

THE WHITE HOUSE

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Fax Cover Sheet

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☐ Bobby ConnerFax: 6-2878

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Date: _____

Pages including cover sheet: 5Message: Here is the section of the drug amend.
re: FALN.

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1 **Subtitle D—Miscellaneous**

2 SEC. ____81. NOTICE; CLARIFICATION.

3 (a) NOTICE OF ISSUANCE.—Section 3103a of title
4 18, United States Code, is amended by adding at the end
5 the following new sentence: “With respect to any issuance
6 under this section or any other provision of law (including
7 section 3117 and any rule), any notice required, or that
8 may be required, to be given may be delayed pursuant to
9 the standards, terms, and conditions set forth in section
10 2705, unless otherwise expressly provided by statute.”

11 (b) CLARIFICATION.—(1) Section 2(e) of Public Law
12 95–78 (91 Stat. 320) is amended by adding at the end
13 the following:

14 “Subdivision (d) of such rule, as in effect on this date,
15 is amended by inserting ‘tangible’ before ‘property’ each
16 place it occurs.”

17 (2) The amendment made by paragraph (1) shall
18 take effect on the date of the enactment of this Act.

19 SEC. ____82. DOMESTIC TERRORISM ASSESSMENT AND RE-
20 COVERY.

21 (a) IN GENERAL.—The Federal Bureau of Investiga-
22 tion shall prepare a study assessing—

23 (1) the threat posed by the Fuerzas Armadas
24 de Liberacion Nacional Puertorriquena (FALN) and

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59

1 Los Macheteros terrorist organizations to the United
2 States and its territories as of July 31, 1999; and

3 (2) what effect the President's offer of clemency
4 to 16 FALN and Los Macheteros members on Au-
5 gust 11, 1999, and the subsequent release of 11 of
6 those members, will have on the threat posed by
7 those terrorist organizations to the United States
8 and its territories.

9 (b) ISSUES EXAMINED.—In conducting and prepar-
10 ing the study under subsection (a), the Federal Bureau
11 of Investigation shall address—

12 (1) the threat posed by the FALN and Los
13 Macheteros organizations to law enforcement offi-
14 cers, prosecutors, defense attorneys, witnesses, and
15 judges involved in the prosecution of members of the
16 FALN and Los Macheteros, both in the United
17 States and its territories;

18 (2) the roles played by each the 16 members of-
19 fered clemency by the President on August 11,
20 1999, in the FALN and Los Macheteros organiza-
21 tions;

22 (3) the extent to which the FALN and Los
23 Macheteros organizations are associated with other
24 known terrorist organizations or countries suspected
25 of sponsoring terrorism;

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1 (4) the threat posed to the national security in-
2 terests of the United States by the FALN and Los
3 Macheteros organizations;

4 (5) whether the offer of clemency to, or release
5 of, any of the 16 FALN or Los Macheteros members
6 would violate, or be inconsistent with, the United
7 States' obligations under international treaties and
8 agreements governing terrorist activity; and

9 (6) the effect on law enforcement's ability to
10 solve open cases and apprehend fugitives resulting
11 from the offer of clemency to the 16 FALN and Los
12 Macheteros members, without first requiring each of
13 them to provide the government all truthful informa-
14 tion and evidence he or she has concerning open in-
15 vestigations and fugitives associated with the FALN
16 and Los Macheteros organizations.

17 (c) REPORT.—Not later than 30 days after the date
18 of the enactment of this Act, the Federal Bureau of Inves-
19 tigation shall submit to Congress a report on the study
20 conducted under subsection (a).

21 SEC. ____83. ANTIDRUG MESSAGES ON FEDERAL GOVERN-
22 MENT INTERNET WEBSITES.

23 Not later than 90 days after the date of the enact-
24 ment of this Act, the head of each department, agency,
25 and establishment of the Federal Government shall, in

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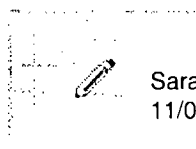
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61

1 consultation with the Director of the Office of National
2 Drug Control Policy, place antidrug messages on appro-
3 priate Internet websites controlled by such department,
4 agency, or establishment which messages shall, where ap-
5 propriate, contain an electronic hyperlink to the Internet
6 website, if any, of the Office.

7 **SEC. ____84. SEVERABILITY.**

8 Any provision of this title held to be invalid or unen-
9 forceable by its terms, or as applied to any person or cir-
10 cumstance, shall be construed as to give the maximum ef-
11 fect permitted by law, unless such provision is held to be
12 utterly invalid or unenforceable, in which event such provi-
13 sion shall be severed from this title and shall not affect
14 the applicability of the remainder of this title, or of such
15 provision, to other persons not similarly situated or to
16 other, dissimilar circumstances.



Sarah Rosen Wartell
11/08/99 11:52:08 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Ronald E. Jones/OMB/EOP@EOP, Sandra Yamin/OMB/EOP@EOP
Subject: Revised Reaff language

Given that we won't know for a while where the negotiations are with sessions, I propose that we use the following language -- inserted in place of "The Administration strongly supports" and all that follows on reaffs:

We understand Senator Sessions may offer an amendment to provide some protections against abusive reaffirmations, but we believe that it 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 many are already requiring be provided in their courts. The Administration strongly supports:

- An amendment by **Senator Reed**, which 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.

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BANKRUPTCY BILL AMENDMENTS

NO.	SPONSOR(S)	SUBJECTS	
1729	HATCH TORRICELLI	DOMESTIC SUPPORT OBLIGATIONS IN BANKRUPTCY	
2514	GRASSLEY FEINSTEIN	EXCEPTION TO AUTOMATIC STAY FOR PROPERTY TAX LIEN CREATION OR PERFECTION	
2515	GRASSLEY TORRICELLI	CREDIT COUSELING AGENCY STANDARDS; DOMESTIC SUPPORT OBLIGATIONS IN BANKRUPTCY, FAMILY FISHING BUSINESSES ADDED TO CHAPTER 12, EDUCATION SAVINGS ACCOUNTS, CHAPTER 11 CASES FILED BY INDIVIDUALS, FILING FEE INCREASE	
2516	KOHL	\$100,000 HOMESTEAD CAP	
2517	SARBANES	MINIMUM PAYMENT DISCLOSURES, CREDIT CARD SECURITY INTEREST DISCLOSURES	
2518	SESSIONS	\$100,000 HOMESTEAD CAP WITH COLA	
2519	COLLINS	FAMILY FISHING BUSINESSES	
2520	MCCONNELL	TRUSTEE'S FEES TO BE AWARDED IN DISMISSED OR CONVERTED CHAPTER 7 CASES	
2521	DURBIN	CLAIMS BASED ON PREDATORY LENDING DISALLOWED IN BANKRUPTCY	
2522	FEINGOLD	MEANS TEST : PROTECTIONS FOR EXPENSES RELATED TO CARE OF NON-DEPENDENT RELATIVES	
2523	JOHNSON	FCC LICENSES	
2524 2526 2527	GRAMM	\$100,000 HOMESTEAD CAP IF PROPERTY IS PURCHASED W/IN TWO YEARS PRIOR TO BANKRUPTCY (MINOR VARIATIONS IN THREE)	
2528	LEAHY MURRAY FEINSTEIN	MEANS TEST: PROTECTIONS FOR EXPENSES RELATED TO PREVENTION OF DOMESTIC VIOLENCE	
2529	LEAHY	TAX RETURN FILING SUBSTITUTE	
2530	BYRD	FTC PAMPHLET WITH ELECTRONIC CREDIT CARD SOLICITATIONS	
2531	DODD	PROTECTION FOR EDUCATION SAVINGS	
2532	DODD LANDRIEU KENNEDY	(FAMILIES PACKAGE) MEANS TEST: PROTECTION FOR CERTAIN EXPENSES; PROTECTIONS FOR EITC AND ALIMONY AND SUPPORT PAYMENTS AS ASSETS IN BANKRUPTCY; IMPROVED HOUSEHOLD GOODS DEFINITION	

