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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. letter	From Claim no 2019823 to Settlement Administrator (partial) (1 page)	04/09/1998	P6/b(6)
001b. form	Sears Personal Bankruptcy Debtor Class Litigation Dispute Form, Claim no 2022421 (partial) (2 pages)	08/13/1998	P6/b(6)
001c. form	Sears Personal Bankruptcy Debtor Class Litigation Dispute Form, Claim no 2056337 (partial) (2 pages)	07/27/1998	P6/b(6)
001d. letter	Disputing citizen to Clerk of the US Bankruptcy Court re Sears Claim Dispute Notice (partial) (1 page)	12/01/1998	P6/b(6)

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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

EDWARD M. KENNEDY
MASSACHUSETTS

United States Senate

WASHINGTON, DC 20510-2101

April 15, 1999

First Lady Hillary Rodham Clinton
The White House
Washington, DC

Dear Hillary,

The Senate Judiciary Committee began its review of the bankruptcy legislation today. Unfortunately, the Committee bill is unbalanced and unfair. It excludes many of the consumer protection provisions we care about, such as credit card disclosure requirements and protections against abusive reaffirmations. It also includes a harsh means test that will deny many vulnerable Americans access to Chapter 7 and a fresh start. The credit card companies have also been able to add provisions similar to those in last year's bill that create broad new categories of nondischargeable debt.

The good news is that several Democrats are outspoken critics of the bill. When the Committee meets again next Thursday to consider amendments, Democrats will have an opportunity to highlight some of the most flagrant provisions in the current bill, and oppose additional Republican amendments modeled on other unacceptable provisions in last year's bill -- I expect the majority of those amendments to be defeated and some to be withdrawn. Orrin Hatch wants to approve the bill soon, so that it can be taken up quickly by the full Senate.

I know we share a common view of the importance of this issue. Bankruptcy is an essential safety net for working families, women and children, elderly Americans, and minorities. True reform should be supported, but this proposed legislation flunks that test.

Thanks for all you have done -- and will continue to do -- to move this debate in the right direction.

With warmest wishes,

Sincerely,

Edward M. Kennedy

Enclosed a view from the other side —

Friday, April 16, 1999

Democrats Block Senate Bankruptcy Reform Bill

◆ By JARET SEIBERG

WASHINGTON — Fierce Democratic opposition derailed efforts Thursday to whisk bankruptcy reform legislation through the Senate Judiciary Committee.

The dissent forced Sen. Orrin Hatch of Utah, the committee chairman, to schedule a hearing April 22 to begin voting on 26 pending amendments.

"This legislation doesn't measure up," Sen. Edward M. Kennedy said. "It basically stinks. If you talk about special-interest legislation, you got it right here."

The Massachusetts Democrat led an insurrection that foiled Sen. Hatch's plan to clear the bill quickly for consideration by the full Senate. No votes were taken Thursday.

Sen. Kennedy's involvement seriously jeopardizes prospects for bankruptcy reform. He successfully blocked a similar bill last year in the waning days of Congress.

"Last year it was a bad bill," he said. "This year it is an equally bad bill. This legislation does not deserve to pass."

The bill would require bankruptcy trustees to determine whether a consumer should eliminate unsecured debt in Chapter 7 or repay it in Chapter 13. Debtors would have to use

See page 2

Democrats on Senate Panel Derail Bankruptcy Reform

Continued from page 1

Chapter 13 if they could afford, after living expenses, to repay $15,000 or 25% of unsecured credit over five years. Creditors also could ask judges to force a consumer into Chapter 13.

The proposal also includes a host of bankruptcy provisions addressing nonconsumer topics ranging from farming to derivatives, small businesses to audits.

It does not incorporate many of the consumer protections Democrats successfully added to last year's reform bill, which passed the Senate 97 to 1 before being altered by the House and eventually blocked by Senate Democrats.

"Today's bill is missing the key ingredient from last year's balanced reforms in the Senate — consumer credit information and protections," said Sen. Patrick Leahy, D-Vt.

Further clouding the bill's prospects was a promised amendment from Sen. Charles E. Schumer that would make it tougher for perpetrators of violence against abortion clinics to use bankruptcy to protect their assets when courts order payments of damages.

"I don't view this as pro-choice or anti-pro-life," the New York Democrat said. "It is about rights."

But other senators called the amendment a "poison pill" that would kill the bill. "If the object is to not have a bankruptcy bill, then move forward with your abortion amendment," said Sen. Joseph R. Biden, D-Del.

Democrats also questioned whether the committee has held enough hearings on the bill. Though it held nearly a dozen hearings last year, Senate Judiciary did not have one this year.

"I don't understand the rush to report this bill without hearings," said Sen. Russ Feingold, D-Wis. "I'm afraid what we are doing here is irresponsible."

Sen. Kennedy also charged that the bill would hurt the poor and middle class who most need help. "It is easy to see who loses," he said. "It is the basic hard-working Americans who have run into hard times."

Sen. Charles E. Grassley, R-Iowa, defended the bill he authored, calling it a "fair and balanced" approach that enjoys overwhelming public support. "The polls are clear," he said. "The American people want bankruptcy reform."

He said consumer credit card protections are not in the bill because Senate Banking Committee Chairman Phil Gramm would have claimed jurisdiction. That would slow the bill and open it up to more changes.

Sen. Biden said it was hypocritical for members of his party to complain that poor people and minorities were being saddled with credit card debt when just a few years ago they demanded banks extend credit to these groups.

Kennedy

Supporters of the bill received a boost from the Clinton administration, which said the Grassley bill includes "some encouraging improvements" over earlier drafts. Still, Acting Assistant Attorney General Dennis K. Burke said in a 34-page letter that further changes are needed.

Among the administration's demands is automatically allowing poor people to file Chapter 7 regardless of repayment ability, and switching to an index different from the one the Internal Revenue Service uses to calculate living expenses.

Industry lobbyists remained optimistic. "There is plenty of time to work these issues out," said Philip S. Corwin, a principal at Federal Legislative Associates who lobbies for the American Bankers Association.

But consumer advocates said the bill is dead unless creditors and their supporters in the Senate drop their opposition to enhanced consumer protections.

"The potential for a compromise bill is there," said Gary Klein, a lawyer at the National Consumer Law Center. "It is simply a matter of whether the powerful forces in the credit industry are willing to accept balanced legislation." ◇

Preliminary

DRAFT – NOT FOR RELEASE

April 27, 1999
(House)

H.R. 833 - Bankruptcy Reform Act of 1999
(Gekas (R) Pennsylvania and 103 cosponsors)

The Administration strongly opposes H.R. 833. If the bill were presented to the President in its current form, his senior advisers would recommend that he veto the bill. The Administration continues to support bankruptcy reform that asks both debtors and creditors to act more responsibly. However, H.R. 833 fails the test of balance between creditors and debtors, particularly in its provisions affecting low- and middle-income debtors. The bill focuses disproportionately on perceived abuse of the bankruptcy system by debtors and takes an excessively rigid approach to limiting access to discharge of debts under Chapter 7 of the Bankruptcy Code.

H.R. 833 in its current form would limit access to Chapter 7 to debtors who meet an inflexible and arbitrary means test. We understand that Reps. Hyde and Conyers intend to offer an amendment that would help ensure that debtors denied access to Chapter 7 under Section 707(b) of the Bankruptcy Code are only those who have a strong likelihood of successfully completing a Chapter 13 repayment plan. As a result, debtors who genuinely have the ability to repay a portion of their debts would remain responsible for those debts. Provided one technical change is included, the Administration could support the Hyde-Conyers amendment. *[Note: If the rule for debate does not permit amendments, the reference will be to the amendment considered by the Judiciary Committee.]*

The Administration continues to believe that reform must encourage creditors to treat debtors fairly, recognizing creditors' superior information and bargaining power. H.R. 833 needs to be revised in the following ways to achieve the appropriate balance: (1) procedural protections and clear guidelines should be added to ensure that debtors are well-informed about the reaffirmation of debt and to enable judges to use streamlined procedures to identify potentially inappropriate and unwise reaffirmations of unsecured and low-value secured consumer debts; (2) the nondischargeability provisions in the bill need to be modified so that the bill no longer inappropriately puts credit card debt in competition with child support, alimony, and other societal priorities like educational loans and taxes; and (3) new disclosure requirements should be included to ensure that credit card companies provide consumers with the information they need to manage their credit card debts.

