Treasury
→ fall back

Potential Administration Amendments for Special Expenses

1. Protection from Domestic Violence

Debtors may incur certain expenses in the course of protecting themselves against domestic violence. These can include relocation expenses to move the debtor and his or her household away from the violent spouse, additional transportation expenses for the debtor to get to work from a new location or for the debtor to undertake work in a workplace location removed from the knowledge of or access by the violent spouse, the legal costs associated with getting and enforcing court protective orders, the costs associated with increasing the security of the debtor's own home, and income gaps associated with unavoidable absences from work due to the danger of being threatened or assaulted at the workplace. Federal law under the Temporary Assistance for Needy Families and Title IV of the Social Security Act as amended provide guidance to states for establishing methods of identifying individuals at risk for domestic violence. It is essential to recognize the additional expenses or gaps in income incurred by such debtors to protect themselves and their households.

We propose to amend S. 625 by replacing its proposed section 707 (b)(2)(A)(ii) in Section 102(a), Dismissal or Conversion, with new 707(b)(2)(A)(ii); and by adding to its proposed section 704(b)(2):

SECTION 102. DISMISSAL OR CONVERSION

After "(II) $15,000" at the end of proposed subsection 707(b)(2)(A)(i), strike currently proposed subsection 707(b)(2)(A)(ii) and replace with the following:

"(2)(A)(ii) The debtor's monthly expenses shall be the applicable monthly (excluding payments for debts) expenses under standards issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. for monthly expenses. The expenses shall include—

> (a) if applicable, the debtor's actual expenses, including, but not limited to, relocation expenses, transportation expenses, legal and other costs associated with obtaining and enforcing protection orders, to maintain the debtor and his or her family safe from domestic violence as identified under applicable state or federal laws"

Add after "to all creditors" at the end of proposed Section 704 (b)(2)(B) the following:

"(C) For purposes of determining whether a motion would be appropriate to be filed, the U.S. trustee shall consider —

"(I) adjustments to current monthly income for income items received over the most recent 180 days that are not reasonably expec ed to be reflected in future income, or for income losses that are reasonably expected to recur in the future, including, but not limited to, income adjustments due to absences from work incurred as a result of the need to maintain the debtor and his or her family safe from domestic violence as identified under applicable state or federal laws";

"(II) adjustments to expenses likely to be due under a chapter 13 plan that are not included in the statement of the debtor's actual monthly expenses.

The debtor shall, at the request of the U.S. Trustee, provide documentation for any current income items that are not reasonably expected to be reflected in future income, and a detailed explanation of the circumstances that warrant making such adjustments."

2A. Welfare to Work (Narrow Definition)

Debtors who receive welfare can incur certain expenses associated with overcoming barriers and moving themselves from welfare to work and maintaining their employment. These include education and training expenses to prepare themselves for a work situation, care of a dependent child or family member, additional transportation expenses, addtional housing expenses in case the work situation demands relocation, and expenses associated with freeing themselves from substance abuse. It is essential to recognize the additional expenses incurred by such debtors as they endeavor to lift themselves and their households out of poverty and dependence on government programs in accordance with federal law and the laws of their state. We propose to amend S. 625 by adding to its proposed section 707 (b)(2)(A)(ii) in Section 102(a), Dismissal or Conversion, as amended above, new 707(b)(2)(A)(ii)(b).

After new subsection 707(b)(2)(A)(ii)(a) above, add the following:

"(b) if applicable, the debtor's actual expenses, including, but not limited to, education and training expenses, transportation expenses, housing expenses, expenses associated with recovery from or prevention of substance abuse, and support and care expenses for dependents of the debtor (including a household member or member of the debtor's immediate family), that the debtor who is receiving or has received payments under the Temporary Assistance for Needy Families program and is attempting to obtain and maintain employment under applicable state laws and the provisions of Title IV of the Social Security Act as amended.

2B. Welfare to Work (Broader Definition)

Assisting debtors who have lost jobs to regain their financial stability and independence is essential to a fresh start, and benefits creditors and taxpayers. Yet, just as in making a transition from welfare to work, debtors may need to incur certain expenses in making the transition to financial independence and security. For example, many debtors who have lost jobs need to retrain for new jobs, or need to retrain to keep their current jobs. In additio:, debtors may incur other expenses associated with seeking new economic opportunities, such as additional transportation or housing expenses, or relocation expenses. These expenses must be allowed in order for the debtor to increase future income and repay debts. We propose to amend S. 625 by adding to its proposed section 707 (b)(2)(A)(ii) in Section 102(a), Dismissal or Conversion, as amended above, new 707(b)(2)(A)(ii)(b).

After the new subsection 707(b)(2)(A)(ii)(a) above, add the following:

"(b) if applicable, for a debtor who is unemployed within six months of the time of the filing and is receiving or has received payments under the Unemployment Insurance program, or other applicable state and federal laws, the debtor's actual expenses, including, but not limited to, education and training expenses, transportation expenses, housing expenses, and support and care expenses for dependents of the debtor (including a household member or member of the debtor's immediate family), that the debtor reasonably incurs in the course of applying for a job, or for education or training expenses that are reasonably required in the course of his current employment [as allowed under the Internal Revenue Code]."

3. *Support for nondependent family members*

Many debtors provide support for family members to enable them to live in dignity, as there are many situations in which the family member does not receive enough income to do so. In many cases, the payments may not be large enough to make the family member a dependent of the debtor. Yet because the payments may be essential to the family member's well-being, for example to provide home care or household goods that enable an elderly parent to continue to live in the community, these support payments should be allowed to continue. We propose to amend S. 625 by adding to its proposed section 707 (b)(2)(A)(ii) in Section 102(a), Dismissal or Conversion, as amended above, new 707(b)(2)(A)(ii)(c).

After the new section 707(b)(2)(A)(ii)(b) above, insert as follows:

"(c) if applicable, the continuation of actual expenses paid by the debtor for care and support of a household member or member of the debtor's immediate family (including parents, grandparents, and siblings of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case) that is not a dependent, not exceeding two times the poverty threshold published by the Census for the current year"

4. *Support for foster children and adoption*

Debtors who adopt children incur one-time and ongoing expenses related to the adoption and care of the child. Debtors who care for a foster child in their homes often have expenses above the payments they receive for the support of these children. These are expenses necessary for the support of these children. We prpose amending S. 625 by adding, after the new section 707(b)(2)(A)(ii)(b) above, the following sections:

"(c) if applicable, the debtor's actual expenses, including but not limited to relocation or other housing expenses, transportation expenses, health expenses and legal costs associated with adoption"

"(d) if applicable, the debtor's actual expense for care and support of foster children that exceeds reimburements under aplicable state and federal law"

5. Adjustment of median incomes for debtors with child support or spousal support.

In the current House and Senate bills, income thresholds for motions do not account for the support expenses of divorced parents and spouses. We would amend S. 625 by adding after its proposed 704(b)(2)(B) the following new section:

"(C) In the case of a debtor who is making child support payments for a noncustodial dependent child, or spousal support payments, in accordance with applicable nonbankruptcy law, the relevant national or applicable State median income for purposes of this subsection shall be the highest of the national or applicable State median household income, increased by the median payment for—

"(I) child support due for the most recent year, as reported by the Bureau of the Census; or

"(II) alimony paid for the most recent year, as reported by the Bureau of the Census

as applicable to the situation of the debtor."

Treasury analysis
5/12

Reforms to Treatment of Individual Debtors in Chapter 11

Background

Bankruptcy reform proposals will channel individuals who file for bankruptcy who can repay a meaningful portion of their debts into Chapter 13, where they are required to devote their disposable income to payment plans. The proposals maintain the current debt limits on Chapter 13 filings and continue to provide, appropriately, that debtors with higher debt levels (who generally have more complex business-related debts) file for Chapter 11. Yet debtors filing for Chapter 11 are free of the requirement to repay from their own incomes.

Administration Proposal

To restore equity and prevent abuse, the Treasury, the SBA, and the SEC's Division of Enforcement propose closing this loophole. The best way to do so is to make the treatment of future income of debtors filing for Chapter 11 as parallel as possible with the treatment of future income of debtors filing for Chapter 13. Hence we propose that: (i) the debtor's disposable income be committed to the plan if need be to assure creditors receive as much as they would have if the debtor did file under Chapter 13, (ii) disposable income and associated reasonable expenses be defined as provided in Chapter 13, and (iii) debtors with primarily nonconsumer debts, such as these debtors, be subject to the 707(b) means test before being allowed to file for Chapter 7 so that, if need be, their incomes are committed to repay creditors.

Specific Amendments

(1) amend Section 303(a) to prevent creditors from being able to file an involuntary Chapter 11 petition against an individual

(2) amend Section 1129(a)(7)(A)(ii) to add, before the semicolon,

> "and, if the debtor is an individual, will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain in a case filed by the debtor on the petition date under chapter 13, whether or not the debtor is eligible to file under than chapter"

(3) amend Section 707(b) to delete "whose debts are primarily consumer debts"

(4) amend section 1141(d):

> (A) in (2), by striking "The confirmation of a plan" and inserting in its place
>
> "A discharge under this chapter"

(B) By adding a new paragraph

"(5) Except as otherwise ordered for cause, shown, the discharge of an individual debtor under this chapter is not effective until the confirmed plan

(6) Section 363(b) is amended by renumbering existing paragraph (2) as paragraph (3) and by inserting the following new paragraph (2):

"(2) The court may permit an individual debtor performing the duties of a trustee under section 1107(a) of this title to transfer property of the estate to pay reasonably necessary personal expenses of the debtor or dependents of the debtor, but only after notice and a hearing."

(7) Amending section 363(b) by adding the following new paragraph:

"(4) The court may permit a debtor performing the duties of a trustee under section 1107(a) of this title to transfer property to an insider of the debtor but only after notice and a hearing.

Treasury analysis 8/12

Limited Improvements in the Means Test

All of these proposals improve the performance of the means test in identifying debtors who truly can repay a significant enough portion of their debt to make a Chapter 13 plan worthwhile, and/or lower the administrative costs of the means test. All can be implemented as specific, incremental changes in the current Senate bill. These proposals are all in addition to our proposal for appropriate, limited judicial discretion. *Status of proposals in italics.*

Development of Expense Standards Appropriate for Bankruptcy

Direct Dept of Justice (EOUST) in coordination with Treasury Dept. to develop expense standards appropriate for bankruptcy.
Hyde Amendment/ Nadler Amendment.

Better Thresholds for Means Test

Reduction in debt amount trigger from $15,000 to $10,000, in return for "safe harbor" provision for low-income debtors (below).
McMickle signaled willing to offer. Good trade.

Change the threshold from the percentage amount to a flat $100/month or $6,000 over 5 years, as it is now in HR 833.
In House bill (Hyde, Graham). Helps moderate-income debtors compared to current Senate provisions. McMickle hopes to use as negotiating point in conference.

Means Test "Screens" to Reduce Administrative Burden

Safe harbor creating a presumption of nonabuse based only on income for those below median income.
Similar to provision in House bill (however, though no motions are allowed, bill still appears to require detailed means test and Trustee report on all filers).

Presumption of nonabuse for middle income debtors (100-150% median income) if they cannot pass the threshold based only on income, priority/nondischargeable debt payments, and formulaic expenses. These changes would reduce burden of means testing by over 80% - over $100 million/year in administrative and attorneys' costs - without missing any debtors who can pay.
Similar provision in Nadler; Administration proposal.

Additional Allowed Categories of "Other Necessary Expenses"

Administrative expenses and reasonable attorneys' fees (up to 10% of Chapter 13 expected payments).
In House bill.

Continuation of educational expenses of dependent child under 18, up to $10,000.
In House bill.

Continuation of charitable contributions.
In House bill.

Personal business expenses. (May already be covered if "income" is interpreted to include net rather than total income from business, as in calculation of taxable income. Presumably noncontroversial.)

Expenses for care of nondependent member of debtor's immediate family (child, parent, grandparent, or sibling of debtor, and of debtor's spouse in joint cases).

Expenses to maintain debtor and family safe from domestic violence.

Expenses for education, supplies, and other services that help debtor move from welfare to work.

Expenses associated with foster care or adoption.
New Administration proposals.

Limited Flexibility for Formulaic Standards for Categorical Expenses

Up to 10% adjustment to debtor's formulaic monthly expenses as specified by National and Local Standards, if debtor demonstrates such adjustments are "reasonably necessary" or "reasonable and necessary."
House bill includes 5% adjustment to food and clothing allowance if debtor demonstrates "reasonable and necessary." IRS reports larger problems for appropriately addressing variations in housing costs than for food and clothing.

Allowance for Current Income that Is Not Expected to Recur

Debtor required to provide documentation on income from past 6 months that is not representative of future income because of unusual circumstances, for example because of job loss or taking a new job. Trustee can consider this information in determining whether to file motion, and court in acting on it.

Nadler Amendment; possible Schumer Amendment.

Appropriate Adjustment of Median-Income Safe Harbors for Debtors in Large Families and with Support Obligations

If debtor is making child support or alimony payments to nonresident children or former spouse, relevant median income for determining debtor's safe harbor is increased by the amount of the payments.
Not yet proposed; discussed as Administration fallback.

Debtors with family size larger than four receive an additional increase in relevant median income for each additional family member ($592 per month per family member).
Similar provision in House bill; Nadler Amendment; Schumer Amendment; Administration proposal.

Consideration of Additional Required Payments in Chapter 13 Not Included in Means Test

In decision to bring motion of abuse and in evaluation of motion, Trustee shall consider additional expenses that are likely to be required in Chapter 13 plan but were not included in means test determination, e.g., required payments on arrearages, etc. Otherwise have debtors that meet means test but cannot work out repayment plan.
Nadler Amendment; likely Schumer Amendment; Administration proposal.

Reasonable Flexibility in Implementing Chapter 13 Plans

IRS "3 Year Rule": Debtor who can pay 100% of debt payments over 3 years is required to do so in 3 years, rather than taking all disposable income (per means test) to repay in less time.

IRS "1 Year Rule": Debtor with expenses higher than allowed expenses, but which are not reasonably necessary, is allowed one year to adjust allowed expenses; repayment for the first year is according to actual disposable income for the first year, not disposable income per means test.
IRS generally applies both rules in developing repayment plans under its guidelines.

Other Issues

Limited Improvements in Reaffirmations of Unsecured and Low-Value Secured Debts

Current Administration proposal: court review required for all reaffirmations of unsecured debt and low-valued (<$500) secured debt, guided by presumptions for undue hardship and full disclosure. More modest versions of these proposals would require court review only in cases where clear "undue hardship" and "full disclosure" tests suggest a problem (review still required if debtor not represented by counsel or does not waive right to hearing, as in current Senate bill).

"Undue Hardship" Test

Determine whether means test shows positive ability to repay after adding reaffirmation payments. If not, presumed undue hardship and court review required.

"Full Information" Test

If full disclosure per terms developed by Judicial Conference (already in use in some districts), then debtor presumed fully informed. If not, court review required.

Protection of Child Support and Alimony Payments

Creditors owed child support and alimony given notice and standing to challenge proposed reaffirmation, on grounds that it jeopardizes debtor's ability to repay.

Moderation in Anti-Cramdown Provisions

Push toward anti-cramdown protection for autos only, to the extent possible.

Credit Card Disclosure Provisions

Items from recent Administration proposal.