2533 2534 2535	HATCH	CREDIT COUNSELING AMENDMENTS: DEBTOR'S LAWYERS CAN'T PROVIDE COUNSELING, NEW POST-BANKRUPTCY CREDIT EDUCATION CLASS REQUIREMENT; DEFINITION OF CREDIT COUNSELING AGENCY	X
2536	HATCH	PROTECTION FOR EDUCATION SAVINGS (SAME AS 2531)	
2537 2538	WELLSTONE	DISALLOWANCE OF CLAIMS OF BANKS THAT DON'T OFFER LOW OR NO FEE ACCOUNTS; DISALLOWANCE OF CLAIMS RELATED TO CERTAIN PAY DAY LOAN PRACTICES; AMENDMENTS TO FDCPA RELATED TO PAY DAY LOAN PRACTICES	
2539 2540	LEAHY	BANKRUPTCY APPEALS (PERMITTING CERTIFICATION OF DIRECT APPEAL); NONDISCHARGE OF TOBACCO CLAIMS	
2545	COVERDELL	JUDGESHIP AUTHORIZATIONS	
2546	BENNETT	INSOLVENT FINANCIAL INSTITUTIONS	
2548 2549	HUTCHISON BROWNBACK	ATTEMPT AT HOMESTEAD EXEMPTION OPT OUTS	
2550	HUTCHISON	HOMESTEAD STUDY (1 YR.)	
2551- 2647	HUTCHISON BROWNBACK	HOMESTEAD STUDY (VARIOUS TIME LIMITS) 97 DIFFERENT AMENDMENTS	
2648	JEFFORDS	IMPORTED ELECTRIC POWER	
2649	GRAMM	CONSUMER CREDIT DISCLOSURES AMENDMENT CREATING LOOPHOLES AND EXCEPTIONS TO TORRICELLI/GRASSLEY (2655)	X
2650	REED	REAFFIRMATION PROTECTIONS INVOLVING FORMAT FOR AGREEMENTS; LIMITED COURT OVERSIGHT	
2652 2653	KENNEDY	PROTECT SOCIAL SECURITY INCOME FROM BEING COUNTED UNDER MEANS TEST; NONCONSUMER CHANGES	
2654	JOHNSON	COMPENSATION OF CHAPTER 7 TRUSTEE IF CASE IS DISMISSED OR CONVERTED UNDER MEANS TEST (SEE 2520)	
2655	TORRICELLI	CONSUMER CREDIT DISCLOSURE, WEAK MINIMUM PAYMENTS PROVISION, TEASER RATES, INTERNET DISCLOSURES AND MORE	
2656 2657	TORRICELLI	AMENDMENTS RELATED TO PERSONAL EARNINGS AS PROPERTY OF THE ESTATE IN CH. 11, INTERESTS IN LEASES AND LICENCES AS PROPERTY OF THE ESTATE	
2658	LEVIN	NON-DISCHARGEABILITY OF DEBTS RELATED TO GUN CLAIMS	

2659 2660	DURBIN	CONSUMER CREDIT COUNSELING IMPROVEMENTS; REAFFIRMATION PROTECTIONS (BETTER THAN REED- 2650)	
2661 2662	DURBIN SCHUMER KENNEDY	MEANS TEST PROTECTIONS FOR DEBTORS BETWEEN 100 AND 150% OF MEDIAN (LIMITATIONS ON PRESUMPTION)	
2663	MOYNIHAN	MEDIAN INCOME SAFE HARBOR LIMIT ON AVAILABILITY OF NEW NONDISCHARGEABILITY GROUNDS RELATED TO LUXURY GOODS, DEBTS INCURRED TO PAY NONDISCHARGEABLE DEBTS	
2664 2665 2666	KOHL	EXCLUDING EMPLOYEE BENEFIT PLAN CONTRIBUTIONS FROM PROPERTY OF THE ESTATE; ADMIN. EXPENSE TREATMENT FOR BACK PAY AWARDS WHEN DEBTOR HAS VIOLATED STATE LAW (HELPS EMPLOYEES AS CREDITORS); STRIPDOWN OK IN CH. 13 UNLESS COLLATERAL PURCHASED W/IN 180 DAYS BEFORE FILING	
2668 2669	HUTCHISON BROWNBACK	ATTEMPT TO ALLOW OPT OUT OF HOMESTEAD CAP; ATTEMPT TO CREATE SENIOR CITIZEN EXEMPTION TO HOMESTEAD CAP	
2670- 2741	BROWNBACK	TO LOWER PERCENTAGE OF INCOME THAT A FAMILY FARMER MUST EARN FROM FARMING TO ESTABLISH ELIGIBILITY	
2743 2744	FEINGOLD SPECTER	FRIVOLOUS STANDARD FOR MEANS TEST AWARDS AGAINST DEBTOR'S ATTORNEY; FILING FEE WAIVER FOR LOW-INCOME DEBTORS	
2745- 2750	FEINGOLD	CHAPTER 12 AMENDMENT RE: DISPOSABLE INCOME; CH. 12 ELIGIBILITY; PROHIBITION OF ARBITRATION CLAUSES IN CONSUMER CONTRACTS; PROTECTIONS FOR TENANTS IN BANKRUPTCY; PROHIBITION OF BANKRUPTCY FOR POLITICAL COMMITTEES; NON-DISCHARGEABILITY OF ELECTION LAW FINES AND PENALTIES	
2753	DODD	CONSUMER CREDIT: MINIMUM PAYMENTS DISCLOSURES	
2754	DODD KENNEDY	LIMITATIONS ON CREDIT TO MINORS	
2755 2756	FEINSTEIN	FEDERAL RESERVE BOARD STUDIES OF INDISCRIMINATE LENDING PRACTICES	
2757	BROWNBACK HUTCHISON	ATTEMPT TO CREATE HOMESTEAD CAP EXCEPTION FOR SENIOR CITIZENS	
2758	ROTH MOYNIHAN	TAX LIEN PRIORITY ISSUES AND OTHER TAX ISSUES	

2759 2760	SCHUMER DURBIN	MODIFICATION TO IRS STANDARDS	
2761	SCHUMER	SCHUMER "SUPER BOX" FOR DISCLOSURE OF LONG-TERM APR	
2762	SCHUMER DURBIN	MEANS TEST: FULL SAFE HARBOR, BETTER DEFINITION OF MEDIAN INCOME	
2763	SCHUMER	NONDISCHARGEABILITY OF DEBTS RELATED TO CLIMIC VIOLENCE	
2764- 2767	SCHUMER	MEANS TEST: BETTER DEFINITIONS OF PERMITTED EXPENSES; ADDITIONAL DISCLOSURES RELATED TO TEASER RATES; SUPER BOX (SEE 2648)	
2768	LEVIN	PROHIBITIONS RELATED TO TWO-CYCLE BILLING METHOD	
2769	DODD	PROTECTION OF EDUCATION SAVINGS (SAME AS 2532?)	
2270 [SIC]	HARKIN	INVALIDATES SECURITY INTERESTS IN HOUSEHOLD PROPERTY PURCHASED FOR LESS THAN \$1,000	
2772	LEVIN	FTC REPORT RELATED TO CREDIT CARD REDLINING	
265?	CRAIG OR GREGG?	REDEMPTION LIMITATION (INCOMPREHENSIBLE. PAWN SHOP PROTECTIONS?)	X

BRIEF COMPARISON OF GRAMM AND TORRICELLI CONSUMER CREDIT AMENDMENT PACKAGES

Both Gramm (2649) and Torricelli (2655) amendments provide different disclosures depending upon required minimum monthly payments:

- 1) for *plan* with min. mo. payment less than 4%, example is based on \$1,000 balance
- 2) if greater than 4%, example based on \$ 300 balance.

In case of creditors whose compliance with TIL is enforced by FTC (most non-bank entities; FTC is the default enforcement agency), disclosure is based on \$300 balance and toll-free # of FTC is provided for consumer to call for estimate. This is a major negative change from the provisions that were vetted with Frank and Ed and Travis and me.

Gramm amendment has exception for creditors with assets under 250 million dollars. No toll free number requirement. Can 'recoup' cost of providing info.

Gramm amendment has two additional exceptions, no disclosure requirements for:

- 1) charge accounts which require payment of charges in full each month (Amer.Express)
- 2) creditors that have toll-free number consumers can call to get actual number of months for repayment.

Torricelli amendment (Sec.XX06) has ban on terminating accounts for failure to incur finance charges whereas Gramm permits Board to conduct study on issue.

Otherwise the amendments are the same.

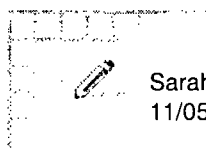
Editorial comment: Neither amendment is good. We should probably not actively support or oppose the Torricelli amendment, but we should actively oppose Gramm.

Brief overview of Reed reaffirmation amendment (2650)

- 1) If reaff based on unsecured debt or secured based on item purchased for less than \$500, agreement must contain model form disclosures.
- 2) No payment under reaff (or total of all reaffs) can exceed debtors net monthly income basically as calculated under means test..

- 3) No model form disclosures required if debtor represented by counsel and amount of debt is less than \$500 or if more than 1 reaff, total less than \$750, or, if amount of debt is secured by more than 1 item and over 50% of total value relates to purchases over \$500.
- 4) Reaff must be filed within 50 days of 1st meeting (may be amended before case closed).
- 5) Court may review any reaff, and shall consider any not signed by debtor's counsel.
- 6) Court cannot disapprove reaff without providing notice and hearing.
- 7) Any reaff not disapproved at time of discharge deemed approved.

