

NEWS RELEASE

Administrative Office of the U.S. Courts

December 3, 1999

Contact: Karen Redmond

Increase in Bankruptcy Filings Slows in Fiscal Year 1999

Bankruptcy filings in the Judiciary's fiscal year 1999, the 12-month period ending September 30, totaled 1,354,376, down 5.7 percent from the 1,436,964 bankruptcy filings for fiscal year 1998, according to data released today by the Administrative Office of the U.S. Courts. This is the first fiscal year since 1994 in which bankruptcy filings have fallen. With minor fluctuations, bankruptcy filings have spiraled upward for nearly a decade.

The dip in FY 99 bankruptcy filings was due to an 18 percent drop in business filings and a 5.3 percent drop in non-business or personal filings. Most bankruptcy filings are non-business. In 1989, non-business filings comprised 90 percent of total bankruptcy filings. In 1999, they made up over 97 percent of total filings.

In fiscal year 1999, total Chapter 7 filings, the largest bankruptcy chapter category, fell 6.5 percent to 959,291. The next largest category, Chapter 13, fell 4 percent to 385,262 in FY99. Chapter 12 filings also fell to 811 in 1999 from 879 in 1998. The only chapter filings to increase were Chapter 11 filings, which rose 2.5 percent from 8,765 in 1998 to 8,982 in 1999.

Business and Non-Business Filings FY 1993-99

<u>FY</u>	<u>Business</u>	<u>Non-Business</u>	<u>TOTAL</u>
1999	38,625	1,315,751	1,354,376
1998	47,125	1,389,839	1,436,964
1997	54,252	1,313,112	1,367,364
1996	53,520	1,058,444	1,111,964
1995	51,042	832,415	883,457
1994	54,425	783,372	837,797
1993	64,857	832,374	897,231

The number of filings also fell in the Judiciary's final quarter of 1999, the three month period ending September 30. Bankruptcy filings for the final quarter were 323,550, down 6.5 percent from 345,956 in the third quarter. This drop may be due to the seasonal nature of bankruptcy filings; filings in the final quarter of the fiscal year are typically lower than the third quarter totals.

Chapter 7 is designed to allow individuals to keep certain exempt property while the remaining property is sold to repay creditors. Under Chapter 13 bankruptcy, creditors may be repaid in install-

(MORE)

**Total Bankruptcy Filings by
Chapter of the Bankruptcy Code
12-Month Periods Ending September 30**

	Chapter			
Year	7	11	12	13
1999	959,291	8,982	811	385,262
1998	1,026,134	8,765	879	401,151
1997	958,045	11,221	966	397,097
1996	761,652	12,554	1,096	336,615
1995	598,250	12,639	883	271,650

ments, in full or in part, over a 3- to 5-year period. Chapter 11 provides for a business to continue operations while formulating a plan to repay its creditors. Chapter 12 is designed to meet the needs of financially distressed family farmers.

A breakdown of the latest data on bankruptcy filings follows.

**Business and Non-business Bankruptcy Cases Filed, by Chapter
During the 12-Month Period Ending September 30, 1999**

Total Filings	Chapter 7	Chapter 11	Chapter 12	Chapter 13
1,354,376	959,291	8,982	811	385,262
Total Business	Chapter 7	Chapter 11	Chapter 12	Chapter 13
38,625	23,499	8,238	811	6,047
Total Non-Business	Chapter 7	Chapter 11		Chapter 13
1,315,751	935,792	744		379,215

**Quarterly Bankruptcy Filings
3-Month Period**

Ending	Total Filings
SEPT. 30, 1999	323,550
JUN. 30, 1999	345,956
MAR. 31, 1999	330,784
DEC. 31, 1998	353,108
SEPT. 30, 1998	361,205
JUN. 30, 1998	373,460
MAR. 31, 1998	354,118
DEC. 31, 1997	347,685
SEPT. 30, 1997	353,515
JUN. 30, 1997	367,168
MAR. 31, 1997	335,073
DEC. 31, 1996	311,131
SEPT. 30, 1996	303,309
JUN. 30, 1996	297,162
MAR. 31, 1996	266,149

Ending	Total Filings
DEC. 31, 1995	244,494
SEPT. 30, 1995	233,593
JUN. 30, 1995	235,302
MAR. 31, 1995	212,626
DEC. 31, 1994	201,618
SEPT. 30, 1994	208,187
JUN. 30, 1994	216,213
MAR. 31, 1994	206,565
DEC. 31, 1993	206,570
SEPT. 30, 1993	215,498
JUN. 30, 1993	229,406
MAR. 31, 1993	222,694
DEC. 31, 1992	228,562
SEPT. 30, 1992	236,810
JUN. 30, 1992	250,622

Ending	Total Filings
MAR. 31, 1992	252,733
DEC. 31, 1991	234,383
SEPT. 30, 1991	231,743
JUN. 30, 1991	246,496
MAR. 31, 1991	231,017
DEC. 31, 1990	209,798
SEPT. 30, 1990	192,555

*Because of ongoing corrections to the bankruptcy database, the quarterly data may not total to the most recent annual figures.

3rd Quarter 1999**Total Filings**

323,550

Non-Business Filings

314,564

Business Filings

8,986

Chapter 7

223,533

Chapter 11

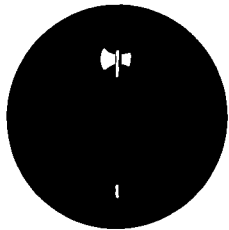
2,283

Chapter 12

199

Chapter 13

97,530



NEWS RELEASE

Administrative Office of the U.S. Courts

August 6, 1999

Contact: Karen Redmond

In June, Total Bankruptcies Filed Decline Again, Personal Bankruptcies Fall for First Time in 5 Years

In the 12-month period ending June 30, 1999, bankruptcy filings declined 2.6 percent over the same period in 1998, according to data released today by the Administrative Office of the U.S. Courts. The number of bankruptcy petitions previously had dropped 0.3 percent in the 12-month period ended March 1999. Filings in the 12-month period ending June 30, 1999, totaled 1,391,964. In comparison, 1,429,451 bankruptcies were filed for the 12-month period ending June 30, 1998. Although filings declined slightly in 1999, the number of petitions filed represent a 62.2 percent increase over the same period ending in 1995.

Both business and non-business filings dropped in the 12-month period ending June 30, 1999. This is the first time since March 1995 that non-business, or personal, bankruptcies have fallen for a 12-month period. Since that time, the number of non-business filings has fueled the steady rise in total bankruptcies filed. Non-business or personal bankruptcy filings went from 1,379,249 to 1,352,030, for a 2 percent decrease in the 12-month period ending June 30, 1999. Total business filings went from 50,202 to 39,934, for a 20.5 percent decrease.

Filings by Chapter

Of the total number of bankruptcy filings for the 12-month period ending June 30, 1999, there were 993,414 Chapter 7 filings, a 2.2 percent decrease over the 1,015,453 filings in the same period for 1998. The next largest group of filings were Chapter 13 filings at 389,004, a 3.6 percent decrease over the 403,501 filings in the same 12-month period in 1998. Chapter 11 filings dropped 9.7 percent to 8,684, down from 9,613 in 1998. Chapter 12 filings also fell in this period, from 845 in 1998, to 829 in the 12-month period ending June 30, 1999.

Business and Non-Business Filings, Years Ended June 30, 1995-99

<u>Year</u>	<u>Total</u>	<u>Non-Business</u>	<u>Business</u>
1999	1,391,964	1,352,030	39,934
1998	1,429,451	1,379,249	50,202
1997	1,316,999	1,263,006	53,993
1996	1,042,110	989,172	52,938
1995	858,104	806,816	51,288

(MORE)

The number of bankruptcy cases filed during the third quarter (April 1, 1999—June 30, 1999) of the Judiciary's fiscal year 1999 totaled 345,956. During the second quarter (January 1, 1999—March 31, 1999) bankruptcy filings were 330,784. Filings in the first quarter of fiscal year 1999 (October 1—December 31, 1998) totaled 353,108.

Total Bankruptcy Filings by Bankruptcy Chapter
Years Ended June 30, 1995-1999

Year	<u>Chapter</u>			
	7	11	12	13
1999	993,414	8,684	829	389,004
1998	1,015,453	9,613	845	403,501
1997	917,274	11,159	1,006	387,521
1996	712,129	12,859	1,063	316,024
1995	581,390	13,221	904	262,551

Chapter 7 is designed to allow individuals to keep certain exempt property while the remaining property is sold to repay creditors. Under Chapter 13 bankruptcy, creditors may be repaid in installments, in full or in part, over a 3- to 5-year period. Chapter 11 provides for a business to continue operations while formulating a plan to repay its creditors. Chapter 12 is designed to meet the needs of financially distressed family farmers.

A breakdown of the latest data on bankruptcy filings follows and is also available on the Judiciary's website at www.uscourts.gov.

Quarterly Bankruptcy
Filings*

3-Month Period

<u>Ending</u>	<u>Total Filings</u>
JUN. 30, 1999	345,956
MAR. 31, 1999	330,784
DEC. 31, 1998	353,108
SEPT. 30, 1998	361,205
JUN. 30, 1998	373,460
MAR. 31, 1998	354,118
DEC. 31, 1997	347,685
SEPT. 30, 1997	353,515
JUN. 30, 1997	367,168
MAR. 31, 1997	335,073
DEC. 31, 1996	311,131
SEPT. 30, 1996	303,309
JUN. 30, 1996	297,162
MAR. 31, 1996	266,149
DEC. 31, 1995	244,494
SEPT. 30, 1995	233,593
JUN. 30, 1995	235,302
MAR. 31, 1995	212,626
DEC. 31, 1994	201,618
SEPT. 30, 1994	208,187
JUN. 30, 1994	216,213
MAR. 31, 1994	206,565
DEC. 31, 1993	206,570
SEPT. 30, 1993	215,498
JUN. 30, 1993	229,406
MAR. 31, 1993	222,694
DEC. 31, 1992	228,562
SEPT. 30, 1992	236,810
JUN. 30, 1992	250,622
MAR. 31, 1992	252,733
DEC. 31, 1991	234,383
SEPT. 30, 1991	231,743
JUN. 30, 1991	246,496
MAR. 31, 1991	231,017
DEC. 31, 1990	209,798

*Because of ongoing corrections to the bankruptcy database, the quarterly data may not total to the most recent annual figures.

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**TABLE F-2 U.S. BANKRUPTCY COURTS
BUSINESS AND NONBUSINESS BANKRUPTCY CASES COMMENCED, BY CHAPTER OF THE BANKRUPTCY CODE,
DURING THE TWELVE-MONTH PERIOD ENDING JUNE 30, 1999**

CIRCUIT AND DISTRICT	TOTAL BUSINESS							TOTAL NON BUSINESS						
	TOTAL FILINGS	CHAP. 7	CHAP. 11	CHAP. 12	CHAP. 13	FILINGS	CHAP. 7	CHAP. 11	CHAP. 12	CHAP. 13	FILINGS	CHAP. 7	CHAP. 11	CHAP. 13
TOTAL...	1,391,964	993,414	8,684	829	389,004	39,934	24,607	7,953	829	6,512	1,352,030	968,807	731	382,492
DC.....	2,806	1,920	36	-	850	90	45	32	-	13	2,716	1,875	4	837
1ST...	52,157	36,396	330	2	15,425	1,525	1,064	308	2	147	50,632	35,332	22	15,278
ME.....	4,473	4,101	11	2	359	232	167	11	2	52	4,241	3,934	-	307
MA.....	20,882	17,959	212	-	2,709	645	381	211	-	51	20,237	17,578	1	2,658
NH.....	4,537	4,202	23	-	310	410	349	23	-	36	4,127	3,853	-	274
RI.....	5,277	4,971	7	-	299	117	104	6	-	7	5,160	4,867	1	292
PR.....	16,988	5,163	77	-	11,748	121	63	57	-	1	16,867	5,100	20	11,747
2ND...	89,468	74,509	800	37	14,108	2,250	1,209	703	37	287	87,218	73,300	97	13,821
CT.....	13,194	11,674	88	2	1,430	144	79	61	2	2	13,050	11,595	27	1,428
NY,N....	15,609	13,201	53	13	2,341	416	270	48	13	84	15,193	12,931	5	2,257
NY,E....	29,936	24,197	242	-	5,497	402	183	209	-	10	29,534	24,014	33	5,487
NY,S....	16,459	14,373	358	4	1,711	538	183	327	4	11	15,921	14,190	31	1,700
NY,W....	12,361	9,311	45	8	2,997	664	442	44	8	170	11,697	8,869	1	2,827
VT.....	1,909	1,753	14	10	132	86	52	14	10	10	1,823	1,701	-	122
3RD...	93,854	65,647	2,186	17	26,002	3,887	1,496	2,098	17	274	89,967	64,151	88	25,728
DE.....	3,937	1,718	1,467	-	752	1,488	22	1,465	-	1	2,449	1,696	2	751
NJ.....	44,140	30,330	408	4	13,397	851	486	352	4	8	43,289	29,844	56	13,389
PA,E....	22,876	13,953	124	3	8,795	349	215	112	3	18	22,527	13,738	12	8,777
PA,M....	10,385	8,613	44	4	1,724	772	509	42	4	217	9,613	8,104	2	1,507
PA,W....	12,446	10,985	135	6	1,320	416	260	120	6	30	12,030	10,725	15	1,290
VI.....	70	48	8	-	14	11	4	7	-	-	59	44	1	14

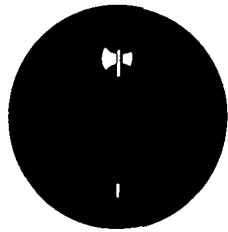
CIRCUIT AND DISTRICT	TOTAL FILINGS	CHAP. 7	CHAP. 11	CHAP. 12	CHAP. 13	TOTAL BUSINESS FILINGS	CHAP. 7	CHAP. 11	CHAP. 12	CHAP. 13	TOTAL NON BUSINESS FILINGS	CHAP. 7	CHAP. 11	CHAP. 13
4TH...	122,122	80,403	558	28	41,133	2,959	1,948	475	28	508	119,163	78,455	83	40,625
MD.....	34,130	24,442	166	2	9,520	993	652	142	2	197	33,137	23,790	24	9,323
NC,E....	10,931	5,001	24	7	5,899	271	145	22	7	97	10,660	4,856	2	5,802
NC,M....	8,818	2,894	11	1	5,912	122	106	11	1	4	8,696	2,788	-	5,908
NC,W....	7,037	3,161	29	4	3,843	73	40	28	4	1	6,964	3,121	1	3,842
SC.....	11,561	5,977	71	9	5,504	222	113	62	9	38	11,339	5,864	9	5,466
VA,E....	30,511	22,135	175	3	8,198	426	227	137	3	59	30,085	21,908	38	8,139
VA,W....	10,699	8,860	28	2	1,809	573	464	26	2	81	10,126	8,396	2	1,728
WV,N....	3,421	3,212	15	-	194	133	103	15	-	15	3,288	3,109	-	179
WV,S....	5,014	4,721	39	-	254	146	98	32	-	16	4,868	4,623	7	238
5TH...	109,261	61,503	756	114	46,886	3,188	1,725	714	114	633	106,073	59,778	42	46,253
LA,E....	7,085	4,688	53	2	2,342	98	48	48	2	-	6,987	4,640	5	2,342
LA,M....	2,837	2,015	12	-	810	30	17	11	-	2	2,807	1,998	1	808
LA,W....	12,618	5,802	36	19	6,761	431	250	33	19	129	12,187	5,552	3	6,632
MS,N....	6,036	3,735	25	27	2,249	147	80	23	27	17	5,889	3,655	2	2,232
MS,S....	12,060	7,002	34	1	5,023	81	53	26	1	1	11,979	6,949	8	5,022
TX,N....	23,143	12,386	201	39	10,516	1,000	557	197	39	206	22,143	11,829	4	10,310
TX,E....	9,542	4,741	47	9	4,744	300	155	46	9	89	9,242	4,586	1	4,655
TX,S....	18,569	11,069	202	7	7,291	635	305	190	7	133	17,934	10,764	12	7,158
TX,W....	17,371	10,065	146	10	7,150	466	260	140	10	56	16,905	9,805	6	7,094
6TH...	163,635	110,940	621	60	52,014	2,891	1,750	575	60	506	160,744	109,190	46	51,508
KY,E....	9,259	7,987	27	5	1,240	151	99	27	5	20	9,108	7,888	-	1,220
KY,W....	12,131	9,790	34	16	2,291	148	88	34	16	10	11,983	9,702	-	2,281
MI,E....	26,809	19,627	149	7	7,026	374	201	145	7	21	26,435	19,426	4	7,005
MI,W....	11,974	9,052	47	7	2,868	287	177	46	7	57	11,687	8,875	1	2,811
OH,N....	28,302	23,189	42	5	5,066	740	562	40	5	133	27,562	22,627	2	4,933
OH,S....	26,961	20,463	60	8	6,430	431	248	58	8	117	26,530	20,215	2	6,313
TN,E....	15,323	8,634	60	7	6,622	292	153	59	7	73	15,031	8,481	1	6,549
TN,M....	11,360	6,504	136	4	4,716	268	130	109	4	25	11,092	6,374	27	4,691
TN,W....	21,516	5,694	66	1	15,755	200	92	57	1	50	21,316	5,602	9	15,705

CIRCUIT AND DISTRICT	TOTAL FILINGS	CHAP. 7	CHAP. 11	CHAP. 12	CHAP. 13	TOTAL BUSINESS FILINGS	CHAP. 7	CHAP. 11	CHAP. 12	CHAP. 13	TOTAL NON BUSINESS FILINGS	CHAP. 7	CHAP. 11	CHAP. 13
7TH...	124,283	97,271	412	119	26,480	2,995	2,149	380	119	346	121,288	95,122	32	26,134
IL,N....	46,874	32,526	195	6	14,147	571	374	180	6	11	46,303	32,152	15	14,136
IL,C....	12,191	10,550	17	49	1,575	158	84	17	49	8	12,033	10,466	-	1,567
IL,S....	7,500	5,672	21	14	1,793	707	515	19	14	159	6,793	5,157	2	1,634
IN,N....	14,614	12,538	35	9	2,032	167	103	33	9	22	14,447	12,435	2	2,010
IN,S....	24,239	19,680	79	7	4,473	399	281	70	7	41	23,840	19,399	9	4,432
WI,E....	12,701	10,691	24	7	1,979	241	183	24	7	27	12,460	10,508	-	1,952
WI,W....	6,164	5,614	41	27	481	752	609	37	27	78	5,412	5,005	4	403
8TH...	81,274	61,489	207	204	19,373	3,018	2,097	193	204	523	78,256	59,392	14	18,850
AR,E....	10,585	5,897	29	6	4,653	182	84	25	6	67	10,403	5,813	4	4,586
AR,W....	6,251	4,495	15	6	1,735	155	100	13	6	36	6,096	4,395	2	1,699
IA,N....	3,634	3,499	8	9	118	133	103	8	9	13	3,501	3,396	-	105
IA,S....	5,283	4,828	6	3	446	85	73	6	3	3	5,198	4,755	-	443
MN.....	17,373	13,577	44	19	3,733	1,703	1,318	44	19	322	15,670	12,259	-	3,411
MO,E....	16,374	10,425	32	9	5,908	217	140	28	9	40	16,157	10,285	4	5,868
MO,W....	11,494	9,676	47	9	1,761	149	84	46	9	9	11,345	9,592	1	1,752
NE.....	5,773	4,843	22	68	840	122	30	19	68	5	5,651	4,813	3	835
ND.....	2,177	2,056	1	39	81	90	43	1	39	7	2,087	2,013	-	74
SD.....	2,330	2,193	3	36	98	182	122	3	36	21	2,148	2,071	-	77
9TH...	308,554	249,542	1,719	94	57,194	11,704	7,824	1,522	94	2,259	296,850	241,718	197	54,935
AK.....	1,518	1,378	14	-	126	114	79	13	-	22	1,404	1,299	1	104
AZ.....	23,729	19,308	248	2	4,171	696	373	216	2	105	23,033	18,935	32	4,066
CA,N....	31,578	23,308	251	6	8,011	1,237	613	210	6	406	30,341	22,695	41	7,605
CA,E....	37,423	32,213	139	29	5,042	1,495	1,025	130	29	311	35,928	31,188	9	4,731
CA,C....	113,653	92,981	525	2	20,145	3,409	2,481	456	2	470	110,244	90,500	69	19,675
CA,S....	17,532	13,416	65	1	4,050	184	120	57	1	6	17,348	13,296	8	4,044
HI.....	5,918	5,439	29	-	449	103	72	25	-	5	5,815	5,367	4	444
ID.....	7,262	5,678	42	21	1,520	330	176	39	21	93	6,932	5,502	3	1,427
MT.....	3,686	3,111	12	5	558	134	117	8	5	4	3,552	2,994	4	554
NV.....	15,542	11,490	120	4	3,928	347	184	112	4	47	15,195	11,306	8	3,881
OR.....	18,225	15,000	55	7	3,162	2,895	2,137	55	7	695	15,330	12,863	-	2,467
WA,E....	7,807	6,249	41	13	1,504	366	256	40	13	57	7,441	5,993	1	1,447
WA,W....	24,554	19,859	175	4	4,516	364	167	158	4	35	24,190	19,692	17	4,481
GUAM...	109	95	2	-	12	22	17	2	-	3	87	78	-	9
NMI.....	18	17	1	-	-	8	7	1	-	-	10	10	-	-

