage their credit card debts effectively, recognizing the creditors' superior information and bargaining ability. Consumers must be given clear information on the terms of their credit and the financial implications of not paying off their credit card balances. The Administration supports:

- An amendment by **Senators Grassley, Torricelli, Biden, and Johnson** addressing some abusive credit practices, such as failure to disclose "teaser" rates clearly, and requiring limited generic disclosure of the impact of making only the minimum payment on credit cards. While the Grassley-Torrecelli amendment is an improvement over H.R. 833, much more should be done. The amendment creates a system that is unnecessarily burdensome for consumers who may be reluctant to call their credit card company if they are worried about their finances or are pressed for time. The Administration strongly supports:

- An amendment by **Senator Schumer** to expand coverage of the teaser rate disclosures provided under the amendment by Senator Grassley and Torrecelli to apply to applications or solicitations available to the public in catalogs, magazines, and restaurants; and
- An amendment by **Senator Dodd** to require additional information specific to the individual consumer to allow them to better understand the impact of making only the minimum payment.

Cramdowns. S. 625 also changes the lien stripping or "cramdown" provisions in current law governing a Chapter 13 bankruptcy, under which the lien underlying a secured debt is reduced to its value at the time of bankruptcy. The Administration agrees that lien stripping should be limited to automobile loans incurred in the period preceding bankruptcy to prevent abuses, but believes that the provisions in the Senate bill are excessive. While the Administration strongly prefers the Senate provisions to the extreme prohibitions in H.R. 833, the five-year prohibition on lien stripping on automobile debts in the current bill will do little more to deter bankruptcy abuses than a more reasonable time limit. Instead, the prohibition will significantly reduce repayment of priority, unsecured debts like child support and taxes. The Administration strongly supports:

- An amendment by **Senator Kohl** that would ban cramdowns of secured goods with purchase money security interests incurred within six months of the bankruptcy filing.

Nondischargeable Debts. The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with debts for child support and alimony payments, educational loans, tax obligations, or debts incurred by fraud. In an attempt to deal with the possibility of abuse, the bill makes nondischargeable debt incurred on the eve of bankruptcy and certain debts incurred to pay nondischargeable debts. Unfortunately, the amendment will catch those who innocently incur debts as well. Moreover, the additional credit card and other nonpriority debts made nondischargeable by these provisions will compete in some cases after bankruptcy with child support, alimony, taxes, and other societal priorities like educational loans and taxes. The Administration strongly prefers the provisions in S. 625, which offer some protection for child support and alimony, to those in H.R. 833. However, the Administration also strongly supports:

- An amendment by **Senator Moynihan** that would preserve the current nondischargeability rules for lower income debtors, those least likely to incur debts on the eve of bankruptcy for abusive purposes; and
- An amendment by **Senator Dodd** to address special concerns of children and families, which includes a provision to alter the bill's nondischargeability provisions to make it less likely that debts legitimately incurred to support a family will be made nondischargeable; and

An amendment by **Senator Schumer** that would make court-ordered fines and debts resulting from abortion clinic violence nondischargeable. As the Justice Department noted in a May 14, 1999 letter to Senator Schumer, the Administration generally opposes the expansion of nondischargeable debt unless there is an overriding public policy objective and no other way to achieve that objective, but believes this amendment is a necessary tool in current efforts to end clinic violence and intimidation.

Loopholes for the Wealthy. The Administration supports closing loopholes in bankruptcy law, such as unlimited homestead exemptions, that allow many wealthy debtors to avoid their responsibility to repay a significant portion of their debt. Bankruptcy reform should not place a greater responsibility for debt repayment on moderate- and low-income debtors than it does on high-income debtors. The Administration strongly supports:

An amendment by **Senator Kohl** to place a reasonable limit on homestead exemptions.

Barriers to Entry to the Bankruptcy System. Finally, the bill appears to place unnecessary barriers to entry into the bankruptcy system that will not prevent abuse, but will create burdens on those with a genuine need for speedy bankruptcy protection. The Administration strongly supports:

An amendment by **Senator Leahy** to save the taxpayers an estimated \$24 million over five years by eliminating the requirement that every debtor file three years of tax returns and instead permit any party in interest to demand the copies when needed to verify the debtor's assets and income, thus reducing filing and storage costs and unnecessary paperwork burdens; and

An amendment by **Senator Durbin** to allow certain mandatory credit counseling to be provided over the phone.



Joel K. Wiginton



11/08/99 11:58:43

Record Type: Record

To: Beth Nolan/WHO/EOP@EOP, Charles M. Brain/WHO/EOP@EOP, Michelle Peterson/WHO/EOP@EOP,
Ann O'Leary/OPD/EOP@EOP

cc: Hildy Kuryk/WHO/EOP@EOP

Subject: FALN Amendment to Bankruptcy

As you probably know, one of the amendments that will likely be offered to the bankruptcy bill in the Senate is an amendment that would reportedly require the FBI to do a background check of the former members of the FALN that were pardoned by the President earlier this year. We have an intern going up to the Hill to get a copy of the amendment, and a copy will be delivered to your office as soon as possible.