Editorial note: In general, these protections are meaningless. We should probably neither actively support nor oppose them. The Durbin protections (2660).



Sarah Rosen Wartell
11/05/99 10:26:59 AM

Record Type: Record

To: Ronald E. Jones/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: Bankruptcy (et al) SAP

Attached is a revised draft sap (very similar to the one cleared in early september) but revised in key ways to reflect the relevant amendments that are going to be filed today.

Bill/Jason -- Do we want to refer here to the minimum wage letter from president yesterday. See proposed language. Note that I understand that the Democratic minimum wage alternative may have Harkin's cash balance plan language -- language that we don't support. This language avoids discussion of any specifics on the minimum wage proposal.

DPC -- What do you want us to say -- if anything -- on the drugs and education amendments to be offered by the republicans?

Treasury and DoJ -- I need your comments on the SAP ASAP. Ron/OMB -- Meanwhile put it into clearance.



bk99sensap.1105.doc

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Calendar No. 357

106th CONGRESS

1st Session

S. 1455

A BILL

To enhance protections against fraud in the offering of financial assistance for college education,
and
for other purposes.

October 29, 1999

Reported with an amendment

S 1455 RS

Calendar No. 357

106th CONGRESS

1st Session

S. 1455

To enhance protections against fraud in the offering of financial assistance for college education,
and
for other purposes.

IN THE SENATE OF THE UNITED STATES

July 28, 1999

Mr. ABRAHAM (for himself, Mr. FEINGOLD, Mr. DEWINE, and Mr. HAGEL) introduced the
following bill; which was read twice and referred to the Committee on the Judiciary

October 29, 1999

Reported by Mr. ABRAHAM, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To enhance protections against fraud in the offering of financial assistance for college education,
and
for other purposes.

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

[Struck out->] SECTION 1. SHORT TITLE. [<-Struck out]

[Struck out->] This Act may be cited as the 'College Scholarship Fraud
Prevention Act of 1999'. [<-Struck out]

[Struck out->] SEC. 2. FINDINGS. [<-Struck out]

[Struck out->] Congress makes the following findings: [<-Struck out]

[Struck out->] (1) A substantial amount of fraud occurs in the
offering of college education financial assistance services to
consumers. [<-Struck out]

[Struck out->] (2) Such fraud includes the following: [<-Struck out]

[Struck out->] (A) Misrepresentations regarding the provision
of sources from which consumers may obtain financial
assistance (including scholarships, grants, loans, tuition,
awards, and other assistance) for purposes of financing a
college education. [<-Struck out]

[Struck out->] (B) Misrepresentations regarding the provision
of portfolios of such assistance tailored to the needs of
specific consumers. [<-Struck out]

[Struck out->] (C) Misrepresentations regarding the
pre-selection of students as eligible to receive such
assistance. [<-Struck out]

[Struck out->] (D) Misrepresentations that such assistance will
be provided to consumers who purchase specified services
from specified entities. [<-Struck out]

[Struck out->] (E) Misrepresentations regarding the business relationships between particular entities and entities that award or may award such assistance. [<-Struck out]

[Struck out->] (F) Misrepresentations regarding refunds of processing fees if consumers are not provided specified amounts of such assistance, and other misrepresentations regarding refunds. [<-Struck out]

[Struck out->] SEC. 3. ENHANCED CRIMINAL PENALTIES FOR COLLEGE EDUCATION FINANCIAL SERVICE ASSISTANCE FRAUD. [<-Struck out]

[Struck out->] (a) ENHANCED PENALTIES- Chapter 63 of title 18, United States Code, is amended by adding at the end the following: [<-Struck out]

[Struck out->] ‘Sec. 1348. Enhanced penalties for college education financial service assistance fraud [<-Struck out]

[Struck out->] ‘(a) IN GENERAL- A person who is convicted of an offense under section 1341, 1342, or 1343 of this title in connection with the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education shall be fined under this title, imprisoned not more than 10 years, or both. [<-Struck out]

[Struck out->] ‘(b) OTHER PENALTIES- Any penalties imposed under this section shall be in addition to any penalties under any of the sections referred to in subsection (a). [<-Struck out]

[Struck out->] ‘(c) INSTITUTION OF HIGHER EDUCATION DEFINED- In this section, the term ‘institution of higher education’ has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).’ [<-Struck out]

[Struck out->] (b) CLERICAL AMENDMENT- The table of sections at the beginning of that chapter is amended by adding at the end the following: [<-Struck out]

[Struck out->] ‘1348. Enhanced penalties for college education financial service assistance fraud.’ [<-Struck out]

[Struck out->] SEC. 4. EXCLUSION OF DEBTS RELATING TO COLLEGE

FINANCIAL ASSISTANCE SERVICES FRAUD FROM PERMISSIBLE
EXEMPTIONS OF PROPERTY FROM ESTATES IN BANKRUPTCY. [<-Struck
out]

[Struck out->] Section 522(c) of title 11, United States Code, is
amended-- [<-Struck out]

[Struck out->] (1) by striking 'or' at the end of paragraph (2);
[<-Struck out]

[Struck out->] (2) by striking the period at the end of paragraph
(3) and inserting '; or'; and [<-Struck out]

[Struck out->] (3) by adding at the end the following: [<-Struck out]

[Struck out->] '(4) a debt in connection with fraud in the obtaining
or providing of any scholarship, grant, loan, tuition, discount,
award, or other financial assistance for purposes of financing an
education at an institution of higher education (as that term is
defined in section 101 of the Higher Education Act of 1954 (20
U.S.C. 1001)).' [<-Struck out]

[Struck out->] SEC. 5. LIST OF BUSINESSES AND ORGANIZATIONS
OFFERING COLLEGE EDUCATION FINANCIAL ASSISTANCE SERVICES.
[<-Struck out]

[Struck out->] (a) LIST- The Secretary of Education shall maintain on the
Internet web site of the Department of Education a web page that--
[<-Struck out]

[Struck out->] (1) lists businesses and organizations that offer
financial assistance (including scholarships, grants, loans,
tuition, awards, and other assistance) for purposes of financing
an education at institutions of higher education; and [<-Struck out]
[Struck out->] (2) provides the Internet web site address of such
businesses and organizations. [<-Struck out]

[Struck out->] (b) APPLICATION FOR PLACEMENT ON THE LIST- A business or
organization may apply to the Secretary of Education for placement on
the list. [<-Struck out]

[Struck out->] (c) CONSULTATION- The Secretary of Education shall consult
with the Chairman of the Federal Trade Commission in an effort to
ensure that a business or organization applying for placement on the
list is a legitimate business or organization. [<-Struck out]

[Struck out->] (d) INELIGIBILITY- A business or organization shall not be listed on the page if-- [<-Struck out]

[Struck out->] (1) the business or organization was prosecuted by the Federal Trade Commission and convicted of using an unfair or deceptive act or practice under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) during the 5-year period preceding the submission of an application under subsection (b); [<-Struck out]

[Struck out->] (2) the business or organization is operated by an individual who operated a business or organization that was prosecuted by the Federal Trade Commission and convicted of using an unfair or deceptive act or practice under such Act during the 5-year period preceding the submission of an application under subsection (b); [<-Struck out]

[Struck out->] (3) the Department of Education receives a significant number of complaints, as determined by the Secretary of Education, from students alleging the business or organization has not in good faith delivered on promises made by the business or organization; or [<-Struck out]

[Struck out->] (4) the business or organization is under investigation by the Federal Trade Commission. [<-Struck out]

SECTION 1. SHORT TITLE.

This Act may be cited as the 'College Scholarship Fraud Prevention Act of 1999'.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) A substantial amount of fraud occurs in the offering of college education financial assistance services to consumers.

(2) Such fraud includes the following:

(A) Misrepresentations regarding the provision of sources from which consumers may obtain financial assistance (including scholarships, grants, loans, tuition, awards, and other assistance) for purposes of financing a college education.

(B) Misrepresentations regarding the provision of portfolios of such

assistance tailored to the needs of specific consumers.

(C) Misrepresentations regarding the pre-selection of students as eligible to receive such assistance.

(D) Misrepresentations that such assistance will be provided to consumers who purchase specified services from specified entities.

(E) Misrepresentations regarding the business relationships between particular entities and entities that award or may award such assistance.

(F) Misrepresentations regarding refunds of processing fees if consumers are not provided specified amounts of such assistance, and other misrepresentations regarding refunds.

(3) In 1996, the Federal Trade Commission launched 'Project Scholarscam', a joint law enforcement and consumer education campaign directed at fraudulent purveyors of so-called 'scholarship services'.

(4) Despite the efforts of the Federal Trade Commission, colleges and universities, and nongovernmental organizations, the continued lack of awareness about scholarship fraud permits a significant amount of fraudulent activity to occur.