CIRCUIT AND DISTRICT	TOTAL FILINGS	CHAP. 7	CHAP. 11	CHAP. 12	CHAP. 13	TOTAL BUSINESS FILINGS	CHAP. 7	CHAP. 11	CHAP. 12	CHAP. 13	TOTAL NON BUSINESS FILINGS	CHAP. 7	CHAP. 11	CHAP. 13
10TH..	74,769	58,984	282	91	15,412	2,293	1,594	266	91	342	72,476	57,390	16	15,070
CO.....	17,303	14,521	78	20	2,684	370	255	77	20	18	16,933	14,266	1	2,666
KS.....	12,291	9,769	35	19	2,468	194	124	29	19	22	12,097	9,645	6	2,446
NM.....	7,718	6,264	35	5	1,414	479	369	32	5	73	7,239	5,895	3	1,341
OK,N....	5,344	4,562	25	1	756	374	293	25	1	55	4,970	4,269	-	701
OK,E....	3,703	3,425	8	11	259	105	72	8	11	14	3,598	3,353	-	245
OK,W....	12,222	9,890	31	19	2,282	249	179	29	19	22	11,973	9,711	2	2,260
UT.....	13,992	8,538	54	12	5,388	446	260	52	12	122	13,546	8,278	2	5,266
WY.....	2,196	2,015	16	4	161	76	42	14	4	16	2,120	1,973	2	145
11TH..	169,781	94,810	777	63	74,127	3,134	1,706	687	63	674	166,647	93,104	90	73,453
AL,N....	19,640	7,595	68	5	11,972	305	130	59	5	111	19,335	7,465	9	11,861
AL,M....	6,852	2,883	10	2	3,957	150	78	10	2	60	6,702	2,805	-	3,897
AL,S....	4,749	2,129	21	1	2,598	40	21	16	1	2	4,709	2,108	5	2,596
FL,N....	5,265	4,335	23	6	901	74	39	21	6	8	5,191	4,296	2	893
FL,M....	44,518	33,768	263	11	10,476	948	577	233	11	127	43,570	33,191	30	10,349
FL,S....	29,445	21,835	198	2	7,406	610	423	174	2	7	28,835	21,412	24	7,399
GA,N....	32,700	13,726	132	2	18,840	715	318	115	2	280	31,985	13,408	17	18,560
GA,M....	14,525	5,687	33	30	8,775	166	63	32	30	41	14,359	5,624	1	8,734
GA,S....	12,087	2,852	29	4	9,202	126	57	27	4	38	11,961	2,795	2	9,164

* THESE FIGURES INCLUDE THE FOLLOWING CASES NOT REFLECTED ELSEWHERE:

MA..... SECTION 304 = 02	NH..... SECTION 304 = 02	NY,N... SECTION 304 = 01
NY,S.... SECTION 304 = 13	NJ..... SECTION 304 = 01	PA,E... SECTION 304 = 01
TX,N.... SECTION 304 = 01	TX,E... SECTION 304 = 01	WI,W... SECTION 304 = 01
MO,W... CHAPTER 9 = 01	CA,N... CHAPTER 9 = 01	CA,N... SECTION 304 = 01
HI..... SECTION 304 = 01	ID..... CHAPTER 9 = 01	OR..... SECTION 304 = 01
FL,S.... SECTION 304 = 04		



NEWS RELEASE

Administrative Office of the U.S. Courts

May 21, 1999

Contact: Karen Redmond

Second Quarter 1999 Shows Slight Drop in Bankruptcy Filings

The number of bankruptcy petitions filed in federal courts dropped slightly in the 12-month period ending March 31, 1999, according to statistics released today by the Administrative Office of the U.S. Courts. Bankruptcy filings went from 1,423,128 in the 12-month period ended March 1998 to 1,419,199 in the same time period in 1999, a decline of 0.3 percent. This is the first time the total number of bankruptcy cases filed has fallen in federal courts since filings first hit the one million mark in 1996.

The number of bankruptcies filed during the second quarter of fiscal year 1999 (January 1, 1999—March 31, 1999) was 330,784, a 7 percent decrease over the 354,118 bankruptcy cases filed during the second quarter of FY98.

Despite this decrease, well over one million bankruptcy cases continue to be filed in federal court each year. The workload has strained a Judiciary where new bankruptcy judgeships were last created in 1992, and where the number of bankruptcy filings has increased by well over 500,000 between 1995 and 1999.

The Judicial Conference has asked Congress to create 24 new bankruptcy judgeships.

Filings by Chapter

Of the total number of bankruptcy filings for the 12-month period ending March 31, 1999, there were 1,017,049 Chapter 7 filings, a 1 percent increase over the 1,007,213 filings in the same period in 1998. The next largest group of filings were Chapter 13 filings at 393,245, a 3 percent

decrease over the 404,749 filings in the same 12-month period in 1998. Chapter 11 filings dropped to 8,010 in the 12-month period ending March 31, 1999, down from 10,244 in 1998. Chapter 12 filings

Business and Non-business Filings, Years Ended March 31, 1995-99

<u>Year</u>	<u>TOTAL</u>	<u>Non-Business</u>	<u>Business</u>
1999	1,419,199	1,378,071	41,128
1998	1,423,128	1,370,490	52,638
1997	1,247,065	1,193,057	54,008
1996	980,126	927,916	52,210
1995	838,959	787,291	51,668

(MORE)

also fell in this period, from 880 in 1998 to 859 in 1999. Business filings totaled 41,128. Non-business filings totaled 1,378,071, up 1 percent from the total non-business filings of 1,370,490 in the 12-month period ending March 31, 1998.

Chapter 7 is designed to allow individuals to keep certain exempt property while the remaining property is sold to repay creditors. Under Chapter 13 bankruptcy, creditors may be repaid in installments, in full or in part, over a 3- to 5-year period. Chapter 11 provides for a business to continue operations while formulating a plan

Total Bankruptcy Filings by Bankruptcy Chapter
Years Ended March 31, 1995-1999

Year	Chapter				
	7	11	12	13	Other
1999	1,017,049	8,010	859	393,245	36
1998	1,007,213	10,244	880	404,749	42
1997	862,136	11,472	1,050	372,369	38
1996	665,310	12,901	988	300,901	26
1995	568,565	14,055	916	255,382	41

to repay its creditors. Chapter 12 is designed to meet the needs of financially distressed family farmers.

The following tables are available:

Table F Bankruptcy Cases Commenced, Terminated and Pending During the 12-month Periods Ended March 31, 1998 and 1999.

Table F-2 Business and NonBusiness Cases Commenced by Chapter of the Bankruptcy Code During the 12-month Period Ended March 31, 1999.

Table F-2 Business and NonBusiness Cases Commenced by Chapter of the Bankruptcy Code During the 3-month Period Ended March 31, 1999.

(MORE)

Quarterly Bankruptcy Filings*

3-Month Period	
Ending	Total Filings
MAR. 31, 1999	330,784
DEC. 31, 1998	353,108
SEPT. 30, 1998	361,205
JUN. 30, 1998	373,460
MAR. 31, 1998	354,118
DEC. 31, 1997	347,685
SEPT. 30, 1997	353,515
JUN. 30, 1997	367,168
MAR. 31, 1997	335,073
DEC. 31, 1996	311,131
SEPT. 30, 1996	303,309
JUN. 30, 1996	297,162
MAR. 31, 1996	266,149
DEC. 31, 1995	244,494
SEPT. 30, 1995	233,593
JUN. 30, 1995	235,302
MAR. 31, 1995	212,626
DEC. 31, 1994	201,618
SEPT. 30, 1994	208,187
JUN. 30, 1994	216,213
MAR. 31, 1994	206,565
DEC. 31, 1993	206,570
SEPT. 30, 1993	215,498
JUN. 30, 1993	229,406
MAR. 31, 1993	222,694
DEC. 31, 1992	228,562
SEPT. 30, 1992	236,810
JUN. 30, 1992	250,622
MAR. 31, 1992	252,733
DEC. 31, 1991	234,383
SEPT. 30, 1991	231,743
JUN. 30, 1991	246,496
MAR. 31, 1991	231,017
DEC. 31, 1990	209,798

*Because of ongoing corrections to the bankruptcy database, the quarterly data may not total to the most recent annual figures.

LEVEL 1 - 5 OF 18 STORIES

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Gannett News Service

November 10, 1999, Wednesday, FINAL EDITION

SECTION: Pg. ARC

LENGTH: 999 words

HEADLINE: Delaware wants third judge to handle bankruptcy load

BYLINE: CARL WEISER; Gannett News Service

DATELINE: WASHINGTON

BODY:

WASHINGTON -- With Delaware's two bankruptcy court judges suffocating under the highest caseload in the country, the state's congressional delegation is demanding that Congress add a third judge.

But the fight for a new judge puts Delaware in a delicate position. The state is simultaneously fighting legislation that would permanently solve the high caseload problem -- but by doing away with the Delaware court's right to hear the big corporate bankruptcy cases.

That legislation, already passed by the House, would not only end the state's bustling bankruptcy business, but hack away at Delaware's position as the nation's corporate capital.

"That's a big deal to our state," said Sen. Joe Biden, D-Del. "It's a prestige thing."

There's no disputing that Delaware's bankruptcy judges -- Peter J. Walsh and Mary F. Walrath -- are overloaded. The Administrative Office of the Courts, which oversees federal courts, reported that the two judges handled 3,108 "weighted" cases each during the year ending June 30 -- the highest load of all 90 bankruptcy courts in the country. (In measuring the load, the office gives more "weight" to complicated cases, such as big corporate bankruptcies.)

The national average is 1,337, and 1,500 is high enough to warrant adding a judge.

"What the numbers do not describe is the tremendous strain Delaware's two bankruptcy judges are under," Rep. Mike Castle, R-Del., told a House-Senate committee during a hearing last week on bankruptcy courts. Morale, he said, is at an all-time low.

On a major corporate bankruptcy like the Montgomery Ward case, the court might sort out 300,000 claims from various creditors, said deputy court clerk Marianne Thompson. "The paperwork



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in this office is just horrendous."

To help with the caseload, the court relies on a Pittsburgh bankruptcy judge who flies in several times a month.

A third \$ 125,764-a-year judge would relieve the pressure, said Bill Sudell, a Wilmington bankruptcy lawyer and partner in Morris, Nichols, Arsht and Tunnell.

"I think it's in the taxpayers' interest to have efficiently working court systems" he said. The nation's bankruptcy court judges have also beseeched Congress to add a third judge in Delaware, one of 24 they say is needed nationwide.

Biden introduced a bill last month that would add a third judge in Delaware, as well as five others around the country.

But Sen. Charles Grassley, R-Iowa, who chairs the Senate subcommittee that oversees federal courts, doesn't want to add judges because of their cost -- \$ 1 million each, including clerks and offices. He wants Congress to see if judges can be reallocated from underworked courts to swamped courts like Delaware's.

The state's need for another bankruptcy judge is intertwined with major bankruptcy reform legislation the Senate is debating this week.

That overhaul would make it harder for bankruptcy filers to walk away from their debts. Delaware's credit card industry, Gov. Tom Carper, and its three members of Congress agree the overhaul is a top priority.

But in the bill that passed the House earlier this year, a California congressman added a provision to end Delaware's reign as the land of big corporate bankruptcies. The court right now, for example, is handling the Hechinger, Montgomery Ward, and Zenith bankruptcies.

Delaware handles a higher percentage of public corporate bankruptcies than any other court district, including New York City and Los Angeles, according to New Generations Research Inc., which publishes the Bankruptcy Yearbook & Almanac. Delaware was home to 26 public company bankruptcies filed last year, almost as many as the next three courts combined.

Those companies can file for bankruptcy in Delaware because, like half the Fortune 500, they are incorporated in Delaware. Rep. Howard Berman, D-Calif., says big companies prefer to file in Delaware because the courts are friendly to them.

He added language to the House bill requiring that companies file for bankruptcy in their principal place of business -- not where they have filed some incorporation papers.

His language was based on a recommendation from the **National Bankruptcy**



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Review Commission, whose 1997 report -- ordered by Congress -- recommended banning companies from having bankruptcy cases heard where they are incorporated.

Big, bankrupt companies can afford to send lawyers to Wilmington and pay for their hotels. Their creditors, especially small ones, can't always get to Wilmington, and thus get "disenfranchised," the report said. It cited the case of Morrison Knudsen Corp., based in Idaho, as were 4,111 of its creditors. But the case was heard in Wilmington.

Sudell said the court is popular because it's efficient and predictable.

"Because it's become attractive, that doesn't mean that you take that away. It means that if they need more resources they ought to get them," he said.

If Delaware's court were to lose its right to be a bankruptcy venue, it wouldn't be a huge economic blow. Only 25 to 50 lawyers concentrate exclusively on corporate bankruptcies, Sudell said.

But Delaware's century-old reputation as the nation's corporate capital would be at risk. Some companies may decide there's no reason to stay incorporated in Delaware.

Both Castle and Biden say they have been assured that the venue provision will be removed from the final version, which won't come up in Congress until next year. If the provision is not removed, Biden said he will filibuster the bill, meaning he will try to kill the bill by talking it to death on the Senate floor.

Rep. Berman, author of the anti-Delaware provision, said Tuesday he too expects his language to die, thanks to Biden's "intensity."

Asked if he saw any contradiction in the Delaware delegation's efforts, Berman said: "Maybe in the real world, but not in the political world."

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LEVEL 1 - 17 OF 20 STORIES

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Knight Ridder Washington Bureau

September 27, 1999, Monday

SECTION: BUSINESS AND FINANCIAL NEWS

KR-ACC-NO: K3138

LENGTH: 1076 words

HEADLINE: Changes in bankruptcy law, minimum wage a women's issue, groups say

BYLINE: By Tony Pugh

BODY:

WASHINGTON _ In the congressional struggle to raise the minimum wage and make personal bankruptcy harder to attain, women have so far been the odd man out.

After all, finance and economics have never been viewed as traditional "women's issues." But welfare reform, the growth in single-parent families and the recent explosion of consumer credit have combined to make women the greatest stakeholders in both pieces of pending legislation.

Women are the fastest-growing segment of the nation's personal bankruptcy filers and comprise 6.8 million, or 59 percent, of the low-income workers who would benefit from an increase in the minimum wage.

Although it's often been absent from the public debate, the women's point of view will be front and center this week as the House of Representatives continues negotiating a compromise on the proposed minimum wage increase. First lady Hillary Rodham Clinton and several low-wage working women are expected to appeal for passage of the proposal by Sen. Ted Kennedy, D- Mass., to raise the minimum wage from \$ 5.15 to \$ 6.15 an hour by January 2001.

About 30 women's' organizations recently joined consumer groups to oppose the "Bankruptcy Reform Act of 1999." Under the proposal, backed strongly by Republicans and the banking lobby, lenders would have more leverage to obtain repayment from bankruptcy applicants.

That means the bill would have the greatest impact on the fast-growing number of women filing for bankruptcy, particularly divorced women, who are three times more likely to seek financial protection than married women. The bill also would weaken the provisions of existing law that require debtors to make child support payments before repaying debts to commercial creditors.

Advocates for changes in the nation's bankruptcy laws say debt protection is too easy to obtain, and that lenders need safeguards. They also argue that tighter restrictions would make irresponsible consumers more accountable.

House Democrats had attached the minimum wage legislation as an amendment to



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Knight Ridder Washington Bureau September 27, 1999, Monday

the bankruptcy bill. But last week, the Senate rejected a Republican move to bring the bankruptcy bill to a vote. Doing so shelved both proposals temporarily, but House Republicans have already conceded they don't have the votes to halt the wage legislation, which will likely be reintroduced.

Republicans are also expected to reintroduce a bankruptcy bill in the coming weeks.

"It's not dead by any means," said Travis Plunkett of the Consumer Federation of America. "It's still very much alive."

In 1981, married couples and men filing alone accounted for nearly four out of five of all bankruptcy petitions. Today women filing alone account for nearly 40 percent, jumping from about 69,000 in 1981 to an estimated 538,000 by the end of this year. That's more than twice the growth rate of men who file alone and more than three times the filing rate for married couples, said Elizabeth Warren, a law professor at Harvard University and adviser to the **National Bankruptcy Review** Commission.

In research with a colleague, Warren found that a disproportionate number of women report an economic calamity such as divorce, medical emergency or job loss as the primary reason for their downfall. For Janice Young of Washington, D.C., that catastrophe was her sister's funeral.

When relatives failed to help her pay for the \$ 9,000 service, Young, whose husband is a security guard, was unable to pay the \$ 300 a month payments and was forced to file for bankruptcy protection earlier this month. She now works as a hotel housekeeper to help make ends meet.

"This thing has really been hard on me," she said. "I was stressed out and depressed ... I've never been in any credit trouble before so this really got to me."

Warren found that many of these women are divorced, separated or widowed.

"The double blow of low wages and divorce is an economic catastrophe," Warren said. "Either one of them makes you vulnerable to bankruptcy and the combination is just deadly."

But getting lawmakers to view the minimum wage as a woman's issue rather than a business issue won't be easy.

"Women's organizations have tended to emphasize personal issues like sexual harassment, domestic violence and (abortion) choice rather than economic issues which, in many cases, the average woman may care more about," said Susan Bianchi-Sand, president of the National Council of Women's Organizations.

Republicans argue that increasing the minimum wage would force employers to hire fewer people, which could slow down the economy and adversely affect small businesses. That's why the GOP leadership is proposing a variety of tax breaks to offset the cost of a wage increase on small businesses.

However, a recent report by the institute for Women's Policy Research in Washington, D.C., and the Economic Policy Institute found that a full-time



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worker who earned the \$ 2.90 an hour minimum wage in 1979 earned enough to pull a family of three out of poverty. The same family would fall more than \$ 2,000 below the poverty line today because the minimum wage has not kept pace with inflation.

That's especially significant because the Department of Labor estimates that 85 percent of the 6.8 million females who would benefit from an increased minimum wage are single mothers _ many of whom, like Melissa Albis of Northampton, Mass., are moving from welfare to work.

A 31-year-old mother of five, Albis works 30 hours a week at a local Burger King and earns \$ 5.25 an hour, just 10 cents more than the minimum wage. She's currently separated from her husband and can only afford to pay half her gas, electricity and phone bills. Local social service agencies helped her buy her children's' school clothes and supplies.

Devita Armstead, a 33-year-old single mother of 11, is training to become a community organizer in a welfare-to- work program in Philadelphia. Although the minimum-wage job is her first ever, she said any increase would help her make ends meet.

"It wouldn't solve everything," Armstead said, "but an extra 50 cents or dollar an hour would help a lot of women like me to pay bills on time without government assistance."

GRAPHIC (from KRT Graphics Network, 202-383-6064):

09-27 WOMEN MONEY, 2x4, compares trend in male, female and couples personal bankruptcy filings; snapshot of female minimum wage worker.

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The Ugly Downside of Easy Credit

Banks are making it harder for card holders to pay down what they owe

By Albert B. Crenshaw
Washington Post Staff Writer

At a time when lenders are complaining that too many consumers are using bankruptcy to escape paying their debts, several of the nation's largest credit card issuers are making it harder for troubled debtors to repay, and thus increasing the likelihood that they will declare bankruptcy, a consumer study has found.

FINANCES

These and some smaller credit card companies are boosting the interest rates they charge card holders who enter debt-management programs under the auspices of the various debt counseling services around the country, the study by the Consumer Federation of America found.

Other issuers, which charge high rates generally, are holding to those levels for troubled borrowers, the CFA found.

Historically, many creditors have reduced or eliminated interest charges to debtors who are in formal "workout" programs. The assumption is that halting the charges gives the borrower a better chance of actually repaying at least the existing debt, and that in turn gives the lender a better chance of recovering some or all of what is owed.

Since credit card debt is generally unsecured, a debtor who goes into bankruptcy is often able to expunge it, leaving lenders with nothing.

A debt-management program "is a better situation for them

than if the consumer has to declare bankruptcy," says Travis Plunkett, CFA legislative director.

CFA officials say they aren't sure why card issuers are hardening their stance toward troubled consumers. Stephen Brobeck, the group's executive director, says he can only assume that "it is part of their continuing drive to increase profitability" through increased interest charges and higher fees.

At the same time, as reported in July by my colleague Kathleen Day, many lenders are cutting back on the payments they make to debt counseling agencies. Lenders have typically given debt counselors around 15 percent of the amount repaid by the agencies' clients, but in recent months many lenders have cut that back to 10 percent or even 6 percent.

"They are starting to pull the rug out on the last debt stop before bankruptcy," Plunkett says.

Some issuers dispute the CFA findings, calling them misleading.

A spokesman for MBNA says the big Delaware-based card issuer treats troubled borrowers on a case-by-case basis and will set rates anywhere from the 15.9 percent cited by the CFA to zero, depending on the borrower's ability to pay. "One of the tools you have to work with... is to lower their interest rates," he says. "Lower interest means more of their payment goes toward their [principal] balance."

Credit card issuers and other lenders have been pressing Congress to redraw the nation's bankruptcy laws, arguing that it is now too easy for debtors to file for bankruptcy protection and wipe out thousands, sometimes tens of thousands, of dollars in unsecured debt.