Joel

November 8, 1999

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: ANN O'LEARY

CC: MELANNE VERVEER

SUBJECT: UPDATE ON BANKRUPTCY BILL

The Senate will continue consideration of S. 625, the Bankruptcy Reform bill today. All first – degree amendments were filed on Friday – 157 amendments were offered (97 of those amendments were offered by Hutchinson and Brownback regarding the Homestead Cap). In addition, the Senate will consider six non-relevant amendments. The three Democratic amendments relate to agriculture, the minimum wage, and East Timor. The three GOP amendments relate to education, drugs, and business costs (minimum wage-related).

A SAP is currently under development (see attached draft) and will be sent up to the Hill by the end of the day. The SAP will outline the Administration's serious concerns with the underlying bill and will include a veto threat on minimum wage and class-size reduction.

The Senate will take up the minimum wage amendments at 3:00 p.m. today and will be voted on at 10:30 a.m. on Tuesday. If an agreement is not reached on minimum wage, the bill will be pulled from the floor. If there is an agreement, the Senate will proceed to consideration of the non-relevant amendments and then to the substantive amendments.

FROM
Nicole

Joel Wington - Leg Admin
16-0444 Sarah 65363
6-6493 Joel 68494

Sarah Rosen Wartell
11/01/99 12:26:33 PM

Record Type: Record

To: Melissa G. Green/OPD/EOP@EOP, Joel K. Wington/WHO/EOP@EOP, Nicole R. Rabner/WHO/EOP@EOP, Broderick Johnson/WHO/EOP@EOP
cc: Douglas.Elmendorf@do.treas.gov, David W. Beier/OVP@OVP, karen.l.wilson@usdoj.gov, Martha.Davis@usdoj.gov
Subject: Minimal Bankruptcy Needs

153 amendments filed
97 May Day 11th & 12th

I would argue that -- of all the amendments we want to see -- we absolutely need to have three when the bill passes and a fourth would be desirable. I would argue our strategy ought to be aimed at getting these changes in the final bill, although in public we ought to be supportive of anything that the Democrats put forth, since many are offering amendments that we proposed.

(1) **Reaffirmation deal.** It appears that Grassley is going to stick with Reed on the Administration's negotiated proposal. We need to assure that it survives conference. It will allow us to say that we have dealt with one of the greatest risks of consumer abuse stemming from the new bill. [What should we do to get that. Would a conversation between Gene and Grassley help now?]

(2) **Block efforts to make debtors (especially below median income debtors) to be subject to "totality of the circumstances" motions by creditors,** as part of any "below median income safe harbor." From the beginning, we have been worried about giving creditors the ability to threaten or coerce debtors. These motions can be brought by trustees under the bill. But if creditors can bring them, they can threaten consumers that they will challenge their bankruptcy filings. For below median income debtors -- who genuinely won't have the ability to repay -- this could be especially harmful. Under last year's conference report and this year's Senate bill, creditors can not bring these motions. But, in response to our insistence on a "safe harbor for below median income debtors" to prevent them from being required to go through the paperwork and hassle when they have virtually no capacity to repay, Grassley proposed a "manager's amendment" that gave them a "safe harbor" from paperwork and means test, but subjected them to the "totality of the circumstances" test. Schumer wants to take on this fight. We want to win a full safe harbor -- but most essential is keeping out the totality of the circumstances motions.

(3) The meager **Torrecelli amendment on credit card disclosures.** While woefully inadequate, this is likely to survive since most of the industry has blessed it. If so, we can point to something new that wasn't there when we expressed concern.

(4) Also desirable would be some of the **carve-outs from the means test** that Gene proposed -- re displaced workers, domestic abuse, expenses for non-dependent family members, and adoption. We can say that clarified how bill applied in particularly problematic cases.

If we get these four changes, we could let the bill become law (or sign it) with serious concerns about its impact, but with a colorable argument that we got some protections. Consumer groups won't buy it -- since the means test is their focus rightly -- and we'll have gotten no meaningful changes.

Anyone got any better ideas? Different priorities?