SEC. 3. SENTENCING ENHANCEMENT FOR HIGHER EDUCATION FINANCIAL ASSISTANCE FRAUD.

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines in order to provide for enhanced penalties for any offense involving fraud or misrepresentation in connection with the obtaining or providing of, or the furnishing of information to a consumer on, any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education, such that those penalties are comparable to the base offense level for misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency.

SEC. 4. EXCLUSION OF DEBTS RELATING TO COLLEGE FINANCIAL ASSISTANCE SERVICES FRAUD FROM PERMISSIBLE EXEMPTIONS OF PROPERTY FROM ESTATES IN BANKRUPTCY.

Section 522(c) of title 11, United States Code, is amended--

(1) by striking 'or' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting '; or'; and

(3) by adding at the end the following:

‘(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1954 (20 U.S.C. 1001)).’.

SEC. 5. SCHOLARSHIP FRAUD ASSESSMENT AND AWARENESS ACTIVITIES.

(a) ANNUAL REPORT ON SCHOLARSHIP FRAUD-

(1) **REQUIREMENT-** The Attorney General and the Secretary of Education, in conjunction with the Federal Trade Commission, shall jointly submit to Congress each year a report on fraud in the offering of financial assistance for purposes of financing an education at an institution of higher education. Each report shall contain an assessment of the nature and quantity of incidents of such fraud during the one-year period ending on the date of such report.

(2) **INITIAL REPORT-** The first report under paragraph (1) shall be submitted not later than 18 months after the date of the enactment of this Act.

(b) **NATIONAL AWARENESS ACTIVITIES-** The Secretary of Education shall, in conjunction with the Federal Trade Commission, maintain a scholarship fraud awareness site on the Internet web site of the Department of Education. The scholarship fraud awareness site may include the following:

(1) Appropriate materials from the Project Scholarscam awareness campaign of the Commission, including examples of common fraudulent schemes.

(2) A list of companies and individuals who have been convicted of scholarship fraud in Federal or State court.

(3) An Internet-based message board to provide a forum for public complaints and experiences with scholarship fraud.

(4) An electronic comment form for individuals who have experienced scholarship fraud or have questions about scholarship fraud, with appropriate mechanisms for the transfer of comments received through such forms to the Department and the Commission.

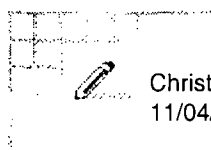
(5) Internet links to other sources of information on scholarship fraud, including Internet web sites of appropriate nongovernmental organizations, colleges and

universities, and government agencies.

(6) An Internet link to the Better Business Bureau in order to assist individuals in assessing the business practices of other persons and entities.

(7) Information on means of communicating with the Federal Student Aid Information Center, including telephone and Internet contact information.

END



Christine L. Anderson
11/04/99 10:11:01 AM

Record Type: Record

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

cc:

Subject: Text of a Letter from the President to the Congress: Minimum Wage

THE WHITE HOUSE

Office of the Press Secretary
(Newark, New Jersey)

For Immediate Release

November 4, 1999

TEXT OF A LETTER FROM THE PRESIDENT
TO THE SPEAKER AND DEMOCRATIC LEADER
OF THE HOUSE OF REPRESENTATIVES
AND THE MAJORITY AND DEMOCRATIC
LEADERS OF THE SENATE

November 4, 1999

I am writing this letter to encourage you to pass a straightforward minimum wage bill that gives working Americans the pay raise they deserve. If we value work and family, we should raise the value of the minimum wage.

In 1996, the Congress and I worked together to raise the minimum wage by 90 cents over 2 years. Since then, the American economy has created nearly 9 million new jobs -- with more than 1 million of them in the retail sector where many minimum-wage workers are employed. The unemployment rate has fallen from the already low rate of 5.2 percent to 4.2 percent -- the lowest in 29 years. We have enjoyed larger real wage increases for more consecutive years than at any time in more than two decades, while inflation is the lowest it has been in more than three decades. The minimum wage increase has contributed to the 39 percent decline in the welfare caseload since the last minimum wage increase -- bringing the welfare rolls down to their lowest level in three decades. And the minimum wage increase has been

a crucial factor in reversing the wage stagnation and declines of the previous decade, contributing to rising wages for even the lowest income groups. Our recent experience clearly demonstrates that what is good for America's working families is good for America's economy.

But as our economy continues to break records, we must do more to ensure that all Americans continue to benefit from it. It is time to build on the steps we have taken to honor the dignity of work. The expansion of the Earned Income Tax Credit in 1993 and the increase in the minimum wage have ensured that no full-time working parent with two children has to raise his or her family in poverty. It is important that we take steps to achieve this goal in the future. That is why I have proposed to raise the minimum wage by \$1 an hour over the next two years -- from \$5.15 to \$6.15. This modest increase would simply restore the real value of the minimum wage to what it was in 1982. More than 11 million workers would benefit under this proposal. A full-time, year-round worker at the minimum wage would get a \$2,000 raise -- enough for a typical family of four to buy groceries for 7 months or pay rent for 5 months.

All Americans should share in our historic prosperity. This is why Congress should not let politics get in the way of raising the minimum wage. If you send me a clean bill that increases the minimum wage by \$1 over the next two years, I will sign it.

Unfortunately, some in Congress have proposed a more gradual increase in the minimum wage that would cost a full-time, year-round worker roughly \$1,500 over three years compared with my proposal. They have added provisions that would repeal important overtime protections for American workers. And they have been playing politics with the minimum wage bill, using it as a vehicle for costly and unnecessary tax cuts that would threaten our fiscal discipline. As I have stated repeatedly, before we consider using projected surpluses to provide for a tax cut, we must put first things first and address the solvency of Social Security and Medicare. If Congress sends me a bill that threatens our fiscal discipline, I will veto it.

If paid-for tax cuts are attached to the minimum wage bill, they should reflect our priorities and address urgent national needs like deteriorating schools and the communities that have been left behind during this time of prosperity. In contrast, the bulk of the provisions attached to the minimum wage bill in the House are directed away from working families. Some of these provisions could even reduce the retirement benefits enjoyed by millions of working Americans.

America's workers show up to work every day and get the job done. Congress should do the same this year. I urge Congress to pass a minimum wage bill that does not at the same time add poison pills that bypass the priorities of working families.

Re: bankruptcy

[LEG AFFAIRS: SINCE CONFEREES HAVE NOT BEEN APPOINTED, TO WHOM SHOULD LETTER BE SENT? Please check spelling also.]

The Honorable Trent Lott
The Honorable Thomas A. Daschle
The Honorable Orrin G. Hatch
The Honorable Patrick J. Leahy
The Honorable Charles E. Grassley
The Honorable Robert G. Torricelli
The Honorable J. Dennis Hastert
The Honorable Richard Gephardt
The Honorable Henry J. Hyde
The Honorable John Conyers Jr.
The Honorable George W. Gekas
The Honorable Jerrold Nadler

Dear ____:

Although conferees have not yet been named, we understand that your staffs are beginning to discuss how to reconcile the House (H.R. 833) and Senate (H.R. 833 EAS) versions of bankruptcy reform legislation. To assist in this process, I share below the Administration's views.

Non-Relevant Amendments

First, the Senate has attached two non-relevant amendments to their version of the bankruptcy bill. They both should be struck before the bill is sent to the President.

Minimum Wage, Pension, and Tax Amendment. The President strongly supports an increase in the minimum wage of \$1 over two years; but the amendment attached to the Senate bill would delay the increase, hurting millions of Americans who are struggling to get by and deserve a raise. **[Brian Kennedy – Better standard language here?]** The attached amendment also includes a tax and pension package that would repeal overtime protections for workers, thwart efforts to enforce pension law, and direct tax benefits away from working families. Moreover, we must establish a proper framework for paying down the debt, strengthening Social Security and Medicare, and funding critical initiatives before we consider major new tax expenditures. If the Congress sends the President a bill delaying the increase, repealing protections for certain workers, adding costly and unnecessary tax cuts that threaten fiscal discipline, directing benefits away from working families, and thwarting efforts to enforce pension law, he will veto it.

Drug [and School Voucher] Amendment. The Administration also opposes the provisions that 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.] **[DPC: Do we want to say anything about school vouchers? Or about mandatory school expulsions. Note letter from parents group. Also, should we note, as Leahy did in his floor statement, that the bipartisan Methamphetamine legislation included in the amendment also passed separately at the end of the last session and should be considered separately? Do we support it as he does? Note ACLU concerns re free speech. Is that in the Metamphetamine provisions that Leahy endorses?]]**

General Views of Bankruptcy Provisions

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. The President was disappointed that the House once again failed to produce legislation that he could support. In its bankruptcy provisions, the Senate bill generally does a better job at meeting key principles that the President has consistently set forth, although the bill should be further improved.