The industry and consumer groups have been trading rhetorical salvos over who is to blame.

Paying Off That Debt

This chart shows the rates charged to troubled card holders in debt-management programs by the 10 largest credit card issuers nationwide, ranked by size of credit card portfolio, and how long it takes to pay off debt of \$10,000 and \$25,000 with monthly payments of \$350.

Issuer*	Interest rate	Months to pay off \$10,000 at \$350 per month	Months to pay off \$25,000 at \$350 per month
Citibank	9.9%	33 months	108 months
First USA/Bank One	6.0	31	89
MBNA	15.9	36	222
Chase Manhattan	6.0	31	89
Bank of America	0	29	71
Capital One	19.8	39	Lifetime
Household Credit Services	9.0	32	103
Fleet	9.5	33	106
Provident	12.0	34	126
Wells Fargo	10.0	33	109

SOURCE: Consumer Federation of America

THE WASHINGTON POST

Consumer groups contend that banks and others all but shove credit down consumers' throats with the billions of solicitations they send out every year. Also, lender advertising encourages card holders to spend beyond their means, critics say.

The industry charges that many borrowers simply cannot control their spending and that it is unjust to let so many off scot-free when, according to lenders, they could pay at least part of what they owe.

Oddly, debt-management plans resemble the kind of bankruptcy workout lenders say they would

like to see more of—where a debtor curbs spending and pays back part or all of the debt over time.

BUT SOME OF THE INTEREST rates the CFA says are now being charged such debtors make it tough if not impossible for them to repay. At \$350 a month, which debt counselors say is a typical rate of repayment for many debt-management plans, a borrower with \$25,000 in debts could pay for a lifetime and never clear the debt on some cards, according to the CFA.

On the other hand, some issuers

are cutting rates for troubled debtors. CFA officials note that debtors who fear they are getting into trouble should consider switching their balances, or as much as they can, to these issuers.

Brobeck acknowledges that this is hardly a just reward for issuers who try to be helpful, but Plunkett notes that many debtors recover to become excellent customers, and surveys show that those who have been helped by creditors at a time of need become very loyal to those creditors.

Many credit card borrowers run into trouble when their income suddenly drops, often as a result of illness, unemployment or divorce. In such cases, there may be no alternative to bankruptcy.

But financial planners and other experts say many other consumers slowly slide into trouble, which is made easy by the low minimum monthly payments and easy access to new credit offered by banks.

In these cases, consumers who see their credit card balances climbing should take a hard look at their spending and work to bring it down. Credit card debt is very expensive; rates are usually high, and generally the interest is not tax-deductible.

People with steady incomes should make it a priority not just to keep up with their credit card payments but to pay their balances off and keep them off. Credit cards are great for convenience use and for emergencies, but as a source of credit, they should be just about your last choice.

OPINIC

A bad way to reform U.S. bankruptcy laws

By Leonard J. Ackerman

The rich have made a legislative attempt to get richer.

After spending \$3.45 billion on careless and harassing direct-mail solicitations, creditors spent additional millions lobbying Congress in an effort to correct their mistake.

The result is proposed bankruptcy legislation which would all but eliminate the exclusive safety net available for unfortunate Americans: Chapter 7 bankruptcy.

As a bankruptcy attorney, I have witnessed hundreds of debtors who had no alternatives. Over the past three years, I have represented people who felt embarrassed, hopeless and terrified about their future.

These were honest hard-working people who were down on their luck, and had no alternatives.

I have represented elderly women on Social Security with \$70,000 of debt; families struggling to pay the mortgage after a significant job loss; divorcees struggling to pay bills formerly paid on two salaries with only one salary; married couples in their 50s with children who put all of their money into a local family business that can no longer afford to pay their bills; people who made the "minimum payments" for two years on their credit-card bills only to have an outstanding balance equal to their original balance at the time of purchase. These are illustrations of typical American debtors with real financial problems.

Recently, the House of Representatives passed "the Bankruptcy Reform Act of 1999."

Now Sen. Trent Lott is attempting to eliminate floor debate in the Senate to strong-arm the legislation through without amendments.

Both the House and Senate versions of the bill adopt harsh eligibility for consumer bankruptcy relief, including a rigid means test based upon IRS budget guidelines. In addition, the legislation will reduce protec-

tion of debtors' basic assets and curtail discharge of debt.

By forcing debtors to repay debts, Congress believes the number of bankruptcies will be significantly reduced. Congress argues that bankruptcy legislation overhaul was prompted by the record 1,442,549 bankruptcies filed in 1998.

While the legislation will curtail bankruptcy filings, it certainly will not eliminate the debt problems of Americans. In President Clinton's Statement of Administrative Policy, the administration strongly opposed the legislation because "the bill focuses on perceived abuse of the bankruptcy system by debtors without adequately addressing abuses by creditors, and takes an excessively rigid approach to limiting access to discharge of debts under Chapter 7 of the bankruptcy code."

Costly Legislation

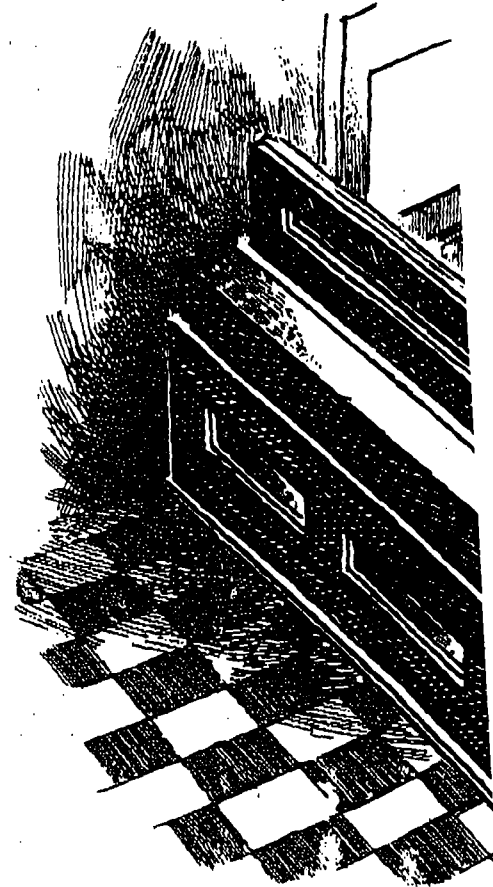
According to the National Association of Consumer Bankruptcy Attorneys (NACBA), creditors spent more than \$50 million lobbying Congress for favorable bankruptcy reform. There is no prominent or competing debtors organization that can come remotely close to lobbying with that type of capital.

Creditors pointed to a study conducted by Ernst & Young, which showed that debtors could afford to pay back billions of dollars that currently get discharged. The problem with the study was that it was funded by creditors.

The Executive Office for the United States Trustees concluded that the creditor-funded study overstated debtors' ability to pay back unsecured creditors by more than \$4.1 billion.

So what exactly are the costs of the new legislation? A recent Congressional Budget Office study states that the proposed bankruptcy legislation changes could cost taxpayers more than \$333 million in just five years.

Not included in this multimillion-dollar cost is the amount of tax revenues lost from debtors who would be forced to work "off the books" to prevent their wages from being garnished by inescapable creditors.



Education can help

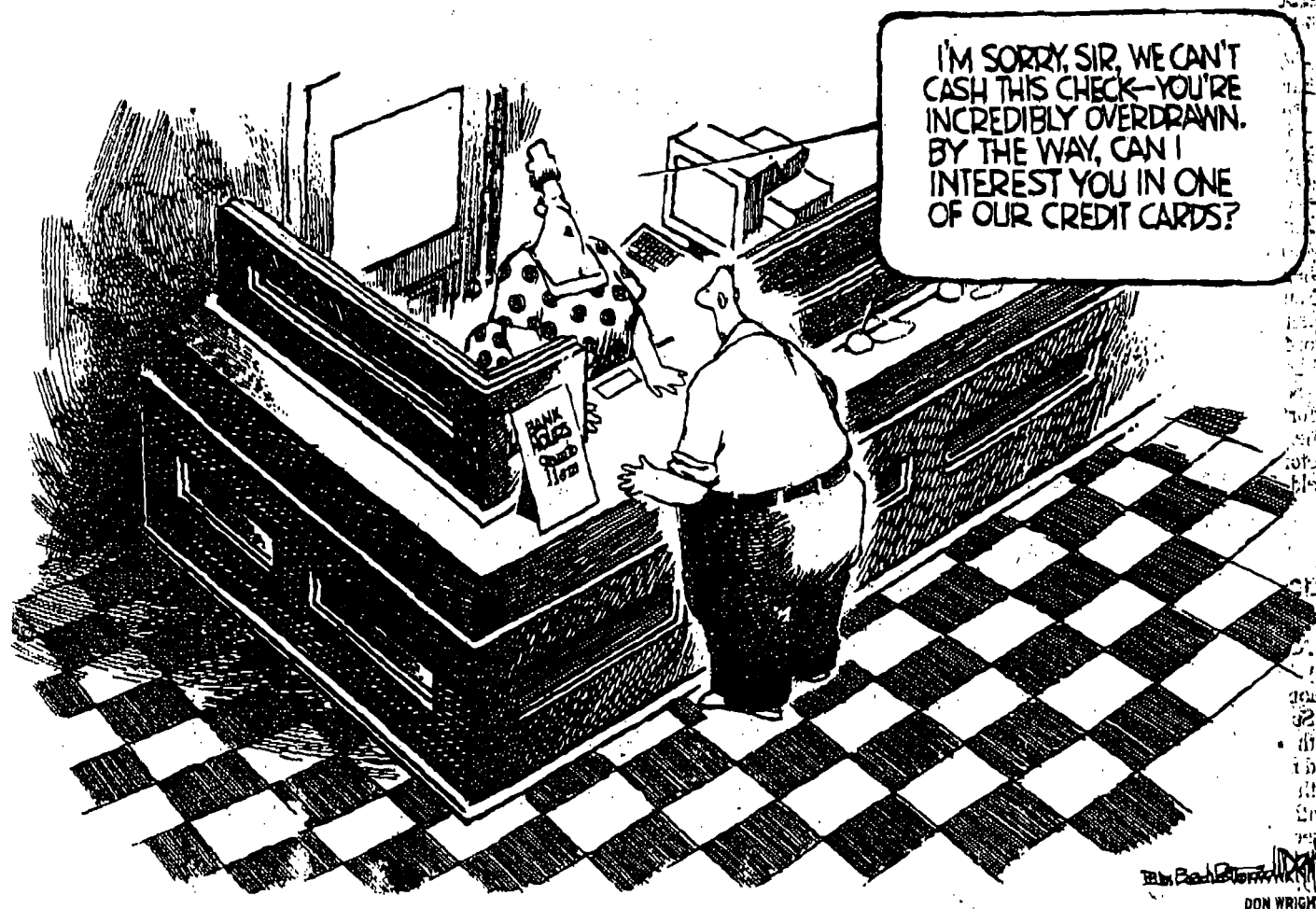
A survey published by Priority Publications indicates that a lack of financial planning by consumers is due in part to financial illiteracy. In a survey of 300 mall shoppers in Boston, Minneapolis, Portland, Dallas, Los Angeles and Chicago, 42 percent of respondents said it is difficult to get the information they need to make sound financial decisions. And nearly half said that it is difficult to speak to a person at a bank.

Sixty-four percent do not have a written household budget, and 44 percent did not have the money to pay their credit-card balance, but they buy lottery tickets sometimes.

Recently, the U.S. Department of Commerce released a report that personal savings are at an all-time low.

Perhaps Congress could reduce bankruptcies by having educational programs available.

Ackerman is a solo practitioner whose San Diego firm focuses exclusively on bankruptcy law.



Don Wright

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Perhaps Congress could reduce bankruptcies by having educational programs available that teach consumers

how to budget, and the potential effects of credit-card use. Most consumers do not realize that they could be paying for a single dinner on their credit card for three years.

No pity for creditors

While creditors may have some of their income lost through bankruptcy, they certainly are not intimidated by the risk. Creditors spent \$260.1 million in credit-card advertising dollars in the last quarter of 1998. They spent \$880 million on direct-mail solicitations sent in the last quarter of 1998.

Congress does not address creditors who inundate students, jobless people and family pets with pre-approved credit card applications.

Fair, Isaac & Co. estimated that credit-card companies could cut their bankruptcy losses by more than 50 percent if they would institute minimal credit screening.

Instead, they choose to focus on thousands of debtors who may unexpectedly lose their jobs, contract an expensive illness, get divorced, or don't earn enough to save for a rainy day.

For unfortunate Americans, eliminating bankruptcy as an option will not obliterate their debts or their problems, and in addition the effects on our society may be even greater.

Hope is the human capital of the U.S. economy. Without it, productivity will suffer, morale will drop, and crime will increase.

Families will break up as debt-laden breadwinners are forced into hiding to avoid creditors.

Envision waking up and starting your day with no hope, no future and no opportunity to obtain either.

If the proposed bankruptcy legislation passes, millions of Americans will awaken with exactly that outlook, and that's not what America is all about.

The "Anti-Cramdown" Provision Makes Chapter 13 Repayment Plans Unworkable and Will Result in Substantial Hardship

Current Law: Under the Bankruptcy Code today, creditors' secured claims generally are protected to the extent of the value of their collateral. Further, current law voids some nonpurchase money security interests -- where a creditor takes a lien on property the borrower already has rather than extending credit to enable the borrower to purchase the item -- that are secured by goods of relatively low value.

Credit Industry Proposal in Original House Bankruptcy Bill Was Narrowly Targeted at the Claimed Abuse: The credit industry claims that some individuals declare bankruptcy immediately after purchasing automobiles (and other items that experience a rapid decrease in value) with the intent to lower their secured debt obligations through the bankruptcy process. To address this problem, the industry *initially* proposed to protect the full amount of a loan (regardless of the collateral's depreciation) if an individual declared bankruptcy within 6 months after purchasing a car or other items on credit. To the extent any abuses are taking place, this proposed 6-month look-back period would be sufficient to protect a lender from a car's loss in value upon being driven off the car lot.

The Anti-Cramdown Provision of S. 625 [Grassley-Torricelli] is Not Justified and Will Make Chapter 13 Repayment Plans Unworkable: The original industry 6-month proposal has expanded substantially. the provision will result in the loss of homes and cars and a substantial reduction in child support and other payments to unsecured creditors. The anti-cramdown provision [Sec 302] currently in S. 625 makes several significant changes:

- It protects lenders for the full amount of loans made within 5 years prior to bankruptcy that are secured by an automobile--regardless of the automobile's value.
- Its protection extends to loans secured by automobiles and other items even if those loans were not incurred to purchase those items (nonpurchase money security interests).

Here are some examples of the effects of the anti-cramdown provision:

*Mrs. Smith takes out a \$10,000 loan and the lender takes a second lien on a car. The car is worth \$3,000. Mrs. Smith still owes \$4,000 (on the car loan secured by the first lien). Two years later, Mrs. Smith files for bankruptcy. As a result of the anti-cramdown provision, both lien holders will be treated as secured creditors and are entitled to be paid in full with interest.

*Mrs. Smith has a store credit card with a \$3,000 unsecured balance. She buys a \$200 television in which the store takes a security interest. If Mrs. Smith files for bankruptcy within 6 months afterward, the store is entitled to the full card balance under the anti-cramdown provision, not just the price of the television.

*Mrs. Smith goes to a finance company to borrow \$10,000. The finance company takes a security interest in her used stereo, which is worth about \$50. If Mrs. Smith files for bankruptcy within the next six months, the anti-cramdown provision requires that the entire amount remaining on the loan is payable in full with interest as a secured debt.

Because the single greatest reduction in car value occurs as the car is being driven off the lot (well within the six-month period), prohibiting cramdown for debts incurred within 5 years before bankruptcy is much longer than necessary to address the identified problem. Providing full protection for loans secured by other types of property of low value will encourage credit card companies and other lenders to take security interests in nearly worthless collateral.

The anti-cramdown provision will have a substantial impact on the repayment of creditors in Chapter 13 repayment plans. To get a repayment plan approved, a debtor must agree to pay secured claims in full with interest. The anti-cramdown provision increases the size of secured claims and creates incentives for creditors to make their claims secured. Many debtors will not be able to pay all of these claims in full with interest and thus will not be allowed to proceed with a repayment plan.

A group of Chapter 13 trustees (who oversee and administer chapter 13 repayment plans) recently conducted a survey to analyze the impact of the proposed anti-cramdown provision. Among their findings:

- As a result of the anti-cramdown provision, 20% of existing Chapter 13 repayment plans would not be confirmed by the court because they could not meet all of the requirements while paying the secured debt in full; and,
- As a result of the anti-cramdown provision, 44% of existing repayment plans would be confirmed by the court only with a substantial reduction in payments to other types of creditors.

For tens of thousands of individuals and families, this will mean the loss of homes and cars for those unable to confirm plans. In other cases, unsecured creditors will receive much reduced payments.

In promoting bankruptcy reform, the credit industry says it wants people to pay back more of their debt in Chapter 13. With provisions like Section 306, the logic of bankruptcy "reform" simply falls apart. The cramdown provision has been criticized by the National Association of Attorneys General, the Department of Justice and others. In commenting on a similar provision in the House bill, the Administration said: "While there are good reasons to limit the most dramatic cramdowns that occur for debts incurred close to bankruptcy, barring most cramdowns [as the House bill would do], puts at risk repayment of other secured and priority debts." Two-thirds of repayment plans already end in failure today. As a result of these new provisions, we can expect to see more failed repayment plans, more repossessions of property, and fewer families who will attempt repayment in Chapter 13.

Waiving the Right to a Fresh Start; The Truth About Reaffirmation Agreements

Reaffirmation agreements are one of the most important, but perhaps least understood, issues in the bankruptcy reform debate. When a person in bankruptcy "reaffirms" a debt, she remains legally responsible for repayment after the bankruptcy case is completed even though the bankruptcy process otherwise would have relieved her of that obligation. Creditors are not supposed to pressure families to reaffirm their debts. However, there have been widespread abuses of two kinds: Some creditors, particularly retail stores, have been collecting debts based on reaffirmation agreements that are illegal and unenforceable because they are not filed with the bankruptcy court.¹ Other reaffirmations may be "legal" but are the product of creditor pressure, not informed decision-making.

In an attempt to reform reaffirmation practices, last year's Senate bill (S. 1301) established bankruptcy court review of reaffirmations and prohibited creditors from using threats and coercion to coax debtors to sign agreements. This year's version of bankruptcy reform (S. 625) regresses substantially from that middle-ground approach and, when put into practice, will not curtail creditor overreaching and abuse. At the same time, other provisions in S. 625 increase creditors' leverage to convince financially-troubled families to sign away their rights to a fresh start.

Voluntary Reaffirmations? The Process in the Debtors' Own Words

These statements are excerpts from claims that were excluded from the Sears illegal reaffirmation settlement because they were "legal" reaffirmations.

Claim #2037250: I remember telling the women that I don't have \$150.00 per month to pay for these two debts while I was signing the two papers for her. (Otherwise I wouldn't be filing bankruptcy in the first place). I thought to myself when I get inside the courtroom I will explain this to the judge exactly what I have previously written, how the women from Sears made me sign the reaffirmation agreements, but the judge never brought up Sears to me in the court room proceedings. I remember thinking when I left the court room, "My Lord how am I going to pay this \$150.00 to Sears each month." . . . The two full time jobs affected my health and I couldn't work them anymore. That is when I stopped paying Sears the \$150.00 a month. I also lost my home which I lived in for 25 years, so now I have nothing! . . . I am worse off financially now then when I filed bankruptcy!

Claim #2019823: I was already emotional from having to attend my bankruptcy hearing. My lawyer said, a representative from Sears would like to talk to me in the hallway. This representative said, I either had to return the bansaw [sic.], that was purchase [sic.] on Dec 11, 1996 to clear my debt. I explain that I no longer had the bansaw. I was told if I didn't return it, since I no longer had it, I would have to sign a reaffirmation agreement. . . . So, instead of having a "fresh start" with the bankruptcy discharge, I have this old debt hanging over my head.

Are these repayment agreements voluntary? Fifty-two percent of debtors surveyed by Visa U.S.A.

¹ Sears Roebuck admitted to bankruptcy fraud carrying a \$60 million criminal fine for enforcing hundreds of thousands of unfiled reaffirmation agreements. Others involved in illegal reaffirmation class action lawsuits include Federated Department stores (Bloomingdale's, Macy's, Stern's), Montgomery Ward, GE Capital Corp., Discover Card, May Department Stores, AT&T, Circuit City, J.C. Penney, and Beneficial National Bank. The House bill, H.R. 833, actually bans class action law suits against creditors who pursue illegal reaffirmations.

in 1996 said that they had reaffirmed at least one debt. If that percentage of debtors reaffirmed debts in 1998, then over 500,000 families who filed for bankruptcy last year agreed to remain legally liable for some consumer debts. Debtors who reaffirm credit card or retail card debts — often the debts that helped lead them down the path to bankruptcy in the first place — frequently do so because the lender asked and the debtors fear the consequences of refusal. Bankruptcy law charges debtors' attorneys with policing reaffirmation to make sure that reaffirming the debt will not impose an undue hardship on debtors' families and that the debtors understand that they are not required to reaffirm debts. For a variety of reasons, attorney review has not been effective or sufficient to prevent creditor pressure.