The Administration also supports changes that would close loopholes in current bankruptcy law, such as unlimited homestead exemptions and exemptions from repayment requirements for individuals who are able to file for bankruptcy under Chapter 11, that protect some of the wealthiest debtors from having to repay a significant portion of their debt. Bankruptcy reform should not place greater responsibility for debt repayment primarily on moderate- and low-income debtors.

Finally, the Administration supports changes such as [. . . Treasury please supply] that would improve the efficiency and reduce the cost of determining whether debtors should have access to Chapter 7.

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.

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THE WHITE HOUSE

WASHINGTON

April 6, 1999

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING
LARRY STEIN
MELANNE VERVEER

RE: BANKRUPTCY REFORM STRATEGY

ACTION FORCING EVENT: Bankruptcy legislation is moving rapidly through the House and the Senate. Both chambers plan to complete committee action after recess and take floor action in May. Last year, we worked closely with Senator Durbin, resulting in a 97-1 Senate vote for a moderate and balanced bill. The moderating provisions were largely abandoned in Conference. Your advisors informed Congress that they would recommend a veto of the Conference Report. The Senate never voted on the Conference Report, because Senator Durbin threatened delay and because pro-reform lobbyists --predicting Republican gains in the 1998 elections --decided to wait to reintroduce the legislation in this Congress. If the Senate had voted on the Conference Report, we do not know what the outcome would have been. The House approved the Conference Report by a veto-proof vote of 300-125. Minority Leader Gephardt was among the 80 or so Democrats supporting the Conference Report.

This year, while Congressman Nadler is leading efforts against the Conference Report and working to enlist greater support for a more moderate approach. Nonetheless, we expect the House to approve a bill like the Conference Report by a similar margin. In the Senate, there seems to be less support than previously among Democrats for fighting unbalanced legislation. Absent a strong effort by the Administration to influence the legislation, it is likely that you will be presented legislation that you will not want to sign, but which may have sufficient support to override a veto.

RECOMMENDATION: We seek your approval of a strategy designed to increase our leverage and reduce the likelihood of a veto override. Specifically, we seek authority to: (1) exploit publicly the vulnerabilities of the legislation (by presenting sympathetic scenarios of 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 Senators Durbin, Kennedy, Leahy and others to develop a Senate floor strategy and identify message amendments which could motivate Republicans to compromise; and (4) work with Representatives Nadler, Conyers, Frank, Gephardt, and Bonior to produce a more palatable House bill, or, if that is not possible, to garner the 20-25 additional House votes necessary to sustain your veto.

THE STATUS OF BANKRUPTCY LEGISLATION IN CONGRESS: In the House, Representative Gekas, introduced H.R. 833, which is virtually identical to last year's Conference Report. It now has 93 cosponsors, including nearly 40 Democrats (*e.g.*, Representatives Boucher, Frost, Kennedy, Holden, Menendez, Roemer, Maloney, and Velazquez). Minority Leader Gephardt supported the Conference Report last year, and would likely do so again (albeit with a low profile). However, if a strong balanced alternative can be constructed that has the strong public backing of the White House, Gephardt might be willing to rally his caucus vigorously around such a vehicle.

Representatives Conyers and Nadler recently wrote to you praising you and the First lady for your leadership last year and asking you to reiterate your opposition to last year's Conference Report. On March 23, 1999, Jack Lew sent a reply noting that your senior advisors had recommended a veto of the Conference Report last year and that "our position . . . has not changed." Armed with that letter and an alternative bill being developed by a group of bankruptcy experts at the National Bankruptcy Conference, Representative Nadler is confident (perhaps more than we are) that he can prevent some Democrats, who last year supported the Conference Report, from doing so this year. Achieving this goal is critical to a credible veto threat.

In the Senate, we originally hoped that Senator Torricelli would not co-sponsor Senator Grassley's bill (which is modeled after the Conference Report) demonstrating to other Democrats that the bill was not ready for the caucus' support. Unfortunately, Senator Torricelli did agree to cosponsor S. 625, although extracted some moderating changes as a precondition of his sponsorship. He also wrote a letter to Senator Grassley outlining six areas where the bill needs to be improved before it leaves the Senate. Although we would like to see some other changes as well, we largely agree with the six areas that Torricelli outlined. (The First Lady urged Senator Torricelli to hold firm on these issues.) We are skeptical, however, that the Republicans will accept many of these amendments either in committee or on the floor. Even if they did, as last year, we can expect any progress made to be undone in conference with the House.

Senator Grassley is more reasonable on bankruptcy than many Republicans, but we do not believe that he will be able to hold off his colleagues who believe they can get Democratic support without further compromise. Senator Biden is already a co-sponsor and five or six other Democrats have expressed interest in signing on the bill. Senator Leahy also may support the bill in Committee as a demonstration of support for Senator Torricelli, who replaced Senator Durbin as ranking member on the relevant subcommittee. Many signs suggest that Senator Torricelli will not oppose the bill even if the additional changes he seeks are not made. Senator Daschle, who wants a bankruptcy reform bill, will likely support S. 625 in the end if enough Democrats move in that direction. Well positioned Democratic staff believe there may be enough votes in the Senate to override a Presidential veto. Finally, last year, Banking Committee Chairman D'Amato raised no objection to provisions inserted on the Senate floor that required credit card companies to provide greater disclosure to consumers.

These provisions were important to our support of the Senate bill. However, the new Banking Committee Chairman, Senator Gramm, recently noted his opposition to any bankruptcy bill which contains the credit card protections that we view as important. Senator Gramm has reportedly said that a bill with these consumer protections "will pass over [his] dead body."

At this time, neither the Administration nor effective advocates like Senator Kennedy have mounted any offensive. Thus, our assessment is preliminary and we hope to affect it. Some House and Senate Democrats are looking to the White House for political guidance and leadership on this issue. While they want to support bankruptcy legislation, we should be able to keep them from supporting the bills moving in each chamber if we give them a viable alternative and a strong rationale not to do so.

RECOMMENDED STRATEGY: While we believe that the current bills before Congress are sufficiently flawed as to merit continued opposition, we also believe that bankruptcy reform is not only desirable but necessary. Our goal is to gain sufficient leverage in the debate on Capitol Hill to make modest but important changes to the bills, so that we could recommend that you sign the resultant legislation. We recommend the four-prong strategy described below.

1. <u>Exploit Vulnerabilities</u>

It is difficult to rally Members or the public around complicated technical issues like nondischargeable debt and means test formulas. However, there are messages we can use to address each of our major areas of concern.

A. The Formulaic Means Test Will Block Efforts of Responsible Debtors to Get Back on Their Feet

One of our most significant concerns with the current bill is that the procedures established do not afford debtors a meaningful opportunity to have their specific circumstances evaluated and do not give the court the necessary discretion to take those circumstances into consideration. While it is difficult to defend judicial discretion, we can tell stories about sympathetic debtors who would be caught by the bill's rigid approach.

Under the bill, the bankruptcy trustee would determine whether a debtor can afford to repay some of their debts by considering the debtor's income, less certain standard allowances for food, clothing, transportation, and housing expenses rather than what the debtor actually spends for those items. There may be cases where the actual expenses are above the allowance amount for good reason, but the court can only provide an exception if the debtor meets the burden of proving that their circumstances "exceptional" and the additional expenses "necessary."

So, for example:

- No exception likely would be made for a debtor who helped his non-dependent mother meet her expenses so that she could live on her own and stay out of a nursing home. That debtor could be denied access to Chapter 7's "fresh start" and the funds used to pay for his mother's housing expenses would instead go to pay off his credit cards.

- Similar problems arise especially in ethic and lower-income communities where neighbors, friends, and relatives often bear significant costs to help children, elderly, the disabled, the unemployed, and others who are not legally their dependants.

- No allowance likely would be made if a debtor's transportation expenses to get to work on the other side of town are above the area allowance. The choice posed could be stark: (1) find a job closer to home (even if less likely to provide career advancement) to lower transportation costs and free up money to repay your creditors; or (2) fail to feed or cloth your children.

- No allowance likely would be made if the debtor's rental costs are higher than the area allowance, even though her apartment allows her to live near to a relative who can safely watch the children after school. The current test could force that single mother to move her family from her home without an opportunity for individualized assessment of the tradeoffs.