- **Access to Chapter 7 should not be governed by an arbitrary means test, but by reasonable guidelines that take into account individual circumstances.** The goal, after all, is to identify those debtors who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 plan. Neither creditors nor debtors are better off expending administrative resources to force debtors into repayment plans that will quickly fail.
 - The House bill limits access to Chapter 7 through a tight, inflexible, and arbitrary means test. Its low threshold means that too many debtors will be denied access to Chapter 7's discharge, even though they are unlikely to succeed under a Chapter 13 repayment plan. Only those showing "extraordinary circumstances" will be able to gain relief. And many debtors will be subjected to burdensome paperwork and tax filing requirements that will produce information that is not needed for bankruptcy determinations.
 - The Senate bill better identifies those capable of repayment with a higher threshold, provides relief in "special circumstances," and takes into consideration certain expenses related to the care of family members, domestic violence, and arrearages on secured debt for necessary property. Needless filing of back tax returns in cases where the information is not at issue is avoided in the Senate bill, although further streamlining of paperwork requirements would eliminate unnecessary burdens on low-income debtors at no cost to the effectiveness of the means test.
 - Both bills protect below-median income debtors from 707(b) motions by creditors that could be the basis for threats or coercion; but the Senate bill does not provide a true "safe harbor" for low-income debtors from application of the means test. Both bills use IRS

guidelines that were designed for a different purpose and are applied in collecting taxes far more flexibly than these bills would allow. We urge the Conferees to adopt Chairman Hyde's proposal to authorize the creation of standards specifically crafted for bankruptcy purposes, using the IRS guidelines as a starting point. We also urge adoption, at a minimum, of Chairman Hyde's proposal in the House bill to allow adjustments for reasonable food and clothing expenses to take into account regional differences in costs.

- **It is fundamentally unfair to ask low- and moderate-income debtors to repay the debt that they can, while leaving loopholes that allow the wealthy to shield income and assets from their creditors.** High or unlimited homestead exemptions allow wealthy debtors to shield assets from their creditors and thus avoid their responsibility to repay a significant portion of their debts. Similarly, wealthy individual debtors are able to file under Chapter 11 where they can shield their future income from creditors, while moderate-income debtors must, under this bill, devote much of their future income to repay their creditors. **[better description?]**

- The House bill provides a \$250,000 cap on homestead exemptions, but allows the states to opt out of the cap. With the opt-out, the provision is effectively the same as having no cap at all. Moreover, the House bill does nothing to close the Chapter 11 loophole for wealthy debtors.

✱ [• The Senate bill provides a meaningful cap of \$100,000 on homestead exemptions. It also closes the Chapter 11 loophole for wealthy debtors.

- **We must ensure that there are appropriate safeguards against coercive creditor practices that compel debtors to forego their rights and disadvantage more scrupulous creditors.** Unfortunately, such practices have been uncovered all too frequently, and these bills might create new opportunities as they give creditors many new opportunities to challenge debtors' actions. In this new environment, we cannot countenance weakening existing protections; in fact, enhanced safeguards are essential.

- The House bill provides that the debtor is entitled to a hearing but the hearing is waivable by represented debtors, effectively doing little to change current law. And while the House bill expressly provides for a private right of action to recover damages for failure to comply with reaffirmation agreement requirements or willful violations of a discharge, the bill precludes use of class actions to bring such claims – thus eliminating the most effective mechanism to remedy widespread coercive practices – a mechanism used in the Sears case among others. The private right of action should be retained, but the bar on class actions must be dropped. **[Do we feel safe saying must here?]**

- The Senate bill does not have the offensive ban on class action remedies. Moreover, it provides for mandatory disclosures of the terms of debt being reaffirmed and creates a new presumption of undue hardship if the debtor does not have the capacity to repay debts that he or she is reaffirming. These mechanisms should go a long way to prevent

creditors from coercing debtors to reaffirm debts through threats or intimidation or simple confusion. However, to avoid lengthy litigation, it is important to clarify that the bill's intent is not to eliminate effective remedies under current law if a creditor accepts payments under a reaffirmation found to be invalid. [While a creditor accepting payments under a reaffirmation agreement in good faith need not be penalized if the agreement is found not to be effective, nor should they be enriched by retaining the improperly obtained funds.]

- **We should be asking both debtors and creditors to be responsible. Bankruptcy legislation should be balanced with provisions that address abusive credit card practices.** Rising levels of consumer debt are strongly correlated with the level of personal bankruptcies. One of the most effective ways to reduce the number of bankruptcies is to require that creditors give consumers the information that they need to manage their credit card debt successfully. Important advances should be made in this legislation to inform consumers about credit card solicitations received over the Internet, the true cost of credit that comes with attractive “teaser” rates, and the impact of making only minimum payments on the duration and cost of repaying credit card debt.
 - The House bill requires merely that consumers be provided once a year with a generic description of the consequences of making only the minimum payment. It provides no way for the consumer to get more specific information about the impact of making the minimum payment in his or her own circumstance, nor does it require the information to be sent with the billing statement when the information might be most relevant. It provides no advance on current law in dealing with teaser rates and puts the burden on the consumer to get accurate and updated information concerning an Internet credit card solicitation. **[Last sentence from consumer group critique – Treasury please review.]**
 - The Senate bill could be further improved, but it provides far better provisions on each of these issues. In addition to a generic example of the impact of making only minimum payments, it requires most lenders to provide an 800 number for consumers who desire more specific and accurate information about the impact of minimum payments in their circumstances. This information must be disclosed conspicuously on the front of the billing statement. The Senate bill also requires prominent disclosure of the permanent interest rate in immediate proximity to the first disclosure of any teaser rate for credit cards. It requires clear disclosure of late payment deadlines and penalties and extends to Internet solicitations current law requirements for credit card solicitations sent by mail. In addition, the Senate bill prohibits termination of a credit card account solely for the consumer's failure to incur finance charges and prohibits finance charges on previous balances in grace periods arising from new credit. **[Can Treasury stomach us just noting it – not directly saying it is good?]** And the Senate bill includes new disclosures on high LTV home equity loans to prevent misleading consumers about tax implications of home equity lending.
- Cramdowns

- Nondischargeable Debt (Women and Children)
- **We must stem abuses of the Bankruptcy system, including abuse by those who would use bankruptcy to avoid penalties for violations of the Freedom of Access to Clinic Entrances (FACE) Act.** The Administration is deeply concerned by the incidents of violence, vandalism, and harassment committed against family planning clinics. Some of these acts have resulted in the deaths and maiming of innocent people. The Administration believes that these unlawful activities must not be tolerated, and that when they are committed, those found liable should be held accountable

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- Privacy

↓
Curtis

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W

The bankruptcy provisions of the House bill, HR 833, fails the test of principle. If a bill emerges from conference that looks like the House bill, the President will *[not sign it—what the news conference said..?]*.

- ◆ It denies debtors the right to bring class action lawsuits for creditors' violations of the requirements for reaffirmation agreements; as the cases of Sears and others have demonstrated, this right is essential to ensuring all parties to the agreement abide by the law. It fails to require that debtors be provided clear information on their credit and the impact of not paying off credit card balances, to help debtors avoid undertaking huge debt burdens.
- ◆ The bill provides unprecedented rights for creditors to collect amounts in excess of the value of their collateral in bankruptcy and makes certain credit card debts nondischargeable in bankruptcy. These provisions force debts for child support and alimony to be collected post-bankruptcy; and put them, as well as other societally important debt such as for taxes and education loans, in competition with debts to profit-making private entities.
- ◆ Finally it provides a loophole for wealthy debtors who are easily able to hide assets, that should go to repay debts, in the form of expensive homes

We believe that the Senate bill has actually fixed many of the bankruptcy-related concerns raised by the House bill, by making improvements to the benefit of debtors and consumers. It is important that the conference bill retain these improvements. However, particularly troublesome areas remain, which we describe below, to which we want to direct the attention of the conferees.

For example, we are concerned about a provision in the Senate bill that leaves to the discretion of the trustee the decision to bring motions against low-income debtors, to deny them access to Chapter 7 under the means test. The House has wisely chosen to protect these debtors from means test motions as well. It is *[important, essential?]* that the conference bill retain this protection.

In addition, both the House and Senate bills contain separate provisions relating to the release of data held by Trustees, that raise serious questions regarding privacy and the use of personal data of individuals involved in bankruptcy proceedings. Adoption of either of these provisions at this time runs the risk of denying important privacy protections to parties in bankruptcy without adequate consideration of the consequences.

Specific Bankruptcy Provisions

Access to Chapter 7: Any means test should deny access to Chapter 7 procedures only to those debtors who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 plan; and debtors must be given a meaningful opportunity to have their specific circumstances considered. The Administration strongly opposes the rigid, inflexible standard of "extraordinary circumstances" in the House bill. This would impose a nearly insurmountable burden of proof upon debtors; the Senate bill's "special circumstances" exception is fairer to

debtors.