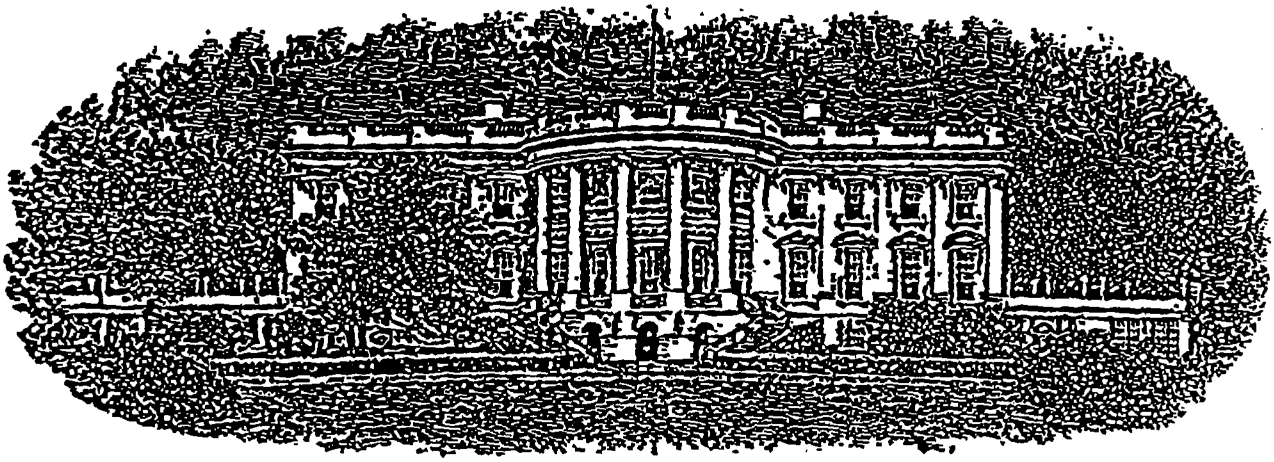
Nondischargeability

Most important is probably increasing "safe harbor" for cash advances in 90 days before bankruptcy from $250 to something more reasonable, e.g., $1,000.

Additional Consumer Group Concern about Fraud Allegations

Prior to the 1978 reforms, creditors often brought allegations of fraudulent credit card use after bankruptcy. Bills should require that allegations of nondischargeability should be allowed during bankruptcy proceedings only, not after, to prevent subsequent actions by creditors.

THE WHITE HOUSE



OFFICE OF LEGISLATIVE AFFAIRS
HOUSE LIAISON
--FAX COVER SHEET--

DATE: 5-4-99

TO: Nicole

FAX: 6-2878

FROM:
- ___ CHUCK BRAIN
- ___ AL MALDON
- ___ DARIO GOMEZ
- ___ LISA KOUNTOUPES
- X BRODERICK JOHNSON
- ___ ELISA MILLSAP
- ___ JADE RILEY

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SUBJECT: ______

1 OF 6

Will you OPPOSE H.R. 833, the Bankruptcy Reform Act?

Y	Baird (WA)		5-3536
	Baldacci (ME)		5-6306
	Baldwin (WI)	against Gekas in Com	5-2906
	Bentsen (TX)		5-7508
	Berkley (NV)		5-5965
	Bishop, Jr. (GA)		5-3631
	Blagojevich (IL)		5-4061
	Blumenauer (OR)		5-4811
	Capuano (MA)		5-5111
	Cardin (MD)	Melanie	5-4016
	Clyburn (SC)		5-3315
	Crowley (NY)		5-3965
	Deutsch (FL)		5-7931
	Dicks (WA)		5-5916
	Doggett (TX)		5-4865
	Etheridge (NC)		5-4531
	Frost (TX)		5-3605
	Gonzalez (TX)		5-3236
	Gordon (TN)		5-4231
	Hill (IN)		5-5315
	Hoeffel (PA)		5-6111
	Holt (NJ)		5-5801
	Hooley (OR)		5-5711
	Hoyer (MD)	Melanie	5-4131
	Inslee (WA)		5-6311
	Jefferson (LA)		5-6636
	Jones (OH)		5-7032
	Kennedy (RI)		5-4911
	Kind (WI)		5-5506
	Kleczka (WI)		5-4572
	Larson (CT)		5-2265
	Lipinski (IL)		5-5701
	Lucas (KY)		5-3465
	Maloney (NY)		5-7944
	Matsui (CA)		5-7163
	McCarthy (MO)		5-4535
	McCarthy (NY)		5-5516
	Menendez (NJ)		5-7919
	Moore (KS)		5-2865
	Napolitano (CA)		5-5256
	Neal (MA)		5-5601
	Pascrell, Jr. (NJ)		5-5751
	Phelps (IL)		5-5201
	Pomeroy (ND)		5-2611
	Rivers (MI)		5-6261
	Sandlin (TX)		5-3035
	Sawyer (OH)		5-5231
	Schakowsky (IL)		5-2111
	Sherman (CA)		5-5911
	Shows (MS)		5-5865
	Smith (WA)		5-8901
	Snyder (AR)		5-2506
	Spratt, Jr. (SC)		5-5501
	Stabenow (MI)		5-4872
	Strickland (OH)	Melanie	5-5705
	Thompson (CA)		5-3311
	Towns (NY)	Melanie	5-5936
	Traficant, Jr. (OH)		5-5261
	Turner (TX)		5-2401
	Udall (CO)		5-2161
	Udall (NM)		5-6190
	Velázquez (NY)		5-2361
	Weiner (NY)		5-6616
	Weygand (RI)		5-2735
	Wise, Jr. (WV)		5-2711
	Wu (OR)		5-0855
	Wynn (MD)		5-8699

Please Phone Results Into the Whip Office at 5-3130

106th Congress
1st Session

H. RES. ______

H.R. 833 – Bankruptcy Reform Act of 1999

1. Structured rule.

2. Waives points of order against consideration of the bill for failure to comply with section 302 (prohibiting consideration of legislation which exceeds a committee's allocation of new spending authority) or section 311 (prohibiting consideration of legislation that would cause the total level of new budget authority or outlays in the most recent budget resolution to be exceeded or cause revenues to be less) of the Congressional Budget Act.

3. Provides one hour of general debate to be equally divided between the chairman and ranking minority member of the Committee on the Judiciary.

4. Provides that it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill.

5. Waives all points of order against the committee amendment in the nature of a substitute and amendments thereto.

6. Makes in order only those amendments printed in the Rules Committee report accompanying the resolution.

7. Provides that amendments made in order may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.

8. Allows for the Chairman of the Committee of the Whole to postpone votes during consideration of the bill, and to reduce voting time to five minutes on a postponed question if the vote follows a fifteen minute vote.

9. Provides one motion to recommit with or without instructions.

SUMMARY OF AMENDMENTS TO BE MADE IN ORDER TO H.R. 833 -- BANKRUPTCY REFORM ACT OF 1999

Gekas #13

(10 Minutes). Manager's Amendment. The Amendment (1) makes various technical changes; (2) makes a clarifying revision to the type of expenses that a debtor may claim pursuant to the IRS Other Necessary Expenses categories (the revision specifies that the debtor must claim *actual* monthly expenses for the specified categories); (3) revises certain provisions so that they conform with the Bankruptcy Code's other provisions pertaining to an award of attorneys' fees; (4) clarifies that the chapter 7 trustee must file a statement as to whether or not a case should be presumed to be an abuse in every case administered by such trustee; (5) revises chapter 13's requirements for confirmation to require the court to find that the debtor filed the chapter 13 case in good faith; (6) revises the title of section 134 of the bill; (7) deletes Section 215 (claims relating to insurance deposits in cases ancillary to foreign proceedings) as this provision is included in title XI of the bill, as revised by this Amendment; (8) adds a new provision to describe certain procedural matters pertaining to appeals, as amended by the bill; (9) adds provisions with respect to the treatment of certain funds subject to state insurance law or regulation for the benefit of claim holders in the United States; (10) repeals sections of the Bankruptcy Code that are no longer necessary; and (11) amends a statutory cross-reference so that it better comports with the drafters' intent, which is to include in the definition of a "financial participant" certain securities contracts, forward contracts, repurchase agreements and swap agreements in addition to certain commodity contracts.

Moran/Dooley/Ackerman #33

(20 Minutes). Amend the Truth in lending Act (TILA) to require Credit Card Issuers to make disclosures regarding minimum monthly payments. It would also ensure that consumers have all the information they need in order to avoid the imposition of late fees and requires that Worldwide Web-Based Credit Card Solicitations are subject to the same "Schumer Box" disclosures as all other credit card solicitations.

Moran #32 **(20 Minutes).** Inserts a disclosure requiring that a debt relief agency providing bankruptcy assistance to an assisted person shall provide a written notice within 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, advising assisted persons of their rights and responsibilities of disclosure. Requires that an attorney or bankruptcy petition preparer give an assisted person a written contract specifying what the attorney or preparer will do and the cost. Inserts a "debtor's bill of rights." Requires that a debt relief agency disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy that the services or benefits are with respect to proceedings under this title of the Bankruptcy Code.

Velazquez #1 **(20 Minutes).** To allow the expansion of the credit committee membership under chapter 11 bankruptcies to include a small business when it is determined that the small business' claims are disproportionally large to its gross revenues. And to ensure better access to information for those small businesses not included in the committee by allowing the committee to be open for comment and subject to additional reports or disclosures.

Graham #14 **(20 Minutes).** The bankruptcy code prohibits the discharge of federally made, guaranteed or insured education loans or education loans made by non-profit institutions. This amendment would extend the prohibition from discharge to all qualified education loans. Includes exceptions for undue hardships.

Dooley #35 **(20 Minutes).** Requires the Federal Trade Commission to set standards to be used by the United States Trustees in approving credit counseling agencies, programs described in section 109(h) and instructional courses concerning personal financial management.

Conyers #23 **(20 Minutes).** Waives the provision of chapter 11 relating to small business debtors or to single asset real estate in cases where the application of those provisions could result in the loss of 5 or more jobs.

Watt #6 **(20 Minutes).** Replaces the provisions of H.R. 833 which require that all bankruptcy filers file their tax returns with the court and instead require that a debtor file tax returns with the court at the request of any party in interest.

Whitfield #36 **(20 Minutes).** Establishes a mechanism whereby bankruptcy trustees may receive compensation when they transfer cases from chapter 7 to chapter 13. Under this provision, the level of compensation would be determined by the bankruptcy judge.

Hyde/Conyers #12 **(40 Minutes).** Deletes the reported bill's application of modified IRS expense allowances for determining permissible projected living expenses of debtors and their families during the life of chapter 13 plans. In its place, the amendment adopts a standard that allows only "reasonably necessary" expenses and directs the Executive office of United States Trustees to issue guidelines that will assist in making assessments of whether expenses qualify. The amendment does not affect other provisions of section 102 that are designed to limit the availability of an immediate fresh start in chapter 7, channel significant numbers of chapter 7 debtors into five-year chapter 13 repayment plans, and generate greater recoveries from creditors.

Nadler #37 **(60 Minutes).** Substitute. Provides a realistic means test which takes into account the debtor's actual income and expenses. Does not omit expenses a debtor would have to pay in a chapter 13 plan from the test used to determine whether the debtor must file for chapter 13. Does not rely on IRS guidelines to determine how much a debtor should live on. Allows adequate judicial discretion to determine whether the debtor appropriately belongs in chapter 7. Avoids using a debtor's ability to repay a specified percentage of unsecured non-priority debts which is easy for debtors to manipulate. Holds both debtor and creditor attorneys to strict application of Rule 9011's penalties for misconduct or bringing a frivolous case. Contains a safe harbor for families below the median national income. Provides a balance by requiring credit card lenders to behave responsibly and to provide borrowers with the information they need to avoid bankruptcy. Prevents some of the more highly publicized cases in which creditors illegally enforced debts after bankruptcy through "reaffirmation agreements." Deletes a section which would have denied victims in these cases a legal remedy by prohibiting class action suits. Eliminates new grounds for making credit card debts non-dischargeable, but leaves intact current law which makes prebankruptcy debt run-up and fraudulently incurred debt non-dischargeable. Eliminates a provision which would have allowed landlords to evict debtors without obtaining the permission of the bankruptcy court. Removes a provision which allows secured creditors to treat the unsecured part of some loans as secured debt. Modifies the child support portions of the bill to take away the special new rights over families that state and local governments would have obtained in a bankruptcy case. Places families first.

Treasury analysis
5/12

Moran Amendment on Consumer Credit Disclosures

3 yrs hence

Minimum payments

- <u>When the consumer first opens an account</u>, credit card issuers would be required to include disclosures which state:
  - that paying only the minimum balance will increase the amount of interest that will be paid and the time it takes to pay the balance;
  - that if the card permits the consumer to forego making a minimum payment, the finance charges will accrue; and
  - several examples of how long it would take to repay a balance if the consumer makes only minimum payments.
    - The number and type of examples would be tailored to the size of the card issuer's typical account balance.
    - If the average account balance for all consumer accounts under a creditor's plan is <u>$1,000 or less</u>, the credit card company must include in account opening materials two examples, based on
      - an annual percentage rate and method for determining minimum periodic payments recently in effect for that creditor, and
      - outstanding balances of $250 and $500,

      showing the estimated minimum periodic payments, and the estimated period of time it would take to repay those outstanding balances, if the consumer paid only the minimum periodic payment on each monthly or periodic statement and obtained no additional extensions of credit.
    - If the average account balance for all consumer accounts under a creditor's plan is <u>more than $1,000</u>, the credit card company must include in account opening materials three examples, based on
      - an annual percentage rate and method for determining minimum periodic payments recently in effect for that creditor, and
      - outstanding balances of $1000, $1500, and $2000

      showing the estimated minimum periodic payments, and the estimated period of time it would take to repay those outstanding balances, if the consumer paid only the minimum periodic payment on each monthly or periodic statement and obtained no additional extensions of credit.

- <u>During at least one billing cycle per year</u>, the credit card company must disclose:
  - the statement on paying only the minimum balance;
  - the statement that finance charges will accrue if the consumer foregoes making a minimum payment;
  - an example, based on the
    - APR
    - method for determining minimum payments, and
    - a $500 balance

    showing the estimated minimum periodic payments, and the estimated period of time it would take to repay the $500 outstanding balance, if the consumer paid only the minimum

periodic payment on each monthly or periodic statement and obtained no additional extensions of credit, and
  - a worksheet prescribed by the Fed to assist the consumer in determining the consumer's household income and debt obligations.

- On each monthly billing statement, the credit card company must disclose:
  - the statement on paying only the minimum balance;
  - the required minimum payment amount represented as a dollar figure; and
  - the date by which or the period within which the required minimum payment must be made.

- Regulations implementing these disclosures are to be effective not earlier than 36 months following enactment of the legislation.

Teaser Rates

- When the consumer first opens an account, credit card issuers would be required to include disclosures which state:
  - the time period that teaser rates remain in effect, and
  - the APR after the teaser rate expires, or if the rate is variable,
    - the fact that the rate is variable,
    - the rate at the time of mailing, and
    - how the rate is determined.

Penalty Rates

- When the consumer first opens an account, credit card issuers would be required to include disclosures which state:
  - the initial rate and the penalty rate,
  - if the penalty rate is a variable rate,
    - the fact that the penalty rate is variable,
    - the rate at the time of mailing, and
    - how the rate is determined. and
  - the events under which the penalty rate is imposed.
- *At the creditor's option*, the creditor may disclose the period for which the penalty rate remains in effect.
- If the penalty rate cannot be determined at the time disclosures are given, the creditor must disclose the events under which the penalty rate is imposed.
- The creditor is not required to disclose the penalty rate when credit privileges are terminated.