In addition to these scenarios, we can make much of the false representation made by bill proponents that the bill no longer would impact below-median income debtors (who make up 80% of those in bankruptcy). All debtors would be subject to the new mean test; while creditors could only bring "abuse" motions against above-median income debtors, the bankruptcy courts and trustees would be required to apply the means test to all debtors.

B. The Bills Roll Back Existing Protections Against Abusive Collection Practices and Coercion.

In a famous, recent case, Sears was found to have harassed creditors into agreeing to repay debts that they no longer had -- having been discharged in bankruptcy. The court found that Sears had violated the "discharge injunction" and was liable for millions of dollars in damages to hundreds of thousands of debtors. Under the House bill, creditors could harass debtors to repay discharged debt with little fear of consequences, as class actions and punitive damages -- the tools that brought the Sears' practices to an end -- would be barred.

Another concern is the bill's failure to deal with coerced reaffirmations of debt. Thousands of bankruptcy debtors each year agree to "reaffirm" one or more debts -- agreeing to pay it back even though they have the right to have the debt discharged in bankruptcy. We have no objection to letting debtors make an informed choice about whether to repay debts. There is widespread evidence, however, that debtors' decisions are not informed and that creditors coerce debtors into reaffirming debts by threatening to challenge the bankruptcy proceedings if they do not reaffirm, promising new credit lines in exchange for reaffirmation, and harassing collection efforts aimed at debtors ignorant of their rights. Provisions of these bills will create new opportunities for creditors to threaten and harass debtors.

In numerous cases, debtors "agree" to reaffirm debts even though they do not have sufficient income to pay their current expenses. While some may be optimistic, many more feel they have no choice when approached by a creditor threatening to challenge their bankruptcy. It would not be unusual to see a reaffirmation agreement, for example, where the debtor agrees to repay $1000 in order to get a $500 line of credit -- an effective interest rate of 200% on the new debt, even though far less expensive credit lines are now available even for those currently in bankruptcy. Even where a debtor makes an informed choice, ***reaffirming the debt may harm ex-spouses and children whose child support and alimony may not get paid because the reaffirmed debt is paid instead.***

The Bankruptcy Review Commission concluded that reaffirmations of unsecured debt should be banned outright. We proposed instead a "coercion" check -- a review by the bankruptcy court of any reaffirmation of unsecured debt to ensure that it was an informed choice in the best interest of the debtor and others. We will press this issue more visibly this year, while developing compromise alternatives that we could offer in final negotiations.

C. Consumer's Right-to-Know and Protection from Credit Card Abuse

Consumers are well aware of intense and misleading credit card marketing efforts. Last year's Senate bill contained a number of important credit card provisions including: (1) a requirement that credit card companies disclose on monthly statements how long it would take (and how much it would cost) to pay back the debt, if consumers only made the minimum payment; (2) a requirement that consumers be notified when credit card companies or retailers take a security interest in the goods purchased; and (3) a requirement that credit card companies inform debtors that they have not assessed the debtors' capacity to repay additional debt and provide a worksheet so that the debtor can easily make that calculation for themselves. These provisions were stripped in conference, leaving only a requirement for the Federal Reserve to study what further disclosures would be helpful.

Senator Sarbanes and other Democrats have introduced legislation separate from the bankruptcy bill that incorporates many of these consumer education provisions. In addition, Representative LaFalce and Senator Schumer have introduced bills that contain a host of additional credit card protections, many of which the Administration supports. One, for example, would eliminate the misleading advertising of credit card "teaser" rates -- which leave consumers shocked by dramatic interest rate increases when rates expire or they incur a penalty for a minor late payment. You are scheduled to unveil a consumer financial protection package the week that Congress returns, which includes many of these credit card provisions, as well as privacy protections. At that time, you can praise the efforts of Democrats in both chambers to protect consumers against abusive credit card practices. While we will not make passage of any *specific* credit card provisions a precondition for bankruptcy support, some balance in this regard is essential. By raising the profile of credit card issues, you will increase the leverage of Democrats seeking to incorporate some of these provisions in the bankruptcy bill and give Democrats an issue around which they can rally.

D. Child Support and Alimony Collection

The bankruptcy bills create or expand categories of nondischargeable debts -- i.e., debts that can be collected after bankruptcy. Last year we argued that these new nondischargeable debts would impair the collection of child support and alimony. In response, the bills' proponents both narrowed the categories of new nondischargeable debts and added a host of provisions that genuinely make it easier for former spouses and custodial parents to collect child support and alimony from debtors in bankruptcy. As a result, the bills probably improve the collection of family support obligations more than it is harmed. However, the bills have not been entirely corrected in this regard. We can continue, therefore, to argue credibly that child support and alimony collection is harmed *in some cases*. In particular, two concerns remain:

(1) the bills now provide that, in the supervised context of a bankruptcy plan, child support and alimony payments must be given the highest priority. However, under these bills, some debtors will have obligations to repay reaffirmed or newly nondischargeable debt. After the bankruptcy discharge, there is no court supervision or other mechanism to ensure that child support and alimony are paid first. The custodial parent or former spouse is unlikely to be as effective as the card company in collecting payment. Once these lower-priority payments are made, it is not practical to require the custodial parent or former spouse to go after the creditor to assert a claim on those payments.

(2) the bills also raise another concern for the payment of child support and alimony. If debtors are forced into Chapter 13 who do not genuinely have the capacity to repay -- as we fear will occur under the current versions of the means test -- they will eventually return to Chapter 7 with a diminished ability to repay their nondischargeable debts -- in particular their child support and alimony -- because while under the plan, they devoted some of their assets to paying their other creditors.

E. The Bills Leave in Place Huge Loopholes for Wealthy Homeowners While Squeezing Low and Moderate Income Debtors in over Their Heads.

Some of the most famous cases of abuse involve celebrities who file for bankruptcy and walk away from most of their debts but continue to live in multimillion dollar mansions protected by "homestead exemptions." (State exemptions also protect such luxuries as race horses and silver spoons in Virginia.)

Yet, at the same time we are creating a system that will ask low and moderate income debtors to behave responsibly -- to pay back some of their debts if they can -- these bills leave in place the biggest loopholes used by the wealthy. (The House bill currently has a homestead exemption cap of $250,000, but we expect even that to be removed on the floor.)

2. **Try to Improve the Legislation**

While the Republicans are not presently receptive to significant changes, we must continue to work in good faith with Senators Torricelli and Grassley (and key House members) to make improvements to the bills where possible. On a few important issues, we may be able to offer compromises that will be more attractive to the credit industry than provisions that were in the Senate bill last year. For example, we think we can propose ways to make the means test more "self-executing" by requiring judges to explain when they vary from formulaic standards and by lowering the costs to creditors for bringing abuse motions. This proposal should address at least one of the creditors' concerns with the discretion that we insist be granted to the courts. While these proposals may not be embraced by the Republicans initially, we hope they will be considered in the "end game." More importantly, these compromise provisions will allow us to present a new "Administration proposal" around which Democrats can rally.

3. **Senate Strategy**

Senior staff will consult directly with key Democratic Senators -- especially Senators Durbin, Kennedy, and Leahy -- in developing a Senate floor strategy. If Senator Torricelli is unable to lead the caucus in demanding balance for these bills, Senators Durbin and Kennedy may be willing to do so. With them, we will identify the best amendments (both germane and non-germane) to offer on the floor to provide negotiating leverage.

4. **House Strategy**

Senior staff will work with Representatives Nadler, Conyers, and possibly Frank to try to develop an alternative for full committee and floor consideration that will represent a balanced approach to bankruptcy reform. We will also seek to engage Minority Leader Gephardt and other House Democratic leaders who may view this year's debate as an opportunity to promote a strong, pro-consumer perspective. The ultimate goal will be either to greatly improve the House bill or, more likely, produce the necessary votes to sustain a possible veto in the House.

_____ Agree

_____ Disagree

Draft
Comments by COB Treas. 4/6

TARGETED MEANS TESTING FOR CHAPTER 7

The 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 benefits of moving some filers into Chapter 13 are the increased debt repayments that would result when filers are moved appropriately. The costs of means testing include the costs to the bankruptcy administrators and filers of providing information for testing, the associated attorneys' costs, and the additional administrative costs of inappropriate referrals to Chapter 13 that result in failure. Beyond these costs are the inherent rights of debtors to a fair hearing on their particular circumstances, if they are to be moved by the test. By targeting the need for such hearings effectively, the proposal assures that virtually all debtors who truly can repay are moved appropriately and at minimum cost to the system.