As we have already indicated, we are especially concerned about the provision in the Senate bill leaving to the discretion of trustees the decision to bring motions against low-income debtors, to deny them access to Chapter 7 under the means test. While it appears to be the intent of the bill that these debtors pose special cases for the trustees, we should not leave this decision to the trustees. Undercutting the limited resources of many with the burden of fighting useless motions, to extract a few dollars from a few debtors, fails the test of balance.

The Senate proposal leaving to the trustee the decision not to bring such motions for moderate income debtors who are only marginally able to meet repayment requirements from formulaic expenses adds an appropriate degree of flexibility. The bankruptcy process and the courts would be ill-served by requiring motions to be brought in every such case.

Both bills exempt social security benefits from income; both contain separate provisions allowing specific expenses. The Senate bill allows expenses related to long term care of family members, domestic violence, and arrearages on secured debt. The House bill exempts from income compensation from war crimes, and allows for expenses related to private education and to the bankruptcy filing. All of these provisions are important and should be retained. *[assume this applies for the exemption for education IRAs?]*

The House provision assuring a reasonable margin of discretion for essential food and clothing expenses should be retained. Since debtors face a difficult burden of proof to gain access to Chapter 7, even if their expenses exceed the standards by minute amounts, it is important to allow courts limited and appropriate discretion in the application of the standards..

It is unfair to require debtors to provide elaborate tax return data, and costly to require courts and trustees to deal with them, when no party to the case has an interest in them. The Senate bill provides some relief in this regard and is clearly preferable. In addition, it provides some flexibility as to how debtors can satisfy the mandatory counseling requirement. It is important to retain these provisions, which reduce the burden debtors face upon attempting to obtain the relief available under the law.

Reaffirmations: Debtors often reaffirm debt on unfavorable terms, and even when they demonstrably can not afford to commit to the agreement, putting at risk payments on more societally important debt. These reaffirmations are frequently the result of insufficient or misleading information. The Senate bill calls for debtors to be given adequate information for their decisions, sets out a definition of affordability, and requires that courts consider reaffirmations that the debtor cannot afford; it is preferable to the House provisions that make little change in current law.

The goal of the Senate process is to improve debtors' understanding of what they are doing when they agree to reaffirm a debt that they are entitled under the law to have discharged, and to promote efficient handling of reaffirmations in the bankruptcy process. The whole basis of this approach to reaffirmations requires their timely filing. Such a requirement is implicit in the

Senate bill and would be viewed in that light by the courts. However, the language of the Senate bill does not expressly specify a filing deadline. The reaffirmation provisions are dealing with an area that has been rife with misunderstanding and even abusive practices. Hence it is imperative to make this requirement as explicit as possible, and make certain technical changes in the description of the disclosures, so that the working of the law is as clear as possible and no one tries to circumvent the basic intent of the amendment.

Furthermore, in view of the prevalence of abusive practices, debtors should have remedies that provide real protection against culpable creditors. The House provides for a private right of action for willful failures of creditors to comply with reaffirmation requirements, but removes the ability to bring class actions, diluting essential protection that experience indicates has served law enforcement well. It is essential that the ability to bring class actions be preserved.

Credit Card Disclosures: The Administration continues to believe that reform must address the factor most strongly correlated with the rise in personal bankruptcies, rising levels of consumer debt. One of the most effective ways to reduce the number of bankruptcies is to require that creditors give consumers the information they need to manage their credit card debt successfully, recognizing the creditors' superior information. In particular, consumers must be given information on the terms of their credit and the financial implications of only paying the minimum on their credit card balances. Therefore, it is important that the additional debtor protections of the Senate bill, including disclosures of the impact of making only the minimum payment on credit card debt, be retained. However, a provision assuring that consumers know how to get this vital information on minimum payments from their creditors needs to be added to the Senate bill.

Cramdowns: Because the Senate bill allows for protection of undersecured debt only in the case of automobiles, it is far preferable to the excessive House provision. Yet the 5-year protection it grants to debt secured by automobiles far outstrips the need. Excessive protection puts at risk the repayment of other societally important debt post-bankruptcy and removes the incentive of the creditor to properly evaluate lending risk.

Homestead Cap: The Administration strongly supports the Senate provision that would cap the homestead exemption. An unlimited exemption for assets in the form of investment in a debtor's home protects wealthy debtors who can easily convert and hold assets in this form from having to repay their debts. Bankruptcy should not place a greater responsibility for debt repayment on moderate-and-low-income debtors than it does on wealthy debtors.

Nondischargeable Debt: Bankruptcy law makes debts nondischargeable only where there is an overriding public purpose. Since such debts compete with societal priorities, any proposals to increase nondischargeable debts should reach only so far as is demonstrably needed to prevent abuse. The Administration strongly prefers the more prudent Senate provisions, which offer some protection for child support and alimony debts, to those of the House bill.

Privacy: Provisions in both bills raise serious questions regarding privacy and the use of personal data of individuals involved in bankruptcy proceedings. The House bill absolves

bankruptcy trustees from liability for all but intentional errors when making disclosures of data from bankruptcy filings. This would unwisely strip away a crucial incentive for accurate reporting, upon which all parties must rely, and should not be retained. The Senate bill requires, among others, that any not-for-profit entity created to make information about cases available electronically to parties in interest must disclose any “reasonable” information about each case. This could expose debtors in different districts to significant and unwarranted invasions of privacy by subjecting them to varying interpretations of the “reasonable” standard, and may run counter to efforts by trustees to develop guidelines for the handling of sensitive bankruptcy-related data. Adoption of either of these provisions at this time runs the risk of denying important privacy protections to parties in bankruptcy without adequate consideration of the consequences.

[Funding of additional duties of trustees?]

Attachments

[DOJ list to be added?]

[Treasury list to be added, covering IRS concerns and those related to financial contracts?]



Joel K. Wiginton



03/07/2000 02:21

Record Type: Record

To: Sarah Rosen Wartell/OPD/EOP@EOP

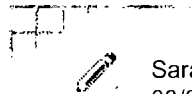
cc: See the distribution list at the bottom of this message

Subject: Bankruptcy Meeting 

Jen Leach from Torricelli's office just got a call from McMickle. Reportedly, Grassley met with Lott yesterday and Lott asked him for a draft of the bill they envision coming out of conference. Grassley said that he would give him such a draft by early next week. To meet that goal, McM is supposed to be forwarding a draft-draft to Jen by CoB tomorrow. She asked if she could see the conferees letter (even if it was in draft form), and that she would absolutely not share it with anyone. I demurred on that request (although I trust Jen, I don't think we're at the point where we want paper going out), but suggested that we might be able to go and meet with her and Ed Pagano from Leahy's staff and walk her thru our points verbally. This would also give us an opportunity to hear where they are. **Jen and Ed can do 11:00 tomorrow in SD-152. Does that work for you all?** Please respond by 4:00 if possible. Thanks.

Message Copied To:

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Rachael F. Goldfarb/OPD/EOP@EOP



Sarah Rosen Wartell
03/07/2000 02:28:19 PM

Record Type: Record

To: Jason Furman/OPD/EOP@EOP, Brian V. Kennedy/OPD/EOP@EOP, Leanne A. Shimabukuro/OPD/EOP@EOP, Ann O'Leary/OPD/EOP@EOP
cc: Joel K. Wiginton/WHO/EOP@EOP, Joanna E. Slaney/WHO/EOP@EOP, Cathy R. Mays/OPD/EOP@EOP
Subject: Excerpts from Bankruptcy Views Letter

I need comments/guidance from NEC (Kennedy/Furman) (minimum wage/tax) and DPC (Drugs/School Vouchers) on the draft bankruptcy letter. I assume DPC has seen the letters that I have been sent from parents groups, ACLU, and others, seen Leahy's floor statement, and are aware of the Torrecelli letter on the voucher piece. Please make judgements about how much of a deal you want to make of all their points and just give us the paragraph that you want us to use. Thanks.

Dear ____:

Although conferees have not yet been named, we understand that your staffs are beginning to discuss how to reconcile the House (H.R. 833) and Senate (H.R. 833 EAS) versions of bankruptcy reform legislation. To assist in this process, I share below the Administration's views.