② Grossly wrong on many points
③ Give a lot of amendments → more relevant - EOP/WHO - FBI has to be involved
Amend all bill on Friday
@ main issue will be after today @ 1:00
Vote - den. until @ 10:30
these changes demanded - Den - go - ag - credit reform - 11th - 12th - no mid vote Democratic again

BANKRUPTCY
September 9, 1999

I. Report of Outreach to Industry

- Tentative GE meeting Friday

II. Senate Schedule

III. Republican Strategy

- Manager's amendment
- Torrecelli credit card amendment
- Reaffirmation "deal" with Administration (possibly in jeopardy)
- Pass homestead amendment on floor vote
- UC limited number of other Democratic amendments on the floor

IV. Democratic Plans

- Over 50 proposed amendments
- Minimum Wage (Kennedy)
- Farm (Dorgan)?
- No privacy amendments
- Numerous bankruptcy-related proposals, including most of the Administration's (See list)
- Amendments preventing discharge of gun control, tobacco, and clinic access judgements in bankruptcy
- Expect list to be significantly winnowed down
- A few could be accepted by UC or incorporated in the manager's amendment

V. Administration Strategy

- Continue working with Democrats on amendments
- Do not put the President or First Lady further into the fray
- Look for opportunities to make modest improvements
- Possible homestead push?
- Expect Conference to drop more moderate Senate provisions

VI. Statement of Administration Position

- Timing (beginning of debate or before final passage)
- If later, send separate guidance on amendments?
- SAP content? Current draft:

".... S. 625, as reported, reflects some improvements over H.R. 833 as passed by the House. The Administration, however, continues to have serious reservations about S. 625 and strongly opposes some of its key provisions. Some of the Administration's major concerns would be addressed by amendments that we understand will be offered on the Senate floor. The Administration remains hopeful that bipartisan cooperation will result in responsible bankruptcy legislation that the President can enthusiastically sign."

Attachments

- Administration's Proposed List of Amendments (indicating who will offer)
- Complete list of known potential amendments (indicating which might be accepted)
- Draft SAP

Proposals for Modest Improvements to S. 625
As of September 7, 1999

Means Test

1. **Changes Already Made in the House Bill:** Include additional factors in the means test that determine repayment capacity and success in Chapter 13, *and that are already included in the House bill.*
 - a. Allow administrative expenses and reasonable attorneys' fees of 10 percent of projected payments under a chapter 13 plan. *Schumer*
 - b. Allow continuation of educational expenses and charitable contributions, and exclude benefits received under the Social Security Act. *Kennedy*
 - c. Allow additional expenses up to 5% of additional food and clothing expenses as in the House bill, and expand this provision to *all* National and Local formulaic standards. This provision is derived from a more flexible IRS enforcement guideline that *automatically* allows deviations that are small in magnitude to the formulaic expense standards without requiring substantial justification. It prevents a strict standard of review from being applied to individuals whose estimated repayment capacity from the means test exceeds the repayment threshold by only a few dollars, when they need those dollars for their usual expenses. *?*
2. **Allow Expenses for Victims of Domestic Violence, Retraining for Displaced Workers, Adoption, and Care of Nondependent Family Members:** Clarify that certain expenses should take priority over credit card debts and "reasonable and necessary" expenses under the means test:
 - a. Allow continuation of reasonable expenses for the support of nondependent family members. For example, many households provide important support and care for elder parents, allowing them to keep living in the community, but do not provide enough support for the parent to be counted as a dependent. *Fengol*
 - b. Allow displaced or unemployed workers seeking to return to work reasonable expenses and adjustments in income for education, equipment, relocation, and other expenses related to moving from welfare, disability, or unemployment to work. Such expenses may substantially reduce government welfare costs and increase repayment capacity in the long run; disallowing them could prevent debtors from working their way out of debt. *Kenn*
 - c. Allow expenses associated with adoption. *Dodd?*

- d. Allow additional expenses and income adjustments associated with protection of the debtor and family from domestic violence. Leahy
3. **Incorporate Rules Used In Applying the IRS Standards to Tax Collection to Increase Bankruptcy Collections and Fairness:**
- a. Allow expenses above formula amounts if the debtor can show that, if such expenses were not allowed, the debtor would in fact have higher necessary expenses and thus less disposable income for debt repayment. For example, if the debtor is paying rent above the allowable amount but penalties for termination of the lease and moving expenses would result in less overall disposable income, the additional rental expense should be allowed over the life of the lease. If the debtor is paying rent above the allowable amounts but has low child care expenses and can show that, if forced to move, higher child care expenses would more than offset savings from lower rent, then the additional rent should be allowed. Schumer
- b. Allow low expenses in some formulaic expense categories to offset high expenses in others. For example, some debtors have above-formula housing expenses but below-formula transportation expenses, because they reside close to their job. Such expenses would be considered appropriate if the total actual expenses for both categories were less than the total formulaic expenses for both categories. Schumer
4. **Reduce unnecessary costs and inefficiency in the reformed bankruptcy system:**
Streamline application of the means test and reduce costly paperwork collections without impacting debt repayment under the new system.
- a. Debtors with incomes of 100-150% of median should not be required to document all of their other necessary expenses unless a preliminary screen based on formulaic expenses and nondischargeable debts shows that they can repay. Durbin
- b. Eliminate provisions requiring debtors to file unnecessarily three years of tax returns (and requiring expensive storage and retrieval systems), requiring filing only when requested by creditors. Leahy
5. **Create a True Safe Harbor for Below-Median Income Debtors:** The current bill, even as modified by the manager's amendment, would require low-income debtors to file extensive documentation of expenses that will not be used for any bankruptcy purpose. These additional filings create unnecessary paperwork and a barrier to bankruptcy for low-income filers with no likely capacity to repay. There is simply no justification for leaving these requirements in place. Schumer/Durbin
- a. Only require below-median income debtors to document their income; do