S. 625 does not reform reaffirmation practices. S. 625 partially responds to illegal reaffirmation agreements that are not filed with the court. However, it does nothing to address the reaffirmation process as it applies to partially secured debts (such as retail credit card debts "secured" by the items bought in the store), fully secured debts, or any debt owed to a credit union. S. 625 authorizes courts to hold hearings on unsecured debt reaffirmations, but the requirement is waivable; unfortunately, experience has taught us that debtors will be pressured to waive the hearing right as a matter of course. **At the same time, however, S. 625 gives creditors greater leverage to get their debts reaffirmed.** S. 625 enhances the rights of creditors to challenge debtor's bankruptcy filings, contest the dischargeability of certain debts, and claim that their debts are secured by even worthless items belonging to the debtor, all of which may be used as leverage to convince debtors to reaffirm more debts to avoid costly litigation. It therefore is likely that S. 625 will push even more financially troubled individuals and families to reaffirm debts. S. 625 contains a provision that could, with revisions, curb some threats that lead debtors to sign reaffirmations, but in its current form it actually protects creditor threats as long as those threats include a recitation of the creditor's legal rights.

What will happen to families with too much reaffirmed debt? A reaffirmation project conducted by Creighton University professors Culhane and White gives us a sense of the extent to which reaffirmation agreements encumber families with debts that exceed their ability to repay those obligations.² Financially troubled families in bankruptcy in their sample reaffirmed debts (excluding mortgages) that were, on average, over 20% of their total incomes. The ultimate financial burden is even higher when one factors in the interest charges (running on average at about 20% for unsecured debt reaffirmations). Given the enhanced leverage for creditors provided by S. 625, one can only imagine how encumbered these families will be if S. 625 becomes law.

Who benefits? Large, well organized lenders (major credit card banks, nationwide retailers) benefit from the boost in reaffirmation potential. Other creditors, such as the local hardware store, will not fare so well because it does not have the resources to send an employee or lawyer to bankruptcy meetings and hearings to engage in a full-court-press for reaffirmations. When the debtor emerges from the bankruptcy system with these reaffirmed debts, child support recipients trying to take their share of the debtor's limited resources will face heightened competition from consumer lenders. None of the domestic support provisions in S. 625 changes that result.

² Marianne B. Culhane and Michaela M. White, *Preliminary Results of the Reaffirmation Project*, March 5, 1999).

Keeping bankrupt families on the hook for credit card debts; the "exceptions to discharge"

Proponents of overhauling the consumer bankruptcy system have offered assurances that the new "means test" and other proposed changes preserve the bankruptcy system for honest working families who use bankruptcy as a last resort. S. 625 does not live up to that promise. One reason relates to the treatment of credit card debt. Under the pretext of addressing fraud and deterring eve-of-bankruptcy purchase of "luxury goods" (which current bankruptcy law addresses already), S. 625 limits the ability of debtors to be relieved of liability for certain consumer debts. When put into practice, these provisions may not do much to deter fraud, but they will prevent many families from getting relief from their credit card debts, compounded interest, and late charges -- even if these families did not act in bad faith or purchase luxury goods. Thus, the legislation may preserve access to chapter 7 bankruptcy for families who cannot pay their debts, but many of those families will emerge from the bankruptcy system still encumbered with high interest consumer debt and will continue to struggle with debt problems. To put this result in more graphic terms, a person doubled over in pain will still have access to the emergency room, but the doctor will send him home with a bursting appendix.

Consumer debt relief is one of the fundamental purposes of bankruptcy. When the head of a household gets laid off, he may be able to find a lower-paying job and downsize his expenses going forward, but may have no hope of repaying debts incurred when he had a higher salary. By filing for chapter 7 bankruptcy, he agrees to forfeit to his creditors any assets (other than those that state or federal law allows him to keep) in exchange for a release of liability for most debts. This release of legal liability, known as the "discharge," permits the debtor's family to focus its more limited resources going forward on housing, food, and other basic necessities.

When the bankruptcy laws prevent a particular type of debt from being discharged in bankruptcy, there usually is a reason for this different treatment. Some debts are not discharged if there is a societal need for repayment (child support, taxes), while others are not discharged if the debtor engaged in some sort of bad faith or egregious activity (willful and malicious injury, fraud, embezzlement). Bankruptcy laws are otherwise expected to provide equal treatment to creditors with similar legal rights.

To establish that a debt should remain collectible after a debtor has completed the bankruptcy process, a creditor generally has the legal burden to prove that the debt fits one of the exceptions to discharge. In practice, however, individuals in financial trouble often cannot afford to defend a lawsuit over the debt. Litigating the dispute may cost more than the debt itself and there is no guarantee that the debtor will win even if he is innocent. Individuals and families in bankruptcy therefore have the propensity to respond to threats of lawsuits by agreeing to repay debts (sometimes through a "reaffirmation agreement") before the dispute ever gets before a judge, even if they did not do anything wrong.¹

Under S. 625, credit card companies will be able to collect more of their debts after a bankruptcy case ends. The consumer credit industry has asked Congress to expand the "exceptions to discharge"

¹ A representative of one credit card company reported several years ago that it settled 80-90% of its allegations out of court. In most cases, the debtor agreed to pay the debt after the bankruptcy case was over. Debra Sparks, *Got an AT&T Card? Don't Go Bankrupt; The Company Is Quick to Charge Down-and-Out Debtors With Fraud. Too Quick?* Business Week (Sept. 15, 1997).

so lenders can challenge more families and collect more debts after the bankruptcy cases are over. S. 625 provides that an individual presumptively cannot discharge in bankruptcy cash advances on credit cards, aggregating more than \$750, that are taken for any purpose within 70 days before filing for bankruptcy. S. 625 also provides that an individual presumptively cannot discharge credit card debts exceeding \$250 if the credit card company alleges that the purchases were made for "luxury goods or services" within 90 days before bankruptcy.² In addition, the debtor may remain liable to repay credit card debts and cash advances that may have been incurred to pay specific types of obligations. The stated justification for these provisions is that individuals should not be able to "load up" on luxury goods or otherwise abuse their credit privileges with the intent to shed those obligations in bankruptcy. That sounds reasonable, but it already is the law today.

In practice, these new provisions may not do much to prevent abuse beyond what current law already provides, but they will make it much easier for credit card companies to allege that their debts cannot be discharged in bankruptcy.³ Given that most financially-pressed families in bankruptcy cannot afford to defend against these lawsuits in court, the effect of the changes will be to keep those families on the hook for more of their high interest consumer debts, making it much harder for these families to get back on their financial feet.⁴

Enhancing the rights of credit card lenders to collect more debts after bankruptcy also weakens protections for other types of creditors, such as child support recipients, who Congress previously determined need a bit more help in collection. As many advocates for women and children have stated, concern about this weakened protection is produced by the realities of debt collection, not legal intricacies. Unlike consumer lenders, support recipients do not have collection departments, do not charge high default rates of interest, and cannot diversify their loan portfolios to protect themselves.

Ensuring that more credit card debt remains collectible after debtors emerge from bankruptcy will have other effects that reach far beyond the limits of the bankruptcy system: it encourages more risky lending to consumers, including those already in deep financial trouble.⁵ If these provisions become law, we can expect to find even more credit offers in the mailboxes of America's most economically-stretched families.

² These changes also affect chapter 13 debtors, who may remain liable for leftover credit card debt and accrued interest even after they have committed every penny of income to a 5-year repayment plan.

³ The creditors most likely to take advantage of these provisions are credit card lenders and large national retailers. Small business creditors probably will not benefit unless they can afford to monitor the bankruptcy courts, challenge each debtor, and negotiate a settlement.

⁴ S. 625 contains a provision that could, with some revisions, prohibit threats of these law suits. However, in its current form, the provision instead protects creditors who threaten debtors with nonmeritorious lawsuits as long as those threats include a recitation of the creditor's legal rights.

⁵ See generally David A. Moss and Gibbs A. Johnson, *The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both?* Harvard Business School Working Paper 98-104 p. 46 (1998) ("[W]hen lenders are more sensitive than borrowers to changes in the bankruptcy law, a tightening of the rules could very well lead to greater availability of credit (particularly for lower income borrowers) and ultimately to an increase in filings").

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in bankruptcy law

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June, 1999

Issue No. 6

EDITORIAL: WHY DOES CONGRESS WANT TO KILL CHAPTER 13?

Bankruptcy Reform has been Carjacked

"People should pay their debts if they can." (Hon. Edith Jones, quoted in BCD Vol 33 March 30, 1999).

This is the mantra of the credit community since the Bankruptcy Review Commission completed its work in 1997. And you hear the same refrain every time Senator Grassley or Congressman Gekas is interviewed about Bankruptcy Reform.

But listen closely: the pitch of this debate has shifted. "Means testing" is what brought the chorus of creditors together. But Bankruptcy Reform has been taken over by a sub-group within the credit community that sings a very different version of "debtors who can pay, should pay."

Bankruptcy Reform has been hijacked by the car lenders.

Car lenders don't really care whether debtors are "means tested" for a few more bucks. What car lenders really care about is that car loans ride through bankruptcy, without modification and without strip down. Right now, car lenders get almost what they want in Chapter 7 cases by reaffirmation. But Chapter 13 is a problem—current law limits a car lender's recovery at confirmation to the ephemeral replacement value of the car. Car lenders want contract protection in Chapter 13 cases. To get from here to there, the car lenders have positioned Congress to destroy Chapter 13.

In the name of making debtors pay who can, H.R. 833 and S. 625 do small things to move debtors out of Chapter 7. But without a breath of explanation, these bills tear the heart out of Chapter 13—secured creditors will get 100% of contract principal and interest and attorney's fees without regard to the value of collateral for anything the debtors bought in the last five years.

The result of that change? Essentially all the money that currently goes to unsecured creditors in Chapter 13 cases will be paid to secured creditors—not to the exspouse, not to the credit card lenders, not to the people this Bankruptcy Reform was supposed to help. The Make 'em Pay dividend and then some will be needed to fund the inflated claims of secured creditors. Does Visa understand that their Bankruptcy Reform has been carjacked?

If you don't believe it, take a look at the study of S. 625 on the ABI's web page. Chapter 13 trustees sampled

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NORTON BANKRUPTCY LAW ADVISER

bankruptcy filings in 13 districts for the month of January, 1999, and applied S. 625 to those filings. Right off the top, more than 20% of existing Chapter 13 cases could not be confirmed under S. 625 and the debtors would simply be ineligible for Chapter 13 relief. Nearly half of the confirmable Chapter 13 cases would pay substantially less to unsecured creditors than under current law. The average loss to unsecured creditors under S. 625 would be \$3,210 per case! System wide losses for unsecured creditors in Chapter 13 cases under S. 625 would be more than \$100,000,000 per year.

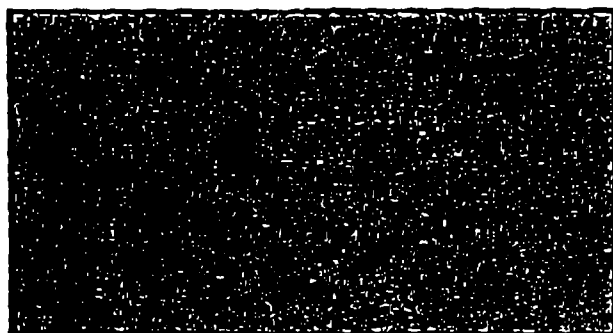
And who gets that \$100,000,000? You guessed it. Most of it will go to the car lenders. Under S. 625, they get a higher value for their cars than under current law. They get mandatory adequate protection payments until after confirmation. And then they get their full contract rights to principal, interest and collection costs for all loans less than five years old.

H.R. 833 and S. 625 aren't about squeezing a few more dollars out of debtors who can pay. These bills are about moving hundreds of millions of dollars out of the pockets of unsecured creditors in consumer bankruptcy cases and into the hands of car lenders. This is such a bad idea that it is almost unimaginable that it is now so close to passage. Well-meaning advocates of Bankruptcy Reform have touted Chapter 13 as the "good part" of the bankruptcy system that ought to be cultivated and enhanced. Does Congress know that it is getting ready to do just the opposite—kill Chapter 13? In addition to eliminating strip down, the legislation requires impossibly large adequate protection payments, reduces the codebtor stay protection in § 1301, narrows the discharge in Chapter 13 cases, increases the penalties for trying and failing in a Chapter 13 case, and requires longer plans and constant reconsideration of the amount debtors must pay into their plans. What these bills leave of Chapter 13 is almost impossible to navigate.

H.R. 833 and S. 625 are a hideous perversion of Bankruptcy Reform. The folks who started this rush toward Bankruptcy Reform should be ashamed for allowing themselves to be so used by a handful of car lenders. If anything like H.R. 833 or S. 625 passes, Bankruptcy Reform will show its true colors in a year or two—distributions to unsecured creditors in Chapter 13 cases will disappear and the car lenders will be driving away with whatever means gets tested out of debtors. It's not too late to stop this madness. Is anybody listening?

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VERN COUNTRYMAN

By Gerald K. Smith,
Lewis & Roca, Phoenix, AZ

Vern Countryman, Royall Professor of Law, Emeritus at Harvard Law School, passed away on May 2, 1999, in Cambridge, Massachusetts. He was 81. Although interested in many areas of law, his impact on bankruptcy and commercial law was enormous. His *Executory Contracts in Bankruptcy*, 57 *Minn. L. Rev.* 439 (1973), was so frequently cited that he was referred to as "Countryman on Executory Contracts."

When I learned of his death, memories flooded my mind, but the one that stood out was the time I introduced him to jigging for Pinto and Grouper in the Sea of Cortez. My fishing companions were salty, down-to-earth westerners and Vern never missed a beat. He was perfectly at ease and enjoyed himself immensely, even though his main contribution was to keep us supplied with small bait fish which he had a knack for catching. Later that year and for much of the next year Vern and I worked together on projects for the first Commission on the Bankruptcy Laws of the United States. We drafted a number of the sub-

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The Associated Press State & Local Wire

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SECTION: State and Regional

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HEADLINE: Senate adopts measure that would supersede states' unlimited homestead exemption

BYLINE: By MICHELLE MITTELSTADT, Associated Press Writer

DATELINE: WASHINGTON

BODY:

The generous homestead exemption offered in South Dakota and four other states would be superseded by a new federal limit under a measure the Senate approved Wednesday, which would allow debtors to shield a maximum \$100,000 in home equity from their creditors.

While considering legislation that would overhaul the nation's consumer **bankruptcy** laws, the Senate endorsed an amendment that would replace states' varying homestead exemptions with a uniform \$100,000 federal cap.

Texas, Florida, Kansas, Iowa and South Dakota now have unlimited homestead exemptions.

Texas Gov. George W. **Bush** and other state lawmakers have opposed limiting Texas' cherished **homestead** protection, which allows debtors to protect their homes and ranches from seizure, regardless of value.

Critics termed the unlimited **homestead** exemption an unfair loophole that wealthy deadbeats have exploited to shield their assets before filing for **bankruptcy**, using Texas and Florida in particular as havens to buy real estate and dodge debts.

"Our proposal closes an inexcusable loophole that allows too many debtors to keep their luxury homes while their legitimate creditors ... get left out in the cold," said Sen. Herb Kohl, D-Wisc., who teamed with Sen. Jeff Sessions, R-Ala., to offer the homestead cap.

Opponents said a federal limit infringes on states' historic ability to set their own homestead exemptions, doesn't take into account states' differing property values, and would harm family farmers subject to the vagaries of the



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market.

"There's a sanctity about the issue of the homestead. That's why it was built into our state Constitution," said Sen. Sam Brownback, R-Kan., who unsuccessfully sought to blunt the federal cap.

The **bankruptcy** bill's author, Sen. Charles Grassley, acknowledged the "noble purpose" of homestead protections that allow people to keep a roof over their heads even in times of financial difficulty.

But, the Iowa Republican added: "This noble idea has been perverted by rich scoundrels and well-paid **bankruptcy** lawyers."

Among the examples cited by Sessions and Kohl was the case of actor Burt Reynolds, who kept his \$2.5 million Florida estate after filing for **bankruptcy** and declaring more than \$10 million in debts.

"Anyone who wants to take advantage of the federal **bankruptcy** system should live with a federal \$100,000 cap," said Kohl.

The cap was approved on a 76-22 vote after senators rejected, 69-29, an amendment by Brownback and Sen. Kay Bailey Hutchison, R-Texas, that would have allowed states to opt out of the federal limit.

"What is being attempted here by Sen. Kohl and others ... is to take a right away from states that they've had for over a hundred years," Brownback said. "It's contrary to states' rights."

Kohl and Sessions noted that **bankruptcy** law is a federal purview in which states have little say.

Countering the use of Reynolds as a "poster boy" for the homestead exemption, Brownback cited the examples of two Kansas farming families which emerged from **bankruptcy** and returned to fiscal health because they were able to hold onto their farming properties.

"This is very harmful to family farmers, many of which have used these homestead exemptions during times of bad commodity prices," Brownback said.

The Senate **bankruptcy** bill is aimed at preventing thousands of people who could pay their debts from claiming Chapter 7 **bankruptcy** protection, in which debts are simply written off. Last year, nearly three-quarters of the 1.4 million consumer **bankruptcies** were filed under Chapter 7.

A **bankruptcy** reform bill the House approved in May would cap homestead exemptions at \$250,000 but allow states to opt out if they pass new laws to do so.

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July 25, 1999, Sunday

SECTION: Editorial; Pg. H2

LENGTH: 578 words

HEADLINE: Homestead protection popular, not populist

BODY:

When it comes to their homesteads, don't mess with Texans.

Texas congressional leaders vigorously oppose federal attempts to limit an unusual state law that prevents debtors from losing the equity in their homes in **bankruptcy** proceedings.

Texas is one of five states that offers unlimited homestead protection to the bankrupt. The century-old constitutional exemption reflects Texas' historic support of private property rights and its populist past.

But a recent federal study by the federal General Accounting Office indicates that the exemption is more popular than populist. Primarily it is the refuge of a few high-living debtors, not the schoolteachers and small farmers it was intended to protect.

Texas political leaders need to heed the report and consider some limits.

Last year, the Texas congressional delegation helped defeat a \$100,000 limit on the home equity (market value minus mortgage debt) that could be sheltered during **bankruptcy**. A uniform limit, of \$100,000, is being proposed in the U.S. Senate. Such a limit would adequately protect all but a tiny percentage of Texas debtors.

Of the approximately 14,000 Chapter 7 **bankruptcy** cases closed in the Northern District of Texas in 1998, about half involved a homestead exemption claim, GAO found. But only 83 of those claims, or just over 1 percent, involved more than \$100,000 in home equity.

Texas' unlimited protection is subject to abuses, such as the case of a **bankruptcy** attorney who protected \$386,000 in homestead assets while seeking to escape \$1.5 million in debts. Some debtors who plan to file for **bankruptcy** preemptively shield assets from seizure by investing in an expensive home.

While even the bankrupt need and deserve a roof over their heads, gross abuses of the **bankruptcy** system shouldn't be tolerated. Besides the unfairness, overly generous state laws threaten lenders, who then raise lending rates for other consumers.



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The U.S. Constitution gives the federal government supremacy over the states in **bankruptcy** matters, so arguments that the federal government should let states do as they wish on this particular facet of **bankruptcy** law make little sense.

Congress has long debated reform of federal **bankruptcy** laws, which debt-happy consumers have been using in large numbers. American consumer debt totals more than \$1 trillion, according to the Federal Reserve. And uncollected debt is rising.

Consumer advocates have criticized **bankruptcy** reform legislation for being skewed in favor of creditors and high-rolling debtors.

Though he supports the state exemption for homesteads, Sen. Phil Gramm, R-Texas, says it should be modernized to prevent abuses. "I do not support allowing people to go by the real estate office to buy a \$7 million house before they go by the law office to declare **bankruptcy**," he said in an interview with the American-Statesman last week.

Gramm says one solution would be to allow the exemption only if the home purchase preceded the **bankruptcy** filing by a certain length of time.

The state's **homestead** protection law has bipartisan support, from Gov. George W. **Bush** to U.S. Rep. Sheila Jackson Lee, D-Houston

State officials in Austin and Washington should at least be willing to discuss limiting **homestead** protection. A few well-heeled and clever **bankruptcy** filers shouldn't be able to mess over a state law designed to protect average Texans.

That mocks the state's much-celebrated populist image.

LOAD-DATE: July 26, 1999



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The Associated Press State & Local Wire

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November 3, 1999, Wednesday, PM cycle

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LENGTH: 892 words

HEADLINE: Voters approved 13 of 17 amendments

BYLINE: By JIM VERTUNO, MICHAEL HOLMES, Associated Press Writers

DATELINE: AUSTIN

BODY:

Given their chance to make law, a small percentage of Texas voters approved 13 of 17 amendments to the state's 123-year-old constitution.

Of Texas' 11.4 million registered voters, only 950,418 or 8.3 percent cast ballots in Tuesday's off-year election. Ninety-nine percent of precincts were reporting.

Two of the four rejected amendments involved pay for public officials.

One would have created a judicial compensation commission to recommend salary increases for state judges; the second would have allowed state employees to be paid when serving on local government boards.

Voters also said "no" to two proposals to expand the governor's appointment powers.

Opponents of the judicial compensation commission, Proposition 9, said elected officials - the Legislature, not an appointed panel - should determine how much judges are paid from taxpayers' money.