Alternatives to Moran Amendment

1. Durbin "lite" amendment on minimum payment, requiring for each billing cycle:
   - the required minimum payment amount represented as a dollar figure (*same as H.R. 833)*;
   - the date by which or the period within which the required minimum payment must be made (*same as H.R. 833)*;

- the number of months (rounded to the nearest month) it would take to pay the entire amount of the outstanding balance if only the minimum amount is paid and no further advances are made *(from Durbin)*, and
- total principle and interest cost to the consumer of paying the balance in full if only the minimum monthly payment is made and no further advances are made *(from Durbin)*.

As a trade-off, drop from the House bill:

- the requirement to put in each monthly statement the boilerplate language on minimum payments;
- all the disclosure requirements noted above for at least one billing cycle per year, *e.g.*, the boilerplate language, the $500 example, and the Fed worksheet; and
- when the consumer first opens an account, the examples from the House bill for paying off balances.

2. During one billing cycle per year, instead of using the $500 figure, use the consumer's average monthly balance for the year to calculate the estimated period of time it would take to repay the outstanding balance if the consumer paid only the minimum periodic payment on each monthly or periodic statement and obtained no additional extensions of credit.

3. During one billing cycle per year, instead of using the $500 figure, use the consumer's actual balance for that month to calculate the estimated period of time it would take to repay the outstanding balance if the consumer paid only the minimum periodic payment on each monthly or periodic statement and obtained no additional extensions of credit.

4. For account balances greater than $1000, add the pay-off information for the credit limit amount applied to each consumer, and require the information to be supplied again each time the credit limit is increased.

5. For penalty rates, require creditors to disclose the period for, or the circumstances under, which the penalty rate remains in effect.

6. For penalty rates, require creditors to disclose the penalty rate when credit privileges are terminated.

7. For penalty rates, require creditors to disclose in each monthly statement the penalty rate amount as a dollar figure plus the APR when the penalty rate is included.

8. For teaser rates, require the credit card company to disclose prominently and unambiguously on the monthly statement for the month prior to the termination of the rate the fact the rate is expiring and the new APR that will apply to outstanding balances.

9. For the Fed worksheet, require that it start with the outstanding balance and interest rate (unless a teaser rate, in which case the APR following the teaser rate would be used) and increase at $500 increments.

May 10, 1999 -- DRAFT

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING
LARRY STEIN
MELANNE VERVEER

RE: BANKRUPTCY REFORM STATUS REPORT

ACTION FORCING EVENT: On April 6, 1999, we wrote to you recommending a strategy to deal with Bankruptcy legislation moving through both chambers in Congress. The goal was to increase our leverage and reduce the likelihood of a veto override. We have made little progress, however, in the face of an extraordinary campaign by the credit industry. The House recently passed a bill that is still fundamentally flawed. Nonetheless, it passed by a vote of 3-- - 108 (with fewer votes in opposition than last year's Conference Report). We anticipate that an only slightly better bill will pass in the Senate by a similar veto-proof margin, making exercise of the veto a futile gesture that will only highlight weakness.

RECOMMENDATION: Given this prognosis, your advisors recommend a new strategy designed to achieve very modest improvements that would allow you to reluctantly sign the bill, while expressing concern about the impact of the legislation. Specifically, we propose to:

(1) develop a tactical amendment to be offered on the Senate floor that would give the court discretion to consider the special circumstances of sympathetic debtors, e.g., those who care for non-dependent elderly or children, who are protecting themselves or their families from domestic violence, or who are trying to move from welfare to work;

(2) work with Democratic supporters of both House and Senate legislation in an effort to win their help in obtaining modest changes;

(3) adjust the tone of Administration statements about the pending Senate bankruptcy bill, showing greater favor for this slightly better bill in hopes of increasing the chances that its more reasonable provisions will prevail in Conference; and

(4) recommend that you sign the bill that comes to your desk, while expressing concern that it provisions will hurt low- and moderate-income families struggling to make a fresh start and making the case for further scrutiny of the bill's impact and reconsideration of its provision if harm is found.

BACKGROUND: In April, we proposed a strategy to:

(1) exploit publicly the vulnerabilities of the legislation (by presenting sympathetic scenarios debtors denied access to a fresh start under the bill, attacking provisions in the bill that roll back existing protections against abusive and coercive collection practices, highlighting the bill's failure to improve disclosure and stem credit card abuses, and critiquing lingering danger it presents to child support and alimony collection);

(2) work with bill proponents and opponents (including Senators Torricelli and Grassley and Representative Nadler) to advance alternative provisions that would substantively improve the current bills;

(3) work with Representatives Nadler, Conyers, Frank, Gephardt, and Bonior to produce a mo palatable House bill, or, if that is not possible, to garner the 20-25 additional House votes necessary to sustain your veto; and

(4) work with Senators Durbin, Kennedy, Leahy and others to develop a Senate floor strategy and identify message amendments which could motivate Republicans to compromise.

Thus far, the effort has been unsuccessful. Representative Nadler began the debate by offering an alternative that was to the left of the Senate bill last year. We convinced him that a different strategy was necessary – that the Democrats should instead offer an amendment that made only a limited list of targeted changes necessary to win the President's support. Minority Leader Gephardt, who last year voted for the Conference Report, agreed to support this strategy. He issued a statement indicating his opposition to the Judiciary Committee print and support for the Democratic alternative. However, it appears that the nature of the alternative was largely irrelevant in the face of an extraordinary lobbying campaign by creditors reminiscent of major tax legislation. The Democratic alternative received votes from __ Democrats, but only ___ were willing to oppose the underlying bill after the alternative failed. **[Leg Affairs – please fill in.]**

The poor showing of the Democratic alternative in the House bodes badly for the Senate debate scheduled for the week of May 17th. In extensive discussions with numerous Senate members and their staff, we find little willingness to advance changes to the complex means test and reaffirmation provisions that need revision. They are interested in advancing "message" amendments (e.g., a Schumer amendment to make nondischargeable in bankruptcy judgements for violation of the Freedom of Access to Clinics Act [Leg affairs – proper name?]) or limited technical changes sought by narrow constituencies (e.g., credit counselors). In any event, few Democratic amendments are likely to succeed; and the majority of Democrats appear prepared to vote for the bill on final passage provided they have an opportunity to offer their amendments. If the Majority Leader takes procedural steps to limit debate in the face of Minimum Wage or Patients' Bill of Rights amendments, Democrats may oppose cloture as a party rights matter; however, a time agreement for consideration of Democratic amendments is likely to be reached.

In light of our limited leverage, the best possible outcome would be further modest changes to the

Senate bill, with key provisions from the Senate version prevailing in conference. To that end, we will find a sponsor for an amendment that will be hard to oppose. This amendment would give the court discretion to consider the special circumstances of those who care for non-dependent elderly or children, who are protecting themselves or their families from domestic violence, or who are trying to move from welfare to work. Our greatest concern with these bills has been that they provide bankruptcy judges inadequate discretion to consider the unique circumstances of individual debtors. As we have been unable to argue compellingly for judicial discretion, we will propose that they provide discretion in specific cases where the strict application of the rigid means test formula would impose clear hardship.

We also will work with Democratic supporters of both House and Senate legislation in an effort to win their help in obtaining modest changes that will allow the Administration to demonstrate that we obtained concessions. We will craft a more balanced Statement of Administration Policy on the Senate bill when it comes to the floor – a statement less critical than others that we have issues thus far. We need to show favor toward the Senate proposal in hopes that its slightly more modest provisions will prevail in conference. Finally, we will begin to lay the groundwork for a signing statement that expresses your concern about the adverse impact of this legislation on some debtors and their families. In signing the legislation, you may wish to direct the Departments of Justice and Treasury to undertake studies of the bill's impact so that, if adverse implications are found, you can advance limited proposals to remedy the harm in the future.

_____ **Agree** ______ **Disagree** ______ **Let's Discuss**

Sarah Rosen Wartell
04/30/99 09:22:32 PM

Record Type: Record

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

cc: Sally Katzen/OPD/EOP@EOP, David W. Beier/OVP@OVP
Subject: Bankruptcy -- Major Developments -- House Strategy

We met late this afternoon with Cassandra Butts (Gephardt), Perry Applebaum (Conyers), and David Lachman (Nadler) to discuss the bankruptcy bill's trip to the floor next week.

Amendments must be filed by 3:00 on Monday. The rules committee meets on Tuesday. The bill should be on the floor on Wednesday. They expect that they will be asked what their top 5-6 amendments are and they will pick among the 30 some that will be offered. They expect that list to include: (1) the Hyde-Conyers amendment on means test (probably exactly as was offered in committee); (2) a Democratic alternative (was to be the Nadler bill before this conversation); and (3) a women's and children's amendment (like Nadler offered in Committee).

They expect that Hyde-Conyers will loose although Hyde's staff is less certain.

Nadler asserts that Gephardt told him that if Nadler offered a reasonable alternative, Gephardt would rally Democrats to vote for the alternative and not vote for final passage of the bill. (Gephardt's staff is not sure that he made that commitment, but does want to try to work this out for the Democrats and the President. Broderick is not sure how hard Gephardt would work it, in any case.)

However, everyone agrees that the goal should be to get strong Democratic support for an alternative and, more importantly, provide adequate cover for enough Democrats to vote against final passage, so that we do not face a veto-proof majority again this year. When you take the votes against the Conference Report in the House last year and subtract the members who left and add Gephardt and subtract Roukema (lost her), the Dems start from about 118. They have to get to about 145 (Broderick -- please check my math). They have worked the freshmen but they clearly don't have firm vote counts and won't til Tuesday. They take comfort in the fact that Barney voted "present" at the committee mark-up. At a recent caucus meeting, a Democrat who voted for the bill last year reportedly told others that they should look at their vote carefully because it could hurt them with progressive constituencies. Nonetheless, they reluctantly agreed that they are a far cry from likely success on this vote as of right now. 27

I talked about how weak our position appears to be in the Senate. I then argued that the Nadler alternative, which is to the left of the Senate bill last year, is not a viable alternative. I argued that we cannot imagine that moderate Dems will feel comfortable not voting for final passage -- changing their votes from last year -- because they voted for the Nadler bill. David acknowledged that it was a bill crafted by industry professionals -- but didn't necessarily send a political message.

There was some discussion of the fact that our preferred policy is more centrist than Nadler's bill and, in fact, there are things in the republican bills that we like better. But we made clear that our concern was political, not substantive. We didn't think it would be viewed as a credible alternative for the Dems.

We argued that they needed instead a Democratic alternative that started from the Judiciary Committee bill. The changes should be limited in number and reasonable enough so that Democrats can say that they were voting for a "real" bankruptcy reform bill that was credible as a political statement. It should invoke Hyde for the means test, since many will assume that the means test provisions have credibility if he supports them.

We proposed that the changes include: .

(1) Revised means test -- the Administration proposal -- described as being similar to Hyde in its key elements.

(2) A credible reaffirmation proposal -- not full judicial review of each agreement -- but our streamlined proposal based on disclosure and capacity to repay the debt reaffirmed.

(3) An alternative to the cram down provisions.

(4) Something adding balance -- by requiring more of credit card companies. homestead ?

(5) Revisions to the nondischargeability provisions

(6) Elimination of the ban on class actions alleging coercive reaffirmations or violations of the automatic stay.

Regarding (3), we suggested no cram downs for 6 months on most goods, 2 years on cars, but they argued that the banks hate this provision so we should simply eliminate it and set the banks against the auto finance folk. I conceded (perhaps too quickly). Need political advice from legislative affairs on that.

Regarding (4), they want to add the LaFalce bill. While we don't like everything in there, we will be saying very warm things about key parts of it on Tuesday and it is easy to reference. We do worry that some of its provisions go too far and will drive some Democrats off, but it was too complicated to pick parts and not others.)

In addition to these, they want to add provisions changing:

(7) the landlord-tenant lease provisions; (we don't agree but won't die over this) and

(8) the child support and alimony provisions to make them more favorable to the custodial parent or former spouse and less preferential for the state agencies collecting refunds of public support paid to people owed child support or alimony.

They said they also needed to check about other things that would be important to keep together their members, like something on small business provisions.

We agreed that, if they offered such a Democratic amendment, we thought the Administration would be strongly supportive of the bill and, if they suggested which members were on the fence, be willing to make good efforts to press them to vote no on final passage and yes for the alternative.

Lachman said that Nadler might not feel comfortable offering this amendment and that it might be good for the effort if someone else offered it -- perhaps Meehan. Cassandra praised him for thinking unselfishly. He acknowledged that the goal always was how to get to a veto-sustaining number so we had room to negotiate a better (if not good) bill.

We are seeking Gene Sperling, Larry Stein, and John Podesta's concurrence on this strategy over the weekend. Meanwhile, Treasury and DoJ are sending the Democrats the language they would need for this amendment.

Lachman went back to check with Nadler. We expect he may call Gene or Podesta this weekend.

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04/15/99 06:22:32 PM

Record Type: Record

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

cc:
Subject: Today*s Mark-up of S. 625

Date: 04/15/1999 06:18 pm (Thursday)
From: Tom McGivern
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Subject: Today*s Mark-up of S. 625

This repeats some of what Joel sent us and has a little more of what individual Senators said today.

* * * * *

Today Chris McDaniel from Treasury attended the Senate Judiciary Committee mark-up of S. 625. Chairman Hatch and Senators Leahy, Kennedy, Grassley, Biden, Kyl, Kohl, DeWine, Feinstein, Feingold, Torricelli, Schumer, Smith, and Sessions were present. Committee Members confined their discussion to opening remarks, and no amendments were introduced. According to Chairman Hatch, 26 amendments have been filed to date. The Committee likely will meet next week to continue the mark-up.

Highlights

Several Senators expressed concern that many of the consumer protections that were included in last year*s Senate bill have been stripped from S. 625, and that more protections need to be introduced in order to give greater balance to the bill. Sen. Grassley attributed the lack of some of the consumer provisions to Banking Committee Chairman Gramm*s statement that he would insist on sequential referral if the bill contains any provisions, such as credit card disclosure, that fall under the Banking Committee*s jurisdiction. Grassley stated that certain amendments thus may need to be introduced on the Senate floor.

In his opening remarks, Sen. Grassley stated that the current bill takes a fair and balanced approach to necessary bankruptcy reform. Grassley cited many factors that favor reform, including: 1) the explosion in bankruptcy filings; 2) the need to close loopholes in the existing bankruptcy system; 3) the hidden tax on all Americans caused by bankruptcy; 4) the $4-5 billion in lost revenue; 5) 70% of Americans support reform; and 6) the overwhelming bi-partisan support for reform in the last Congress. He added that he has been working hard with the two Democratic co-sponsors, Senators Torricelli and Biden, to craft a bipartisan bill.

Sen. Torricelli agreed that the increase in bankruptcy filings was a major concern, but also stated that it should not be lost on the Committee that many filers fall on hard times and deserve a fresh start. He stated that a fresh start will not be assured without a balanced bill that addresses both debtor and creditor abuses. Torricelli said that last year*s conference report abandoned many of the principles contained in last year*s Senate bill, which passed 97-1. Torricelli seemed most concerned about: 1) preventing abusive reaffirmations; 2) preventing abusive filings by creditors; 3) ensuring that a debtor*s attorney will not be held financially liable for certain debtor filings; and 4) requiring adequate consumer credit card disclosure.