not require them to provide full means test documentation (since not subject to means test motions). Also – technical amendments to existing safe harbor language.

Schumer/Dodd

6. Clarify that small variations are permitted from the means test housing, food, and transportation expense allowances where reasonably necessary [where reasonable and necessary?] to ensure fairness: Many households have expenses that are somewhat higher than the median for reasons that are hardly extravagant. Small variations should be permitted where necessary for fairness.

Schumer ???

- a. Allow additional housing expenses of up to 10% for gross rent and for housing costs other than mortgage if reasonably necessary. Without such a variance, some debtors could be arbitrarily forced to leave their homes, communities, school districts, when their housing expenses are slightly above the county median yet are not unreasonable or extravagant, while others less well off would not suffer the same fate. For example, according to the 1990 Census, the median gross monthly rent in the Census Tract in North Woodhaven, Queens, was \$640, 15 percent larger than the median rent for the county. Applying the housing standards inflexibly could force debtors of this community to move far from their jobs, or forego other necessary expenses. Yet this is not a particularly wealthy community – its median income was less than the median income of the county as a whole (\$34,200). By comparison, the median gross rent in the Census Tract just north of Howard Beach is less than the county median, so far fewer filers from this community would have to move. Yet their resources are in fact greater—their median income is \$2,000 above the county median income. What is fair or rational about forcing lower income debtors to move from Woodhaven, but not higher income debtors from Howard Beach?
- b. Allow additional adjustments to food expenses of up to 10 % if reasonably necessary. Many households have above-average food expenses for perfectly ordinary reasons. For example, debtors who have children who are older than average also have food expenses that are 15 % more than the average. This variance would allow consideration of the ages of the children to be feed on the food allowance.
- c. Allow adjustment of 15% in transportation expenses other than ownership costs of vehicles if reasonably necessary. Non-ownership transportation expenses (e.g., bus fare) increase enormously as the size of the debtor's family grows, nearly independently of the number of owned or leased cars. Indeed, households with fewer cars often have much higher non-ownership expenses. Such expenses are even larger when the additional family members also earn income for the family; and so not allowing them could substantially reduce a household's ability to repay debt. In addition, many debtors have work situations

Dodd ??

that require high transportation expenses. For example, the non-ownership expenses are about 15% higher for families of 4 people than for 2 people; public transportation expenses are nearly 30% higher for the same size difference.

6. Develop means test standards appropriate for bankruptcy, based on the IRS guidelines, without increasing judicial discretion.

- a. Treasury and Justice should be required to develop expense standards appropriate for bankruptcy based on the IRS guidelines. Chairman Hyde made a similar proposal, pointing out that the IRS standards were designed for tax collection in IRS processes with substantial administrative discretion, not debt repayment after bankruptcy in courts with more limited judicial discretion. In this context, more carefully tailored standards are required. The current bill, as amended by the managers' amendment, fails to authorize DoJ and Treasury to develop bankruptcy-specific expense standards.

Schumer
Dunbar

7. Improve the Accuracy of the Means Test (as a test of capacity to repay).

- a. Amend Section 704 to allow U.S. Trustees to consider required payments of arrearages and other debt expenses and administrative costs and attorneys fees not included in the means test in determining capacity to repay. [Query: Does Schumer want to amend the means test or allow Trustees to consider this fact in making a motion?] Arrearages and administrative costs can be large and will be required to be repaid under a Chapter 13 repayment plan. A test that assesses capacity to succeed under a Chapter 13 plan that doesn't take into account these expenses arrearages will not accurately identify those truly able to succeed, and will instead increase the number of failed Chapter 13 plans.

Schumer

9. Improve predictive capacity of means test by taking into account expected future changes.

- a. Allow the U.S. Trustees to consider expected changes in future income or expenses compared to the past 6 months (e.g., from expected job loss, training completion, or changing child care needs) in determining capacity to repay. This amendment would minimize the referral of cases to Chapter 13 that simply will not be able to confirm a successful plan.