Summary of Targeted Means Test Proposal

The resources expended to scrutinize debtors' ability to repay should be related to the "payoff" in terms of additional debt repaid. We do not want to expend many resources on debtors who are likely to have very little repayment capacity. Evidence on the actual ability to repay of filers suggests that the best screen approach has two parts: a low-cost screen for debtors who are very unlikely to be able to repay, plus a more complete means test targeted to those who are more likely to be able to repay. The simple test is based on documentation of income only; the more complete test involves a review of income and expenses.

Targeted Screen

(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. It is automatically presumed that filing for Chapter 7 by such debtors is not abusive, unless the totality of circumstances suggests that the debtor is abusing the system.

(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 is based on their ability to repay the lesser of [30% of debt, $15000] based only on their income and the subset of allowable expenses included in the *formulaic* portion of the IRS standards, which is based only on income and family size. If they cannot repay according to this test, they certainly could not pay if additional expenses were 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 the debtor's income, expenses, and individual circumstances.

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

ANALYSIS

Who can be expected to repay?

Recent national studies of the repayment capacity of Chapter 7 filers (Ernst & Young, March 1998, with additional data provided to Treasury; and Culhane & White, December 1998, using the needs-based provisions of HR 3150; and Ernst & Young, March 1999 based upon HR 833) show that income is a very strong predictor of repayment capacity and therefore is an appropriate measure for a simple initial screening test.

- Filers with incomes below 75% of the national median adjusted for family size represented 54% of Chapter 7 filers. Their repayment capacity was very low. Ernst & Young[1] found that about 3%-- or 3 out of 100-- of filers in this income category had the ability to repay even $3000 or 20% of their debt. Moreover, the debtors who met this $3000/20% threshold had the lowest average ability to repay among all income groups.

- Filers with incomes between 75% and 150% of the national median constituted 36% of Chapter 7 filers. About 26% --less than 3 out of 10 -- of these filers had some ability to repay. The degree of repayment capacity did not differ substantially at different levels of income within this range.[2]

- Finally, those with incomes above 150% of median were about 9.7% of all Chapter 7 filers, but nearly 50% of these--5 out of 10--had some ability to repay.

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 $8-16M in additional judgeship costs due to the new burden on the court system of means test determinations and associated litigation.[3]

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[1] Culhane & White.

[2] Of those debtors with incomes between 75% and 100% of the national median, nearly 25% had some capacity to repay. Of those debtors with incomes between 100% and 150%, 37% had some capacity to repay.

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

CBO did not estimate the additional costs for the *private* Trustees, who are responsible for the actual management of most bankruptcy filings under the current system. Under the House and Senate bills, both Chapter 7 and Chapter 13 Trustees would be required to conduct a means test. Chapter 13 Trustees' expenses are covered under current compensation rules. We presume the Chapter 7 Trustees' expenses for conducting the tests would be covered by allowing an additional percentage of any repayment ability discovered similar to their current law compensation in Section 326 (a) of Title 11. The current Senate bill gives responsibility for administering the means test to the private Trustees. In this case, the additional costs to the private Trustees would be borne 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, the determination of the debtor's secured and priority monthly debt payments, and the additional time that would be required to assess nonformulaic, case-specific factors (if discretion is allowed).

The Chapter 13 Trustee from the Northern District of California has estimated these additional means-testing costs to the private Trustees.[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; most experts we questioned believed that income determination would be far simpler than assessment of expenses, and so would comprise a smaller share of the added cost of means testing.) Presumably the Chapter 7 Trustees' expenses would also rise by comparable amounts, as they will be performing much the same examination. The total increase in administrative costs per case would be around $50 for the income test; $30-40 for the secured and priority debt determination that, together with the income determination, represents the cost of a formula-based screen; and $10-20 for the remainder of the means test. The high-end estimates assume more Trustee time for discretionary review.

In addition, there will be litigation expenses, should debtors or creditors choose to litigate the Trustee's conclusion with regard to ability to repay. The increase in cases requiring additional action by the Trustee could total over 1% of current filings, or about 12,000 additional cases. The administrative costs of litigation to the bankruptcy courts and Trustees are over 4 times as much as those of non-litigated cases.[5]

Additional Attorney Costs

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[4] Devin Derham-Burke, Chapter 13 Trustee, N.D. of California

[5] US Trustees

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 about 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. A complete means test would increase debtor attorney costs by perhaps $200 per case.

This does not count the attorney costs of any additional litigation following a determination of abuse by the Trustee or (for individuals of above-median income) a motion by creditor attorneys. We assume that such litigation costs are 2- 4 times the costs of non-litigated cases for both debtor and creditor (or Trustee) attorneys, or around $3000-5000 for each side. As noted above, a reasonably conservative estimate is that 1% of filings would result in further litigation after an initial means-test determination by the Trustee.

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

Income	*Share of Ch. 7 filers*	**HR 833 Means Test**					**Targeted Discretion**				
		Share of Ch. 7 filers subject to full test	Share of filers with repay-ment 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	Repay-ment	Add'l administrative costs	Add'l legal costs
<75%	54%	all 54%	1.7%	0	$38-51M	$86M	income screen:all full test: 0%	0	0	$8-9M	$43M
75-150%	36%	all 36%	9.3%	$.80B	$33-40M	$97M	income & formulaic expense screen:all full test: 11.3%	9.3%	$.79B	$16-19M	$55M
>150%	10%	all 10%	4.7%	$2.2B	$8-11M	$64M	full test: all (10%)	4.7%	$2.1B	$8-11M	$34M
Total	**100 %**	**100%**	**16%**	**$3.0B**	**$79-102M**	**$247M**	**21.3%**	**14%**	**$2.9B**	**$32-39M**	**$132M**

Conserv estimates

Conclusions

(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 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.

DEBTOR'S STATEMENT CONCERNING DECISION TO REAFFIRM

I agreed to reaffirm this debt because ______________________________

____

I believe this agreement is in my best interest because ______________________________

____

I [considered][did not consider] redeeming the collateral under section 722 of the Bankruptcy Code (11 U.S.C. § 722). I chose not to redeem because ______________________________

____

I [was][was not] represented by an attorney during negotiations on this agreement.

CERTIFICATION OF ATTACHMENTS

Any documents which created and perfected the security interest or lien [are][are not] attached. [*If documents are not attached*: The documents which created and perfected the security interest or lien are not attached because

____

______________________________.]

SIGNATURES

____
(Signature of Debtor)

Date______________

____
(Signature of Joint Debtor)

Date______________

____
(Name of Creditor)

____
(Signature of Creditor Representative)

Date ______________

CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY)

I hereby certify that 1) this agreement represents a fully informed and voluntary agreement by the debtor(s); 2) this agreement does not impose a hardship on the debtor or any dependent of the debtor; and 3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

______________________________ ______________
(Signature of Debtor's Attorney, if any) Date

Payments on this debt [were][were not] in default on the date on which this bankruptcy case was filed.

This agreement differs from the original agreement with the creditor as follows:

____

____

CREDITOR'S STATEMENT CONCERNING AGREEMENT AND SECURITY/COLLATERAL (IF ANY)

Description of Collateral. If applicable, list manufacturer, year and model. ______________

____

Value $ ____________

Basis or Source for Valuation ______________________________________

Current Location and Use of Collateral ______________________________________

Expected Future Use of Collateral ______________________________________

Check Applicable Boxes:

☐ Any lien described herein is valid and perfected.

☐ This agreement is part of a settlement of a dispute regarding the dischargeability of this debt under section 523 of the Bankruptcy Code (11 U.S.C. § 523) or any other dispute. The nature of dispute is ______________________________________.

DEBTOR'S STATEMENT OF EFFECT OF AGREEMENT ON DEBTOR'S FINANCES

My Monthly Income (take home pay plus any other income received) is $ ____________.

My current monthly expenses total $ ____________, not including any payment due under this agreement or any debt to be discharged in this bankruptcy case.

I believe this agreement [will][will not] impose an undue hardship on me or my dependents.