Sen. Leahy echoed Sen. Torricelli*s remarks concerning the need for increased credit card disclosure, including information about how long it will take a debtor to pay off total credit card debt if only the minimum monthly payment is made. Sen. Leahy also opposes using the IRS income formulas to administer the proposed means test because they are not flexible enough, and he doesn*t believe that an agency that has received so much criticism in the last year should have their formulas serve as the model for bankruptcy reform.

Sen. Kennedy expressed his belief that last year*s Senate bill was truly a product to be proud of, while this year*s bill lacks many of the crucial consumer protections that are necessary to balanced reform. He further stated that the Democrats were denied a voice in formulating last year*s conference report and that the special interests have taken over S. 625. He said that S. 625 *stinks* because the creditors have the most to gain from its passage.

Sen. Biden stated that with 1.4 million bankruptcy filings, something is clearly wrong with the system, and that the legislation needs to address both creditor and debtor abuses. On the debtor side, he said that those who file a chapter 7 when they could pay a portion of their debts in a chapter 13 will cost the system up to $4 billion over the next five years unless there is reform. On the creditor side, he argued that there must be increased disclosure by credit card companies so that consumers can manage their debts more effectively. He does not support, however, any provision that would restrict credit card solicitation. Biden*s solution for avoiding the jurisdiction of the Banking Committee is to offer certain consumer oriented amendments on the Senate floor, rather than in the Judiciary Committee.

Sen. Feingold expressed reservations about S. 625. He is especially concerned with the provision that could require the debtor*s attorney to bear personal financial responsibility for certain debtor filings. He also feels that there are too many ambiguities in the means test, that the proposed use of IRS guidelines is inappropriate, and that other creditor oriented provisions will decrease the potential to successfully complete a chapter 13 plan. Sen. Feingold also stated that the legislation is moving too quickly and is concerned that no Senate hearings have been held during the current Congress. He thinks that in many ways S. 625 is entirely new when compared to last year*s conference report, and that the Senate should not be rushed into considering the bill.

Sen. Schumer found last year*s Senate bill to be the model upon which to fashion a new bill and he is disappointed that it was not used as a starting point for S. 625. His suggestions for balanced reform include: 1) eliminating the option for states to choose an unlimited homestead exemption; 2) eliminating the provisions that require the use of IRS income standards; and 3) increasing disclosure related to credit card payments.

Sen. Feinstein agrees with Sen. Feingold that the bill is moving too fast, and that many of the provisions are anti-consumer. She also thinks that the means test is too arbitrary, and that the consumer credit counseling program provisions in the bill are overly burdensome.

Sen. Kohl expressed his opinion on only one issue, the homestead exemption. He believes that the bankruptcy code should place a cap on the homestead exemption, considering that 43 states have an exemption of $100,000 or less.

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4/26/99 mtg

Reaffirmations

Administration Proposal

The Administration supports the following reforms in bankruptcy law governing the approval of reaffirmations:

- Court review of reaffirmations that are least likely to be in the debtors best interest: court review is required for reaffirmation of unsecured debt and of secured personalty debt with original purchase price under $500, to determine that these reaffirmations are fully informed, voluntary, in the debtor's best interest, and do not pose undue hardship. In addition, costs and attorneys' fees cannot be added to these reaffirmations. This proposal is similar to the ABI proposal, which requires review for unsecured debt and secured debt of less than $3000.

- Guidance to determinations of whether the debtor is fully informed and whether the reaffirmation creates an undue hardship: An affidavit filed with the reaffirmation would create these presumptions.

  – A presumption that the debtor is not fully informed would be created if the affidavit did not include the model form on disclosure of financial terms developed by the Judiciary Committee.

  – A presumption that the reaffirmation presents undue hardship would be created if, when the cost of the reaffirmation is added to the debt expenses calculated in the means test, the debtor's income is insufficient to repay all nondischargeable debts.

  This guidance applies both for court review (where it is required) and for reaffirmations subject to review by the debtor's attorney.

- Notice and standing for domestic support creditors, allowing them to object to a proposed reaffirmation that is likely to jeopardize payment of their priority debt.

- No coercion: the Court must find that the agreement was not part of a threat, as in the current bills.

Current House and Senate Bill

The current House and Senate bills require that creditors who seek reaffirmation of wholly unsecured debts provide a disclosure that the debtor is entitled to a court hearing, and that the debtors can waive their rights to hearings if represented by counsel. Thus the court must hold a hearing to determine whether the agreement should be approved if: (1) the debtor was not represented by counsel (as in current law), or (2) has unsecured consumer debt and was represented by counsel but did not waive the right (which rarely occurs). The bills also require that the court must find that the agreement was not the result of a threat.

Background on Administration Position

The Administration agrees with the Bankruptcy Commission that debtors need to receive full and complete disclosure of the facts of reaffirmation agreements, that many reaffirmations involve terms that are far worse than those available elsewhere, that the existing attorney affidavit procedure provides inadequate protection from unfavorable reaffirmations. Thus, the Administration has sought additional protection against unwise reaffirmations. Along with the American Bankruptcy Institute, the Administration has endorsed court review of reaffirmations that are least likely to be in the best interest of debtors and priority creditors like divorced spouses. Such reaffirmations include unsecured debt and debt secured by small personalty items of little value, which are often the basis of reaffirmations that are very unfavorable and/or are the result of misleading or coercive offers by creditors. Finally, believing that debtors with adequate information and protection against coercion were capable of making wise decisions even in the case of unsecured credit, the Administration does not support a ban on reaffirmations of unsecured credit.

Accordingly, the Administration supported the reaffirmation reform proposed in last year's Senate bill, S. 1301. The Senate bill required that the reaffirmation agreement contain a clear disclosure of the components of the reaffirmed debt--principal, interest, late fees, creditor's attorneys fees and other costs of collection. In addition, in cases where the debt was unsecured or was for purchase of a personalty item of original value less than $250, the bill required the court to make a number of findings for approval, including finding that the agreement was in the debtor's best interest, did not impose undue hardship, was not the result of coercion, and was not excessive relative to collateral value. The Administration also sought further protections, by requiring that the court find clear and convincing evidence that the agreement was in the debtor's best interest and would not cause a hardship, and by applying the bill's provisions to debts for purchases of somewhat higher original value than $250. One criticism of the Senate proposal was that the bill language did not provide clear guidance for courts to use in deciding whether reaffirmations met the conditions for approval, so that reaffirmations would be costly to review and the diverse standards currently used by courts might continue to be applied.

This enhanced Administration proposal addresses the concerns about feasibility and clear guidance. It also builds on the new information on repayment capacity to be collected as part of the bankruptcy reform process – indeed, it applies the same results and standards to reaffirmations as the reform bills apply in the means test for determining ability to repay – thereby limiting costs of reaffirmation review and assuring that priority debts will be paid. Thus, the enhancements to the reaffirmation proposal make it largely self-executing.

Detailed Description of Administration Proposal

The proposal for "no coercion" is the same as the finding required in the current House and Senate bills. We describe below the specific guidance for whether "full disclosure" has occurred, and for whether the reaffirmation constitutes an undue hardship for the debtor.

Presumptions for affidavits/court approvals:

By providing clear guidance for courts, attorneys, and parties at interest in developing reaffirmations that are in the best interest of the debtor, *yet do not harm* priority creditors, the proposal would improve the quality of all reaffirmations without imposing significant new administrative burdens on the bankruptcy system.

(1) *fully informed*: Debtor is *presumed not to be fully informed* unless the creditor who is party to the agreement discloses credit terms according to forms provided by the Judicial Conference, and provides the disclosures to the court as part of filing. This form is provided at Attachment A. The disclosures included on the form are standard information that the debtor, the attorney, and the court need in order to assess whether the reaffirmation is in the debtor's best interest:

- the amount of the prepetition claim
- total amount of the reaffirmed debt, and component amounts attributable interest accrued, attorney fees, late fees, other costs relating to collection
- the monthly payment of the reaffirmed amount or, if the reaffirmation agreement extends new or additional credit, the minimum monthly payment on that amount
- annual percentage rate of interest (APR) and other types of finance charges and their manner of calculation, including but not limited to late fees, service fees, etc, assuming that Regulation Z applies to the transaction and treats it as a refinancing; separately, the same information for any new or additional credit extended[1]
- date payments start
- total number of payments made to satisfy the reaffirmed indebtedness, if paid on schedule
- if secured: date any lien is released, if payments are made on schedule
- if secured: description of collateral, value, and basis for valuation

Disclosures that meet these requirements create a presumption of full information.

(2) *undue hardship*: A proposed agreement is presumed to be undue hardship if, when all monthly payments in the proposed reaffirmation are added to the debtor's monthly expenses as calculated in the Section 707(b) means test, the total expense exceeds the debtor's monthly income. This test simply adds one line (the expense of the reaffirmation) to the ability to repay calculations that will be performed for all Chapter 7 debtors.

For debtors who undergo the full 707(b) means test, this calculation is straightforward - documentation on income, expenses, and nondischargeable debt payments not counted in expenses is filed as part of the case. The only additional information required of the debtor is the total monthly payment for the proposed reaffirmation; if the total expenses counting the reaffirmed debt are greater than the debtor's monthly income, the reaffirmation is presumed not to be in the debtor's best interest. For reaffirmations that do not involve a regular monthly

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[1] There is debate over the exemption granted to credit agreements that are the result of "court proceedings" in Regulation Z. This proposal does not suggest changing the exemption.

schedule of payments, the debtor's total expenses over the period of the reaffirmation (including the total payments for the reaffirmed debt) are compared to the debtor's total income over the same period.

For debtors who are "screened out" of the means test under the Administration proposal, the debtor's monthly expenses are estimated to be 1.4 times the applicable monthly expenses under the IRS National and Local Standards for food, clothing and other items[2]; housing and utilities; and transportation. The "undue hardship" presumption is then whether the debtor's monthly income is greater than the sum of these monthly expenses, plus monthly payments on existing nondischargeable debts, plus monthly payments on the proposed reaffirmations.

The debtor may rebut a presumption of undue hardship by demonstrating circumstances that, despite the presumption, justify the proposed agreement. For debtors who were not subject to the full Chapter 7 means test or who did not have adequate ability to repay according to the means test, this would require documenting expenses and required debt payments to provide evidence that the reaffirmation does not jeopardize payment of nondischargeable debts. Any such evidence can also be used by the court as a factor in determining whether the Chapter 7 filing is presumed abusive, and/or in setting the terms of a Chapter 13 repayment plan.

Notice and standing for domestic support creditors

(1) *Notification*: The debtor must notify creditors owed child support and alimony payments of any proposed reaffirmation agreement with sufficient time to allow such creditors to object to the court's approving an agreement.

(2) *Standing for parties at interest*: A creditor with a domestic support claim may object to the approval of an agreement because of substantive or procedural defects on the grounds that the debtor's future income and/or expenses are not described adequately in the information provided by the debtor on capacity to repay and that the true capacity to repay is insufficient to protect his or her own claim adequately. If an objection is made, the court must hold a hearing.

(3) *Fee shifting*: The court may award the creditor all reasonable costs in bringing an objection, if the court grants the objection and finds that the position of the debtor who proposed the agreement was not substantially justified (as guided by the presumptions). The court may award the debtor all reasonable costs in contesting an objection brought by a party in interest if the court does not grant the objection and the court finds that the position of the party in interest was not substantially justified, or that the party brought the objection solely for the purpose of coercing a debtor into waiving the right to reaffirm.

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[2] According to the data in the BLS's Consumer Expenditure Survey, average total consumer expenditures are about 40% larger than annual expenditures for the items covered in the National and Local Standards.

4/26/95 mtg

Section 524© is amended--

(1) in subsection (3) , in the material preceding subsection (3)(A), by inserting after "such agreement has been filed with the court" the following:

"within 45 days after the meeting of creditors under section 341(a)"

(2) in subsection (c)(6)(B), by adding at the end the following:

"or is a debt described in subsection (c)(7)"

(3) by adding at the end of subsection (C) the following:

"(7) If the consideration for such agreement is based in whole or in part on an unsecured consumer debt, or is based in whole or in part upon a debt for an item of personalty the value of which at point of purchase was $500 or less, and in which the creditor asserts a purchase money security interest, the court approves such agreement as-

(i) in the best interest of the debtor, including that it represents a fully informed agreement by the debtor

(ii) not imposing an undue hardship on the debtor or a dependent of the debtor or on the debtor's future ability to pay for the needs of children and other dependents (including court ordered support)

(iii) not an agreement that the debtor entered into as a result of a threat by the creditor to take an action that, at the time of the threat, the creditor could not legally take or did not intend to take."

(4) In subsection (d)(2)--

(A) by striking "subsection (c)(6)", and inserting "subsections (c)(6) and (c)(7)"

(B) After "of this section," by striking "if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor", and adding at the end "as applicable"

(5) After subsection (d)(2)

by inserting --

"(3) if the parties execute an agreement which fully discloses the financial terms of the reaffirmed debt under the form prescribed by the Judicial Conference of the United States, and the debtor has sufficient income after expenses to make the payments required by the agreement, the court may presume--

(A) that the debtor has been fully informed; and

(B) that the agreement does not impose an undue hardship on the debtor or a dependent of the debtor or on the debtor's future ability to pay for the needs of children and other dependents (including court ordered support).

For purposes of this subsection, the debtor's income and expenses shall be calculated in the same manner as required by section 707(b) of this title, based on the debtor's filings under section 521 of this title."

"(4)(A) A party at interest shall have standing to object to the filing of a reaffirmation agreement.

(B) The court shall award a debtor all reasonable costs and other appropriate damages in contesting a motion brought by a party in interest under this subsection (including reasonable attorneys' fees) if, after notice and a hearing, the court does not grant the motion and the court finds that—

(i) the position of the party that brought the motion was not substantially justified; or

(ii) the party brought the motion solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title."

Section 707(b)(2) after Hyde amendments

"(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income less estimated administrative expenses and reasonable attorneys' fees and amounts set forth in clauses (ii) for monthly expenses, (iii) for monthly payments on account of secured debts, and (iv) for monthly unsecured priority debt payments, and multiplied by 60 months is not less than $6,000.

"(ii) The debtor's monthly expenses shall be the debtor's monthly expenses reasonably necessary to be expended—

"(I) for the maintenance or support of the debtor, the dependents of the debtor, and, in a joint case, the spouse of the debtor if the spouse is not otherwise a dependent; and

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

Notwithstanding any other provision of this clause, the debtor's monthly expenses shall not include any payments for debts described in clauses (iii) and (iv).

"(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition, and dividing that total by 60 months.

"(iv) The debtor's monthly unsecured priority debt payments (including payments for priority child support and alimony claims) shall be calculated as the total amount of unsecured debts entitled to priority, and dividing the total by 60 months.

"(v) For the purposes of this subsection, a family or household shall consist of the debtor, the debtor's spouse, and the debtor's dependents, but not a legally separated spouse unless the spouse files a joint case with the debtor.