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Credit Card Disclosures

The most effective way to reduce the number of bankruptcies is to give consumers the

information they need to manage their credit card debts effectively -- information that creditors can provide at low cost. An amendment expected to be offered would provide a general disclosure to all consumers and more specific information only if they call an 800 number. While we believe more tailored disclosure is appropriate for all consumers, intermediate measures to target those most in need or seeking more information would:

1. **Provide Greater Disclosure for At-Risk Debtors:** Provide automatic disclosures about the financial implications of making only a minimum payment, with the monthly credit card statement, at least to consumers who are most likely to benefit from this information -- i.e., those who made the minimum payment only in the previous month (or 2 months). If this information can be custom-generated for any consumer who calls an "800" number, which is costly to set up and staff, it could certainly be provided automatically to a limited number of easily-identifiable "high-risk" consumers. Dodd
2. **Provide Better Information to those Who Call the 800 Number:** Borrowers who are interested in the impact of making minimum payments may better understand the issue if told the total dollar amount that they would be required to repay, if making only the minimum payment, in addition to the total number of payments that it would require. none

Reaffirmations

[If agreement can be reached on the proposed Sessions-Reed amendment without creating any loopholes to its important protections, and if Senate leadership will commit to protect the amendment in Conference, it should be strongly supported.] Sessions-Reed

Nondischargeable Debt

The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with debts for child support and alimony payments, educational loans, tax obligations, or debts incurred by fraud. The Administration remains concerned that additional credit card and other nonpriority debts that are made nondischargeable by S. 625 will compete after bankruptcy with these societal priorities. There is no evidence of widespread abuse of credit cards on the eve of bankruptcy, particularly for low-income filers.

1. **Change provision for dischargeability of cash advances from \$750 to \$1000 within 70 days.** Cash advances are generally used for necessary not luxury expenses. This is still a tightening of dischargeability from current law. Dodd
2. **Retain current law provisions on nondischargeability for below-median income debtors.** Risk of abusive bankruptcy planning by these debtors is low, while the need for cash or juggling debts on the eve of bankruptcy is likely to be greater. none

Loopholes for Wealthy

Fair bankruptcy reform should close loopholes that allow many wealthy debtors to avoid their responsibility to repay a significant portion of their debt. Bankruptcy reform should not impose very strict requirements of debt repayment on moderate- and low-income debtors, while allowing wealthier debtors to shelter many hundreds of thousands of dollars in assets.

1. Include a reasonable cap on homestead exemptions. Any limit, even a very high one, *Kohl* would be an important step toward increasing debt repayment by those who really can afford to do so.
2. Include a "bright line" time limit on assets transferred to the homestead on the eve of bankruptcy, for example within 365 days. The current Senate bill reduces the value of the homestead exemption on purchases within 730 days, provided that intent to defraud is demonstrated. But "eve of bankruptcy" provisions that do not require proof of intent are imposed by the bill on low-income debtors. There shouldn't be a double standard. *none*

Notes indicate likelihood of passage
if not marked, prospect is remote.



Record Type: Record

To: sarah rosen wartell/opd/eop@eop
cc: Brooke B. Livingston/WHO/EOP@EOP
Subject: Updated Bankruptcy Amendment List

Substitute

Durbin -- Although it much less likely than before, Durbin is still considering offering -- or more likely just floating -- last year's Senate bill, S. 1301, as a substitute.

Means Testing

Schumer/Durbin -- The safe-harbor amendment -- protection for debtors who earn below the median income from creditor motions of all kinds, trustee 707(b) motions, and from the paperwork requirements of the means-test.

partial likely

Durbin -- The efficiency amendment -- for debtors who earn between 100-150 percent of the median income do a cursory evaluation of their ability to pay prior to running the full means-test on these debtors.

possible but not likely

Schumer -- Giving Treasury the express authority to promulgate bankruptcy specific standards.

Schumer -- An amendment expressly noting that the flexibility employed with the IRS standards should be used in the bankruptcy context as it is in the tax collection context.

possible but not likely

Schumer -- The accuracy Amendment -- expressly allowing the U.S. Trustee to consider arrearages, administrative expenses, attorneys fees, etc. in determining the debtor's ability to repay.

partial likely, real possible

Feingold -- Part of the sympathetic debtor amendment -- nondependent family members (perhaps combined with an express protection for long-term care expenses).

possible

Kennedy -- Part of the sympathetic debtor amendment -- displaced workers.

possible

Dodd -- Part of the sympathetic debtor amendment -- adoption expenses.

possible

Leahy -- Part of the sympathetic debtor amendment -- domestic abuse expenses.

possible

Durbin -- Durbin is still tossing around the idea of offering the Hyde amendment or parts of the Hyde amendment. As noted above, they are working with Schumer and us on other means test amendments, but they still appear to believe that the Hyde amendment might win due to the rhetorical advantage of invoking Hyde's name and his speech on the House floor.