CLERK'S OFFICE

This agreement is not valid or binding unless it is filed with the bankruptcy court. If you were not represented by an attorney during the negotiation of this reaffirmation agreement, the agreement cannot be enforced by the creditor unless 1) you have attended a reaffirmation hearing in the bankruptcy court, and 2) the agreement has been approved by the bankruptcy court. (Court approval is not required if this is a consumer debt ~~and the creditor has a~~ mortgage or other lien on your real estate.) SECURED BY A

REAFFIRMATION AGREEMENT

The debtor and creditor named above agree to reaffirm the debt described in this agreement as follows.

THE DEBT

Total Amount of Debt When Case was Filed $__________

Total Amount of Debt Reaffirmed $________

Above total includes the following:

Interest Accrued to Date of Agreement $________
Attorney Fees $________
Late Fees $________
Other Expenses or Costs Relating to the Collection of this Debt (Describe) $________

Annual Percentage Rate (APR) ________%

Amount of Monthly Payment $________

Date Payments Start ________

Total Number of Payments to be made ________

Total of Payments if paid according to schedule ________

Date Any Lien Is to Be Released if paid according to schedule ________

The debtor agrees that any and all remedies available to the creditor under the security agreement remain available.

All additional Terms Agreed to by the Parties (if any):

____

____

In the process of promulgation by US Bankruptcy Ct.

disclosure
standing
categories — need CT review
and/or presumption of non-reaffirmability

Form B21

FORM 21. REAFFIRMATION AGREEMENT

UNITED STATES BANKRUPTCY COURT

_______________ DISTRICT OF _______________

Debtor's Name	Bankruptcy Case No.
	Chapter
Creditor's Name and Address	

Instructions: 1) Attach a copy of all court judgments, security agreements, and evidence of their perfection.
2) File all the documents by mailing them or delivering them to the Clerk of the Bankruptcy Court.
3) If the debtor was not represented by an attorney in negotiating this agreement, ~~the agreement must be accompanied by a motion for its approval. (See Form 21M.)~~

~~☐ Check box if motion to approve reaffirmation agreement is attached.~~

NOTICE TO DEBTOR:

This agreement gives up the protection of your bankruptcy discharge for this debt.

As a result of this agreement, the creditor may be able to take your property or wages if you do not pay the agreed amounts. The creditor may also act to collect the debt in other ways.

You may rescind (cancel) this agreement at any time before the bankruptcy court enters a discharge order or within 60 days after this agreement is filed with the court, whichever is later, by ~~sending a letter to~~ notifying in writing the creditor at the above address saying that the agreement is canceled or by telling the creditor in some other lawful way. appropriate

You are not required to enter into this agreement by any law. It is not required by the Bankruptcy Code, by any other law, or by any contract (except ~~a~~ another reaffirmation agreement made in accordance with Bankruptcy Code § 524(c)).

You are allowed to pay this debt without signing this agreement. If you do not sign this agreement and are later unwilling or unable to pay the full amount, the creditor will not be able to collect it from you. The creditor also will not be allowed to take your property to pay the debt unless the creditor has a lien on that property.

If the creditor has a lien on your personal property, you ~~have~~ may a right to redeem the property and eliminate the lien by making a single payment to the creditor equal to the current value of the property, as agreed by the parties or determined by the court.

TALKING POINTS
BANKRUPTCY REFORM
March 17, 1999

- The President supports responsible bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly. The President was disappointed that the last Congress failed to produce legislation that he could support. He remains hopeful that bipartisan consultation and compromise will produce legislation that he can enthusiastically sign this year.

- Last year, we believed that the extraordinary bipartisan support for the Senate bill was an endorsement of balance and moderation. We noted that even the Senate bill could be further improved to better protect the rights of debtors. We were sorely disappointed when the Conference Report went the other direction, failing the test of balance.

- We believe that bankruptcy reform must reflect bipartisanship and balance. We want to avoid a situation like last year, but we are prepared to hold firm if the balance that the President seeks is not there.

- During this year's debate, the Administration will continue to encourage Congress to find an appropriate balance. Our concerns from last year have not changed. Among the issues that must be addressed are:

    - **Access to Chapter 7:** Any "means test" imposed should deny access to Chapter 7 only to those who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. Thus, bankruptcy courts must have discretion to consider the specific circumstances of a debtor in bankruptcy, and the time periods and thresholds used should be set to ensure that only those with a strong likelihood of success are affected.

    - **Nondischargeable Debts:** It is inappropriate to create new categories of nondischargeable debts that could pit post-bankruptcy credit card debt against child support, alimony, educational loans, and taxes. We remain skeptical that a case has been made that the existing protections against abuse are inadequate in this regard. If these new categories are to be created, they should cover only: (1) debt incurred to pay nondischargeable debt with an intent to avoid the debt in bankruptcy; and (2) debt incurred on the eve of bankruptcy for goods and services that are not reasonably acquired to support the debtor's household.

    - **Coercive Debtor Practices:** Particularly if we are to provide new opportunities for creditors to challenge debtors' use of the bankruptcy system under the 707(b) abuse test, it is imperative that we adequately limit prevalent abusive creditor practices such as coercive reaffirmations and violations of the automatic stay. While the Senate bill initially took laudable steps in this direction, the Conference Report rolled back existing consumer protections by denying consumers an effective means for remedying the harm from such practices and eliminating the current authorization for penalties for intentional violations of debtor rights.

- **Credit Card Disclosures:** The challenge posed by the unprecedented level of bankruptcy filings requires us to ask greater responsibility of debtors and creditors both. Credit card companies must give consumers more and better information so that they can understand and better manage their debts.

- **Homestead Exemptions:** At the same time that we are creating a system that will deny certain moderate-income Americans access to the traditional "fresh start," we should also close the loopholes that allow the wealthy to shield hundreds of thousands of dollars of wealth from their creditors.

- We look forward to working with Congress to address these and others important concerns and to produce responsible, balanced, and bipartisan bankruptcy reform.

Possible remarks

This Congressional District, Jerry Nadler's district, is as marvelously diverse as this country: the wonders of Lincoln Center and the Brooklyn Museum...Wall Street, Coney Island, Brighton Beach, and the upper West Side. It is, in many ways, America, and Congressman Nadler represents it that way—reflecting this country's real values, its willingness to work hard, its fundamental fairness and decency, and its unwavering commitment to the family and, especially, to the children of our families.

Much of this country learned of Jerry's contribution to this country's values last fall during the hearings in the House Judiciary Committee. When there was a need for due process, he expressed it. When there was a need for common sense, he took up its cause. When there was a need for decency, he was its advocate. Today, the work of that Committee continues to draw attention as it evaluates the expiration of the Independent Counsel statute, and the Congressman's arguments and analysis again will be heard not only in Congress but across the country.

The true test of leadership comes, however, not just on issues in the spotlight, not just on controversies that trigger editorials and national passions and, not incidentally, that trigger the political contributions of the special interest groups. The true measure of a public man or woman comes on those issues, often virtually invisible in the turmoil of the legislative process, that directly affect working families. For these issues, there is little political reward and few advocates for justice. For these issues, members of Congress sometimes have to make a choice between what's politically useful and what's right.

Later this week, Jerry Nadler will continue a fight that began when he was in the state legislature leading the effort to enact New York's child support enforcement law. You won't read much about it, and that's unfortunate, because the bankruptcy legislation that the House Judiciary Committee will develop this week will have a direct, immediate, and punitively harsh impact on more than 1.5 million American families. That's how many families probably will file for bankruptcy protection this year.

They've lost their health insurance...or had to find a lower-paying job because of a corporate merger or downsizing...or had a catastrophic illness. They have no lobby. They have no political action committees or conduits to attract Congressional patrons. They do have serious problems though and, for the last 100 years, this country has had a bankruptcy system that offers them the possibility of a fresh start and offers their creditors fairness and established priorities for repayment. The bankruptcy system is not a government program, but it provides a practical opportunity for those families that face difficulty and are willing to work to overcome it.

This is the same system that has permitted some of the most visible companies in this country—airlines, department stores, and steel companies—to reorganize themselves and save jobs and investors' equity. And, no less than those great American companies, that system should be able to give American families the same kind of chance to help themselves. This is not a government hand-out, not a substitute for welfare: it's an opportunity, just a chance to succeed.

The elderly, who are disproportionately affected by credit scams, can find in the bankruptcy system a way to protect some of their savings. Young homeowners, who have pledged virtually everything to buy that first house, can find in the bankruptcy system a way to save their home and the little equity they have in it. Single parents, who depend on the former spouse for support, can find in the bankruptcy system a priority payment plan that puts children first. And all of them--the young, the elderly, and single parents—can find in this legal system a way to save their dignity and to start again.