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Drug [and School Voucher] Amendment. The Administration also opposes the provisions

that 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.] **[DPC: Do we want to say anything about school vouchers? Or about mandatory school expulsions. Note letter from parents group. Also, should we note, as Leahy did in his floor statement, that the bipartisan Methamphetamine legislation included in the amendment also passed separately at the end of the last session and should be considered separately? Do we support it as he does? Note ACLU concerns re free speech. Is that in the Metamphetimine provisions that Leahy endorses?]]**

The FACE/Clinic Violence Amendment would prohibit someone from obtaining a Chapter 7 bankruptcy discharge in order to avoid paying monetary judgments issued against the debtor stemming from various state and federal access to clinic laws (i.e., laws that prohibit someone from preventing a woman access to a women's health clinic by use of threats or violence). Although the vote on the amendment was originally projected to be very close, it eventually passed by an overwhelming majority in the Senate. This lopsided vote had more to do with the fact that the VP was poised to cast the possible tie-breaking vote than with the Republican's support for the measure. Indeed, it is widely expected that the plan is to strip the provision in conference. Although the House obviously passed the original FACE Act, it has never voted on this particular amendment (i.e., the amendment was not formally raised during the House bankruptcy bill debate). Sarah and I have been lobbied by various consumer and women's groups who also have strongly urged us to underscore the importance of maintaining the amendment through conference (they argue that this is a very rare opportunity -- a positive pro-choice provision that the choice and women's groups can be for (instead of against) and which has a fairly good chance of becoming law). We have made no promises, but in the current draft of the letter to conferees, the Schumer amendment is highlighted as being a significant priority to the Admin (there is no veto threat accompanying this amendment in the draft letter). Although a number of Senate Dems and pro-choice Repubs have voiced their support for the amendment, we are not confident that a significant majority of the Senate Dems would necessarily vote against the bankruptcy conference report, if the amendment were stripped.

Thanks, Joel

ENFORCING CLINIC PROTECTION LAWS TO THEIR FULLEST POTENTIAL: Amending the Bankruptcy Code to Ensure that Clinic Violence- Related Debts are Non-Dischargeable in Bankruptcy

Many Perpetrators of Clinic Violence Actively Seek to Avoid Paying Fines and Penalties.

Perpetrators of Clinic Violence Often Take Actions to Make Themselves Judgment-Proof. After a verdict of more than \$107 million was rendered against the defendants in the "Nuremberg Files" web site case, one defendant admitted: "Many of us have divested ourselves of assets in order they [pro-choice supporters] -- they can't take them away. I will not give any money to people who kill babies for a living."

Randall Terry Has Filed for Bankruptcy to Avoid Payment of Over \$1.6 Million in Legal Fines and Related Fees Owed as a Result of his Unlawful Activities. Upon filing Terry explained, "I cannot in good conscience permit the National Organization [for] Women, Planned Parenthood and others who have profited from abortion to harass my wife and family, and possibly get money from me to continue their crusade against unborn life."

Five Defendants in the "Nuremberg Files" Case Filed for Bankruptcy in Late 1999/Early 2000 Just Before Scheduled Depositions Regarding their Assets. By filing for bankruptcy, Michael Bray, David Crane, Charles Roy McMillan, Donald Treshman, and Charles Wysong set a dangerous precedent that others may follow.

✶ Amending the Bankruptcy Code to Ensure that Clinic Violence-Associated Debts are Non-Dischargeable is Both Consistent with the Purpose of the Code and Necessary.

The Bankruptcy Code provides a fresh start to the "honest but unfortunate debtor." Debtors whose debts arise from clinic violence are *not* honest debtors and they should not be able to escape the financial liabilities incurred by their illegal conduct.

Although the Bankruptcy Code contains several exceptions to dischargeability which may prevent some clinic violence-related debts from being discharged, existing exceptions may not cover all clinic violence-associated debts.

A single individual may owe a single creditor a multitude of clinic violence-related debts -- including fines, damages, penalties, and contempt fines -- arising from a variety of illegal activities. Without a specific clinic violence-related debts carve-out, the bankruptcy proceedings could become an extremely protracted and litigious process in which each debt would have to be evaluated for dischargeability.

The creation of a specific clinic violence-associated exemption would clearly signal Congress's intent that clinic violence debts may not be discharged while providing relief for victim-creditors already pushed to the limit by continuous litigation.

Amending the Bankruptcy Code to Ensure that Clinic Violence-Related Debts are Non-Dischargeable is Vital in Ensuring the Effectiveness of the Freedom of Access to Clinic Entrances Act (FACE).

1/19/00

DO SOMETHING! Call 1-877-YOU-DECIDE (1-877-968-3324) or log-on to www.naral.org.
*For a complete fact sheet on Enforcing Clinic Protection Laws to Their Fullest Potential:
Amending the Bankruptcy Code, please contact the NARAL information line at (202) 973-3018.*

**ENFORCING CLINIC PROTECTION LAWS TO THEIR FULLEST
POTENTIAL: Amending the Bankruptcy Code to Ensure that Clinic
Violence-Related Debts are Non-Dischargeable in Bankruptcy**

THE REASONS AN AMENDMENT IS NECESSARY

Operation Rescue's founder Randall Terry has attempted to use bankruptcy proceedings to avoid paying debts arising from clinic violence -- setting a dangerous precedent that others may follow. After filing for bankruptcy, Terry explained:

I cannot in good conscience permit the National Organization [for] Women, Planned Parenthood and others who have profited from abortion to harass my wife and family, and possibly get money from me to continue their crusade against unborn life. . . . Hence, I have filed a Chapter 7 petition to discharge my debts to those who would use my money to promote the killing of the unborn.

In late 1999/early 2000, five defendants in the "Nuremberg Files" web site case -- Michael Bray, David Crane, Charles Roy McMillan, Donald Treshman, and Charles Wysong -- filed for bankruptcy. Each anti-choice activist filed for bankruptcy in the days/hours immediately prior to scheduled depositions in which they would have had to reveal information regarding their assets.

Anti-choice activists Reverend Robert Behn and Bonnie Behn filed for bankruptcy in March of 1999. Due to her violation of a temporary restraining order, Bonnie Behn owes \$35,260 to Buffalo GYN Womenservices -- the clinic of slain abortion provider Dr. Barnett Slepian. The Behns attempted to argue that these debts resulting from clinic violence were dischargeable in bankruptcy. The court, however, refused to discharge the debts.

Ensuring that any judgment or settlement agreement resulting from clinic violence is non-dischargeable is central to enforcing clinic protection laws to their fullest potential. Moreover, such an amendment would be consistent with the Bankruptcy Code's central purpose of providing an "unencumbered

new beginning to the ‘honest but unfortunate debtor.’” Individuals owing clinic violence-associated debts are *not* honest debtors -- they would not owe such monies were it not for their violations of the law and their harassment, threats, intimidation, and violence against abortion providers and patients attempting to exercise their constitutionally protected rights.

The Bankruptcy Code’s existing exceptions to discharge may not cover all clinic violence-associated debts. Without a specific carve-out for clinic violence-related debts, the bankruptcy proceedings could become extremely protracted, as each individual debt would have to be evaluated for dischargeability. Thus, although some clinic violence-related debts may qualify for non-dischargeability under 11 U.S.C.A. § 523(a)(6) and (a)(7) of the Bankruptcy Code -- which respectively provide that debts resulting from “willful and malicious injury” and fines and penalties payable to the government are non-dischargeable -- *a specific exception to discharge for clinic violence-related debts remains necessary.*

First, the “willful and malicious injury” exception of § 523(a)(6) of the Bankruptcy Code has been the subject of considerable and confusing litigation, and it could allow some clinic-violence associated debts to be discharged. In *Kawaauhau v. Geiger*, the U.S. Supreme Court recently attempted to clarify the intent requirement of this exception. Using the common understanding of “willful” to mean “deliberate or intentional,” the Court explained that, in the Bankruptcy Code, the word “willful” “modifies the word ‘injury,’ indicating that nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. . . . Intentional torts generally require that the actor intend ‘the consequences of an act,’ not simply ‘the act itself.’” Thus, for example, if someone bombed a clinic at night believing no one would be there and killed someone inadvertently, damages arising from the unintended death might not qualify under the “willful and malicious injury” exception, although damages arising from the intended harm to the building would come under the exception.

Second, not all state clinic protection laws track the intent requirements of the “willful and malicious injury” exception as defined by the Supreme Court. The recent Supreme Court opinion on § 523(a)(6) construes the intent requirement to mean a “*deliberate or intentional injury*.” Massachusetts’s clinic violence law has a *knowingly* requirement, while laws in the District of Columbia and Washington require “*willful or reckless*” action. Those guilty of clinic violence under Massachusetts, the District of Columbia, or Washington law should not be able to have their clinic violence-associated debts discharged, nor should victims have to re-litigate the issue of intent.

Third, some clinic violence-associated debts may arise in the context of settlement agreements, which typically do not include an admission of liability. Without an admission, such debts would likely fail to meet the intent requirement of the “willful and malicious injury” exception, thereby necessitating additional litigation.