Dodd -- An amendment that would protect any money that is supposed to be earmarked for kids as the debtor goes through the system.

Reaffirmations

Reed/Sessions -- If the deal holds up, they will likely offer the compromise Treasury was able to secure.

will pass if offered

Kennedy -- Kennedy's office has softly implied that if they are not happy with the Reed/Sessions amendment that they may offer the reaffe language from last year's Senate bill.

Credit Card Disclosures

Torricelli-Grassley -- They will offer the credit card disclosure amendment that Torricelli negotiated with the credit card companies. *will pass*

Sarbanes/Durbin -- They are contemplating everything from offering the disclosure provisions from last year's Senate bill to a series of improvements to the Torricelli-Grassley amendment.

Dodd -- They are considering doing a stronger credit card disclosure amendment (in particular targeting at risk debtors with more specific and automatic disclosures).

Schumer -- Teaser-rate disclosures (if not content with this provision in the Torricelli-Grassley amendment).

Reed -- Disclosure that debt greater than the security interest in a home is not deductible (if not in the Torricelli-Grassley amendment).

Reed -- No penalty or cancellation if pay credit card balance off on time (if not in the Torricelli-Grassley amendment).

Durbin -- Predatory lending; if violate TILA, lose rights in bankruptcy.

Homestead

Kohl/Sessions -- 100,000 dollar cap. *will pass (drop in conference)*

Cram Downs

Kohl -- 6 months on all goods with a purchase money security interest.

Nondischargeable Debt

Dodd -- will likely tackle both the cash advance and dischargeable debt used to obtain nondischargeable debt issues with adjustments to the time and money amounts.

Consumer Credit Counseling

Durbin -- A two part amendment: (1) allowing the debtor to satisfy the credit counseling requirement over the phone; and (2) requiring court approval before a filing can be dismissed for failure to satisfy the credit counseling requirement. *partial likely, all possible*

Feingold -- They may do an amendment expanding the definition of exigent circumstances (in particular if Durbin is unsuccessful in getting his amendment accepted).

Hatch -- An amendment limiting what information a credit counselor can share with a credit reporting agency. *likely*

Women and Children

Dodd -- As noted above, Dodd is likely to do some nondischargeable debt amendments.

Dodd -- As noted above, Dodd is likely to do a carve-out for money owed for women and children in the means-test.

Dodd -- An amendment expanding the definition of household goods and requiring a hearing to rebut a presumption in favor of the debtor on this issue.

Dodd -- An amendment that would protect the refund obtained by a debtor via the Earned Income Tax Credit from being included as income in the means-test.

Miscellaneous

Kennedy -- Minimum Wage *possible ??*

Kennedy/Schumer -- An amendment protecting social security benefits (the same amendment that Sheila Jackson Lee got accepted on the House floor). *likely*

Kennedy -- The solicitation of minors amendment -- if younger than 21 and a dependent as defined by the IRS, then would have to show independent income or have parent's signature to obtain a credit card. In addition, a disclosure of the common law principal that most contracts made with a minor are unenforceable.

Kennedy -- Chapter 11/labor amendment(s) -- an amendment or series of amendments to address some of the business bankruptcy provisions with which labor is concerned.

Durbin -- The nondischargeability of damage awards levied against gun manufacturers. *?*

Feingold -- No mandatory, binding arbitration of disputes between a debtor and a credit card company.

Feingold -- IFP *likely*

Feingold -- Reinstatement of the apartment tenant automatic stay.

Feingold -- Family farm amendments -- Four small amendments increasing the dollar maximum and definitions of "family farm" to expand the number of small farmers who are eligible for Chapter 12.

Feingold -- The nondischargeability of FEC fines.

Cleland -- Disclosure of mandatory, binding arbitration clause contained in most credit card agreements.

Leahy -- Tax returns -- an amendment that would provide that a debtor would have to provide proof of income, but that s/he would only have to provide *three years* of tax returns if a party in interest makes such a request (as opposed to an automatic requirement).

Leahy -- An amendment clarifying a debtor's right to judicial review (as suggested by the Judicial Conference). *Possible*

Schumer -- The FACE amendment.

Dodd -- Protection of educational savings accounts. *possible*

Kohl -- The back-pay amendment -- insuring that more of the wages of employees (who are creditors of the estate) of a business that files for Chapter 11 are paid out to the employees at a higher priority. *possible*

Kohl -- The employee benefits contributions amendment -- protecting the money employees make into the *possible*

employee benefit accounts when the employer files for Chapter 11.

Dorgan -- Possible substantive Ag amendments.

Feinstein/Biden -- An amendment increasing filing fees to pay for the increase cost to the bankruptcy system created by this bill. *in some form likely*

Wellstone -- The payday loan amendment -- if make a "payday" or some other very high interest loan, lose rights in bankruptcy as to that loan.