The legislation pending before the House Committee has a simple goal: to make more debtors pay more of their debts. The Administration supports that goal. It supports reform, and it has said so repeatedly. The President has stated publicly, however, that he is unwilling to sign legislation that upsets the careful balance—between debtors and creditors and among creditors—that has characterized 100 years of bankruptcy law.

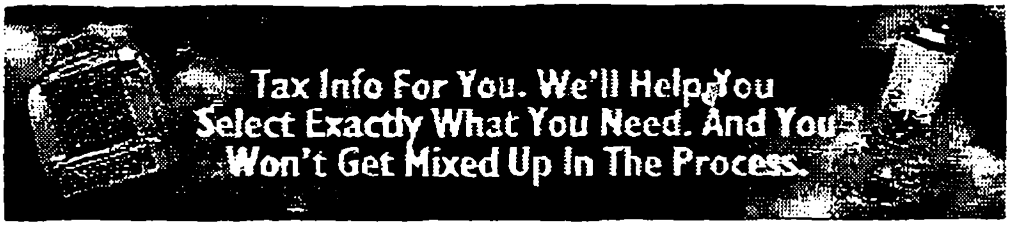
There are debtor abuses, and they should be corrected now. There should be no unlimited homestead exemption that permits debtors in this state to move to Florida or Texas, purchase a $2 million home, and deny their creditors any repayment. That's wrong. But it's also wrong to permit department stores to use the bankruptcy system to make consumers pay debts that have been discharged or to use a "security interest" in a car battery or a child's crib to force a consumer to pay a staggering credit card bill that could be eliminated in a bankruptcy proceeding. And it's just as wrong to permit 3.5 billion credit card solicitations a year, including campaigns aimed at high school students, without also requiring credit disclosure and an end to predatory interest rates.

Families facing financial problems don't have lobbyists or PACs. But they do have Jerry Nadler and some of his colleagues on that Committee and in the House of Representatives and the U.S. Senate. They stopped legislation last year, supported by the credit card industry and opposed by this Administration, that would have placed the burden of "reform" only on one party in the debtor-creditor relationship: the consumers of this country. They stopped legislation that would have given credit card companies equal standing with single women who depend on maintenance and child support to keep their families together. They stopped legislation that would have crippled the efforts of consumer attorneys to represent their clients but, at the same time, ignored the scandal of inadequate disclosure and creditor abuse.

And now that legislation has returned. It is not balanced. It is not fair. It makes no provision for truth in lending. It asks, instead, in a time of unprecedented prosperity, that we tip the scales against consumers and working families so that a few national corporations can add just a few more dollars to the bottom line.

This Thursday, in his usual calm and understated manner, Congressman Nadler will point out a few of these problems to his colleagues on the Judiciary Committee as it decides what kind of legislation to send to the full House. Few in the news media will notice. There will be no political benefit. The business of legislation is demanding, difficult and, in the case of a 1500-page bankruptcy code, technically and legally challenging. It takes a good lawyer, it takes a good Congressman, to master the details and understand the issues. But, more than that, much more than that, it also takes heart and courage and a commitment to doing, quite simply, what is right. And that, more than anything else, characterizes Jerry Nadler—last year, this year, and for as long as the people of this district send him to Washington, D.C., to represent them, quite simply, by doing what's right.

→ IRS Guidelines



Collection Financial Standards

[Click for Text Only Version]

General

Collection Financial Standards are used to help determine a taxpayer's ability to pay a delinquent tax liability.

Allowances for food, clothing and other items, known as the National Standards, apply nationwide except for Alaska and Hawaii, which have their own tables. Taxpayers are allowed the total National Standards amount for their family size and income level, without questioning amounts actually spent.

Maximum allowances for housing and utilities and transportation, known as the Local Standards, vary by location. Unlike the National Standards, the taxpayer is allowed the amount actually spent or the standard, whichever is less.

Food, Clothing and Other Items

National Standards for reasonable amounts have been established for five necessary expenses: food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous.

Transportation

The transportation standards consist of nationwide figures for monthly loan or lease payments referred to as ownership costs, and additional amounts for monthly operating costs broken down by Census Region and Metropolitan Statistical Area (MSA). Public transportation is included under operating costs. A conversion chart has been provided with the standards which shows which IRS districts fall under each Census Region, as well as the counties included in each MSA. The ownership cost portion of the transportation standard, although it applies nationwide, is still considered part of the Local Standards.

The ownership costs provide maximum allowances for the lease or purchase of up to two automobiles if allowed as a necessary expense. The operating costs are derived from BLS data.

If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has no car payment, or no car, only the operating costs portion of the transportation standard services, and miscellaneous.

All standards except miscellaneous are derived from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey (CES). The miscellaneous standard has been established by the IRS.

Alaska and Hawaii

Due to their unique geographic circumstances and higher cost of living, separate standards for food, clothing and other items have been established for Alaska and Hawaii.

The allowances for food, clothing and other items in Alaska consist of the National Standards increased by a weight of 1.20.

The allowances for food, clothing and other items in Hawaii consist of the National Standards increased by a weight of 1.10.

Housing and Utilities

- mortgage payment
- taxes/ins
- maint/repair
- homeowner dues/condo fees

The housing and utilities standards are derived from Census and BLS data, and are provided by state down to the county level.

portion of the transportation standard is used to come up with the allowable transportation expense.

Recent Revisions

The National Standards were revised in 1997 based on the 1994-95 CES, adjusted for inflation using the 1996 Consumer Price Index. The 1994-95 CES is the latest survey broken-out by income levels. The revised National Standards are effective for financial analysis conducted on or after April 14, 1997.

The Local Standards for housing and utilities and transportation were revised in 1997 to:

- add family size to the housing and utilities allowances (two or less, three, and four or more);
- base automobile ownership/leasing costs on the five-year average of new and used car financing data compiled by the Federal Reserve Board of Governors; and,
- reflect updated information from the Bureau of Labor Statistics.

The revised Local Standards for housing and utilities and transportation are effective for financial analysis conducted on or after June 1, 1997.

- Nat'l
- Local
- other Nec' taxes, health care, cc, etc.

Cur sched.

Collection Financial Standards

Allowable Living Expenses for Food, Clothing and Other Items

[Click for Text Only Version]

Summary of 1997 National Standards

Number of Persons

Total Gross Monthly Income	One	Two	Three	Four	Over Four
less than $830	336	453	563	704	+125
$831 to $1,249	382	510	627	740	+135
$1,250 to $1,669	421	610	714	776	+145
$1,670 to $2,499	510	662	757	805	+155
$2,500 to $3,329	537	744	835	896	+165
$3,330 to $4,169	600	802	917	1,029	+175
$4,170 to $5,829	746	927	985	1,133	+185
$5,830 and over	958	1,194	1,352	1,424	+195

National Standards

One Person	less than $830	$831 to $1,249	$1,250 to $1,669	$1,670 to $2,499	$2,500 to $3,329	$3,330 to $4,169	$4,170 to $5,829	$5,830 and over
Food	163	191	206	247	260	313	412	439
Housekeeping supplies	18	20	21	25	26	28	33	41
Apparel & Services	41	50	72	115	122	124	161	322
Personal Care Products & Services	14	21	22	23	29	35	40	56
Miscellaneous	100	100	100	100	100	100	100	100
Total	$336	$382	$421	$510	$537	$600	$746	$958

Two persons	less than $830	$831 to $1,249	$1,250 to $1,669	$1,670 to $2,499	$2,500 to $3,329	$3,330 to $4,169	$4,170 to $5,829	$5,830 and over
Food	219	267	337	351	408	421	496	611
Housekeeping Supplies	22	26	27	38	44	49	55	71
Apparel & Services	68	69	94	116	123	160	195	323
Personal Care Products & Services	19	23	27	32	44	47	56	64
Miscellaneous	125	125	125	125	125	125	125	125
Total	**$453**	**$510**	**$610**	**$662**	**$744**	**$802**	**$927**	**$1,194**

avg 3.2

avg 3323

Three Persons	less than $830	$831 to $1,249	$1,250 to $1,669	$1,670 to $2,499	$2,500 to $3,329	$3,330 to $4,169	$4,170 to $5,829	$5,830 and over
Food	262	314	375	391	427	469	524	709
Housekeeping Supplies	23	27	28	39	45	53	56	74
Apparel & Services	106	109	129	138	168	197	198	354
Personal Care Products & Services	22	27	32	39	45	48	57	65
Miscellaneous	150	150	150	150	150	150	150	150
Total	**$563**	**$627**	**$714**	**$757**	**$835**	**$917**	**$985**	**$1,352**