Legislators' pensions are tied to the salaries of district judges, and the amendment would have allowed those pensions to be raised without either chamber voting.

Opponents of Proposition 5, the state employees amendment, said state workers already are paid by taxpayers and would be dipping into public pockets twice.

The other two rejected propositions, 8 and 10, would have seen the adjutant general and the state health and human services commissioner serve at the pleasure of the governor. With the defeats, those posts will remain two-year



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appointments confirmed by the Texas Senate.

The amendments approved included one to clarify who replaces the governor if there's a vacancy in the state's top job and another to expand the maximum size of urban **homesteads** to 10 acres.

Proposition 1 specifies that the lieutenant governor would fill a permanent vacancy in the governor's office.

The amendment could be useful fairly soon if Republican Gov. George W. **Bush** is successful in his bid for the White House next year.

The amendment requires the lieutenant governor to forfeit that office if he or she fills a permanent vacancy in governor's office.

The post of lieutenant governor - the presiding officer of the Texas Senate - then would be filled within 30 days by an election among the 31 senators.

The constitution, written in 1876, had said that in the case of a gubernatorial vacancy, the lieutenant governor "exercises the powers and authority" of the governor.

Backers of the amendment said it was needed to provide certainty for the succession of the governor's office and make it clear that a lieutenant governor who moves up to fill a permanent vacancy for governor cannot hold both offices.

Opponents said the amendment was unnecessary because in the past, the lieutenant governor has become governor and a senator has filled his place without problems.

In all four previous successions, the lieutenant governor had assumed the actual office of governor, not just the power and responsibility.

Voters also approved Proposition 6, which allows the expansion of urban homesteads from one acre to 10.

Supporters say it will give more Texans the right and freedom to use their own property as security for a loan and that most who would benefit are not wealthy but own too much land to qualify under the original restrictions.

Opponents said the expansion would benefit wealthy people and would encourage some to buy expensive homes and then file for **bankruptcy** knowing their property would be protected from most creditors.

Also approved were:

- Proposition 2: Revising current provisions that authorize reverse mortgages, in which borrowers over age 62 can get payments or a lump sum secured by the equity in their homes.

- Proposition 3: Eliminating outdated and duplicative portions of the constitution, such as the authority of a governor to protect the frontier from hostile incursions by Indians and other predatory bands.



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- Proposition 4: Allowing the Legislature to exempt from property taxes property owned by "primarily" charitable organizations rather than a "purely public charity."

- Proposition 7: Allowing garnishment of wages to enforce court-ordered spousal maintenance.

- Proposition 11: Allowing political subdivisions to buy nonassessable property and casualty insurance from mutual insurers.

- Proposition 12: Giving the Legislature power to exempt vehicles leased for personal use from property taxes.

- Proposition 13: Authorizing another \$400 million in bonds for college student loans.

- Proposition 14: Allowing state boards to have an odd number of three or more members.

- Proposition 15: Permitting spouses to convert separate property to community property.

- Proposition 16: Giving counties more flexibility in determining the numbers of justices of the peace and constables they have.

- Proposition 17: Giving regents of the University of Texas and Texas A&M University systems more flexibility in managing assets of the Permanent University Fund.

According to the House Research Organization, ratified amendments take effect when the official vote canvass confirms the election results, unless a later date is specified. Results are tabulated by the secretary of state and canvassed by the governor 15 to 30 days following the election.

With the ratification of 13 more amendments Tuesday, the Texas Constitution now has been amended 390 times since its adoption.

LANGUAGE: ENGLISH

LOAD-DATE: November 4, 1999



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TOP TEN CONSUMER PROBLEMS WITH THE SENATE BANKRUPTCY BILL

1. The Payment of Child Support is Compromised

***The cramdown provision [see 3 below] will preserve substantially more secured debt-- which will leave less for child support.**

***The nondischargeability provisions [see 4 below] will allow more credit card and other debt to survive and compete with child support.**

***The reaffirmation provision [see 5 below] will allow more debt to survive and compete with child support.**

2. The Means Test [Sec 102] is arbitrary and rigid, based on IRS standards which do not take into account individual family circumstances. It disfavors renters and individuals who rely on public transportation and unduly favors owners of homes and brand new cars. Debtor families would be forced to 'litigate' their right to stay in Chapter 7, something most will not have the resources to do. It does not have an effective safe harbor to protect low-income families. At the same time, the means test is highly susceptible to manipulation by sophisticated debtors.

3. The Cramdown provision [Sec 306] will make it more difficult for a Chapter 13 plan to be confirmed, adding to the already high failure rate and, making it impossible for people to save their homes and cars.

4. The nondischargeability provisions [Sec 310 & 314] will preserve credit card debt. While these provisions purport to only create a presumption of nondischargeability, debtors will not have the resources to defend against creditor motions. There is no compelling public policy reason to expand nondischargeability further.

5. The reaffirmation provision [Sec 204] does not give adequate protection against creditor coercion. While the debtor is entitled to a hearing regarding a re-affirmation, this requirement is easily waivable. In fact, the bill gives creditors new opportunities to coerce reaffirmations by threatening to repossess household goods. Given the recent history of large class action settlements and the Sears criminal case, reform of the current Code is needed.

6. The consumer disclosure provisions found in last year's Senate bill are absent. Disclosure of the consequences of making minimum payments for an individual debtor was a part of last year's bill and is endorsed by consumer groups and others. This disclosure is essential to encouraging consumers to use credit wisely.

7. Provisions to guard against creditor abuses found in last year's bill are absent. Last year's bill disallowed credit claims where credit was extended under terms that violated the truth in Lending Act [including the failure to make certain disclosures and other predatory mortgage lending practices]. The bill also prevented certain creditor practices [including the imposition of fees] when debtors pay their bills on time and don't incur finance charges. Not one of the 14 significant consumer protections from Title II of last year's bill is in S.625.

8. Section 311 would allow landlords to evict debtors without first seeking court permission, even if the debtor is paying current rent and is catching up on past-due rent.

9. There is no fee waiver for indigent debtors. Last year's Senate bill allowed the court to waive the filing fee. A federal pilot program has found that fee waiver works well.

10. The pre-bankruptcy credit counseling and education provisions--however well-intended-- will not work and could lead to evictions, utility shut-offs and other such consequences. The bill allows no judicial discretion to waive the requirement in emergency situations or where debtors can't afford to pay for the counseling or education courses.

THE WHITE HOUSE

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**Discussion Draft of Republican House Offer
(as of May 3, 2000)**

The House accepts the draft Senate offer, dated April 6, 2000, with the following modifications:

Section ¹	Description	Execution
§ 102(a)(2)(C) & (b)(2) - Means Test Monetary Threshold	The monetary floor for the means test should be the lower of 15% of general unsecured claims or \$10,000, with a minimum monthly threshold of not less than \$100 per month.	On page 11, strike lines 19 through 21 and replace with the following: “(I) 15 percent of the debtor’s nonpriority unsecured claims in the case; or “(II) \$10,000; “but in no event less than \$6,000.” Make the same changes to page 14, lines 16 through 18, and to page 18, lines 16 through 18.

¹ All section references are to the draft Senate offer (dated April 6, 2000), unless otherwise specified.

§ 102(a)(2)(C) -
Administrative Expenses
and Reasonable Attorneys'
Fees

House by.
p. 15

Accept a revised version of the Senate offer. The revision would increase the cap to 10% with the limitation that it not apply to secured debts paid under a plan. In addition, the House offer would include clarifying language that if the Chapter 13 debtor is unable to propose a confirmable plan or has less than \$100 dollars available per month to fund a plan and the Chapter 13 case is subsequently converted to Chapter 7, the debtor would not be subject to a motion under Section 707(b)(2).

On page 12, line 20, strike the sentence beginning with "In addition" and replace it with the following:

"In addition, the debtor's monthly expenses may include administrative expenses of a Chapter 13 plan up to an amount of 10 percent of projected plan payments, but not including projected plan payments made on secured debt."

On page 15, line 16, add the following:

"(3) by adding at the end of section 707 the following:

"(c) A case under this Chapter shall not be subject to conversion under subsection (b)(2) if the case was previously converted to a case under Chapter 13 under subsection (b)(2) and -

"(1) the debtor was unable to effectuate a plan pursuant to Section 1322;

"(2) confirmation of the plan was denied under Section 1325; or

"(3) the plan proposed to pay less than \$100 per month to general unsecured creditors because actual administrative expenses and reasonable attorneys' fees, when divided by 60 months, exceeded projected administrative expenses and reasonable attorneys' fees, as determined under subsection (b)(2)(A)(ii)(II)."

§ 102(a)(2)(C) - Rebuttal of
the Presumption of Abuse

The presumption of abuse may only be rebutted by demonstrating special circumstances that require additional expenses or adjustments to income. Thus, the House accepts the Senate offer in so far as it provides that the presumption of abuse may "only" (House language) be rebutted by "special circumstances" (Senate language). In addition, the word "justify" in the Senate offer is replaced with the term "require".

On page 13, line 20, replace the word "justify" with "require".

§ 102(a)(2)(C) - Educational Expenses	Actual reasonable and necessary expenses of a dependent child under the age of 18 years to attend a private elementary or secondary school are deemed to be special circumstances.	On page 13, line 21, before the period, add the following: ““, except that actual expenses of a dependent child under the age of 18 years to attend a private elementary or secondary school shall be deemed to be a special circumstance if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary.”
§ 102(a)(2)(C) - Bankruptcy Rules and Forms	Codify as an amendment to Title 28 of the United States Code.	Revise lines 1 through 4 on page 15 to be an amendment to Title 28 of the United States Code.
§ 102(b)(1) - Definition of Current Monthly Income	Change determination period from 180 days to six months.	On page 16, line 1, strike “180-day” and replace with “6-month”.
§ 102(b)(2)(B) - Income Standard and Adjustment for Households in Excess of Four Persons	The income standard should be the applicable “national median household monthly income” rather than the state median income. For households in excess of four persons, the monthly adjustment should be \$300 per person.	On page 17, lines 13 through 18, replace with the following: “(A) in the case of a household of 1 person, the national median household income last reported by the Census Bureau for one earner. “(B) in the case of a household of two, three or four individuals, the applicable national median household income last reported by the Census Bureau for a household of equal size; or “(C) in the case of a household of more than four individuals, the monthly national median household income shall be that of a household of four individuals plus \$ 300 for each additional member of that household.”
§ 102(b)(2)(B) - Discretionary Motions To Dismiss Based on Income	Delete this provision from the Senate offer.	Strike page 17, line 19, through page 18, line 18.
§ 102(b)(2)(B) - Certification by Debtor's Attorney	Accept the Senate offer, but include provision for a separate certification for schedules that would require the attorney to state that he or she has no knowledge, after reasonable inquiry under the circumstances, that the information they contain is incorrect.	On page 19, line 22, add the following: “(D) The signature of an attorney on the debtor's schedules shall constitute a certificate that the attorney has no knowledge that the information in the schedules is incorrect after an inquiry reasonable under the circumstances.”

§ 102(b)(2)(B) - Sanctions for Inappropriate Section 707(b) Motions	Revise the Senate offer to use Rule 9011, instead of a "substantially justified" standard. UNRESOLVED: Exception for a party in interest having a claim of less than \$1,000. <i>Small Bus. Int. est. Act ?</i>	On page 20, line 7, strike "was not substantially justified" with "violated Rule 9011". EITHER: Strike language appearing on page 20, lines 11 through 13. OR: Strike language appearing on page 20, lines 11 through 13, and replace with the following: "(B) A small business that is independently owned and operated, has annual receipts of less than \$500,000, and has less than 20 full time employees, shall not be subject to subparagraph (A)(ii)(I).
§ 102(b)(2)(B) - Safe Harbor	There should be an absolute safe harbor for debtors with below median incomes with respect to motions to dismiss based on ability to repay under Section 707(b)(2). The income standard should be national and include a \$300 monthly monetary adjustment for households with more than four individuals.	Replace language on page 20, line 14, through page 21, line 9, with language derived from the House bill at page 10, lines 6 - 16, as follows: "(5) No judge, United States trustee, bankruptcy administrator, trustee or other party in interest shall bring a motion under this paragraph if the debtor and the debtor's spouse combined, as of the date of the order for relief, have current monthly income equal to or less than the national median household monthly income last reported by the Census Bureau for a household of equal size. In the case of a household of 1 person, the applicable standard shall be the national median household income last reported for one earner. In the case of a household of more than four individuals, the monthly national median income shall be that of a household of four individuals plus \$300 for each additional member of such household."
§ 102(c) - Nonlimitation of Information	Accept the Senate offer, but clarify that it excludes <i>ex parte</i> communications to a judge.	On page 21, line 12, after the "judge" add "(except for information communicated <i>ex parte</i>)".
§ 102(d) - Dismissal for Certain Crimes	Accept a revised version of the Senate provision.	On page 22, lines 1 through 2, strike ", or at the request of a party in interest," and replace with "may, when it is in the best interest of the victims".

shall

HOUSE § 102(f) [no Senate counterpart] - Good Faith Requirement to File Chapter 13 Case	The Senate offer should include this provision from the House bill.	On page 22, after line 9, add the following: "(e) CHAPTER 13- Section 1325(a) of title 11, United States Code, is amended— "(1) in paragraph (5) by striking 'and' at the end: "(2) in paragraph (6) by striking the period and inserting ': and': and "(3) by inserting the following after paragraph (6): "(7) the action of the debtor in filing the petition under this chapter was in good faith."
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§ 104 - Notice of Alternatives	Replace the Senate offer with Section 103 of the House bill.	Strike language on page 23, line 16, through page 24, line 8, and replace Section 103 of the House bill as follows: "Section 342(b) of title 11, United States Code, is amended to read as follows: "(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing-- "(1) a brief description of-- "(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and "(B) the types of services available from credit counseling agencies; and "(2) statements specifying that-- "(A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both; and "(B) all information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General."
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HOUSE § 130 (no Senate counterpart) - Apply IRS Expense Standards to Chapter 13 Debtors

Offer a revised version of the House provision, which would make IRS expense standards applicable only to Chapter 13 debtors with above median incomes.

On page 22, after line 9, add the following:

“(f) Applicability of Means Test to Chapter 13. — Section 1325(b) of title 11, United States Code, is amended—

“(1) in paragraph (1), by inserting ‘to unsecured creditors’ after ‘to make payments’

“(2) in paragraph (2)—

“(A) by inserting ‘current monthly’ before ‘income’;

“(B) by striking ‘and which is not’ and inserting ‘less amounts’;

“(C) by inserting after ‘received by the debtor’, ‘(other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law and which is reasonably necessary to be expended)’; and

“(D) in subparagraph (A) by inserting after ‘dependent of the debtor’ the following: ‘, as determined in accordance with section 707(b)(2)(A) and (B), if the debtor has currently monthly income greater than —

“(i) in the case of a household of 1 person, the national median household income last reported by the Census Bureau for one earner;

“(ii) in the case of a household of two, three or four individuals, the applicable national median household income last reported by the Census Bureau for a household of equal size; or

“(iii) in the case of a household of more than four individuals, the monthly national median household income shall be that of a household of four individuals plus \$ 300 for each additional member of that household.”

On page 22, line 10, change “(e)” to “(g)”.

**§ 103 - Congressional
Finding Regarding the
Treasury Department's
Authority To Modify IRS
Expense Guidelines**

Delete the findings provision of the Senate and its study provision with a modified version of language appearing in Section 102 of the House bill.

On page 22, line 14, strike "Findings".

Strike language appearing on page 22, line 15, through page 23, line 15, and replace with the following:

"Not later than 2 years after the date of the enactment of the Bankruptcy Reform Act of 1999, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, containing its findings regarding the utilization of the Internal Revenue Service standards for determining the current monthly expenses under section 707(b)(1)(A)(ii) of title 11, United States Code, of debtors and the impact that the application of such standards has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to such title, consistent with the Director's findings."

**§ 106 - Financial
Management Training and
Credit Counseling**

Include the House exception regarding Chapter 7 debtors; delete the Senate provision limiting a credit counseling agency's liability for willful or negligent actions; include a provision requiring the U.S. Trustee and Bankruptcy Administrator to investigate the qualifications of a counseling agency and to allow a person to challenge an award or denial of certification; and include the House's standards.

On page 29, line 2, delete the quotation marks and period and add the following:

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

Strike language on page 30, lines 11 through 25, and replace with the following language from Section 302(e)(1) of the House bill:

“(e) GENERAL PROVISIONS-

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

“Sec. 111. Credit counseling services; financial management instructional courses

“(a) The clerk of each district shall maintain a publicly available list of credit counseling agencies and of programs described in section 109(h) and instructional courses offered by such agencies currently approved by—

“(1) the United States Trustee; or

“(2) the bankruptcy administrator for the district.

“(b) The United States Trustee or bankruptcy administrator shall only approve credit counseling agencies which satisfy standards set in regulations promulgated by the Federal Trade Commission and which are accredited by the Council on Accreditation or an equivalent third party nonprofit accrediting organization.

CONTINUED:

"(c) The United States Trustee or bankruptcy administrator shall only approve programs or courses under subsection (a) if they satisfy standards set in regulations promulgated by the Executive Office of the United States Trustee. The Executive Office of the United States Trustee is authorized to promulgate regulations setting such standards.

"(d) The Federal Trade Commission shall have authority to promulgate regulations setting standards for credit counseling agencies for the purposes of subsection (b). Such standards shall establish minimum requirements for such agencies with respect to providing qualified counselors, safekeeping and payment of client funds, disclosure to clients, adequate counseling with respect to client credit problems, and such other matters as relate to the quality and financial security of such programs. Nothing in this provision shall limit the authority of the Federal Trade Commission pursuant to the Federal Trade Commission Act (15 U.S.C. 45 et seq.).

"(e) The United States Trustee or bankruptcy administrator may notify the clerk that a credit counseling agency, or a program or course, is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a)."

Strike language on page 31, line 1, beginning with the word "For" through the word "administrator" on line 3, and replace with "Such regulations".

Strike language on page 32, lines 11 through 19, and replace with the following:

"(c)(2) No credit counseling service or financial management training service may be approved until the United States trustee or bankruptcy administrator has thoroughly investigated the qualifications of such entities. A party in interest may seek review of any such approval or disapproval."

CONTINUED:

		"(2) REGULATIONS- The Federal Trade Commission and the Executive Office of United States Trustees shall promulgate regulations pursuant to the power delegated in this section within 180 days of the date of the enactment of this Act. "(3) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 1 of title 11, United States Code, is amended by adding at the end the following: "111. Credit counseling services; financial management instructional courses."
§ 201(a) - Permissive Reduction of Claims	Delete the Senate provision.	Strike language appearing on page 33, line 10, through page 34, line 15.
§ 202 - Violation of Discharge Injunction	Delete.	Strike language appearing on page 34, line 23, through page 35, line 6.
§ 203 - Reaffirmation Agreements	Unresolved	Options include, but are not limited to: (a) no provision, (b) the House provision, or (c) a revised version of the Senate provision as follows: On page 43, line 4, add after line 4 "(for reaffirmation agreements not subject to subsection (k), a period should be placed after the word "court" and the remainder of the sentence deleted)." On page 46, line 4, add the following: "(C) In the case of a reaffirmation agreement not subject to subsection (k), (B) is not applicable." On page 46, line 5, add "(A)" after "(6)" and on page 47, after line 3, add the following: "(B) Where the debtor is represented by counsel and is reaffirming a debt owed to a creditor defined in section 461(b)(1)(A)(iv) of title 12, United States Code, the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following: "I believe this agreement is my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement."
§ 216 - Continued Liability of Property for Domestic Support Obligations	Correct erroneous statutory cross reference in Senate offer.	On page 62, line 18, change "523(a)(4)" to "523(a)(5)".

§§ 302, 303 - Serial Filings and Residential Mortgages	Clarify that a mortgagee may request the court to issue an order confirming that the automatic stay has terminated upon the expiration of the 30-day period and require federal, state and local governmental units to accept <i>in rem</i> orders for recordation.	On page 99, between lines 9 and 10, add the following: "Add to the end of Section 362 the following subsection -- "(i) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has terminated." On page 100, line 9, strike "that recording" and replace with "the date of entry of such order by the court". On page 100, line 12, add the following language: "Any Federal, State, or local governmental unit which accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."
§ 303(c) - Waiver of Retirement Exemption	Delete.	Strike language appearing on page 101, line 15, through page 102, line 3.
§§ 304 & 305 - Treatment of Liens	Replace with Sections 119 and 120 of the House.	Strike Sections 304 and 305 on page 102, line 4, through page 106, line 14, and replace with Sections 119 and 120 of the House bill, which appear on page 57, line 17, through page 62, line 12, of the House bill.
§ 306(b) - Preventing Bifurcation of Personal Property	Extend the period for personalty (other than a motor vehicle) from six months to 18 months.	On page 107, line 19, replace "6-month" with "18-month".
§ 306(c) - Definition of Debtor's Principal Residence	Accept the Senate offer, but include language from Section 302(e) of the House bill regarding the number of units and reference to mobile homes.	On page 108, line 2, before the comma add the following: "when the structure contains 1 to 4 units". On page 108, line 5, before the semicolon add the following: "and includes, without limitation, an individual condominium or cooperative unit, a mobile or manufactured home, or trailer".
§§ 307 - Domiciliary Requirement for Homestead Exemption	Replace the Senate provision with Section 124 of the House bill.	Strike language on page 108, lines 21 through 25, and replace with Section 124 of the House bill, which appears on page 65, lines 3 through 14.