Wellstone -- An amendment requiring banks with over \$200 million in assets to provide free checking accounts to low income persons.

Hatch/Biden -- An amendment capping the amount of a debtor's retirement savings that can be protected during bankruptcy (likely at \$500,000). *possible*

Draft -- Not for Release

September 8, 1999
(Senate)

S. 625 - Bankruptcy Reform Act of 1999
(Grassley (R) Iowa and eight cosponsors)

The President supports bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly. He is disappointed that the House failed to produce legislation that he could support. S. 625, as reported, reflects some improvements over H.R. 833 as passed by the House. The Administration, however, continues to have serious reservations about S. 625 and strongly opposes some of its key provisions. The Administration's objections to this bill are explained in detail in the Attachment.

Many of the Administration's major concerns would be addressed by amendments that the Administration understands will be offered on the Senate floor. The Administration's views on the anticipated amendments are also contained in the Attachment. The Administration remains hopeful that bipartisan cooperation will result in responsible bankruptcy legislation that the President can enthusiastically sign.

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Detailed Administration Views on S. 625 and Anticipated Floor Amendments

Access to Chapter 7. Any means test used in bankruptcy proceedings should deny access to Chapter 7 bankruptcy procedures only to those debtors who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. S. 625 in its current form would limit access to Chapter 7 to those debtors who meet a relatively inflexible and arbitrary means test. The Administration strongly opposes this provision. Debtors who may be denied a discharge of their debts must be given a meaningful and realistic opportunity to have their specific circumstances considered by bankruptcy courts with appropriate, limited discretion to determine whether they genuinely have the capacity to repay a portion of their debts.

As reported, S. 625 would apply rough guidelines, developed by the Internal Revenue Service (IRS) for tax repayment plans, as standards for determining debtors' ability to repay, with exceptions only for expenses that are "reasonable and necessary." While some expense standards should be used to guide the determination of ability to repay, they should be tailored for bankruptcy. The same set of standards simply cannot be used *[why not? not clear]* in both bankruptcy and tax collection, which involve very different purposes and systems of judicial review. The Administration believes that the IRS expense formulas can be used as a starting point for developing appropriate bankruptcy guidelines, but that each system would be best served by its own appropriate standards.

As House Judiciary Committee Chairman Henry Hyde has said, the use of IRS guidelines without flexibility "depriv[es] debtors and their families of the means to pay for their basic needs." **[Confirm quote from NYTs – accurate in context.]** As Chairman Hyde noted on the House floor, "The cost of food in Omaha, Nebraska, or Boise, Idaho, is different than in downtown Manhattan. So what is realistic about an inflexible standard?"

[Another example illustrates the arbitrary impact of these formulas, treating similarly situated debtors differently. According to the 1990 Census, the median gross monthly rent in the Census Tract in North Woodhaven, Queens, was \$640, 15 percent greater than the median rent for the county. Applying the housing standards inflexibly could force debtors of this community to move far from their jobs, or forego other necessary expenses. Yet this is not a particularly wealthy community -- its median income was less than the median income of the county as a whole (\$34,200). By comparison, the median gross rent in the Census Tract just north of Howard Beach is less than the county median, so far fewer filers from this community have to move. Yet their resources are in fact greater--their median income is \$2,000 above the county median income. What is fair or rational about forcing lower income debtors to move from Woodhaven, but not higher income debtors from Howard Beach?]/*Is this a compelling argument?*]

Finally, all parties should be able to agree that any means test should be implemented efficiently. Burdensome filing and hearing requirements that lead to little or no additional debt

repayment are not in the interest of debtors, creditors, or taxpayers.

The Administration understands that a series of amendments will be offered to improve the fairness of the means test. The Administration supports these amendments, including: [list subject to change]

- An amendment by Senator ____ to incorporate improvements in the means test that were adopted by the House;
- Amendments by Senators _____ and ____ to clarify the treatment under the means test of expenses for victims of domestic abuse, adopting a child, displaced or unemployed workers retraining or moving for employment, and caring for a non-dependent parent or relative;
- An amendment by Senator Durbin to reduce unnecessary costs and inefficiency in the reformed bankruptcy system by streamlining application of the means test and reducing costly paperwork collections without affecting debt repayment under the system;
- An amendment by Senators Schumer and Durbin [?] to create an effective safe harbor from application of the means test for debtors with incomes below the national median;
- An amendment by Senator Durbin [?] to authorize the Treasury Department, in consultation with the Executive Office of the United States Trustees, to develop customized guidelines for use in the means test based on the IRS guidelines;
- An amendment by Senator Schumer to improve the accuracy of the means test calculation by counting all required expenses (administrative costs, reasonable attorneys fees, and arrearages on other debt) in calculating capacity to repay under the means test.
- An amendment by Senator ____ to adopt policies, which are used by the IRS in applying the IRS guidelines for tax collection, for use in the bankruptcy means test, so as to increase collections and enhance fairness;
- Amendments by Senators ____ to clarify that small variations are permitted from the means test for housing, food, and transportation expense allowances where reasonably necessary [where reasonable and necessary?] to ensure fairness; and
- An amendment by Senator _____ to confirm the U.S. Trustees' discretion to consider expected changes in income or expenses in evaluating a debtor's challenge to the presumption that the debtor has the capacity to repay as calculated under the means test.