Four Persons	less than $830	$831 to $1,249	$1,250 to $1,669	$1,670 to $2,499	$2,500 to $3,329	$3,330 to $4,169	$4,170 to $5,829	$5,830 and over
Food	360	362	391	400	455	552	605	748
Housekeeping Supplies	34	35	36	44	47	55	58	75
Apparel & Services	109	140	141	142	172	198	235	355
Personal Care Products & Services	26	28	33	44	47	49	60	71
Miscellaneous	175	175	175	175	175	175	175	175
Total	**$704**	**$740**	**$776**	**$805**	**$896**	**$1,029**	**$1,133**	**$1,424**

More than four persons	less than $830	$831 to $1,249	$1,250 to $1,669	$1,670 to $2,499	$2,500 to $3,329	$3,330 to $4,169	$4,170 to $5,829	$5,830 and over
For each additional person, add to four-person total allowance:	$125	$135	$145	$155	$165	$175	$185	$195

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What's Hot | Meet The Commissioner | Comments & Help | Site Tree

final draft

The Honorable John Conyers, Jr.
Ranking Democratic Member
Committee on the Judiciary
House of Representatives
Washington, DC 20515

Dear Representative Conyers:

Thank you for your letter of March 4, 1999, to the President regarding bankruptcy reform. He has asked me to respond on his behalf. The President is grateful for your kind words about the role that he and the First Lady played during last year's debate on bankruptcy reform.

As you know, the President supports responsible bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly. The President was disappointed that the last Congress failed to produce legislation that he could support. He remains hopeful that bipartisan consultation and compromise will result in legislation that he can enthusiastically sign this year.

As you will recall, last year the Administration expressed its strong opposition to the House-passed version of H.R. 3150. We encouraged passage of the Senate bill "as an important step toward balanced bankruptcy reform," but noted that the Administration would support its enactment "only if the essential reforms incorporated by the Senate managers' amendment [were] preserved and strengthened and the unbalanced and arbitrary elements of the current House bill [were] omitted." Although we thought that the Senate bill could be further improved, we believed that the extraordinary bipartisan support for the Senate bill was an endorsement of balance and moderation. We were sorely disappointed when the Conference Report failed to include key provisions of the Senate bill, thus failing the test of balance, as noted in my letter to Majority Leader Lott, Speaker Gingrich, Minority Leaders Daschle and Gephardt, dated October 9, 1999. [OMB -- PLEASE CHECK PROPER WAY TO DESCRIBE THIS CAST.]

During this year's debate, the Administration will continue to encourage Congress to find an appropriate balance. Our concerns from last year have not changed. Among the issues that must be addressed are:

- **Access to Chapter 7:** Any "means test" imposed should deny access to Chapter 7 only to those who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. Thus, debtors affected by a means test must be given a meaningful opportunity to have their specific circumstances considered by bankruptcy courts with discretion to determine whether they genuinely have the capacity to repay a portion of their debts. In addition, the time periods and thresholds used in any means test should be set to ensure that only those with a strong likelihood of success are affected.

- **Nondischargeable Debts:** It is generally inappropriate to make post-bankruptcy credit card debt a new category of nondischargeable debt. The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with debts for child support and alimony payments, educational loans, tax obligations, or debts incurred by fraud. We remain skeptical that the current protections against fraud and debt run-up prior to bankruptcy are ineffective and that the additional debts made nondischargeable by this bill meet the standard of an overriding public purpose. If new categories of nondischargeable debt are to be created, however, they should be narrowly tailored and limited to situations where the debtor is clearly abusing the system, such as when the debtor: (1) incurred the debt to pay nondischargeable debt with an intent to avoid the debt in bankruptcy; and/or (2) incurred the debt on the eve of bankruptcy for goods and services that are not reasonably acquired to support the debtor's household.

- **Coercive Creditor Practices:** Particularly if we are to provide new opportunities for creditors to challenge debtors' use of the bankruptcy system under the 707(b) abuse test, it is imperative that we adequately limit prevalent abusive creditor practices such as coercive reaffirmations and violations of the automatic stay. While the Senate bill initially took laudable steps in this direction, the Conference Report rolled back existing consumer protections by denying consumers an effective means for remedying the harm from such practices and eliminating the current authorization for penalties for intentional violations of debtor rights.

- **Consumer Information and Protection:** The challenge posed by the unprecedented level of bankruptcy filings requires us to ask greater responsibility of debtors and creditors both. Credit card companies must give consumers more and better information so that they can understand and better manage their debts.

- **Homestead Exemptions:** At the same time that we are creating a system that will deny certain moderate-income Americans access to the traditional "fresh start," we should also close the loopholes that allow the wealthy to shield hundreds of thousands of dollars of wealth from their creditors.

We look forward to working with you and your colleagues on both sides of the aisle to address these and others important concerns and to produce responsible, balanced bankruptcy reform.

Sincerely,

Jacob J. Lew

[Identical letter sent to the Honorable Jerold Nadler]

Office of Economic Policy

Department of the Treasury
Washington, D.C. 20220

FAX

Date: / /99

Number of pages including cover sheet____

	Name	Fax Number	Phone Number
To:	Nicole Rabner	456-2878	
	Joel	456-6468	~~45~~
From:	Mark McClellan	202-622-2633	202-622-0563

Remarks: ___**URGENT** ___For your review ___Reply ASAP ___Please comment

From: Mark McClellan
To: devlinc
Date: 3/18/99 9:20am
Subject: can you fax now to Nicole Rabner (DPC) and Joel Wiginton (WH Leg Aff)

How about the following minor changes? It would also be helpful for Joel to point out that this is consistent with what we have said in previous letters - we are not pulling back on this issue. Pls call to discuss if necessary.

. . . We remain skeptical that the current protections against fraud and debt run-up prior to bankruptcy are ineffective and that the additional debts made nondischargeable by this bill **meet the standard of an overriding public purpose**. If new categories of nondischargeable debt are to be created, however, they should be narrowly tailored and limited to situations where the debtor is clearly abusing the system, **such as** when the debtor: (1) incurred the debt to paynondischargeable debt with an intent to avoid the debt in bankruptcy; and/or (2) incurred . . .

The Honorable John Conyers, Jr.
Ranking Democratic Member
Committee on the Judiciary
House of Representatives
Washington, DC 20515

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however

- **Nondischargeable Debts:** It is inappropriate to create new categories of nondischargeable debts that could pit post-bankruptcy credit card debt against child support, alimony, educational loans, and taxes. If these new categories are to be created, they should only cover situations where the debtors clearly are abusing the system: (1) debts incurred to pay nondischargeable debt with an intent to avoid the debt in bankruptcy; and/or (2) debts incurred on the eve of bankruptcy for goods and services that are not reasonably acquired to support the debtor's household.

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We look forward to working with you and your colleagues on both sides of the aisle to address these and others important concerns and to produce responsible, balanced bankruptcy reform.

Sincerely,

Jacob J. Lew

[Identical letter sent to the Honorable Jerold Nadler]

[redacted]

Record Type: Record

To: Nicole R. Rabner/WHO/EOP, mark.mcclellan @ treas.sprint.com @ inet

cc:

Subject: Re: Bankruptcy Letter

Mark -- as you can certainly discern from the emails below, Nicole and I have been putting the finishing touches on the Conyers/Nadler letter. Sarah is gone so it's up to us.

Nicole had a concern with the nondischargeability provision. I agreed with Nicole and drafted the following. What do you think? We'd love to get this over and done with.

It is generally inappropriate to make post-bankruptcy credit card debt a new category of nondischargeable debt. The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with debts for child support and alimony payments, educational loans, tax obligations, or debts incurred by fraud. We remain skeptical that the current protections against fraud and debt run-up prior to bankruptcy are ineffective and that the additional debts made nondischargeable by this bill rise to that level of public priority. If new categories of nondischargeable debt are to be created, however, they should be narrowly tailored and limited to situations where the debtor is clearly abusing the system. That is, when the debtor: (1) incurred the debt to pay nondischargeable debt with an intent to avoid the debt in bankruptcy; and/or (2) incurred the debt on the eve of bankruptcy for goods and services that are not reasonably acquired to support the debtor's household.