"(B) In any proceeding brought under this subsection, the presumption of abuse may be rebutted only by demonstrating extraordinary circumstances that require additional expenses or adjustment of current monthly income. In order to establish extraordinary circumstances, the debtor must itemize each additional expense or adjustment of income and provide documentation for such expenses or adjustment of income and a detailed explanation of the extraordinary circumstances which make such expenses or adjustment of income necessary and reasonable. The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustment to income are required. The presumption of abuse may be rebutted only if such additional expenses or adjustments to income cause the debtor's current monthly income less estimated administrative expenses and reasonable attorneys' fees and the amounts set forth in clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than $6,000.

"(C) As part of the schedule of current income and expenditures required under section 521 of this title, the debtor shall include a statement of the debtor's current monthly income, and the calculations which determine whether a presumption arises under subparagraph (A)(i), showing how each amount is calculated. The bankruptcy rules promulgated under section 2075 of title 28, United States Code, shall prescribe a form for such statement and may provide general rules on its content.

"(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not apply or has been rebutted, the court shall consider—

"(A) whether the debtor filed the petition in bad faith; or

"(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

"(4)(A) If a panel trustee appointed under section 586(a)(1) of title 28 or a bankruptcy administrator brings a motion for dismissal or conversion under this subsection and the court grants that motion and finds that the action of the counsel for the debtor in filing under this chapter violated Rule 9011, the court shall assess damages which may include ordering:

"(i) the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting the motion, including reasonable attorneys' fees;

"(ii) the assessment of an appropriate civil penalty against the counsel for the debtor; and

"(iii) the payment of the civil penalty to the panel trustee, bankruptcy administrator or the United States trustee.

"(B) In the case of a petition filed under sections 301, 302, or 303 of this title and supporting lists, schedules and documents filed under section 521(a)(1) of this title, the signature of an attorney on the petition shall constitute a certificate that the attorney has—

"(i) performed a reasonable investigation into the circumstances that gave rise to the petition; and "(ii) determined that the petition, lists, schedules, and documents—

"(I) are well grounded in fact; and

"(II) are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and do not constitute an abuse under paragraph (1) of this subsection.

"(5)(A) Except as provided in subparagraph (B), the court may award a debtor all reasonable costs in contesting a motion brought by a party in interest (not including a panel trustee, bankruptcy administrator, or United States trustee) under this subsection (including reasonable attorneys' fees) if—

"(i) the court does not grant the motion; and

"(ii) the court finds that—

["(I) the position of the party that brought the motion was not substantially justified; or]

"(II) the party brought the motion solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

"(B) A party in interest that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A).

"(6) However, only the judge, United States trustee, bankruptcy administrator, or panel trustee may bring a motion to dismiss or convert a case under this subsection if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief, when multiplied by 12, is less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner. Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.

"(7) In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

"(8) In a proceeding to dismiss or convert under this subsection, the presumption under paragraph (2) shall not apply if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief, when multiplied by 12, is less than—

"(A) the highest regional median family income last reported by the Bureau of the Census for a family of equal or lesser size, or in the case of a household of 1 person, the regional median household income for 1 earner; or

"(B) in the case of a debtor whose family consists of more than 4 individuals, the regional median household income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.

No judge, United States trustee, panel trustee, bankruptcy administrator or other party in interest shall bring a motion under subsection (b)(2) if the debtor and the debtor's spouse combined, as of the date of the order for relief, have current monthly total income equal to or less than the regional median household monthly income calculated on a semi-annual basis for a household of equal size. However, for a household of more than 4 individuals, the median income shall be that of a household of 4 individuals plus $583 for each additional member of that household.".

(b) DEFINITION.—Title 11, United States Code, is amended—

(1) in section 101 by inserting after paragraph (10) the following:

"(10A) 'current monthly income' means the average monthly income from all sources derived which the debtor, or in a joint case, the debtor and the debtor's spouse, receive without regard to whether it is taxable income, in the 180 days preceding the date of determination, and includes any amount paid by anyone other than the debtor or, in a joint case, the debtor and the debtor's spouse, on a regular basis to the household expenses of the debtor or the debtor's dependents and, in a joint case, the debtor's spouse if not otherwise a dependent;''; and

(2) by inserting after paragraph (17) the following:

"(17A) 'estimated administrative expenses' means 10 percent of projected payments under a chapter 13 plan;".

<u>Additional Hyde Amendment related to determination of debtor expenses</u>

SEC 151. GUIDELINES FOR ASSESSING INCOME.

Section 586 of title 28, United States Code, is amended by adding at the end the following:

"(f) Not later than 1 year after the effective date of this subsection, the Director of the Executive Office for the United States Trustee shall issue guidelines to assist in making assessments of whether income is not reasonably necessary to be expended by a debtor for the maintenance or support of the debtor, the dependents of the debtor, and, in a joint case, the spouse of the debtor if the spouse is not otherwise a dependent.".

Total Pages: 5

LRM ID: REJ72

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, April 29, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below
FROM: Richard E. Green (for) Assistant Director for Legislative Reference
OMB CONTACT: Ronald E. Jones
PHONE: (202)395-3386 FAX: (202)395-3109
SUBJECT: **Report on HR833 Bankruptcy Reform Act of 1999**

DEADLINE: **10:00 AM Friday, April 30, 1999**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: If we do not hear from you by the deadline, we will assume you have no objection to the proposed letter.

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LRM ID: REJ72 SUBJECT: Report on HR833 Bankruptcy Reform Act of 1999

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Ronald E. Jones Phone: 395-3386 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: ______________________ (Date)
______________________ (Name)
______________________ (Agency)
______________________ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _______

_____ Other: ______________________

_____ FAX RETURN of _____ pages, attached to this response sheet

[addressee?]

I am writing to communicate the Administration's views on the Hyde-Conyers amendment to H.R. 833, the "Bankruptcy Reform Act of 1999." This amendment incorporates changes initially proposed in the Judiciary Committee by Chairman Hyde that would substantially improve the bill. Prior to these changes, the bill did not differ meaningfully from last year's Conference Report, which the President's advisers recommended that he veto.

The Hyde-Conyers amendment would create effective "means testing" for access to Chapter 7, to assure that debtors who genuinely have the ability to repay a portion of their debts would remain responsible for them. The Administration continues to support adoption of such a means test to prevent abuse of the bankruptcy system by debtors, as part of balanced bankruptcy reform that encourages both debtors and creditors to act more responsibly.

Some of the changes proposed in Committee by Chairman Hyde have been retained in the bill. For determining whether debtors should be moved to Chapter 13, the amended bill establishes a repayment capacity floor of $6000 over 60 months, or $100/month, and allows consideration of reasonable administrative expenses and attorneys fees in the calculation of repayment ability, so that debtors who are moved to Chapter 13 are more likely to be able to repay a nontrivial amount of debt. The amended bill also excludes debtors with below-median incomes from the means test; evidence shows that virtually none of these debtors have any repayment capacity.

But two of Chairman Hyde's proposals were not retained, and are contained in the Hyde-Conyers amendment. The Hyde-Conyers amendment proposes the development of standards for calculating ability to repay that are appropriate for bankruptcy, and provides appropriate, limited judicial discretion in the application of these standards. These changes are essential for assuring that debtors who are moved to Chapter 13 are those who genuinely have the some capacity to repay.

First, the Hyde-Conyers amendment recognizes that no specific standards can capture all of the diverse circumstances that influence the expenses required to support a debtor's household, business, or ability to work. Limited exceptions to the standards are thus allowed for expenses that are "reasonably necessary." This limited but appropriate amount of judicial discretion is applied in Chapter 13 debt repayment plans. It is also similar to the discretion that Congress has endorsed when IRS standards are used to determine the capacity of individuals to repay tax debts. During consideration last year of the Internal Revenue Service Restructuring and Reform Act, Pub. L. 105-206, the Joint Committee on Taxation explained the attitude of Congress about the repayment of tax debt in the following terms:

> The IRS is . . . required to consider the facts and circumstances of a particular taxpayer's case in determining whether the national and local schedules are adequate for that particular taxpayer. If the facts indicate that use of scheduled allowances would be *inadequate*

under the circumstances, the taxpayer is not limited by the national or local allowances. (italics added)

Indeed, the IRS has found that excessively rigid use of standards is not only unfair to debtors with special circumstances but also may reduce repayment, because repayment plans that do not account for the individual circumstances of the debtor have higher administrative and legal expenses, and are also more likely to fail. The Administration agrees that the appropriate, limited discretion in the Hyde-Conyers amendment for applying standards for determining repayment ability is the most effective method for assuring repayment of debt that can be discharged in bankruptcy.

Second, the Hyde amendment proposed the use of standards appropriate to bankruptcy in determining a debtor's capacity to repay. In a letter dated April 21 to Secretary Rubin and Attorney General Reno, Senators Grassley and Torricelli suggested that the Department of the Treasury and the Justice Department, through the United States Trustee program, consider modifying the IRS standards or creating a new set of standards specifically tailored to bankruptcy. The Administration also supports the development and use of fair and reasonable expense standards for bankruptcy purposes.

The Administration remains concerned about the absence of provisions to address creditor abuses in the bill. Reform should provide guidance to reduce unwise and coercive reaffirmations of debts on unfavorable terms, which jeopardize priority payments like child support and alimony. Reform should also improve credit card disclosures, so that consumers can get the information they need to manage their credit card debts effectively. In addition, the Administration believes that reform should close loopholes that allow wealthy debtors to avoid the responsibilities being imposed on middle-income debtors.

The Administration remains ready to work with the House to address these concerns, building on the bipartisan commitment to responsible and balanced reform of the Hyde-Conyers amendment.

Sincerely,

Jacob J. Lew
Director

THE WHITE HOUSE

WASHINGTON

DOMESTIC POLICY COUNCIL

FACSIMILE FOR: Nicole Rabner

DATE: 4-20-99

TELEPHONE:

FAX: 62878

FACSIMILE FROM: LEANNE SHIMABUKURO

TELEPHONE: (202) 456-5574

FAX: (202) 456-7028

NUMBER OF PAGES (INCLUDING COVER): 8

COMMENTS: My contact at MADD sent this along regarding their concerns on the bankruptcy bill. I'm not sure that they are asking us to do anything here but they wanted us to be aware of their issue.

Let me know if you have any questions

Leanne

Mothers Against Drunk Driving

511 E. John Carpenter Frwy., Suite 700 • Irving, Texas 75062-8187 • Telephone (214) 744-MADD • FAX (972) 869-2206/2207 • www.madd.org
NATIONAL OFFICE

August 18, 1998

To: Tony Orza
Office of Senator Frank R. Lautenberg

From: Tom Howarth

Re: History of the Bankruptcy Code and Drunk Driving

Prior the passage by Congress in 1984 of the *Bankruptcy Amendments and Federal Judgeship Act of 1984 (P.L. 98-353)*, it was possible for a drunk driver to escape paying damages by filing for bankruptcy under Chapter 7. In fact, it was the case of an Ohio teenager, killed by a drunk driver, which led to the passage of the 1984 law. The victim's family was awarded damages for wrongful death and survivor's compensation. The offender filed for bankruptcy under Chapter 7 and never paid a cent as the full debt was discharged.

On February 24, 1983, Senator John Danforth (R-Missouri) introduced S. 605, a bill designed to address the Ohio case. The House sponsor was Rep. John Seiberling (D-Ohio). Because the Seiberling/Danforth amendment, which was added to the *Bankruptcy Amendments and Federal Judgeship Act* in conference, addressed a Chapter 7 case, it dealt only with Chapter 7 leaving a loophole for those who might file under Chapter 13.

Dorothy Mercer is a woman from Michigan who was hit by a drunk driver traveling over 100 m.p.h. with a blood alcohol content level of .20. She was severely injured. She filed a personal injury suit against the drunk driver in 1982, before passage of the Seiberling/Danforth provision. The drunk driver who hit her filed for bankruptcy and for absolute discharge under Chapter 7. Subsequent to passage of Seiberling/Danforth, the drunk driver filed under Chapter 13.

On November 20, 1989, Senator Danforth, along with Senators Biden, Thurmond and Pell, introduced S. 1931, a bill designed to close the loophole in Chapter 13 which was benefiting drunk drivers at the expense of their victims. The bill was approved by the Senate Judiciary Committee on June 14, 1990 and ultimately signed into law by President Bush.

Historically, the Bankruptcy Code was not to be used to protect people who engaged in "willful malicious conduct" but a case in Wisconsin in 1983, *re Kuepper*, cast doubt on whether drunk driving was to be considered "willful and malicious". It has always been MADD's view that drunk driving is not an accident but a crime and that those who drive while drunk are indeed engaging in willful and malicious conduct. The action by Congress in 1984 and again in 1990 clearly demonstrates that the law of the land reflects MADD's view.

The changes to the Bankruptcy Code proposed now in 1998 are not a direct attack on the protections for drunk driving victims established in 1984 and 1990, but they will have the impact of diluting the ability of victims to receive damages owed to them by placing drunk driving victims in competition with credit card companies. Innocent victims of drunk driving should not be placed in this position and should retain their standing under the Bankruptcy Code to receive damages from those who engaged in willful and malicious conduct toward them and their loved ones.

I am enclosing some additional material which might be of assistance to you.

TESTIMONY OF JANICE LORD

MOTHERS AGAINST DRUNK DRIVING

HOUSE JUDICIARY SUBCOMMITTEE ON ECONOMIC AND COMMERCIAL LAW

JUNE 21, 1990

I am Janice Lord, National Director of Victim Services for Mothers Against Drunk Driving, a non-profit organization of 2.8 million members and supporters. MADD's mission is to stop drunk driving and to provide services to victims of drunk driving crashes.

While MADD's most common forum for victim advocacy is the criminal justice arena, we also advocate for equality and justice in the treatment of victims of drunk driving crashes as they interface with all systems which may oppress them.

Since MADD was incorporated ten years ago, we have heard victims cry for justice upon learning that the civil wrongful death or personal injury judgements against the drunk drivers who killed or injured their loved ones were meaningless because the offenders simply filed bankruptcy to avoid payment.

To illustrate the problems victims have with Chapter 13 Bankruptcy issues, I would like to share the following with you.

Dorothy Mercer's vehicle was rear-ended in 1982 by a drunk driver traveling over 100 m.p.h. with a blood alcohol content of .20, twice the legal limit in Michigan. Dorothy, a psychologist just finishing the dissertation for her doctorate, was severely head-injured and also suffered numerous broken bones, an injured spine, contusions and abrasions. Her spine was so compressed in the crash that she lost three inches in height. She continues treatment today for residual effects of the crash. Dorothy filed a personal injury and dram shop suit in 1983, prior to the Seiberling/Danforth amendment to the Federal Bankruptcy Code which prevented the discharge of debts arising out of the debtor's operation of a motor vehicle while legally intoxicated. The drunk driver who hit her filed bankruptcy for absolute discharge under Chapter 7. Following the 1984 amendment, he transferred from Chapter 7 to Chapter 13 which was not included in the legislation. The bankruptcy proceedings delayed Dorothy's ability to pursue the civil case for one and one half years, during which her attorneys continued out of town court appearances and filing of documents, all of which came out of her settlement. All action on the civil suit had to be approved by the bankruptcy court, and because of losing both times and money Dorothy ultimately settled her civil suit for the face value of the insurance policy and the bankruptcy suit was put in abeyance with no recovery from the drunk driver.