The complexity of some clinic violence cases makes a clinic violence-specific exception to discharge necessary. A single case against an individual may encompass a variety of illegal acts committed over a length of time. A complaint or judgment could involve criminal and civil penalties and fines, punitive and compensatory damages, additional fines resulting from contempt charges, and attorney's fees resulting from the various stages of the case. Moreover, petitioners may face multiple claims under both state and federal law, all with differing intent requirements. Under the existing Bankruptcy Code, parceling out the individual debts and determining whether they fit within the variety of existing exceptions can be a time-consuming process. A single creditor, already overburdened by the litigation created by the debtor's repeated and flagrant violation of the law, could be forced to endure seemingly endless bankruptcy litigation, without the guarantee that such debts ultimately would be non-dischargeable. A specific statutory carve-out would make it easier to exclude such debts from discharge.

The deterrent effect of clinic violence laws is undermined greatly if bankruptcy provides violent offenders with refuge from payment of damages, fines, and penalties. Criminal laws and civil remedies are created, at least in part, to deter the conduct that they punish. The hope is that, by punishing violence, violence is deterred. However, if awards of damages, fines, and penalties are erased simply by filing for protection under the Bankruptcy Code, the law's deterrent effect is gutted. The Code never was intended to be a safe haven for those who wish to avoid the penalties that the law imposes for violent and illegal acts.

In cases such as that of Randall Terry, the creditors who would litigate the dischargeability issue for clinic violence-associated debts are the same individuals who, because of the debtor's repeated violations of the law and repeated refusals to cooperate with asset assessment, have been forced to engage in continuous litigation against the debtor. In these instances, a clinic violence-specific exception to dischargeability would provide welcome relief.

The creation of a specific exception to discharge of debts resulting from clinic violence will not undermine the public policy concerns that motivated the creation of similar protection afforded to other debts, but, instead, will strengthen the Bankruptcy Code's protections for issues directly affecting women. Without in any way minimizing the profoundly important public policy interests that are served by helping individuals collect alimony and spousal or child maintenance or support, it is important to address the similarly important public policy rationales that support a clinic violence-associated debts exception. A clinic violence-related exception to discharge would serve the following public policy interests:

- ✍ helping the victims of clinic violence prevent the perpetrators from easily escaping their debts;
- ✍ sending a clear message that such debts are not avoidable through bankruptcy proceedings;
- ✍ augmenting the deterrent effect of the federal Freedom of Access to Clinic Entrances Act (FACE) and other clinic protection laws; and

enhancing the ability of millions of American women to seek abortions free from violence and harassment.

Amending the Bankruptcy Code to prevent the dischargeability of clinic violence-related debts -- many of which may result from actions under FACE -- will not infringe on any constitutional rights. FACE is constitutional. It *does not* prohibit the free expression of ideas but, rather, prohibits force, threats of force, and physical obstruction -- acts that are not protected by the First Amendment. In fact, FACE explicitly protects expressive conduct, including peaceful picketing or other peaceful demonstration, that is shielded by the First Amendment. In constitutional challenges to FACE, courts repeatedly have upheld the constitutionality of the law. In fact, a November 1998 report by the U.S. General Accounting Office (GAO) identified 24 reported court cases in which the constitutionality of FACE was challenged. *In all 24 of these cases, the courts ultimately found FACE to be constitutional.* Moreover, the U.S. Supreme Court repeatedly has refused to review rulings upholding FACE as constitutional. Thus, the creation of a specific exception to discharge for debts resulting from clinic violence serves the additional purpose of enhancing the effectiveness of a constitutional law -- FACE -- by preventing debtors from escaping debts imposed for violating FACE simply by filing for bankruptcy.

1/19/00

**NARAL***Reproductive Freedom & Choice*

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February 25, 2000

Mr. John Podesta
Chief of Staff to the President
1600 Pennsylvania Avenue, N.W.
1st Floor, West Wing
Washington, D.C. 20500

Dear Mr. Podesta:

As the Administration prepares its letter to conferees on the Bankruptcy Reform Act (S. 625/H.R. 833), we urge the very high prioritization of the Schumer Amendment making clinic violence-related debts non-dischargeable in bankruptcy proceedings. This provision is of critical importance to insure that anti-choice activists cannot avoid criminal sanctions and that they do not further compromise the availability of reproductive health services. **The Senate passed this provision by the overwhelming vote of 80 - 17.** We urge the Administration to communicate to Congress that the Schumer language must be included in the final version of the Bankruptcy Reform Act.

The Freedom of Access to Clinic Entrances Act (FACE), which President Clinton signed into law in 1994, and other state-passed clinic protection laws have proven to be critically effective in helping to stem the tide of clinic violence. However, as prosecutions have been brought under these laws, it has become increasingly clear that violent anti-choice activists are pursuing a deliberate strategy both to hide their assets and to declare bankruptcy in order to have their clinic violence-related debt wiped clean. The result is that these wrong-doers are able to avoid the very laws that this Administration is committed to enforcing.

As President Clinton recognized when he enacted FACE, clinic violence is not a pro-choice or anti-choice issue. The Schumer Amendment would ensure that lawbreaking perpetrators of clinic violence who harm women and doctors cannot seek shelter in the Bankruptcy Code to evade the law and escape responsibility for their actions.

- One such defendant — Randall Terry — has filed for Chapter 7 bankruptcy to avoid paying over \$1.6 million in legal fines, damages, and related fees.
- Four defendants in the infamous “Nuremburg Files” case — Michael Bray, David Crane, Donald Treshman, and Charles Wysong — recently declared bankruptcy just before they were scheduled to be deposed regarding their assets.
- Other individuals, including additional defendants in the “Nuremburg Files” case, have bragged that they intend never to pay the judgments currently pending against them.

The total disregard that Randall Terry, the “Nuremburg Files” defendants and others hold for our legal system is unacceptable. The United States is a nation built on the premise of the rule of law. Ultimately, the actions of these defendants challenge this very concept. In this country, no

one is allowed to violate a law simply because he or she disagrees with it. And, a person cannot ignore a court-imposed penalty for violating the law simply because he or she does not want to pay.

Although the Bankruptcy Code contains several exceptions to dischargeability that may prevent clinic violence-related debts from being discharged, a specific and comprehensive carve-out for clinic violence-related debts is necessary. A single individual may owe a single creditor a multitude of clinic violence-related debts — including fines, damages, penalties, and contempt fines — arising from a variety of illegal activities. Without a specific clinic violence-related debts carve-out, bankruptcy proceedings in this area are an extremely protracted and litigious process in which each debt has to be evaluated for dischargeability.

The Schumer Amendment to the Bankruptcy Code addresses these critical issues. Its enactment would bar defendants like Randall Terry and the authors of the "Nuremburg Files" website from hiding behind bankruptcy laws in order to avoid paying the judgments resulting from their illegal acts. Simply put, this is not a provision about abortion — it is a provision about the rule of law.

We urge the Administration to make the inclusion of the Schumer Amendment one of its top priorities when considering the Bankruptcy Reform Act. This legislation is necessary to insure that the laws barring clinic violence enacted under the Clinton Administration are not circumvented, and that -- at last -- the President's goal of insuring that women have access to clinics free from threats and violence can be met.

Sincerely,

Alan Guttmacher Institute
American Association of University Women
American College of Obstetricians and Gynecologists
Center for Reproductive Law and Policy
National Abortion Federation
National Abortion and Reproductive Rights Action League
National Family Planning and Reproductive Health Association
National Council of Jewish Women
National Organization for Women
National Partnership for Women & Families
National Women's Law Center
Physicians for Reproductive Choice and Health
Planned Parenthood Federation of America

cc: Charles Burson
Sarah Rosen
Melanne Verveer

File: bannmy



NATIONAL
ABORTION
FEDERATION

September 8, 2000

President William J. Clinton
White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

*Ann
Py I
Heather*

Dear President Clinton:

On behalf of the membership of the National Abortion Federation, I would like to thank you for your continuing leadership and support of the Schumer clinic-violence amendment to S. 625, the Bankruptcy Reform Act.

This amendment is crucial for health care professionals who routinely risk their lives in order to provide women with safe reproductive health care. Since 1993, seven people have died as a result of anti-choice violence. With over 2,500 reported occurrences of violence and disruption this year, including an attempted murder, two attempted bombings, two arsons, and four incidents of stalking, this amendment is key to protecting the safety of the providers and their patients. Without this amendment, violent convicted anti-choice extremists will continue to circumvent the law by declaring bankruptcy.

We very much appreciate your letters to the Senate in June. We ask that you continue to make certain that this amendment is part of the final bankruptcy legislation.

Thank you for your continued commitment to preserving women's ability to access safe and legal abortion care. Your leadership and support will once again provide a critical tool that will help prevent violence against abortion providers and their patients.

Sincerely,



Vicki Saporta,
Executive Director

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