Consumer Information and Protection. The Administration continues to believe that reform must address the factor that is most strongly correlated with the rise in personal bankruptcy: rising levels of consumer debt. Americans now receive more than 3.5 billion credit card solicitations per year, many of which are marketed to encourage consumers to carry high

balances and incur large interest charges. The most effective way to reduce the number of bankruptcies in this new financial era is to give consumers the information they need to manage their credit card debts effectively, recognizing the creditors' superior information and bargaining ability. Consumers must be given clear information on the terms of their credit and the financial implications of not paying off their credit card balances.

The amendment to be offered by Senators Grassley and Torricelli addresses some abusive credit practices, such as failure to disclose "teaser" rates clearly. While this is an improvement over H.R. 833, much more should be done. Under the Grassley-Torricelli amendment, creditors must provide *[specified?]* information to debtors who call the toll-free number on the statement. The amendment creates a system that is unnecessarily burdensome for consumers who may be reluctant to call their credit card company if they are worried about their finances or are pressed for time. The Administration supports the _____ amendment, which would require that the information be provided in a manner that would be easier and more reliable for consumers to use by including it automatically on credit card statements. Providing the information in this manner *[would/could/would likely]* also be less costly to creditors than the requirement to make this information available to consumers who call a toll-free number. *[can we say this?]* [The Administration also supports other amendments that are designed to address abuses in credit card solicitation.][Note: We should specify the amendments or drop this reference.] [Treasury reviewing the new Dodd kiddie-credit amendment.]

Abusive Creditor Practices. Much evidence shows that debtors often reaffirm unsecured debt and low-value secured debt on unfavorable terms even though they do not have the means to meet their own necessary expenses and make more important debt payments, placing such priority debts as child support and alimony obligations at risk. Such reaffirmations frequently are the result of insufficient or misleading information or threats from creditors. S. 625 as reported does little to address these abuses. If we are to provide substantial new opportunities for creditors to challenge debtors' use of the bankruptcy system under Chapter 7 of the Bankruptcy Code, we must limit abusive creditor practices such as coercive reaffirmations and violations of the automatic stay against collection actions. Hence, the Administration supports the amendment of Senators Sessions and Reed, which protects debtors by giving them adequate information for decisions about significant reaffirmations of unsecured and low-value secured debt.

Cramdowns. S. 625 also changes the lien stripping or "cramdown" provisions in current law governing a Chapter 13 bankruptcy, under which a secured debt becomes nondischargeable only up to the value of the security interest at the time of bankruptcy. The Administration agrees that lien stripping should be limited to automobile loans incurred in the period preceding bankruptcy to prevent abuses, but believes that the provisions in the Senate bill are excessive. While the Administration strongly prefers the Senate provisions to the extreme prohibitions in H.R. 833, the five-year prohibition on lien stripping on automobile debts in the current bill will do little more to deter bankruptcy abuses than a more reasonable time limit. Instead, the prohibition will significantly reduce repayment of priority, unsecured debts like child support and taxes. The Administration understands that Senator _____ [Kohl? Sessions?] will offer an amendment that would provide appropriate cramdown relief. The Administration supports this

amendment.

Nondischargeable Debts. The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with debts for child support and alimony payments, educational loans, tax obligations, or debts incurred by fraud. The Administration strongly prefers the provisions in S. 625, which offer some protection for child support and alimony, to those in H.R. 833. But the Administration remains concerned that additional credit card and other nonpriority debts made nondischargeable by these provisions will compete after bankruptcy with child support, alimony, and other societal priorities like educational loans and taxes. The amendment to be offered by Sen. _____, which the Administration supports, would address this concern by _____.

Loopholes for the Wealthy. The Administration supports changes that would close loopholes in bankruptcy law, such as unlimited homestead exemptions [and the exemptions from repayment requirements for individuals who are able to file for bankruptcy under Chapter 11 – **do we need to mention this issue – isn't it in manager's amendment? Some bankruptcy professionals disagree?**], that allow many wealthy debtors to avoid their responsibility to repay a significant portion of their debt. Bankruptcy reform should not place a greater responsibility for debt repayment on moderate- and low-income debtors than it does on high-income debtors. The Administration supports the _____ amendment to place a reasonable limit on homestead exemptions.