In another case, "Butch" Williamson from Missouri was hit by a driver with a blood alcohol content of .28 and cocaine and marijuana in his blood. Butch spent six months in a deep coma and just over another six months in a semi-coma, helpless and struggling to survive. He could not eat, so was fed through a stomach tube. His bowels could not move on their own. He required round the clock care from his weary family until he died on the 403rd day after the crash. The offender was ordered to spend one year in jail with work release and pay one-fourth of his income to Butch's parents as restitution. Payments averaged $40 to $45 per week and then tapered off, although an investigation funded by the family indicated that this is far less than one fourth of his income which was ordered for criminal restitution. He will leave the criminal justice system in 1992, having paid only a minute portion of the expenses for Butch's care and funeral. The documented cost of Butch's care was $400,539.73, not to mention thousands of dollars of undocumented expenses. Therefore, the family filed a $6 million suit. On the eve of a pre-trial hearing, the offender filed bankruptcy and the attorney of Butch's parents recommended that they drop the suit because the offender would be able to have his judgement discharged under Chapter 13.

Prior to the Seiberling/Danforth Amendment, part of the "Bankruptcy Amendments and Federal Judgeship Act of 1984" (P.L. 98-353), federal bankruptcy law already contained a provision prohibiting a debtor from discharging any debt he owed for "willful and malicious death or injury." It was at that time and still is today the position of MADD that drunk driving is malicious, intentional, criminal conduct. However, prior to the 1984 Amendment, there was debate in the judiciary regarding whether or not drunk driving death and injury was "willful and malicious."

The 1984 amendment was initiated by the plight of a family in Ohio whose teenage daughter was killed by a drunk driver. The court awarded the family damages for wrongful death and survivor's compensation. However, the offender filed for bankruptcy protection under Chapter 7 and never paid a cent of the judgment as the full debt was discharged. Thus, it is understandable that the amendment focused on Chapter 7. It was a noble, well-intentioned, and meaningful change which MADD supported. However, recent victim and public concern over Chapter 13 problems convince us it is now time to similarly amend that component at the statute. As the law currently stands, it is still possible for drunk drivers to pay a small portion of their judgments and then discharge the remainder. Therefore, the only way their victims might hope to receive full judgment is to defeat the plans in their entirety as "bad faith" endeavors, which is difficult and unnecessarily time-consuming.

Legislative history seems to indicate that the 1984 Amendment to the Federal Bankruptcy Code was an effort to seal up a loop-hole which allowed drunk drivers to receive total discharge of their debts through Chapter 7. The fact that it was not imposed on Chapter 13 also was most likely a Congressional oversight.

Oversight or not, the problem has been noted with no small amount of disturbance by some who have labeled it a national disgrace. In re McMinn, 4 B. R. 150 states:

> ...the court is of the opinion that the Bankruptcy Code ought not to be a haven for individuals seeking to absolve themselves from making whole, persons whom they have injured... If it is the intent of Chapter 13 to absolve debtors of the liability for such criminal acts, then the intent is ludicrous and the malaise apparently affecting our society is indeed understandable.

In re Hudson , 9 B. R. 363 (Bkrtcy Ill. 1981) takes "judicial notice" that Chapter 13 involves a violation of the interest of society and public policy in general:

> The Court can take judicial notice of the fact that there are many powerful interests within the country that believe that Congress went too far in many areas of the Bankruptcy code, but particularly with respect to the breadth of discharge under Chapter 13.

MADD believes that it is time to stop the revictimization of victims of drunk driving crashes by adding to their emotional and financial stress through inadequate provisions in Chapter 13. Chapter 13 was historically intended to give the honest, financially distressed debtor a "fresh start." A consenting person who has entered into a relationship as a debtor is presumed to have agreed to the potential risks of non-payment or partial payment. However, a debt owed to the innocent victim of a drunk driving crash can never be construed as a mutual agreement between consenting parties.

Drunk driving is not an accident. It is a willful and malicious crime in that it involves two very clear choices: (1) to use alcohol or other drugs and (2) to get behind the wheel of a vehicle. Although the Bankruptcy Code currently is silent on the issue of dischargeability of criminal restitution, recent Supreme Court cases have indicated that it was never the intent of the legislation to make criminal restitution dischargeable. Justice Powell's opinion for the Supreme Court in re Robinson was based on the "deep conviction that Federal Bankruptcy Courts should not invalidate the results of state criminal proceedings." Further, prior to Congressional adoption of the Bankruptcy Code in 1978, courts had ruled that restitution was non-dischargeable and Congress did not express any specific attempt to change that judicial and creative concept. Therefore, MADD supports the "Drunk Driving Victims' Protection Act," S. 1931, approved unanimously by the Senate Judiciary Committee on June 14, not only because it paves the way for meaningful financial recovery for victims, but also because it assures victims that their rights and needs are as important as the rights and needs of drunk drivers.

Dorothy Mercer and "Butch" Williamson will never be able to make a "fresh start." We now ask Congress, by amending the Bankruptcy Code, to assure that victims of drunk driving crashes will be able to recover the financial responsibility owed them by offenders.

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April 15, 1999

Ms. Nicole Rabner
Office of the First Lady
The White House
Washington, D.C. 20500

Re: ATLA's Lawyer's Challenge for Children

Dear Nicole:

Thank you for taking the time to meet with me and Kathleen Strottman last Friday to discuss the Lawyers' Challenge for Children Program of the American Trial Lawyers Association. Enclosed is a letter which was sent to he First Lady by our President, Mark Mandell, inviting her to participate in our annual convention in San Francisco this summer. Any help you can give us would be appreciated.

Many thanks also for the pictures and for lunch. Please be in touch if I can be of any help to you.

Sincerely,

Madeleine M. Landrieu

Madeleine M. Landrieu

MML/pam
Enclosure

cc: Senator Mary Landrieu
c/o Kathleen Strottman
Mark S. Mandell
Richard H. Middleton, Jr.

Sarah Rosen
04/20/99 08:54:56 PM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP, Broderick Johnson/WHO/EOP

cc:
Subject: revised bankruptcy reform documents

---------------------- Forwarded by Sarah Rosen/OPD/EOP on 04/20/99 08:54 PM ---------------------------

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04/20/99 08:34:21 PM

Record Type: Record

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Subject: revised bankruptcy reform documents

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Subject: revised bankruptcy reform documents

Attached are revised versions of all of our bankruptcy proposals. The text below summarizes the status of our active issues; sorry about the length, but this is a complex topic and I wanted to be sure that we covered everything in one place. We do not need to give out all of the attached documents tomorrow; my understanding from Joel is that the one-page summary of the means test proposal and the accompanying graph would be enough to discuss means testing.

Means Testing:

1. mnstst8.wpd: This is the "white paper" describing the estimates underlying the means test proposal. Page 1 summarizes the proposal. The paper also includes a figure summarizing how the test works that you have seen before.

2. mnslng2.wpd: Draft legislative language on the means test proposal, with input from EOUST and DOJ.

There is one potentially important unresolved issue that was mentioned in our email last week: following EOUST and SEC recommendations (see below), we have broadened the applicability of the Chapter 7 means test to include all individual debtors, not just debtors with primarily consumer debt. This will expand the test to capture debtors with primarily tax and business debt. The expansion to tax debt is a previously-vetted Administration position discussed in the DOJ letter. The expansion to business debt is an important part of closing the "loophole" for wealthy individuals identified in the SEC Chapter 11 proposal that Grassley has adoped. If there is a good policy reason for not expanding the means test to include individuals with primarily business debt, let us know. The SEC has reviewed this proposed change and supports it, and will say so to McMickle. The bankruptcy judges we have spoken with also support it.

The draft language preserves a "placeholder" for modifying the IRS standards. Shumer and others have expressed interest in this, and the ABI proposal presents a specific alternative.

How does the ABI proposal fit with ours?

*Standards: the good feature of the ABI proposal is that it provides more specific guidance to judges, trustees, and others about a comprehensive list of expenses (which could make the test function more smoothly); the bad feature is that it establishes specific standards for these additional types of expenses (retirement, education, health care) that vary enormously across households - this is why IRS does not have standards for such categories.

*Discretion: ABI supports "burden of proof" language rather than presumptions, which they claim are not clear enough for judges. We have not been able to get draft language, but supposedly the burden of proof will be something like "the preponderance of the evidence" - a relatively mild standard, we think, but we would appreciate DOJ views. If this view is correct, it is possible that we could end up adopting their discretionary language as an alternative to ours, but we obviously need to see it first.

How does the Shumer proposal fit with ours?

We just got it and havent finished analyzing. Shumer proposes an alternative to the IRS standards along the lines of the ABI proposal, but uses a debtor's actual expenses in more cases (medical and child care). On discretion, Shumer uses the burden of proof formulation for the debtor to rebut the means test: "the expenses are necessary for the maintenance or support of the debtor or his dependents" and "the debtor has no reasonable alternative to incurring the expenses."

This seems to us to be between "special" and "extraordinary". It would be helpful to get legal guidance asap on whether this formulation or a similar "burden of proof" formulation (suggestions?) is something we can live with, especially if we use additional categories of actual expenses as Shumer does.

Reaffirmations

3. reaff7.wpd: First page summarizes the proposal, and remainder of document provides details.

Our reaffirmation proposal needs further comment from the group before final release. As you know, the earlier version was criticized as too complicated and costly. We have simplified the presentation of the presumptions on full disclosure and undue hardship, and we have narrowed new creditor notice and standing to those owed child support and alimony.

*Presumptions/additional requirements for reaffs that are least likely to be in the debtor's best interest: Judge Wedoff (ABI) likes the idea of a specific disclosure requirement of using the means test to provide guidance for judges on whether the reaff is an undue hardship. All the judges we spoke to agreed that providing this info as an affidavit with the reaff would significantly reduce court costs. But Wedoff was concerned that the presumptions would not provide useful guidance to courts as to what to do next (paralleling his preference for "burden of proof" over presumptions in the means test). The ABI proposal requires court hearing for reaffs of wholly unsecured debt and secured < $3000, so our proposed hearing requirement is more modest than theirs. Like ours, the proposal requires judges to assess whether the reaffirmation would be too burdensome for the debtor. Unfortunately, the proposal is vagueabout a better way than presumptions to guide judges. We are waiting for their language.

*Standing: Judge Wedoff (ABI) likes the standing proposal but thought it could be costly (hence the reason to narrow it to our highest-priority group). Judge Fenning thought this would create additional burdensome litigation, but it does highlight our important remaining political concern about reaffirmations placing high-priority debt payments at risk.

Suggested next steps on reaffirmations: Assuming that we want to keep stressing this issue as a potential Administration veto threat, we need to begin engaging on it even if our proposal is not finalized. It seems likely that any proposal we support would require court hearings for unsecured and small personalty reaffirmations, and would provide better guidance for judges and attorneys to use in deciding whether reaffs are in the best interest of the debtor, to minimize the cost of our proposal. Thus, we can mention these arguments, and say that we are still considering the best way to do this and are open to suggestions - eg, presumptions based on an affidavit, a requirement that an affidavit be provided with the reaff, etc.

Are there any other reaff issues that need to be addressed in the bill - for example, elimination of right of class action?

Anti-Cramdown Provisions

Judge Fenning has urged the Administration to address cramdown. ABI did not take a position on this issue, because of their concern that anti-cramdown provisions could reduce or jeopardize the ability of debtors to repay priority unsecured creditors, eg child support and alimony. We need to decide on a reasonable Administration position on this issue.

One possible compromise position: 2 year anti-cramdown provision for vehicles; 6 months for all else.

Loopholes in Chapter 11 and Elsewhere for High-Income Debtors

4. chap11.wpd: This document outlines a possible Administration position on closing the loophole that we have discussed with SEC and bankruptcy judges.

The problem in the current bill is that many wealthy individuals who file for bankruptcy are likely to escape the means test entirely. As the attached document describes, they may: (1) be exempt from the current bill Chap 7 means test because they have primarily personal business debt, (2) be subject to the test, be referred to Chap 13, but exceed the Chap 13 debt limit, in which case they are referred to Chap 11, which in the existing bill does not require that disposable income be dedicated to repayment as in Chap 13, or (3) file directly in Chap 11, and once again escape repayment. The SEC "fix" that Grassley now supports is an incomplete fix these loopholes. The attached short proposal addresses all three, by making Chapter 11 parallel to Chapter 13 in terms of dedication of discretionary income to debt repayment. This proposal is supported by SEC; indeed they may propose it if we don't.

This is important for us to address not only because it is a significant loophole for the wealthy, but also because closing the loophole requires a change in our means test legislative language, as noted above.

- MNSTST8.WPD

- MNSLNG2.WPD

- REAFF7.WPD

- CHAP11.WPD

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TARGETED MEANS TESTING FOR CHAPTER 7

The principal goal of this proposal is to minimize the total cost of a means test for moving potential Chapter 7 filers who can repay some of their debt into Chapter 13. The benefit of moving filers who can repay is the increased debt repayments that would result. The direct costs of means testing include the costs to the panel trustees, bankruptcy administrators and filers of providing information for testing, the attorney's and administrative costs associated with challenges to trustees' findings, and the additional administrative costs of inappropriate referrals to Chapter 13 that result in failure. Beyond these costs are the burden of personal compliance, and the inherent rights of debtors to a fair hearing on their particular circumstances, if they are to be denied access to Chapter 7. By targeting means testing effectively, the proposal assures that virtually all debtors who can repay are moved fairly and at minimum cost to the system. Much as the IRS uses its repayment capacity standards today, the proposal allows for limited discretion by Trustees and judges to consider special circumstances of debtors, subject to clear presumptions created by the detailed guidelines. Thus, this proposal would reduce the costs of means testing compared to current bills, permitting greater debt repayment.

Summary of Proposal

The resources expended to scrutinize debtors' ability to repay are related to the "payoff" in terms of expected repayment. Evidence on filers' actual ability to repay suggests that the best screen approach has two parts: low-cost screens for debtors who are unlikely to be able to repay, plus a more complete means test targeted to those who have some chance of being able to repay. Figure 1 summarizes the proposal.

(I) *Very Low Potential to Repay:* Debtors who document incomes below 75% of the national median, adjusted for family size, are not subject to further means testing. Unless the totality of circumstances suggests abuse, it is automatically presumed that filing for Chapter 7 by such debtors is not abusive.

(II) *Low Potential to Repay:* Debtors with incomes between 75% and 150% of the national median are initially screened using a simple preliminary test of repayment capacity. This *preliminary* test calculates ability to repay the lesser of 30% of debt, or $15,000, given that they can repay a minimum of $50/month, based only on their income and the subset of allowable expenses included in the *formulaic* portions of the IRS standards, the National and Local Standards, determined only by income, family size, and area of residence. If they cannot repay according to this test, they certainly could not pay if the additional nonformulaic expenses allowed under the IRS' Other Necessary Expenses are included, and they are presumed to be filing appropriately in Chapter 7. Debtors who may be able to repay according to this screen are subject to a complete means test involving a detailed review of income and expenses, and any other special circumstances that substantially influence the likelihood of repayment success.

(III) *Some Potential to Repay:* Debtors with incomes above 150% of the national median are fully examined for the ability to repay according to a complete means test involving a detailed review of the debtor's income, expenses, and any special circumstances.

ANALYSIS

Who can be expected to repay?

Recent national studies of the repayment capacity of Chapter 7 filers show that income is a very strong predictor of repayment capacity and therefore is an appropriate measure for a simple initial screening test.