§ 309 - Adequate Protection Payments	Include House provision requiring maintenance of insurance and payment at the contract rate for certain secured claims.	On page 114, after line 16, add the following: “(4) On or before 60 days after the filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.” On page 113, strike lines 18 through 21, and replace with the following: “(B) make payments to a lessor of personal property for that portion of the obligation that becomes due after the case is filed; and “(C) make payments at the contract rate to any creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of that property by such debtor.”
§ 310 - Limitation on Luxury Goods and Services Requirement	Reduce amount in Senate offer to \$500 and retain 90-day provision. Delete the reference that appears in the cash advance provision to luxury goods and services.	On page 115, line 3, delete “for luxury goods or services”. On page 115, line 4, strike “\$750” and replace with “\$500”.
§ 311 - Exception to the Automatic Stay	Add to the Senate offer language from Section 136 of the House bill with respect to the McConville exception.	On page 116, at the end of line 21, add the following: “(26) under subsection (a) of any transfer that is not avoidable under section 544 of this title and that is not avoidable under section 549 of this title.”

§ 313 - Definition of Household Goods

Replace the Senate offer with compromise language.

UNRESOLVED

or compact disc player not to exceed \$425 in value in any particular item or \$700 in the aggregate;

in the debtor's principal residence for use of the debtor or the debtor's dependents (including without limitation minor children and elderly or disabled dependents)

Strike language appearing on page 117, line 14, through page 119, line 3, and replace with the following:

“(4) For purposes of paragraph (f)(1)(B)(i) –

“(A) subject to subparagraph (B), the term “household goods” means personal property of the debtor or the debtor’s dependents in the following categories:

“(i) food;

“(ii) medical equipment and supplies;

“(iii) toys, education, hobby and recreation equipment of minor dependent children of the debtor;

any radio, television, VCR, Tape recorder or player
“(iv) electronic equipment (including radios, televisions, VCRs) not in excess of \$1,000 in aggregate value;

“(v) one personal computer (including a monitor, modem and printer) for the use of the debtor or the debtor’s dependents not in excess of \$1,000 in aggregate value; 500

“(vi) kitchenware, including without limitation food preparation, cooking and storage containers; equipment

“(vii) household cleaning and maintenance equipment, and supplies, including repair and maintenance tools, and one lawnmower (of an original purchase price of not more than \$500); 500

“(viii) licenses;

“(ix) china and crockery;

“(x) flatware that is not commonly sold as sterling silver, gold or other precious metal;

“(xi) works of art (by or of the debtor or a dependent of the debtor) and other works of art items acquired as antiques that do not exceed in value \$150 individually or \$500 in the aggregate; and furniture (excluding carpets and window treatments)

“(xii) other personal property normally found in or around a residence not to exceed \$1,000 in aggregate value.”

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HOUSE § 802 [no Senate counterpart] - Notice to Government Creditors

Include a revised version of House Section 802

Include a portion of Section 802 (which deletes "safe harbor" references) as follows:

"SEC. __. EFFECTIVE NOTICE TO GOVERNMENT.

“(a) Effective Notice to Governmental Units - Section 342 of title 11, United States Code, as amended by section 603, is amended by adding at the end the following:

“(g) If a debtor lists a governmental unit as a creditor in a list or schedule, any notice required to be given by the debtor under this title, any rule, any applicable law, or any order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted. The debtor shall identify (with information such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, where applicable), and describe the underlying basis for the governmental unit's claim. If the debtor's liability to a governmental unit arises from a debt or obligation owed or incurred by another individual, entity, or organization, or under a different name, the debtor shall identify such individual, entity, organization, or name.

“(h) The clerk shall keep and update quarterly, in the form and manner as the Director of the Administrative Office of the United States Courts prescribes, and make available to debtors, a register in which a governmental unit may designate a mailing address for service of notice in cases pending in the district. A governmental unit may file a statement with the clerk designating an address to which notices are to be sent, unless such governmental unit files a notice of change of address.”

“(i) A notice that does not comply with subparagraph (g) shall be presumed to be ineffective unless the debtor demonstrates that timely notice was given in a manner reasonably calculated to satisfy the requirements of subparagraph (g) and that either —

“(1) the notice was timely sent to the address provided in the register maintained pursuant to subparagraph (h) by the clerk of the district in which the case was pending for such purchases; or

CONTINUED: P. 17 P. 18

		“(B) the term ‘household good’ does not include a motor vehicle (including a tractor or lawn tractor), boat, watercraft or aircraft.”
§ 314(a) - Debts Incurred To Pay Nondischargeable Debts	Replace the Senate offer with a revised version of Section 146 of the House bill that expands current law (Section 523(a)(14)) with regard to debts incurred to pay nondischargeable state and local taxes.	Strike the language on page 119, lines 6 through 24, and replace with the following: “(1) Section 523(a) of title 11, United States Code, is amended as follows: “(14A) incurred to pay a tax to a governmental unit, other than to the United States, that would be nondischargeable pursuant to paragraph (1).”
§ 314(b) - Nondischargeable Debts under Chapter 13	Revise the Senate offer to retain current law with respect to the nondischargeability of domestic support obligations.	Strike the language on page 120, lines 5 through 6, and replace with the following: “(2) of the kind specified in paragraph (2), (3), (4), (5), (8), or (9), of section 523(a).”
§ 315 - Notice to Creditors in Chapter 7 and 13 Cases	Accept the Senate offer, but require that the notice include account numbers specified by creditors, with an exception for debtors who lack this information.	On page 120, line 24, add “(1)” after (d). On page 121, line 5, after the word “address” add the following: “(2) If the creditor supplies the debtor, in both the creditor’s last communication and also by toll-free number, with the debtor’s current account number and the address at which the creditor wishes to receive correspondence, then the debtor shall include such account number in any required notice to the creditor and send the notice to the address provided by the creditor.”

§ 318 - Five-Year Chapter 13 Plans

Replace with a revised version of Section 606 of the House bill that limits its application to a debtor with above median income and clarifies that the five-year time period does not apply if the debtor can repay debts in less time.

Strike the language appearing on page 129, lines 8 through 22, and replace with the following.

“(d) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the applicable national median household income last reported by the Census Bureau for a household of equal size or, in the case of a household of one person, not less than the national median household income last reported by the Census Bureau for one earner, the plan may not provide for payments over a period that is longer than 5 years. If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than the applicable national median household income for a household of equal size, or in the case of a household of one person, the national median household income for one earner, the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years. The monthly national median household income for a household of more than four individuals shall be the national median household income last reported by the Census Bureau for a household of four individuals plus \$300 for each additional member of the household.”

“(2) in section 1325(b)(1)(B) –

“(A) by striking ‘three year period’ and inserting ‘applicable commitment period’; and

“(B) by inserting at the end of subparagraph (B) the following: ‘The ‘applicable commitment period’ shall be not less than 5 years if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the applicable national median household income last reported by the Census Bureau for a household of equal size, or in the case of a household of one person, the national median household income last reported by the Census Bureau for one earner. The national median household income

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change if 5y/12 3yr-plan

Fax Transmission
from the Office of the

***Senate Judiciary Committee
Subcommittee on Administrative
Oversight and the Courts***

Robert G. Torricelli, Ranking Member

**149 Senate Dirksen Building
Washington, DC 20510
Office: (202) 224-4022
Fax: (202) 224-8567**

To: Joel Wiegman

At Fax#: 456-6468

From: Sen. Frank Lautenberg

Date: 5/9

Pages Including This Cover Sheet: 42

Notes: As promised -

Part 2: pages 17-41

		for a household of more than four individuals shall be the monthly national median household income last reported by the Census Bureau for a household of four individuals plus \$300 for each additional member of the household. “(3) Notwithstanding subparagraph (B), the applicable commitment period may be less than 5 years if the plan provides for payment in full of all allowed unsecured claims over a period that is less than 5 years.” and “(3) in section 1329-- “(A) by striking in subsection (c) ‘three years’ and inserting ‘the applicable commitment period under section 1325(b)(1)(B)’; and “(B) by inserting at the end of subsection (c) the following: ‘The duration period shall be 5 years if the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is not less than the national median household income last reported by the Census Bureau for a household of equal or, in the case of a household of one person, the national median household income for one earner, as of the date of the modification, and shall be 3 years if the current monthly total income of the debtor and the debtor’s spouse combined, when multiplied by 12, is less than the applicable national median household income last reported by the Census Bureau for a household of equal size or, in the case of a household of one person, less than the national median household income for one earner as of the date of the modification. The national median household income for a family of more than four individuals shall be the national median household income last reported by the Census Bureau for a household of four individuals plus \$300 for each additional member of the household. Notwithstanding the foregoing, the applicable commitment period shall be less than 5 years if the plan provides for payment in full of all allowed unsecured claims over a period that is less than 5 years.’”
§ 321 - Amendment to Chapter 11 Cases of Individual Debtors	Retain a revised version of the Senate provision.	On page 131, line 19, add “(a)” before word “In”. On page 132, after line 6, add the following: “(b) Except as provided in Section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.” On page 133, line 16, change “3” to “5”.

§ 322 - Treatment of Employee Benefit Plan Funds	Retain the Senate provision.	Include language originally appearing on page 136, line 3, through page 137, line 14.
§ 324 - Limitation on Homestead Exemption	Replace the Senate provision with Section 147 of the House bill.	Strike language on page 138, line 3, through page 139, line 6, and replace with Section 147 of the House bill, appearing on page 100, line 14, through page 101, line 23.
§ 328 - Nondischargeability of Debts Concerning Abortion Clinics	Delete.	Strike language appearing on page 142, line 4, through page 144, line 8.
§ 401 - Rolling Stock and Aircraft Equipment	Delete as these provisions were signed into law on April 5, 2000 (Pub. L. 106-181).	Strike language appearing on page 144, line 14, through page 152, line 10.

**§ 405 - Nonresidential
Leases**

Modify the Senate offer by providing that the initial period by which a debtor/lessee must assume or reject a lease is initially 120 days, with provision for an additional 100-day extension. Include Section 217 of the House bill, which limits a lessor's administrative expense claim based on a lease that is assumed and then subsequently rejected.

On page 154, line 24, change "180" to "120".

Strike language appearing on page 155, line 3 through 4, and replace with the following:

“(B)(i) The court may extend the period determined under subparagraph (A) for 100 days upon motion of the trustee or the lessor for cause.

“(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor.”

At the appropriate location, add the following:

**“SEC. ____ PRIORITY FOR ADMINISTRATIVE
EXPENSES.**

“Section 503(b) of title 11, United States Code, is amended—

“(1) by deleting ‘and’ at the end of paragraph (5);

“(2) by striking the period at the end of paragraph (6) and inserting ‘; and’ and

“(3) by inserting the following after paragraph (6):

“(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or penalty provisions, for the period of one year following the later of the rejection date or date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor; and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6).”

§ 409 - Compensation of Professionals	Retain a revised version of this provision.	Strike the language appearing on page 157, line 17 beginning with “; and” through line 22 and replace with a period. Add the following: “Section 326 is amended by adding at the end the following: “(c) Subject to subsection (a), the court, in determining the amount of reasonable compensation to be awarded to a trustee, shall consider results achieved.”
§ 414 - Nondischargeability of Community Association F	Revise the Senate offer to include language from Section 214 of the House bill with respect to the period of time for which community association fees are nondischargeable.	Strike language appearing on page 160, lines 7 through 15, and replace with the following: “(4) by striking ‘but only’ and all that follows through ‘such period,’ and inserting ‘or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot.’”
§ 419 - Utility Service Provision	Delete this provision.	Strike the language appearing on page 163, line 6, through page 165, line 2.
§ 420 - Waiver of Filing Fees	Retain a revised version of the Senate offer.	On page 165, line 17, change “125” to “150”.
§ 431 - Disclosure Statement Requirements	Revise Senate offer to address implementation aspects per Section 401 of the House bill.	On page 167, after line 14, add the following: “(a) Section 1125(a)(1) of title 11, United States Code, is amended by inserting before the semicolon following: “and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.” On page 167, line 15, add “(b)” before the word “Section”. Strike the language appearing on page 167, lines 19 through 24. On page 168, line 1, change “(2)” to “(1)” and make similar conforming changes on that page.
§ 432 - Definition of Small Business Debtor	Correct drafting errors.	On page 169, line 6, after the word “person” add “engaged in commercial or business activities” On page 169, line 9, change “and” to “or”.

§ 436 - Duties of Chapter 11 Debtor	Retain a revised version of the Senate offer.	On page 174, line 16 through 17, strike "senior management personnel and counsel" and replace with "responsible individual and counsel, if applicable". Strike language appearing on page 174, line 20 beginning with the word "unless" through the word "circumstances" on line 23. On page 175, line 14, after the word "and" add the following: ""(C) subject to section 363(c)(2) of this title, establish one or more separate deposit accounts not later than 10 business days after the date of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof or a responsible time set by the court, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units unless the court waives this requirement after notice and hearing; and""
§ 437 - Plan Filing and Confirmation Deadlines	Replace the Senate provision with Section 407 of the House bill.	Strike language appearing on page 176, line 1, through page 177, line 2, and replace with Section 407 of the House bill appearing on page 158, line 15, through page 160, line 13.
§ 438 - Plan Confirmation Deadline	Replace the Senate offer with Section 408 of the House bill.	Strike language appearing on page 177, lines 3 through 9, and replace with Section 408 of the House bill appearing on page 160, line 14, through page 161, line 2.
§ 440 - Court Authority under Section 105	Retain a revised version of the Senate provision.	On page 179, line 21, strike language beginning with "and" through "Procedure," on line 24, and insert a semicolon before the end quote.
§ 441(2) - Serial Filings by Chapter 11 Debtors	Include a revised version of the Senate provision.	Strike language appearing on page 180, lines 14 through 20, and replace with the following: ""(k)(1) Except as provided in paragraph (2) of this subsection, the provisions of subsection (a) of this section shall not apply in a case in which the debtor-- "(A) is a debtor in a case under this title pending at the time the petition is filed;" On page 181, line 6, add the following after the word "to": "a case commenced by an involuntary petition pursuant to section 303 of this title by a creditor that is not an insider or affiliate of the debtor, or to"

§ 442 - Expanded Grounds for Dismissal or Conversion and the Appointment of a Trustee	Replace the Senate offer with Section 413 of the House bill.	Strike the language appearing on page 181, line 16, through page 185, line 7, and replace with Section 413 of the House bill appearing on page 165, line 18 through page 169, line 11.
HOUSE § 409 [no Senate counterpart] - Restriction on Court's Authority To Extend Certain Deadlines	Include Section 409 of the House bill.	At the appropriate location, include Section 409 of the House bill appearing on page 161, lines 3 through 12.
§ 704 - Tax Interest Rate	Technical revision.	On page 204, line 13, add "or on an administrative expense tax" after the word "claim". On page 204, line 16, delete "shall be".
§ 705 - Priority of Tax Claims	Technical revision.	On page 206, lines 11 through 12, strike the dash through "(i)" and on line 19, strike "(ii)".
§ 708 - Chapter 11 Discharge	Delete reference to Section 523(a)(2).	On page 207, line 16, strike "described in section 523(a)(2) or".
§ 710 - Tax Interest Rate Applicable in Chapter 11	Delete language regarding the interest rate or propose a compromise.	Strike the language appearing on page 208, lines 15 through 17.

§ 903 - Asset Backed Securities	Include additional revisions.	On page 327, line 16, delete "the most senior" with "including, without limitation all securities issued by governmental units, at least one class or tranche". On page 327, line 16, replace "are" with "was". On page 327, line 18, add after the comma "when the securities are initially". On page 327, line 23, add after the comma "whether or not the same are in existence as of the date of the transfer.". On page 327, line 25, add before the word "and" the following: "assets of governmental units, including payment obligations relating to taxes, receipts, fines, tickets and other sources of revenue". On page 328, line 8, add before the period the following: "including, without limitation, all securities issued by governmental units." On page 328, line 11, add after the word "partnership" the following: "governmental unit, limited liability company (including a single member limited liability company)." On page 329, line 2, strike the first comma and replace with the following: "(whether or not reference is made to the Bankruptcy Code or any section thereof)."
Title X - Protection of Family Farmers and Family Fishermen	Delete and replace with Section 201 of the House bill.	Strike language appearing on page 287, line 5, through 295, line 24, and replace with the following: "SEC. ____ REENACTMENT OF CHAPTER 12. "(a) REENACTMENT- Chapter 12 of title 11, United States Code, as in effect on June 30, 2000, is hereby reenacted. "(b) EFFECTIVE DATE- The amendment made by subsection (a) shall take effect on June 30, 2000."
Title XII - Amendments to Fair Labor Standards Act	Delete.	Strike language appearing on page 306, line 1, through line 13.

Title XIII - Tax Relief	Delete.	Strike language appearing on page 306, line 14, through page 415, line 23.
§ 1413 - DePrizio Amendment	Revise the Senate offer by changing "security interest" to "transfer".	On page 420, lines 16 through 17, change "security interest given" to "transfer". On page 420, line 20, change "security interest" to "transfer".
§ 1425 - Additional Bankruptcy Judgeships	Accept the Senate offer, but provide that this provision becomes effective on the date of enactment.	On page 429, after line 6, add the following: "(e) EFFECTIVE DATE - The amendment made by this section shall take effect on the date of enactment of this Act." Include a savings provision with respect to any temporary bankruptcy judgeships that may expire prior to the effective date of this Act.
§ 1435 - Protections for Sellers of Goods/Reclamation	Retain a revised version of the Senate provision.	With respect to the amendment to Section 546(c), add to the sixth line of the Senate language the following before the word "within": "while insolvent". With respect to Section 546(c)(2), as amended, delete "or chooses not to do so". With respect to the amendment to Section 503(b)(7), change "invoice price" to "value".
§ 1439 - Treatment of Pawned Property	Retain a revised version of the Senate provision.	On page 444, line 10, add the following after "(6)": "Subject to subchapter III of chapter 5 of this title". On page 444, line 14, after the word "money" add the following: "given by a person licensed under law to make such loans or advances".
Title XVII - Methamphetamine and Other Controlled Substances	Delete.	Strike language appearing on page 484, line 4, through page 561, line 10.

HOUSE § 106 (no Senate counterpart) - Restrictions on Debt Relief Agencies	Retain a revised version of Section 106 of the House bill with language specifying that it is neither intended to override applicable nonbankruptcy law with respect to regulation of attorneys nor permit the unauthorized practice of law by non-attorneys.	At the appropriate place, add a revised version of Section 106 as follows: "SEC. _____. RESTRICTIONS ON DEBT RELIEF AGENCIES. "(a) Enforcement - Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following: "Sec. 526. Restrictions on debt relief agencies. "(a) A debt relief agency, unless otherwise prohibited under applicable nonbankruptcy law, shall not— “(1) fail to perform any service that such agency informed an assisted person it would provide such person in connection with a case or proceeding under this title; “(2) make any statement, or counsel or advise any assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue or misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading; “(3) misrepresent to any assisted person, directly or indirectly, affirmatively or by material omission, with respect to — “(i) the services that such agency will provide to such person; or “(ii) the benefits and risks that may result if such person becomes a debtor in a case under this title; or “(4) advise an assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title. CONTINUED:
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“(b) Assisted Person Waivers Invalid - A waiver by any assisted person of a protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

“(c) Noncompliance-

“(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

“(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and hearing, to have-

“(A) intentionally or negligently failed to comply with any provision of this section with respect to a case or proceeding under this title for such assisted person;

“(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document, including those specified in section 521 of this title; or

“(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

“(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has

CONTINUED:

reason to believe that any person has violated or is violating this section, the State—

“(A) may bring an action to enjoin such violation;

“(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

“(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

“(4) The United States District Court for any district located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

“(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

“(A) enjoin the violation of such section; or

“(B) impose an appropriate civil penalty against such person.

“(b) Conforming Amendment - The table of sections for chapter 5 of title 11, United States Code, is amended by inserting before the item relating to section 527, the following:

“526. Debt relief agency enforcement.”

HOUSE § 123 [no Senate counterpart] - Valuation (Rash)	Adopt compromise language falling between House language and current law.	At the appropriate place, add the following: "Section 506 of title 11, United States Code, is amended by adding at the end the following: ""(e) Notwithstanding subsection (a), an allowed claim secured by a lien on personal property of an individual Chapter 7 or 13 debtor is a secured claim to the extent of the replacement value of such property as of the date of the filing of the petition, less costs of sale or marketing. Replacement value for property acquired for personal, family or household purpose shall mean the price a retail merchant would charge for such property considering its age and condition.""
HOUSE § 131 [no Senate counterpart]- Termination of the Chapter 13 Co-debtor Stay	Retain a revised version of the Senate provision.	Amend Section 1301(b) to add a new subsection consisting of language from Section 131 appearing on page 83, lines 2 through 9, of the House bill as follows: "Section 1301(b) of title 11, United States Code, is amended— "(1) by inserting "(1)" after "(b)": and "(2) by adding at the end the following: ""(2) The stay provided by subsection (a) shall terminate as of the date of confirmation of the plan, in any case in which the plan of the debtor provides that the debtor's interest in personal property subject to a lease with respect to which the debtor is the lessee will be surrendered or abandoned or no payments will be made under the plan on account of the debtor's obligations under the lease.""