- According to Ernst & Young, March 1998,[1] and additional data provided to the Treasury, filers with incomes below 75% of the national median adjusted for family size represented 54% of Chapter 7 filers. Their repayment capacity was extremely low. Ernst & Young found that only about 3 out of every 100 filers in this income category had the ability to repay even $3,000 or 20% of their debt. Moreover, the debtors who met this $3,000/20% threshold had the lowest average ability to repay among all income groups.

- Those with incomes between 75% and 150% of the national median constituted 36% of Chapter 7 filers. About one-fourth of these filers --less than 3 out of every 10 -- had some ability to repay even a small portion of their debt. The degree of repayment capacity did not differ substantially at different levels of income within this range.[2]

- Those with incomes above 150% of median comprised only 9.7% of all Chapter 7 filers. But nearly 5 out of every 10 of these filers had some ability to repay.

What is the repayment potential?

Available data preclude a precise estimate of the amount of debt each debtor would actually repay in a Chapter 13 plan. As we note below and as other studies have argued, many factors suggest that actual repayment may be significantly less than *ex ante* repayment capacity would suggest: the administrative and legal costs of executing means testing (which our proposal is intended to minimize), the potential for "gaming" means-test expense formulas and

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[1] Ernst & Young,"Chapter 7 Bankruptcy Petitioners' Ability to Repay", March 1998, with additional data provided to Treasury; Culhane & White, "Taking the New Consumer Bankruptcy Model for a Test Drive", December 1998, using the needs-based provisions of HR 3150; and Ernst & Young's March 1999 update based upon HR 833.

[2] Of those debtors with incomes between 75% and 100% of the national median, over 20% had some capacity to repay. Of those debtors with incomes between 100% and 150%, 37% had some capacity to repay.

repayment thresholds, the limited actual success of voluntary Chapter 13 plans, the variability in debtor circumstances post-bankruptcy and the real possibility that debtors forced into an involuntary Chapter 13 may be even less motivated to adhere to a repayment plan— all imply that actual repayment may be significantly below potential repayment. Thus, formulating a precise estimate of expected repayment is very speculative. Instead, we consider *potential repayment* - that is, the maximum possible repayment assuming that *none* of the factors just mentioned reduce repayment. We assume that debtors who would be moved by the means test have between median and average debt repayment potential for their income range. As we have argued, it is likely that repayment will be less. Moreover, repayment is probably disproportionately lower for the lower-income ranges, since administrative and other costs are more likely to exceed the repayment capacity of debtors in these income ranges.

What are the costs of means testing?

Additional Administrative Costs of Means Testing

The Congressional Budget Office estimated that the additional federal costs of last year's House bill would be $16-24 Million annually. This includes approximately $8 Million per year in costs for the U.S. Trustees due only to oversight of the means testing provisions and maintaining the tax information required by the testing, and $8-$16 million in additional judgeship costs due to the new burden on the court system of means test determinations and associated litigation.[3] We assume that these costs are unaffected by whether or not the means test is targeted effectively; this is likely to be a conservative assumption, because oversight and court costs would probably be reduced proportionally with the burden of the means test itself.

CBO did not estimate the additional costs for the *private* Trustees, who are responsible for the actual management of bankruptcy filings under the current system. Under the House bill, both Chapter 7 and Chapter 13 Trustees would be required to conduct a means test. These expenses will reduce the debt ultimately recovered by creditors. Chapter 13 Trustees' expenses are covered under current compensation rules. We presume the Chapter 7 Trustees' expenses for conducting the tests would be also covered by allowing an additional percentage of any repayment ability discovered, like their current law compensation in Section 326 (a) of Title 11. The current Senate bill gives responsibility for administering the Chapter 7 means test to the U.S. Trustees. In that case, the additional costs to the private Chapter 7 Trustees would be borne instead by the Federal government.

The additional private Trustee costs of means testing can be separated into the costs of determining the debtor's monthly total income, the monthly total allowable expenses under the IRS formulaic standards, the determination of the debtor's secured and priority monthly debt payments, and the assessment of nonformulaic, case-specific factors under the IRS' Other

[3] Cost Estimate, H.R. 3150, CBO, May, 1998

Necessary Expenses allowance.

We developed evidence on the likely cost of each component of means testing from a number of sources. The Chapter 13 Trustee from the Northern District of California has estimated the additional costs to the private Trustees of means testing under H.R. 3150.[4] She reports that total out-of-pocket administrative expenses of the district (not including overhead) are likely to increase by about $90-110 per new case due to the full means testing requirement. The income-determination portion of the test accounts for a little more than half of this amount, with the remainder covering the determination of expenses and debt repayment. This is likely a generous assumption. Other experts we questioned (including bankruptcy trustees and IRS administrators) believed that income determination -- which only requires tax records and evidence on pay from current employment -- would be far simpler than assessment of case-specific expenses, and so would comprise a relatively smaller share of the cost of means testing. In contrast, assessment of case-specific expenses, including both nonformulaic expenses and debt payments, would be a far larger share. Based on these expert recommendations, we estimate the administrative costs per case for the income test would be around $20; the cost of the secured and priority debt determination would be around $40; and the calculation of case-specific expenses would be around $30-50 per case.[5] The high-end estimates assume more Trustee time for review of expenses. Presumably the Chapter 7 Trustees' expenses would also rise by comparable but slightly lower amounts, perhaps by about 75-80% of the Chapter 13 expense, as they will be performing much the same examination but do not apply this information in the formulation of a Chapter 13 plan.

Additional Attorney Costs

Debtors' lawyers' fees for a Chapter 7 filing have averaged about $800 per case, and, for Chapter 13 cases, have averaged about $1300 per case. Requiring the Chapter 7 attorney to apply a means test would increase fees, perhaps near to that of the average Chapter 13 fee. An income-only or formula-based screen would increase the Chapter 7 lawyer's costs by perhaps one-quarter of the difference between a Chapter 7 filing and a Chapter 13 filing today due to the additional demands upon the lawyer's time --by about $100-125 per case. (The attorney time could be considerably lower for an income-only screen.) A complete means test would increase debtor attorney costs by perhaps $200 per case.

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[4] Devin Derham-Burke, Chapter 13 Standing Trustee, N.D. of California, "Report on Cost to Administer Chapter 13 Cases under H.R. 3150", March, 1998.

[5] The estimates all assume that well-designed, standardized forms for expense reporting are developed, and that debtors must comply in good faith with providing the required expense information prior to Trustee review. Costs to the debtors of providing this information are not included in our calculations.

Costs of Contesting a Finding

Additional administration and litigation expenses are incurred when debtors or creditors choose to contest a Trustee's conclusion with regard to ability to repay. Cases involving debtor challenges are assigned to the U.S. Trustee. We assume the debtors most likely to attempt to rebut a Trustee motion for dismissal will primarily consist of those "at the margin" of apparent ability to repay, for whom only a modest increase in expenses or adjustment in income could be the difference between satisfying the ability to repay criterion or not. Debtors who would most obviously fall into this category include those above 100% of median income who are estimated to be able to repay between 25-50% of debt, comprising about 3% of total Chapter 7 filers.[6]

Creditors are also likely to find it cost-effective to challenge filings by debtors who are at the margin of ability to repay and who have substantial outstanding debt, but who did not generate Trustee motions. This group of debtors probably has, on average, somewhat less favorable apparent repayment circumstances than those who do generate motions. Debtors who could most obviously fall into this category include the debtors above 100% of median income who are estimated to be able to repay between 0-25% of debt, comprising about 2% of total Chapter 7 filers. Thus, up to 5% or more of filings could result in further informal action and formal litigation after the means test, by both debtors and creditors.

The number of such cases, and the intensity of litigation, would be significantly smaller if the means test was applied with appropriate judicial discretion comparable to that now applied by the IRS - specifically, a standard of review in which the means test result creates a rebuttable presumption in the case of unusual circumstances. With such a standard, the Trustee would be able to address the case-specific factors that would lead debtors to believe that they would not succeed in Chapter 13 during the means-test review, rather than having to address them in subsequent, more costly litigation. Similarly, the Trustee could account for other factors that would likely affect repayment capacity, so that those who are moved would be significantly more likely to succeed in Chapter 13 – thereby making further litigation less likely to be viewed as worth the cost by either debtors or creditors. Without such discretion, debtors who truly believe that they will not do well in a Chapter 13 plan have little to lose by litigating, because their attorney fees will simply come out of their (already-limited) ability to repay used to determine their Chapter 13 plan. Similarly, a very strict "extraordinary" standard may cause creditors to pursue additional litigation, in the belief that they would have a better opportunity to overturn any judgment by the Trustee. *IRS collection officials indicate that they use considerable discretion in applying the collection financial standards to individual taxpayers, to avoid the additional administrative and legal costs associated with taking enforcement actions based on rigid standards; they have found that applying rigid standards is not cost-effective.*

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[6]We assume that few filers below 100% of median income would seriously contest a Trustee motion for dismissal, due in part to their limited willingness and ability to incur additional attorney costs.

The estimates of rates of further action following the Trustee's means test determination are consistent with those of the U.S. Trustees, who estimate that additional cases requiring action by the U.S. Trustee due to challenges of motions for dismissal could total between 1-6% of current filings, and that a small share of cases (about 8%-10% of these actions, or 0.1-0.5% of filings) would go through complete formal litigation. The high-end estimates are based on the assumption that a large number of "marginal" Chapter 7 filers challenge. The Trustees estimate the total U.S. Trustee costs of these cases to be $2-11 million per year.[7]

Debtor attorney costs for these further actions would also reduce the debts ultimately recovered. Based on discussions with U.S. Trustees, we estimate debtors' lawyers hourly fees to be about $150-200/hour. Using the estimates of time requirements for additional actions and litigation developed by the U.S. Trustees for their own costs, we estimate the debtors' legal fees for additional administrative actions to be about $750-$1,000, and attorney costs for litigation, about $ 3,000-$5,000.

Notice Costs

The U.S. Trustees have estimated that the costs of providing notice to all creditors of the findings of the Trustee's investigation of the debtor's ability to repay are $5 - $10 million per year, as a result of mailing costs and associated administrative expenses. The Trustees have also noted that preliminary, easily verifiable information - such as information on debtor income - can be provided at the first meeting of creditors. Though we do not consider these savings in the following comparison, more than half of the notice costs (approximately $3-$5 million per year) could be avoided under the Administration proposal.

Cost and Debt Recovery Comparison of Administration and Current Bill Means Tests

Table 1 below summarizes the cost advantages of the "targeted discretion" means test. The principal reason that administrative and legal costs are much lower in the Administration proposal is that full means tests are avoided for the large share of Chapter 7 filers who, through simple screens, can be identified as having virtually no capacity to repay. The screens require only a determination of income and family size (for all debtors), and of debt expenses (for a large group of middle-income debtors). As the Table shows, screening out these individuals has essentially no impact on the debt recovery, because essentially all individuals with some repayment capacity are still subject to a full means test. Second, the Administration proposal also reduces administrative and legal costs by providing limited judicial discretion in reviewing the means test results, subject to clear presumptive guidelines. We have used conservative assumptions regarding the estimated reduction in challenges and further legal action; as noted above, IRS experience and consideration of debtor and creditor incentives to challenge the outcome of a nondiscretionary review in the 5% or more of bankruptcy filings that are close

[7] Communication from Executive Office of U.S. Trustees.

cases suggest that the savings could be significantly larger. The substantially lower cost of the Administration means test would significantly increase the repayment potential of Chapter 13 plans resulting from the means test.

What are the additional costs and benefits of referring debtors to Chapter 13?

In addition to the administrative and legal costs of means testing are the costs of the resulting Chapter 13 plans. These costs must be weighed against the benefits of additional debt repayment by the additional Chapter 13 filers resulting from the means test. It is likely that these costs would be higher and benefits lower compared to the voluntary Chapter 13 filings that occur today. In this section, we compare the consequences for debt repayment and additional administrative and legal expenses of the "targeted discretion" approach to the current House/Senate approach for debt repayment in Chapter 13.

Table 1 reports the repayment potential of debtors under each means test. As the Table notes, the targeted screen does not make mistakes for debtors with incomes above 75% of the median; virtually all debtors who can repay a nontrivial portion of their debt will be identified for potential movement to Chapter 13.[8] Thus, a key question is whether the limited discretion in the targeted test would lead to a significant reduction in debtors actually moved, and whether this reduction in turn would have a significant impact on actual debt repayment net of administrative and legal costs.

What share of debtors might meet a standard of "special circumstances" in determining access to Chapter 7 but not a standard of "exceptional circumstances"? Debtors with substantial ability to repay - that is, far above the repayment thresholds for the means test - are unlikely to be able to meet either standard except in truly unusual cases. The group most affected is likely to be those near the test threshold, that is, those with 25-50% repayment capacity according to the test. To provide an upper bound on the potential loss of repayment capacity, we assume that all debtors in this repayment range are able to convince the Trustee that they have unusual circumstances that make them unable to pay. (This is a truly extreme assumption; more realistically, only a subset of these debtors will be affected by the greater discretion, as well as a small share of debtors with greater apparent repayment capacity.) According to Ernst & Young estimates, less than one-fourth of filers who meet the means test (3.2% of the 14% who meet the test) are in this category. These debtors account for a significantly smaller share of potential repayments than their numbers suggest because they are close to the margin of the means test.

In actuality, the impact of the Administration's proposal for limited discretion on the

[8]As the Table notes, there is very slight repayment capacity in debtors with incomes less than 75% of median, who would be screened out under the targeted test. No studies have concluded this modest repayment capacity can be recaptured by any of the bankruptcy reform proposals.

debtors moved to Chapter 13 is likely to be much smaller than one-fourth of all debtors who meet the means test. About two-thirds of these "marginal" debtors are above 100% of median income and would be subject to creditor motions, which creditors have appropriate incentives to bring if the debtors truly can repay. Because the share of repayment capacity in this "marginal" group is disproportionately low and because of the threat and use of creditor motions, we estimate that the impact of allowing limited discretion on actual repayment would be well under 10% of potential repayment. This "upper bound" on the reduction in repayment potential would be significantly offset by the reduction in administrative and legal costs from the reduction in the number of Chapter 13 plans that would fail, compared to a rigid means test.

Movement to Chapter 13 does not guarantee debt repayment. Debtors filing Chapter 13 voluntarily have had relatively low success rates. On a nationwide basis approximately one-third of those who file complete plans and receive a discharge, but the rates of plan completion and discharge vary widely by district. Available data on repayment rates is entirely local; most recently the Chapter 13 trustee for the Western District of Missouri reported that about 20% of district debtors completed their plan, and that those completing their plans repaid about 43% of their nonpriority unsecured debt.[9] Of the remainder, approximately 63% ultimately fail in their repayment plan and are either dismissed or converted directly to Chapter 7 (and many of those dismissed refile for Chapter 7, in worse financial circumstances, incurring the costs of means testing once again).

Success rates in Chapter 13 are likely to be particularly low for debtors who have marginal capacity to repay and who are close to the means-test limit. For example, consider a debtor judged by the means test to have 31% capacity to repay. If this debtor has any sort of unusual circumstances - such as the need to provide financial support for a nondependent parent or other relative, slightly higher-than-median work or personal expenses (e.g., because of longer commute distances or having a home in an area that is slightly more expensive than average) - then it is likely that either priority debt repayment will suffer or the Chapter 13 plan will be unsuccessful. The study by the Chapter 13 Trustee of the costs of H.R.3150 report that the administrative costs of failing Chapter 13 cases is significantly greater than for cases that succeed. The IRS has found that a significant number of "borderline" tax debtors have reasonable expenses that are not "median." To avoid the additional administrative expenses associated with failing tax collection cases and the legal expenses associated with the application of rigid standards, the IRS applies its standards with at least as much discretion as a means test that allowed for "special circumstances" would imply.