HOUSE § 155 [no Senate counterpart] - Requirements for Debt Relief Agencies	Include a revised version of House Section 155.	At the appropriate place, add a revised version of Section 155 of the House bill as follows: "SEC. ____ REQUIREMENTS FOR DEBT RELIEF AGENCIES "Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following: "Sec. 528. Requirements for debt relief agencies. "(a) A debt relief agency shall-- "(1) not later than five business days after the first date such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously -- "(i) the services such agency will provide to such assisted person; and "(ii) the fees or charges for such services for such services, and the terms of payment; "(2) provide the assisted person with a copy of the fully executed and completed contract; "(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public, (whether in general media, seminars or specific mailings, telephonic or electronic messages or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; "(4) clearly and conspicuously include the following statement in any such advertisement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code,' or a substantially similar statement. "(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public includes -- "(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan, whether or not chapter 13 is specifically mentioned in such advertisement;
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		“(B) statements such as ‘federally supervised repayment plan’ or ‘Federal debt restructuring help’ or other similar statements that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title; and “(2) An advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt, shall disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title, and shall include the following statement: ‘We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.’ or a substantially similar statement. “(b) CONFORMING AMENDMENT- The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 527, the following: “528. Requirements for debt relief agencies.” Note: This does not include Section 154 of the House bill.
HOUSE § 215 [no Senate counterpart] - Nonmonetary Obligation Defaults	UNRESOLVED: Whether to include the House provision, a revised version of it, or recede to the Senate.	
HOUSE § 216 [no Senate counterpart] - Exception to Fee Sharing Prohibition	House provision should be retained.	At the appropriate place, add Section 216 of the House bill: “SEC. ____ SHARING OF COMPENSATION. “Section 504 of title 11, United States Code, is amended by adding at the end the following: “(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.”

HOUSE § 305 [no Senate counterpart] - <i>Catapult Fix</i>	Include House provision, which clarifies current law concerning the assumption of executory contracts and unexpired leases by Chapter 11 debtors in possession and trustees in corporate Chapter 11 cases.	At the appropriate place, add the following. “(a) Section 365(c) of title 11, United States Code, is amended to read as follows: “(c)(1) The trustee may not assume or assign an executory contract or unexpired lease of the debtor, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties, if— “(A)(i) applicable law excuses a party to the contract or lease from accepting performance from or rendering performance to an assignee of the contract or lease, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties; and “(ii) the party does not consent to the assumption or assignment; or “(B) the contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor. “(2) Notwithstanding paragraph (1)(A) and applicable nonbankruptcy law, in a case under chapter 11 of this title, a trustee in a case in which a debtor is a corporation or a partnership, or a debtor in possession, may assume an executory contract or unexpired lease of the debtor, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties. “(3) The trustee may not assume or assign an unexpired lease of the debtor of nonresidential real property, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties, if the lease has been terminated under applicable nonbankruptcy law before the order for relief.” “(b) Section 365(d) of title 11, United States Code, is amended by striking paragraphs (5), (6), (7), (8), and (9), and redesignating paragraph (10) as paragraph (5). CONTINUED:
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		"(c) Section 365(e) of title 11, United States Code, is amended to read as follows: " (c)(1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on-- “(A) the insolvency or financial condition of the debtor at any time before the closing of the case; “(B) the commencement of a case under this title; or “(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement. “(2) Paragraph (1) does not apply to an executory contract or unexpired lease of the debtor if the trustee may not assume or assign, and the debtor in possession may not assume, the contract or lease by reason of the provisions of subsection (c) of this section.” “(d) Section 365(f)(1) of title 11, United States Code, is amended by striking the semicolon and all that follows through ‘event’.”
HOUSE § 612 [no Senate counterpart] - Direct Appeals	Retain the House provision.	At the appropriate place, include Section 612 of the House bill appearing on page 194, line 3, through page 197, line 20.
HOUSE § 613 [no Senate counterpart] - GAO Study on the Feasibility of Trustees/Courts Supplying Information to Child Support Claimants	Retain House provision.	At the appropriate place, include Section 613 of the House bill appearing on page 197, line 21, through page 198, line 14.

	<u>Do proposal:</u> not always ask that you are talking about	“(2) the register maintained pursuant to subparagraph (h) contained no address for the government unit and an officer of the government unit responsible for the matter or claim had actual knowledge of the case sufficient time to act.” <i>noted</i> “(b) ADOPTION OF RULES PROVIDING NOTICE. The Advisory Committee on Bankruptcy Rules of the Judicial Conference shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption enhanced rules for providing notice to State, Federal, and local government units that have regulatory authority over the debtor or which may be creditors in the debtor's case. Such rules shall be reasonably calculated to ensure that notice will reach the representatives of the governmental unit, or subdivision thereof, who will be the proper persons authorized to act upon the notice. At a minimum, the rules should require that the debtor— “(1) identify in the schedules and the notice, the subdivision, agency, or entity in respect of which such notice should be received: “(2) provide sufficient information (such as case captions, permit numbers, taxpayer identification numbers, or similar identifying information) to permit the governmental unit or subdivision thereof, entitled to receive such notice, to identify the debtor or the person or entity on behalf of which the debtor is providing notice where the debtor may be a successor in interest or may not be the same as the person or entity which incurred the debt or obligation; and “(3) identify, in appropriate schedules, served together with the notice, the property in respect of which the claim or regulatory obligation may have arisen, if any, the nature of such claim or regulatory obligation and the purpose for which notice is being given.”
HOUSE § 1110 (no Senate counterpart) - Technical Amendment to Section 507	House provision should be retained.	At the appropriate place, add the following: “SEC. ____ PRIORITIES. “Section 507(a) of title 11, United States Code, is amended in paragraph (4), by striking the semicolon at the end and inserting a period.”

HOUSE § 1111 (no Senate counterpart)- Technical Amendment to Section 522	House provision should be retained.	At the appropriate place, add the following: "SEC. ____, EXEMPTIONS "Section 522(g)(2) of title 11, United States Code, is amended by striking 'subsection (f)(2)' and inserting 'subsection (f)(1)(B)' "
HOUSE § 1129 (no Senate counterpart) - Judicial Review of U.S. Trustee Actions with Respect to Trustees Amendment to Section 522	Retain House provision.	At the appropriate place, add Section 1129 of the House bill appearing on page 341, line 7, through page 343, line 2.
NEW § 224 - Retirement Savings Plans	UNRESOLVED: Whether to revise the Senate offer with respect to excepting mandatory pension contributions as disposable income.	PROPOSED RESOLUTION: Except from the means test mandatory pension contributions.
NEW - Transnational Insolvencies	Technical corrections.	To be supplied.

HOUSE § 105 (no Senate counterpart) - Definition of Assisted Person. Bankruptcy Assistance, & Debt Relief Agency	Retain a revised version of the House provision that specifies this section applies to bankruptcy cases as well as proceedings. In addition, the revised version specifically excludes booksellers and publishers.	Include a revised version of House Section 105 as follows: "SEC. ____ DEFINITION OF ASSISTED PERSON. BANKRUPTCY ASSISTANCE, AND DEBT RELIEF AGENCY. "(a) DEFINITIONS- Section 101 of title 11, United States Code, is amended-- "(1) by inserting after paragraph (2) the following: "(3) 'assisted person' means any person whose debts consist primarily of consumer debts and whose non-exempt assets are less than \$150,000;"; "(2) by inserting after paragraph (4) the following: "(4A) 'bankruptcy assistance' means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation or filing, or attendance at a creditors' meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to such case or proceeding under this title;"; and "(3) by inserting after paragraph (12A) the following: "(12B) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer pursuant to section 110 of this title, but does not include any person that is any of the following or an officer, director, employee or agent thereof-- "(A) any nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; "(B) any creditor of the person to the extent the creditor is assisting the person to restructure any debt owed by the person to the creditor. CONTINUED:
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“(C) any depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such a depository institution or credit union; or

“(D) any seller or publisher of books.

“(b) CONFORMING AMENDMENT- In section 104(b)(1) by inserting ‘101(3),’ after ‘sections’.

HOUSE § 154 - Required Disclosures for Debt Relief Agencies	Retain the House provision	Include House Section 154 as follows: "SEC. 154. DISCLOSURES. "(a) DISCLOSURES- Subchapter II of chapter 5 of title 11, United States Code, as amended by section 106, is amended by adding at the end the following. "Sec. 527. Disclosures "(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide the following notices to the assisted person: "(1) the written notice required under section 342(b)(1) of this title; and "(2) to the extent not covered in the written notice described in paragraph (1) of this section and no later than three business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons of the following— "(A) all information the assisted person is required to provide with a petition and thereafter during a case under this title must be complete, accurate and truthful; "(B) all assets and all liabilities must be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value; "(C) current monthly income, the amounts specified in section 707(b)(2) and, in a chapter 13 case, disposable income (determined in accordance with section 707(b)(2)) must be stated after reasonable inquiry; and "(D) that information an assisted person provides during their case may be audited pursuant to this title and that failure to provide such information may result in dismissal of the proceeding under this title or other sanction including, in some instances, criminal sanctions. CONTINUED
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“(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

**“IMPORTANT INFORMATION ABOUT
BANKRUPTCY ASSISTANCE SERVICES
FROM AN ATTORNEY OR BANKRUPTCY
PETITION PREPARER.**

“If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. **THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST.** Ask to see the contract before you hire anyone.

“The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

“Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a ‘trustee’ and by creditors.

CONTINUED:

"If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so and a creditor is not permitted to coerce you into reaffirming your debts.

"If you choose to file a chapter 13 case in which you repay your creditors what you can afford over three to five years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

"If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what needs to be done from someone familiar with that type of relief.

"Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice."

"(c) Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance to an assisted person, to the extent permitted by nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which shall be provided in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

"(1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2)) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;

"(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and

CONTINUED:

“(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506 of this title.

“(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for two years after the date on which the notice is given the assisted person.”

“(b) CONFORMING AMENDMENT- The table of sections for chapter 9 of title 11, United States Code, as amended by section 106, is amended by inserting after the item relating to section 526 the following:

“527. Disclosures.”

September 23, 1998

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: Nicole Rabner

SUBJECT: Bankruptcy Reform

Today, the Senate passed, 97-1, a bankruptcy reform bill that reflects almost all the major elements of the Administration's proposal. Key aspects of our proposal, incorporated into the Senate bill, are: (1) a discretionary and more targeted "means test" to shift borrowers from Chapter 7 to Chapter 13; (2) elimination of new, nondischargeable debt that could inappropriately compete post-bankruptcy with child support collection and other priority debt; and (3) balanced reforms affecting creditors, as well as debtors. Our message is that today's vote was a vote in favor of responsible, balanced reform.

Still, there remains an important disagreement within the Administration about conference negotiations and what our bottom line should be. Attached please find a draft of a decision memorandum for the President that seeks his guidance on this issue. In short, the majority of the President's advisors (our office included) advise the President to insist on the inclusion of the majority of the Administration's moderating and balancing proposals, while the Department of Treasury and the Council of Economic Advisors argue that, in the end, the President should accept a less than ideal compromise as an improvement over the status quo.

It is unclear when or if this memorandum will reach the President, as the Staff Secretary has advised that it may not yet be "ripe" for the President's consideration. In the interim, Erskine Bowles will mediate these differences. Still, this process should move fairly quickly to ensure that the President's views are appropriately reflected in conference negotiations.

On Friday, Melanne and I are scheduled to meet with outside advocates (including Elizabeth Warren and Wade Henderson) to hear their views of the Senate bill and prospects for conference. They will likely urge that we remain firm and demand a balanced bill. In addition, they advise that the credit card companies, which, as you know, have out-spent even the tobacco industry in their lobbying efforts, are now trying to determine what if anything they can live with in terms of the Senate provisions that address creditor abuse. If we remain strong, the advocates argue, the credit card companies may actually decide that no bill is better than what may emerge from conference, and therefore may put off bankruptcy reform to the next session of Congress.

As Bowles and the President examine the options presented in the attached memorandum, the real unknowns may be the extent of our leverage in conference and what kind of bill could sustain the President's veto, *i.e.* exactly how hard the Democrats will fight for balanced reform. What is clear and where there is broad agreement, however, is that in our opening message to the conferees should be strong and powerful.

September 23, 1998 -- DRAFT

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING

RE: BANKRUPTCY REFORM LEGISLATION

This memorandum seeks your guidance on whether to: (1) take a firm stance regarding the upcoming bankruptcy conference, threatening a veto if many of the Administration's proposals are not included; or (2) negotiate forcefully but, in the end, accept a bill including some, but not all, key aspects of our proposals, provided that it offers no harm to, and enhances, child support and alimony collection from debtors in bankruptcy.

Background

In June, you approved a bankruptcy reform proposal that was influential in shaping the Senate bill. Today, the Senate passed, 97-1, a bankruptcy bill that reflects almost all the major elements of our proposal. While further improvements could be made, the Senate bill reflects a significant step toward balanced bankruptcy reform, dealing with abuses by both debtors and creditors.

The House bill has some desirable features, too, but it is not acceptable as is. That bill, which passed by a veto-proof majority over the Administration's strong opposition, uses a rigid formula to exclude certain debtors from Chapter 7's full discharge of unsecured debt, creates new nondischargeable debts that will compete with child support and alimony post-bankruptcy, and addresses perceived abuses by debtors but not by creditors.

Administration Proposal

The key aspects of our proposal, incorporated in the Senate bill, are:

- (1) ***A Discretionary and More Targeted "Means Test"*** -- a discretionary approach to, and higher thresholds for, shifting borrowers from Chapter 7 to Chapter 13, instead of the House's rigid, lower threshold approach to deciding whether a debtor can use Chapter 7;
- (2) ***Elimination of New, Nondischargeable Debts*** -- elimination of House provisions that could pit, post-bankruptcy, certain credit card debt against child support, alimony, educational loans, and taxes, except for debt incurred with an intent to defraud;
- (3) ***Balanced Reforms Affecting Creditors, as well as Debtors*** -- inclusion of provisions that ask creditors (not just debtors) to behave more responsibly, including:
 - (a) adequate protection against coercive reaffirmations of debt; and
 - (b) disclosure requirements to ensure that consumers get the information that they need to manage their budgets.

Prospects for Conference

Work on compromising the two bills has already begun. The credit industry urges adherence to the House approach, while women's, consumer, civil rights, union, and elderly groups and bankruptcy attorneys, opposing any bill, fear that the Senate's moderation will be sacrificed in conference.

The extent of our leverage is unclear. The most likely outcome is a bill between the House and Senate bills, with our key proposals watered down or omitted. Senator Grassley will fight hard to preserve the Senate approach, but Chairman Hatch expects (and wants) the Senate approach to be compromised. House Republicans say that they will not compromise their position on key issues. On the other hand, the legislative calendar works in our favor. A more extreme approach in conference risks trouble on the Senate floor and a veto. Some Democratic Senators supported the Senate bill because of its balance and moderation.

While the Senate vote shows strong bipartisan support for reform, we likely (but not certainly) could sustain a veto of a House-like bill. Clearly, the closer the bill ends up to the Senate approach, the weaker our ability to sustain a veto. Legislative Affairs recommends a clear message about what you would sign and veto to maximize our influence in the conference.

Staff have agreed on a letter to conferees laying out our position, but the language papers over a disagreement on the bottom line. A clearer message could be sent with your guidance.

OPTION 1: INSIST ON INCLUSION OF MAJORITY OF ADMINISTRATION'S MODERATING AND BALANCED PROPOSALS, AS IN SENATE BILL.

Proponents: NEC, OLA, CoS (Echaveste), OVP, OMB, WH Counsel, DPC, OFL, OPL (Women's Office), Commerce, OTS, USDA and DoJ.¹

The majority of your advisors will recommend that you veto a bill that deviates substantially from the Senate bill -- i.e., that: (1) uses the arbitrary House "means test" instead of the more flexible Senate approach; (2) creates categories of nondischargeable debt that compete with child support, alimony, educational loans, or taxes; or (3) fails to include enhanced disclosures and consumer protections against coercive reaffirmations.

These advisors feel strongly that we should not sanction a rigid "means test" unresponsive to the unique circumstances of individual debtors. Any test that excludes some people from Chapter 7 significantly changes our bankruptcy system. We should be cautious in that change, lest we deny access to bankruptcy's full discharge of debt to some who really need it.

We know you will not accept creating new nondischargeable debts that compete with child support and alimony. In addition, even if child support and alimony are untouched, making certain credit card debts nondischargeable would treat them like educational loans or taxes, without justification.

¹ Education prefers this approach, but would not recommend a veto unless an issue within their jurisdiction is implicated -- specifically, unless new nondischargeable debts are created that compete with educational loans.

Finally, these advisors believe you should insist on balance -- curbing abuse by creditors as well as debtors. Greater competition and dramatic changes in how creditors grant credit, while beneficial for many, have allowed more consumers to get in over their heads. In response, we need improved disclosures and enhanced protections against coercion, especially if we foreclose a "fresh start" for some who make a mistake.

OPTION 2: ACCEPT, IN THE END, LESS IDEAL COMPROMISE AS AN IMPROVEMENT OVER THE STATUS QUO.

Proponents: Treasury and CEA.

Treasury and CEA fully endorse the key aspects of the Administration proposal and support forceful negotiating to achieve them, but they believe that bankruptcy reform short of some Administration goals would still markedly improve the current system. While they would not support signing the current House bill, they believe you should sign a bill reflecting a reasonable compromise of House and Senate bills, if it protects child support and alimony.

Treasury and CEA emphasize that the House means-test formula would affect only 10% of filers, all with above-median income. Currently, these debtors escape their obligations, even though many likely can repay at least part of what they owe. Reducing their debt charge-offs would lower the cost of credit for all consumers -- a particular benefit for lower- and middle-income Americans who depend on consumer credit for significant household purchases.

Finally, Treasury and CEA argue that any compromise bill will likely improve payment of child support and alimony (provided that it creates no new post-bankruptcy obligations competing with these payments). More debtors (with the ability to repay some of their debts) will enter Chapter 13 repayment plans, where child support and alimony receive first priority. Court supervision and other powers will make payment of these obligations more likely.²

Decision

While we seek no final judgment regarding the bill to be produced by the conference, your response to this memorandum will allow staff to negotiate with a clear sense of your objectives.

OPTION 1 -- INSIST ON MAJORITY OF SENATE BILL PROVISIONS _____

OPTION 2 -- ACCEPT, IN THE END, LESS IDEAL COMPROMISE _____

LET'S DISCUSS _____

² Other offices note, however, that some debtors shifted to Chapter 13 under the House's inflexible means test will not be able to complete their plans. Enhanced child support and alimony collection will not be achieved for the dependents of those debtors.

September 25, 1998

MEMORANDUM FOR HILLARY RODHAM CLINTON

CC: Melanne Verveer

FROM: Nicole Rabner

SUBJECT: Bankruptcy Reform Update

Today, we held a very productive meeting on bankruptcy reform with a coalition of liberal advocates, including Brady Williamson, Wade Henderson of the US Conference on Civil Rights, the National Partnership for Children and Families, and a variety of bankruptcy attorneys associations and consumer groups. The NEC (Sally Katzen and Sarah Rosen) and DoJ (Fran Allegra) joined the meeting. The group praised the hard work of the Administration and repeatedly noted your critical role in getting the Senate bill into good shape. They expressed great concern, however, of significant backsliding in conference negotiations and urged us to be strong and express clearly our bottom line. Melanne and Sally assured the group that we will send a strong letter to the conferees early next week (an earlier draft of which is attached), and urged them to do their part to ensure that the House and Senate Democrats understand just what is at stake.

The draft decision memo I sent to you earlier this week will now not go to the President. The Treasury Department has since withdrawn its position that the Administration signal that we would be willing to accept and sign a weaker bill.

It is clear that the next few weeks will be critical. While the House and Senate are now in the process of appointing conferees, pre-conferencing sessions are already taking place that exclude all Democratic staff -- a troubling sign for the conference itself. We have, however, important leverage: (1) the legislative clock is ticking; (2) strong credibility on the basis of our support for the Senate bill; and (3) the Presidential veto.

Upcoming Column

This may be an important time for you to pen another column about bankruptcy reform, explaining, in human terms, what is at stake, and arguing for a balanced bill, one that, like the Senate's, asks for responsibility from creditors as well as debtors. Your column could mirror in tone the letter to the conferees that we plan to send early next week, but explain the issues in terms of "real people." Please advise.

STATUS OF BANKRUPTCY REFORM FROM THE NEC

October 4, 1998

The bankruptcy conference (members) met on Friday morning. After opening statements, the session was adjourned, with little of substance discussed. Saturday midday, the House made an "offer" to the Senate that largely consisted of the House bill on most substantive issues, according to Senate Democratic staff. This is consistent with reports Friday that Gingrich told a small group of lobbyists that "it will be the House bill or no bill."