A means test with limited discretion to account for such unusual circumstances would avoid the additional administrative costs of a significant number of unsuccessful Chapter 13 plans. Thus, targeted means testing with limited discretion would allow the bankruptcy system

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[9] Hon. Arthur Federman, "What Means Testing Really Means--An Empirical Study," *Consumer Bankruptcy News*, April, 1999.

to direct greater attention to determining the true repayment capacity of the subset of debtors who are likely to be able to repay a significant portion of their debt.

Table 1. Cost Comparison of Current Bill Means Test vs. Targeted Discretionary Testing

Income	*Share of Ch. 7 filers*	**HR 3150 Means Test**					**Targeted Discretion**				
		Share of Ch. 7 filers subject to full test	*Share of filers with repay-ment potential*	*Potential Repayment*	*Add'l adminis-trative costs*	*Add'l legal costs*	*Share of Ch 7 filers subject to screens*	*Share of filers with repayment potential*	*Potential Repayment*	*Add'l adminis-trative costs*	*Add'l legal costs*
<75%	54%	all	1.7%	<.09B*	$38-51M	$86M	income screen:all full test: 0%	0	0	$8-9M	$43M
75-150%	36%	all	9.3%	$.7B	$34-41M	$142-146M	income/formulaic expense screen:all full test: 11.3%	9.3%	$.7B	$16-19M	$105-110M
>150%	10%	all	4.7%	$1.9B	$9-12M	$137-141M	full test: all	4.7%	$1.9B	$8-11M	$113-117M
Total	**100%**	**100%**	**16%**	**$2.6B**	**$81-104M**	**$356-364M**	**21.3%**	**14%**	**$2.6B**	**$32-39M**	**$257-266M**

*The total repayment capacity for this category of debtors is around $85 million. However, as Ernst & Young note, because of the absence of creditor motions and marginal capacity to repay of the few debtors in this category with any capacity to repay, it is very unlikely that any of this debt could be recaptured through means testing.

Conclusion

(I) A cost-effective screen should not examine low income debtors. It should expend resources examining debtors with some capacity to repay.

> The costs simply do not justify examining debtors with incomes below 75% of the national median to find those with any capacity to repay. A Chapter 7 filing by a debtor with income less than 75% of the national median should automatically be presumed not be abusive with regard to the means test.

(II) The optimal screen should minimally examine the disposable incomes of moderate income debtors, eliminating those who do not have the ability to repay, and giving a full Trustees' examination only to those remaining.

> Since one must examine on average 10 such debtors to identify 3 who can repay, it is not cost-effective to examine all of them fully. A minimal screen would calculate the debtor's ability to repay, basing the allowable expenses on only those portions of the means-test-allowed expenses that are set in formula. We do not make a mistake using this screen: debtors without the ability to repay formulaic amounts will clearly not be able to repay if consideration is given to all their expenses.

(III) Debtors with incomes greater than 150% of the national median should be fully examined, applying a means test.

Reaffirmations

Administration Proposal

The Administration supports the following reforms in bankruptcy law governing the approval of reaffirmations:

- Court review of reaffirmations that are least likely to be in the debtors best interest: court review is required for reaffirmation of unsecured debt and of secured personalty debt with original purchase price under $500, to determine that these reaffirmations are fully informed, voluntary, in the debtor's best interest, and do not pose undue hardship. In addition, costs and attorneys' fees cannot be added to these reaffirmations. This proposal is similar to the ABI proposal, which requires review for unsecured debt and secured debt of less than $3000.

- Guidance to determinations of whether the debtor is fully informed and whether the reaffirmation creates an undue hardship: An affidavit filed with the reaffirmation would create these presumptions.

  - A presumption that the debtor is not fully informed would be created if the affidavit did not include the model form on disclosure of financial terms developed by the Judiciary Committee.

  - A presumption that the reaffirmation presents undue hardship would be created if, when the cost of the reaffirmation is added to the debt expenses calculated in the means test, the debtor's income is insufficient to repay all nondischargeable debts.

  This guidance applies both for court review (where it is required) and for reaffirmations subject to review by the debtor's attorney.

- Notice and standing for domestic support creditors, allowing them to object to a proposed reaffirmation that is likely to jeopardize payment of their priority debt.

- No coercion: the Court must find that the agreement was not part of a threat, as in the current bills.

Current House and Senate Bill

The current House and Senate bills require that creditors who seek reaffirmation of wholly unsecured debts provide a disclosure that the debtor is entitled to a court hearing, and that the debtors can waive their rights to hearings if represented by counsel. Thus the court must hold a hearing to determine whether the agreement should be approved if: (1) the debtor was not represented by counsel (as in current law), or (2) has unsecured consumer debt and was represented by counsel but did not waive the right (which rarely occurs). The bills also require that the court must find that the agreement was not the result of a threat.

Background on Administration Position

The Administration agrees with the Bankruptcy Commission that debtors need to receive full and complete disclosure of the facts of reaffirmation agreements, that many reaffirmations involve terms that are far worse than those available elsewhere, that the existing attorney affidavit procedure provides inadequate protection from unfavorable reaffirmations. Thus, the Administration has sought additional protection against unwise reaffirmations. Along with the American Bankruptcy Institute, the Administration has endorsed court review of reaffirmations that are least likely to be in the best interest of debtors and priority creditors like divorced spouses. Such reaffirmations include unsecured debt and debt secured by small personalty items of little value, which are often the basis of reaffirmations that are very unfavorable and/or are the result of misleading or coercive offers by creditors. Finally, believing that debtors with adequate information and protection against coercion were capable of making wise decisions even in the case of unsecured credit, the Administration does not support a ban on reaffirmations of unsecured credit.

Accordingly, the Administration supported the reaffirmation reform proposed in last year's Senate bill, S. 1301. The Senate bill required that the reaffirmation agreement contain a clear disclosure of the components of the reaffirmed debt--principal, interest, late fees, creditor's attorneys fees and other costs of collection. In addition, in cases where the debt was unsecured or was for purchase of a personalty item of original value less than $250, the bill required the court to make a number of findings for approval, including finding that the agreement was in the debtor's best interest, did not impose undue hardship, was not the result of coercion, and was not excessive relative to collateral value. The Administration also sought further protections, by requiring that the court find clear and convincing evidence that the agreement was in the debtor's best interest and would not cause a hardship, and by applying the bill's provisions to debts for purchases of somewhat higher original value than $250. One criticism of the Senate proposal was that the bill language did not provide clear guidance for courts to use in deciding whether reaffirmations met the conditions for approval, so that reaffirmations would be costly to review and the diverse standards currently used by courts might continue to be applied.

This enhanced Administration proposal addresses the concerns about feasibility and clear guidance. It also builds on the new information on repayment capacity to be collected as part of the bankruptcy reform process – indeed, it applies the same results and standards to reaffirmations as the reform bills apply in the means test for determining ability to repay – thereby limiting costs of reaffirmation review and assuring that priority debts will be paid. Thus, the enhancements to the reaffirmation proposal make it largely self-executing.

Detailed Description of Administration Proposal

The proposal for "no coercion" is the same as the finding required in the current House and Senate bills. We describe below the specific guidance for whether "full disclosure" has occurred, and for whether the reaffirmation constitutes an undue hardship for the debtor.

Presumptions for affidavits/court approvals:

By providing clear guidance for courts, attorneys, and parties at interest in developing reaffirmations that are in the best interest of the debtor, *yet do not harm* priority creditors, the proposal would improve the quality of all reaffirmations without imposing significant new administrative burdens on the bankruptcy system.

(1) *fully informed*: Debtor is *presumed not to be fully informed* unless the creditor who is party to the agreement discloses credit terms according to forms provided by the Judicial Conference, and provides the disclosures to the court as part of filing. This form is provided at Attachment A. The disclosures included on the form are standard information that the debtor, the attorney, and the court need in order to assess whether the reaffirmation is in the debtor's best interest:

- the amount of the prepetition claim
- total amount of the reaffirmed debt, and component amounts attributable interest accrued, attorney fees, late fees, other costs relating to collection
- the monthly payment of the reaffirmed amount or, if the reaffirmation agreement extends new or additional credit, the minimum monthly payment on that amount
- annual percentage rate of interest (APR) and other types of finance charges and their manner of calculation, including but not limited to late fees, service fees, etc, assuming that Regulation Z applies to the transaction and treats it as a refinancing; separately, the same information for any new or additional credit extended[1]
- date payments start
- total number of payments made to satisfy the reaffirmed indebtedness, if paid on schedule
- if secured: date any lien is released, if payments are made on schedule
- if secured: description of collateral, value, and basis for valuation

Disclosures that meet these requirements create a presumption of full information.

(2) *undue hardship*: A proposed agreement is presumed to be undue hardship if, when all monthly payments in the proposed reaffirmation are added to the debtor's monthly expenses as calculated in the Section 707(b) means test, the total expense exceeds the debtor's monthly income. This test simply adds one line (the expense of the reaffirmation) to the ability to repay

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[1] There is debate over the exemption granted to credit agreements that are the result of "court proceedings" in Regulation Z. This proposal does not suggest changing the exemption.

calculations that will be performed for all Chapter 7 debtors.

For debtors who undergo the full 707(b) means test, this calculation is straightforward - documentation on income, expenses, and nondischargeable debt payments not counted in expenses is filed as part of the case. The only additional information required of the debtor is the total monthly payment for the proposed reaffirmation; if the total expenses counting the reaffirmed debt are greater than the debtor's monthly income, the reaffirmation is presumed not to be in the debtor's best interest. For reaffirmations that do not involve a regular monthly schedule of payments, the debtor's total expenses over the period of the reaffirmation (including the total payments for the reaffirmed debt) are compared to the debtor's total income over the same period.

For debtors who are "screened out" of the means test under the Administration proposal, the debtor's monthly expenses are estimated to be 1.4 times the applicable monthly expenses under the IRS National and Local Standards for food, clothing and other items[2]; housing and utilities; and transportation. The "undue hardship" presumption is then whether the debtor's monthly income is greater than the sum of these monthly expenses, plus monthly payments on existing nondischargeable debts, plus monthly payments on the proposed reaffirmations.

The debtor may rebut a presumption of undue hardship by demonstrating circumstances that, despite the presumption, justify the proposed agreement. For debtors who were not subject to the full Chapter 7 means test or who did not have adequate ability to repay according to the means test, this would require documenting expenses and required debt payments to provide evidence that the reaffirmation does not jeopardize payment of nondischargeable debts. Any such evidence can also be used by the court as a factor in determining whether the Chapter 7 filing is presumed abusive, and/or in setting the terms of a Chapter 13 repayment plan.

Notice and standing for domestic support creditors

(1) *Notification*: The debtor must notify creditors owed child support and alimony payments of any proposed reaffirmation agreement with sufficient time to allow such creditors to object to the court's approving an agreement.

(2) *Standing for parties at interest*: A creditor with a domestic support claim may object to the approval of an agreement because of substantive or procedural defects on the grounds that the debtor's future income and/or expenses are not described adequately in the information provided by the debtor on capacity to repay and that the true capacity to repay is insufficient to protect his or her own claim adequately. If an objection is made, the court must hold a hearing.

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[2] According to the data in the BLS's Consumer Expenditure Survey, average total consumer expenditures are about 40% larger than annual expenditures for the items covered in the National and Local Standards.

(3) *Fee shifting*: The court may award the creditor all reasonable costs in bringing an objection, if the court grants the objection and finds that the position of the debtor who proposed the agreement was not substantially justified (as guided by the presumptions). The court may award the debtor all reasonable costs in contesting an objection brought by a party in interest if the court does not grant the objection and the court finds that the position of the party in interest was not substantially justified, or that the party brought the objection solely for the purpose of coercing a debtor into waiving the right to reaffirm.

Reforms to Treatment of Individual Debtors in Chapter 11

Background

Bankruptcy reform proposals will channel individuals who file for bankruptcy who can repay a meaningful portion of their debts into Chapter 13, where they are required to devote their disposable income to payment plans. The proposals maintain the current debt limits on Chapter 13 filings and continue to provide, appropriately, that debtors with higher debt levels (who generally have more complex business-related debts) file for Chapter 11. Yet debtors filing for Chapter 11 are free of the requirement to repay from their own incomes.

Administration Proposal

To restore equity and prevent abuse, the Administration and the SEC's Division of Enforcement propose closing this loophole. The best way to do so is to make the treatment of future income of debtors filing for Chapter 11 as parallel as possible with the treatment of future income of debtors filing for Chapter 13. Hence we propose that: (i) the debtor's income be part of the estate, (ii) the debtor's disposable income be committed to the plan (and the debtor be allowed control over remaining income), (iii) disposable income and associated reasonable expenses be defined as provided in the Chapter 7 abuse test, and (iv) debtors with primarily nonconsumer debts, such as these debtors, be subject to the 707(b) means test before being allowed to file for Chapter 7, so that they must commit their own disposable incomes to their reorganization, provided that reorganization yields more value to creditors than liquidation.

Specific Amendments

(1) amend Section 541(a)(6) to provide that the income of an individual Chapter 11 debtor is property of the estate by inserting:

> "(other than an individual debtor who, in accordance with section 301, files a petition to commence a voluntary case under chapter 11)"

after "individual debtor".

(2) amend Section 303(a) to prevent creditors from being able to file an involuntary Chapter 11 petition against an individual

(3) amend Section 1123(a) to add a new subsection (8)--

> the plan shall provide for the submission of all or such portion of future earnings or other future income of the debtor as necessary for the execution of the plan to the control of the trustee

(4) amend Section 1129 to add a new subsection (14) requiring that--

(A) if the debtor is engaged in a business, the projected earnings from the business less the expenses necessary for its continuation, preservation and operation, including reasonable expenses incurred by the debtor, as defined in section 1325(b)(2) and by incorporation, section 707(b), for the period beginning on the date that the first payment is due, will be applied to make payments under the plan.

(B) if the debtor is not engaged in a business, then the plan provides that all of the debtor's projected disposable income over the plan's life is applied to make payments under the plan. "Disposable income" is defined as in Section 1325 (b)(2) and, by incorporation, section 707(b)-- as income which is received by the debtor and is not reasonably necessary to be expended for the maintenance or support of the debtor or dependent of the debtor. NOTE THAT THE STANDARDS OF REASONABLY NECESSARY EXPENSES AND DISPOSABLE INCOME SHOULD BE CONFORMED TO THE 707(B) MEANS TEST AS DOES THE SUBSTITUTE HOUSE BILL

(5) amend Section 707(b) to delete "whose debts are primarily consumer debts"

(6) add a new section to 1121 to provide a time limit on individual debtors as does Chapter 13 but longer to account for the complexity of affairs of individual debtors filing under this section:

If the debtor is an individual, the debtor shall file a plan within 90 days of the order for relief under this chapter, except that the court may extend such period if the debtor can demonstrate that such extension is attributable to circumstances not under his control.

(7) add a reporting requirement to section 1108:

A debtor engaged in a business shall file monthly operating reports of such business. The U.S. Trustee shall prescribe an appropriate form.