Friday night, Senate Republican staff call me to describe a proposal that the Senate Republicans (Grassley, Hatch and Sessions) had developed. McMickle (Grassley's person) told me that they had been directed that the bill was to be "wrapped up" by 5:00 p.m. on Monday. Thus, without waiting for the House offer, the Senate Republicans had developed their counteroffer. McMickle said that Sessions hated the proposal, much preferred the House bill, and was reluctantly going along with this offer. Moreover, if the House did not accept it, Grassley would refuse to compromise further. Finally, it was clear that the proposal was developed without any Senate Democratic input. I asked if Durbin's staff had seen it and, other than a brief discussion about one part, they had not discussed it with Victoria Bassete. Late on Saturday, McMickle did discuss a few other sections, but not all, of the proposal with Victoria. The Republicans have apparently been meeting throughout the weekend, but the Democrats only got word of meetings by email sent at 9:30 Saturday evening, for a 9:30 Sunday morning meeting. Thus, no discussions have occurred with the Democrats, although I have shared what I have learned with the Senate Dems.

While much depends on the details, from the simple outline, the proposal appears to be clever. It includes many of the key items we insist on, but seriously watered down. As you will see from my analysis below, I clearly think the proposal provides too little, although if we could negotiate back from it, some good could be saved. Durbin's staffer also was very negative, but she has not had a chance to talk with her boss. A key issue will be the response of the Democratic Senators. Of course, if the House rejects some or all of this proposal, and/or insists on something closer to their bill, our decision is made easier.

We will need to see what happens on Monday to decide if the Administration should do anything publicly at this time. In the meantime, I told McMickle that he could not represent that the Administration had concurred with any part of his proposal. While there was an effort made to meet some of our requirements, much about it was likely to raise significant concerns. I would appreciate your office or agency's feedback as soon as humanly possible.

Reaffirmations:

Judicial review of all reaffirmations of unsecured debt (presumably not of debt secured by low value items), but the six factors in our test would be condensed into two. (1) evidence of coercion; and (2) not in the best interest of the debtor (but not dependents). However, a Judge

can only reject a reaffirmation if they find, *by clear and convincing* evidence, that one of the factors exists.

Analysis: In some ways, this test is worse than current law. Although under current law, judges only must personally review the reaffirmations in pro se cases where there is no attorney to file an affidavit, there is no requirement that the judge find clear and convincing evidence in order to reject a reaffirmation. This would apply a clear and convincing evidence test to pro se and represented cases. Since we believe that it is rarely in the best interest of the debt to reaffirm unsecured debt, this creates an unnecessarily high burden, especially for pro se debtors. In addition, it fails to address our concern that creditors will increasingly take security interests in goods purchased with credit cards (like Sears) making any protections irrelevant, unless they apply to secured debt as well. The failure to address the needs of dependents, as in current law, is also a major failing.

Finally, unnecessarily reaffirmed unsecured debt does in fact compete with child support and alimony after a chapter 7 bankruptcy. If we wanted to, we could argue that the failure to address effectively coercive reaffirmations created a child support and alimony problem.

Means Test:

Rebuttable presumption of "abuse" if debtor is above median income and has capacity to repay 25% or more of their debt (didn't specify time period). However, when looking at expenses for purposes of calculating disposable income, the IRS expense guidelines would be used rather than actual expenses. A debtor could rebut the presumption by arguing that they should be allowed to use their actual expenses in this case. (Treasury estimates that in 25% of the cases, the debtors actual expenses will be greater than the IRS averages.)

In addition, if the debtor earns more than X amount (to be determined) and files in Chapter 7, the Trustee is required to look at their filing and if, based on the information provided it appears that they meet the presumptive guideline and have the capacity to repay 25%, the Trustee is required to file the 707(b) motion alleging abuse.

Analysis: This strongly resembles the House proposal in 707(b) clothing. From our perspective, the greatest problem should be the use of the IRS expense guidelines. This would force an above median income debtor to litigate that their actual expenses were appropriate and that continuing to meet those expenses was not abuse. If, as expected, they also pick median income for automatic trustee motions, it addresses the creditors concern about their expenses in enforcing the system. However, when coupled with the presumptive guidelines, it creates a significantly higher bar for the debtor to meet to gain access to chapter 7 and more opportunity to threaten or coerce debtors. In addition, the 25% threshold is lower than the 27=28% that we collectively said was where we expected to settle.

Finally, note that the proposal is silent on creditor motions. So in addition to the trustee motions,

creditors will now be authorized to bring motions not only on the basis of capacity to repay under a 25% test, but all the traditional bases for abuse, including repeat filings or capacity to repay a smaller amount -- say 20% -- which some circuits now use.

In good faith we had told the Republicans what compromise we would be prepared to live with on the means-test. They have taken that compromise and added additional features so that it strongly resembles the House bill in actual effect.

Disclosures:

The Senate bill had not required the new disclosure requirements to go into effect until the end of the Year 2000, because of concern that programming requirements would interfere with Y2K activities. The new proposal would direct the Federal Reserve to use the time to perform a study of what additional disclosures (on minimum payments and otherwise) would be "appropriate and effective" to aid consumers. Then, the Fed would be authorized to implement their findings before January 1, 2001.

Analysis: The Republicans argue that this is modeled after the car leasing disclosures that the Fed developed only after extensive study and focus group testing. In fact, they did use a good process to ensure that car leasing disclosure forms are effective; however, at a minimum, an objective should be set forth for the disclosure, so it isn't an unguided "whatever the fed thinks best" substituting the judgment of the Fed for that of the Congress. While we cannot argue this publicly, the effect will be to give the credit card companies 2 years to fight new disclosure requirements before a relatively bank-friendly Fed. A role for the FTC might help to balance the process somewhat, but the Fed would surely object to ceding authority under TILA.

Nondischargeability:

The Senate would insist on the Senate bill provisions -- which are not perfect on the debt incurred within 90 days of bankruptcy -- as the test is now focused on what is necessary rather than what constitutes a luxury. However, it isn't that far off.

Homestead Exemptions:

The Senate will compromise with the House, either by significantly raising the cap in the Senate bill (now \$100k) or by expanding the test in the House which requires that assets not be shifted into exempt assets within 6 months of filing.

Analysis: While we have not made a big deal about this issue, if they raise the cap, it gives us the argument that -- *while they are imposing so many restrictions on median income families access to bankruptcy, they are refusing to shut down the biggest loophole used by the affluent.*

Reaffirmations of unsecured debt	- The court can approve a reaffirmation of unsecured debt if the reaffirmation does not impose an "undue hardship" and is in the debtor's best interest. - However, the court can rely on affidavits of debtor's counsel. Few courts make independent inquiry.	- The court itself must find that there is clear and convincing evidence that reaffirming unsecured debt is in the debtors best interest and not entered into after coercive actions, without reliance on counsel affidavits. - Bar reaffirmation of debts that add attorney's fees and costs to the debt. - Same protection for secured debt whose security are individual items whose value was less than \$500 at time of purchase.	- No related provisions.	- The court itself must find that reaffirming unsecured debt is in the debtors best interest and not entered into after coercive actions, without reliance on counsel affidavits. (No clear and convincing standard.) - Bar reaffirmation of debts that add attorney's fees and costs to the debt. - Same protection for secured debt whose security are individual items whose value was less than \$250 at time of purchase.	- Administration proposal. (Restore clear and convincing evidence standard and seek to increase dollar limit to at least \$300.)
Credit card minimum payment disclosure	- Disclose minimum payment and current balance. No requirement regarding amortization period if make minimum payment.	- Subordinate unsecured, nonpriority debt if the creditor did not disclose clearly to the debtor the time period over which the debt would amortize at a minimum payment level.	- No related provisions.	- Amend TILA to disclose the period over which the debt would amortize at minimum payment and total cost to debtors of repaying balance at minimum payment. - Warn consumers to review personal financial circumstances before assuming new debt. - Provide worksheet to calculate capacity to assume more debt.	- Senate provision.
	<i>Current Law</i>	<i>Original Administration Proposal</i>	<i>House Bill</i>	<i>Senate Bill</i>	<i>Conference Goal</i>

Access to Chapter 7	- Section 707 (b) gives the court discretion to dismiss a bankruptcy petition under Chapter 7, upon its own motion or the motion of the U.S. Trustee, if use of Chapter 7 would be "substantial abuse." - Jurisprudence under Section 707(b) varies widely from circuit to circuit. - Some find substantial abuse if debtor has the ability to repay 20% of debts over 3 years.	- Give court discretion to find "abuse" if the debtor can repay at least 35% of her debt over 3 years. - \$5000 minimum amount to be paid under a Chapter 13 plan if a debtor is shifted under the abuse test. - Make ability to repay 35% and \$5000 presumptively abuse. - Add another factor to consider for abuse -- movement of more than \$50,000 from non-exempt to exempt assets w/in 1 year of filing.	- Strict formula to determine access to Chapter 7. - Access to Chapter 7 barred for those with income above 100% of median family income, who can repay 20% or more of their unsecured debts during a five-year repayment plan, unless there is a demonstration of special circumstances.	- Give court discretion to find "abuse" if the debtor has the capacity to repay 30% of her debt over three years and "abuse."	- Senate provision. - Preserve 30% ability to repay threshold. - Add \$5000 minimum payment threshold. - Turn ability to repay factor into a presumption.
Creditor Motions	- U.S. trustee or bankruptcy judge only can bring motion to dismiss Chapter 7 petition for abuse. - Existing case law holds that many other bases exist for showing abuse of Chapter 7, including, for example, repeat filings.	- Creditor standing be only granted to creditors who are seeking to show abuse by showing that the debtor has the capacity to repay.	- Although doesn't rely on 707(b) for "means test," authorize creditor motions under 707(b).	- Creditor may bring 707(b) motion for any reason.	- The only basis for creditor standing be that debtor is able to repay 30% of debt within three years. - Object to other criteria, such as repeat filings, as evidence of abuse.
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Bankruptcy Reform Briefing Table

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Debt incurred to pay nondischargeable debt	- Debts incurred to pay nondischargeable <u>federal taxes only</u> with a credit card are nondischargeable.	- The current law remain unchanged; however, if a debtor paid a nondischargeable debt with a credit card, it would be a factor in determining whether the debtor's use of Chapter 7 was abuse.	- Debts incurred to pay <u>all</u> nondischargeable debts are nondischargeable and shall have 10th priority.	- Debts incurred to pay nondischargeable debts are nondischargeable, only when the creditor can demonstrate that the debtor paid a debt with a credit card having the intent of then filing bankruptcy so the debt would be discharged.	- Senate provision
Debt incurred just prior to bankruptcy	- Debts owed to a single debtor, aggregating more than \$1000 for "luxury goods and services," incurred within 60 days of bankruptcy are presumed nondischargeable. - Can be overcome if debtor can demonstrate that she had reason to believe that she could repay.	- Debt for all luxuries incurred within 90 days of bankruptcy are presumed nondischargeable. - No cap on amount of debt for necessities that can be discharged.	- All debts owed to a single debtor, incurred within 90 days of bankruptcy, are presumed nondischargeable except necessities up to \$250.	- Debts owed to a single debtor, aggregating more than \$400 for luxuries incurred within 90 days of bankruptcy, are presumed nondischargeable.	- Senate provision

Reaffirmations of unsecured debt	- The court can approve a reaffirmation of unsecured debt if the reaffirmation does not impose an “undue hardship” and is in the debtor’s best interest. - However, the court can rely on affidavits of debtor’s counsel. Few courts make independent inquiry.	- The court itself must find that there is clear and convincing evidence that reaffirming unsecured debt is in the debtors best interest and not entered into after coercive actions, without reliance on counsel affidavits. - Bar reaffirmation of debts that add attorney’s fees and costs to the debt. - Same protection for secured debt whose security are individual items whose value was less than \$500 at time of purchase.	- No related provisions.	- The court itself must find that reaffirming unsecured debt is in the debtors best interest and not entered into after coercive actions, without reliance on counsel affidavits. (No clear and convincing standard.) - Bar reaffirmation of debts that add attorney’s fees and costs to the debt. - Same protection for secured debt whose security are individual items whose value was less than \$250 at time of purchase.	- Administration proposal. (Restore clear and convincing evidence standard and seek to increase dollar limit to at least \$300.)
Credit card minimum payment disclosure	- Disclose minimum payment and current balance. No requirement regarding amortization period if make minimum payment.	- Subordinate unsecured, nonpriority debt if the creditor did not disclose clearly to the debtor the time period over which the debt would amortize at a minimum payment level.	- No related provisions.	- Amend TILA to disclose the period over which the debt would amortize at minimum payment and total cost to debtors of repaying balance at minimum payment. - Warn consumers to review personal financial circumstances before assuming new debt. - Provide worksheet to calculate capacity to assume more debt.	- Senate provision.
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September 9, 1998

**MEMORANDUM TO: GENE SPERLING
 SALLY KATZEN**

FROM: SARAH ROSEN

RE: STATUS REPORT ON BANKRUPTCY REFORM

Below you will find a brief summary of the Bankruptcy Reform legislation to be considered by the Senate this week, including a brief description of the status of negotiations on the bill, the Administration's criticism of the current version Senate bill, and the list of amendments that the Administration and Senators Durbin, Dodd, and Sarbanes jointly provided to Senators Hatch and Grassley for inclusion in the manager's amendment. In addition, per your request, I provide comments on the letter to the First Lady from Professor Elizabeth Warren.

I. STATUS OF NEGOTIATIONS ON THE BILL

As described below, the Administration and Senators Durbin, Dodd and Sarbanes, in consultation with Senator Daschle, prepared a list of amendments that we would like to see incorporated into the managers' amendment. However, we have not, as yet, had a comprehensive response from the Republicans to the list of amendments.

Last Thursday, Senator Lott attempted to bring up the bankruptcy bill for debate. Senator Kennedy objected to the motion to proceed to take up the bankruptcy bill. Senator Lott filed a cloture petition, which ripened and passed today (Wednesday, 9/9), by a vote of 99-1 (with only Brownback against). Senators Lott and Grassley then introduced a substitute amendment that we will not see until Thursday morning, but which we expect contains new farm homestead exemption language, some corporate bankruptcy issues, and a few of the amendments included in the Administration/Durbin/Dodd/Sarbanes list for the managers' amendment. Leadership and bill managers then reached agreement to proceed as follows: (1) two hours of debate on Senator Kennedy's minimum wage amendment; (2) Democrats to provide all their amendments to the bankruptcy bill by noon on Thursday; (3) Democratic and Republican leadership will negotiate and agree to a finite list of amendments that will be in order on the bill; and (4) Democrats and Republicans will complete negotiations on the Administration/Durbin/Dodd/Sarbanes issues for a manager's amendment. The Administration has been asked to participate in those negotiations on Thursday afternoon (9/10).

If all proceeds apace, Lott will withdraw the cloture petition. Thus the first votes could be held as early as Friday (9/11).

II. ADMINISTRATION VIEW OF CURRENT SENATE BANKRUPTCY BILL

Denying Access to Chapter 7: The Senate bill is based on the approach that the Administration prefers -- using the Section 707(b) abuse test to determine whether a borrower should be required

to repay a portion of their debts under Chapter 13 or can obtain a full and immediate discharge of debt under Chapter 7. (This contrasts with the House approach that would use a rigid formula with limited court discretion.) However, we believe that the thresholds in the abuse test are too low. Instead of capacity to repay 20% of their debt, the test should be capacity to repay 35% of their debt (we'd compromise at 30%) or \$5000. (We also would agree to making those guidelines presumptive, but would prefer to offer that as a compromise with the House in conference.)

New Nondischargeable Debts: The Senate bill provides that debts incurred to pay nondischargeable debts are nondischargeable, except if the debtor owes child support or alimony, unless the debtor intended to avoid repayment through shifting the nondischargeable debt to a credit card. This effectively eliminates our concern about competition with child support and alimony. However, we continue to argue that it is inappropriate to give credit card companies the same protection as student loans, taxes, etc. Concern about creditor fraud can be better dealt with in the abuse test, by making repayment of such debt to avoid nondischargeability a factor in determining whether eligible for Chapter 7.

Regarding debt incurred within 90 days of bankruptcy, the Senate bill has been modified so that only debt of more than \$400 to a single creditor for goods not necessary for the support of the debtor (the old luxury definition) can be discharged. We had been prepared to accept no "luxury" safe harbor (although we never articulated that in public), so we have little argument with this provision. However, we have kept silent so as to not undercut Senator Durbin who continues to seek to restore the \$1000 safe harbor.

Balance: requiring responsibility of creditors as well as debtors. The bill's greatest flaw, at this point, is the absence of balance. It does nothing to address creditor practices of coercing reaffirmations and encouraging borrowers to utilize credit without appreciation for the burdens involved. The Administration has said to bill managers that additional protections against coercive reaffirmations and additional disclosures of the time periods on which debt will amortize at the minimum payment level are necessary for Administration support.

III. DEMOCRATIC/ADMINISTRATION AMENDMENT LIST

Administration staff met with Senators Durbin, Daschle, Dodd, and Sarbanes and developed a joint list of amendments that we would like to see in the manager's amendment. It includes all of the Administration's list of issues, as well as others to which we do not strongly object. In a few cases, we believe Senator Durbin or Dodd or Sarbanes provisions go too far, but we agreed that the Administration would encourage the Republicans to address the Democrats concerns without the Administration specifically endorsing every item on the list.

The list of amendments included:

1. Raise thresholds in the 707(b) abuse test factor from ability to repay 20% of debt to ability to repay 35% of debt or \$5000 over 3 years.
2. Eliminate provision making debt incurred to pay nondischargeable debt nondischargeable.
3. Lift ceiling on the debts incurred within 90 days of bankruptcy to one creditor, that are not necessary for the support of the debtor or its dependent, from \$400 to \$1000.
4. Prohibit coercive reaffirmations of unsecured debt (or debt secured by small items of personalty) by:
 - requiring the court to make a finding that there is clear and convincing evidence that it is in the debtor's best interest to reaffirm the debt and would not cause a hardship to the debtor or its dependants;
 - prohibiting the reaffirmation of any unsecured debt that includes attorneys fees or costs;
 - clarifying that it is a violation of the automatic stay to threaten to oppose the discharge of debt or to threaten to file a 707(b) abuse motion or to repossess the debtor's collateral.
5. Require that creditors provide debtors with up-front and monthly disclosure of the time period over which their debt would amortize if they paid only the minimum payment.
 - Also require that the monthly statement calculate what payment would be necessary to repay the debt in three years.
 - Also require that a simple worksheet be provided that allows to creditor to determine how much debt they can afford to incur.
 - Also require that it be disclosed that: "Your pre-approval for this credit card does not mean that we have reviewed your individual financial circumstances. You should review your own budget before accepting this offer of credit."
 - Also require that consumers are informed that they are entitled to a copy of their credit report at low cost.
 - Also require that consumers be informed when use of a credit card creates a security interest in the goods that they are purchasing.
6. Provide debtors with relief from the mandatory deadlines to file back tax returns and wage information if they can demonstrate that they have made bona fide efforts to seek the information from the relevant tax authorities or old employers and await response from those sources.
7. Allow tenants to have one opportunity to pay rent after filing for bankruptcy before the automatic stay is lifted and an eviction can commence.

8. Revise requirements that debtors receive consumer counseling before they can file for bankruptcy to provide an exception for exigent circumstances and to ensure requirement isn't a bar to bankruptcy because of limited counseling resources.
9. Expand categories of types of retirement programs that qualify as exempt assets.
10. To revise the definition of household goods to include items reasonable necessary for the maintenance and support of the debtor and dependents.

III. COMMENTS ON PROFESSOR WARREN LETTER

In mid-August, Harvard Law Professor Elizabeth Warren wrote to the First Lady about the status of the bankruptcy bill. I provide below a few comments on the aspects of the letter concerning the Senate bill

Abusive Creditor Practices. Professor Warren describes some of the widespread abuse by creditors who have violated the automatic stay by seeking payment on charge card debts that can be or have been discharged in bankruptcy. These facts, in part, are what motivates the Administration to insist on inclusion of our package of protections against coercive reaffirmations of debt.

Use of Consumer Credit Counseling. Professor Warren complains that the bill requires that debtors make a good faith attempt to create a repayment plan through consumer credit counseling services before filing for bankruptcy, regardless of the severity of current circumstances, including imminent foreclosure. These provisions have been significantly modified in an agreement between Senator Sessions and the Consumer Credit Counseling Services to reduce the burden of the counseling required, eliminate concerns about the availability of credit counseling, and provide exceptions for exigent circumstances. The credit counselors now support the provision as does Senator Durbin.

Means-testing. Professor Warren argues that the Senate bill, which provides a means-test for remaining in Chapter 7, is not significantly different than the House bill's means-test to gain access to Chapter 7. In fact, the Administration supports requiring some kind of test to determine if a debtor has the capacity to repay. We support the Senate approach, but think the thresholds for determining capacity to repay are too low.

Harm to Women and Children from Non-Dischargeable Debt. Professor Warren argues that the injury to women and children from additional new nondischargeable debts has not been resolved by the various child support and alimony protections in the House and Senate bill. We concur as to the House bill. However, the current version of the Senate bill has largely addressed this problem, by two modifications:

- the bill now only makes newly nondischargeable luxury items over \$400 incurred within 90 days of bankruptcy; and

- the bill does not make debt incurred to pay nondischargeable debt nondischargeable if the debtor owes child support or alimony, unless they paid the nondischargeable debt with the credit card with an intent to avoid payment post-bankruptcy.

We continue to believe that the latter nondischargeability provision should be eliminated altogether, regardless of whether one owes child support or alimony; however, one can no longer credibly argue that the nondischargeability provisions harm women and children.