---------------------- Forwarded by Joel K. Wiginton/WHO/EOP on 03/17/99 05:56 PM ---------------------------

[redacted]

Record Type: Record

To: Nicole R. Rabner/WHO/EOP

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

bcc: Records Management

Subject: Re: Bankruptcy Letter

How about this(Nicole -- please call me at 6-6494 when you get this):

It is generally inappropriate to make post-bankruptcy credit card debt a new category of nondischargeable debt. The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with debts for child support and alimony payments, educational loans, tax obligations, or debts incurred by fraud. We remain skeptical that the current protections against fraud and debt run-up prior to bankruptcy are ineffective and that the additional debts made nondischargeable by this bill rise to that level of public priority. If new categories of nondischargeable debt are to be created, they should be narrowly tailored and limited to situations where the debtor is clearly abusing the system. That is, when the debtor: (1) incurred the debt to pay nondischargeable debt with an intent to avoid the debt in bankruptcy; and/or (2) incurred the debt on the eve of bankruptcy for goods and services that are not reasonably acquired to support the debtor's household.

debt on the eve of bankruptcy for goods and services that are not reasonably acquired to support the debtor's household.

Nicole R. Rabner

Nicole R. Rabner

03/17/99 04:41:53 PM

Record Type: Record

To: Sarah Rosen/OPD/EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Bankruptcy Letter

Sarah struck altogether the following line to the letter re: nondischargeability: "We continue to be skeptical that a case has been made that the existing nondischargeable debt protections against abusive efforts to avoid debts in bankruptcy are inadequate in this regard." In our meeting today, we discussed making sure we had used this language before and sticking with language closest to any earlier statement.

In our June 10, 1998 SAP on H.R. 3150, we wrote: "The Bankruptcy Code generally makes debts nondischargeable only where there is an overriding public purpose, as with debts for child support and alimony payments, educational loans, tax obligations, or debts incurred by fraud. There has been no sufficient finding that current protections against fraud and debt run-up prior to bankruptcy are ineffective and that the additional debts made nondischargeable by this bill rise to that level of public priority."

Do you think we should re-insert something? Joel? Mark?
Sarah Rosen

Sarah Rosen
03/17/99 03:01:30 PM

Record Type: Record

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

cc:
Subject: Bankruptcy Letter

First doc attached is what I think of as final lew letter; the second is a comparison of substantive changes from last draft. Melissa -- I don't think the changes will affect Gene's review but you can show him if you want. (Doesn't show the creditor debtor thing but that was fixed.)

Kate -- Please get whatever other West Wing and OMB sign-offs you need and get these out. As mentioned, please coordinate their delivery with Joel and let everyone know.

If there are changes that need to be made per Jack, please circulate them to Joel, Nicole, Broderick and Mark (that should reflect the spectrum). Note that some sentences here are from last year and we want them to be the same, so we may resist purely editorial changes. Or I can be paged at tonight (except when airborn) and tomorrow (except during 12:30 -- 4:00).

thanks all.

bnk99nad.l bnk99nad.co

Message Sent To:

Melissa G. Green/OPD/EOP
Douglas W. Elmendorf/CEA/EOP
Joseph J. Minarik/OMB/EOP
Sarah Rosen/OPD/EOP
Alice Veenstra/OMB/EOP
Rebecca M. Blank/CEA/EOP
Jennifer M. Luray/WHO/EOP
Nicole R. Rabner/WHO/EOP
Cynthia A. Rice/OPD/EOP
Joel K. Wiginton/WHO/EOP
Broderick Johnson/WHO/EOP
David W. Beier/OVP @ OVP
mark.mcclellan @ treas.sprint.com
laura.KALAMBOKIDIS @ treas.sprint.com
tom.mcgivern @ do.treas.gov
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LCAMPBELL @ DOC.GOV
Jane.Molloy @ mail.doc.gov
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agrundeman @ usda.gov
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Pam.J.Smith @ usdoj.gov
jean_veta @ ed.gov
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ggreenbe @ osaspe.dhhs.gov
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pgilbert @ cpsc.gov
Kate P. Donovan/OMB/EOP
Ronald E. Jones/OMB/EOP

Message Copied To:

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laura.kalambokidis @ treas.sprint.com
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david.enzel @ ots.treas.gov
lcampbell @ doc.gov
jane.molloy @ mail.doc.gov
ebiel @ doc.gov
agrundeman @ usda.gov
kenneth.l.chernof @ usdoj.gov
pam.j.smith @ usdoj.gov
jean_veta @ ed.gov
doelleri @ osaspe.dhhs.gov
ggreenbe @ osaspe.dhhs.gov
mwilderdhhssmtp @ osaspe.dhhs.gov
pgilbert @ cpsc.gov
Kate P. Donovan/OMB/EOP
Ronald E. Jones/OMB/EOP

Message Copied To: ____

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david.enzel @ ots.treas.gov
lcampbell @ doc.gov
jane.molloy @ mail.doc.gov
ebiel @ doc.gov
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pam.j.smith @ usdoj.gov
jean_veta @ ed.gov
doelleri @ osaspe.dhhs.gov
ggreenbe @ osaspe.dhhs.gov
mwilderdhhssmtp @ osaspe.dhhs.gov
pgilbert @ cpsc.gov
Kate P. Donovan/OMB/EOP
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david.enzel @ ots.treas.gov
lcampbell @ doc.gov
jane.molloy @ mail.doc.gov
ebiel @ doc.gov
agrundeman @ usda.gov
kenneth.l.chernof @ usdoj.gov
pam.j.smith @ usdoj.gov
jean_veta @ ed.gov
doelleri @ osaspe.dhhs.gov
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mwilderdhhssmtp @ osaspe.dhhs.gov
pgilbert @ cpsc.gov
Kate P. Donovan/OMB/EOP
Ronald E. Jones/OMB/EOP

Representative John Conyers, Jr.
Ranking Democratic Member
Committee on the Judiciary
House of Representatives
Washington, DC _____

Dear Representative Conyers:

I write in response to your letter of March 4, 1999 to President Clinton. The President is grateful for your kind words about his role, and that of the First Lady, during last year's debate on bankruptcy reform.

As you know, the President supports responsible bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly. The President was disappointed that the last Congress failed to produce legislation that he could support. He remains hopeful that bipartisan consultation and compromise will produce legislation that he can enthusiastically sign this year.

As you will recall, last year the Administration expressed its strong opposition to the House-passed version of H.R. 3150. We encouraged passage of the Senate bill "as an important step toward balanced bankruptcy reform," but noted that the Administration would support its enactment "only if the essential reforms incorporated by the Senate managers' amendment [were] preserved and strengthened and the unbalanced and arbitrary elements of the current House bill [were] omitted." We believed that the extraordinary bipartisan support for the Senate passed-version of H.R. 3150 was an endorsement of balance and moderation. We noted that even the Senate bill could be further improved to better protect the rights of debtors. We were sorely disappointed when the Conference Report went the other direction, failing the test of balance. -- as I noted

During this year's debate, the Administration will continue to encourage Congress to find an appropriate balance. Our concerns from last year have not changed. Among the issues that must be addressed are:

- **Access to Chapter 7:** Any "means test" imposed should deny access to Chapter 7 only to those who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. Thus, bankruptcy courts must have discretion to consider the specific circumstances of a debtor in bankruptcy, and the time periods and thresholds used should be set to ensure that only those with a strong likelihood of success are affected.

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whether they have the capacity to repay

nondischargeable debts that could pit post-bankruptcy credit card debt against child support, alimony, educational loans, and taxes. We continue to be skeptical that a case has been made that the existing protections against abuse are inadequate in this regard. If these new categories are to be created, they should cover only that debt: (1) incurred to pay nondischargeable debt with an intent to avoid the debt in bankruptcy; and (2) incurred on the eve of bankruptcy for goods are services that are not reasonably acquired to support the debtor's household.

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We look forward to working with you and your colleagues on both sides of the aisle to address these and others important concerns and produce responsible, balanced bankruptcy reform.

Sincerely,

Jack Lew

[Identical letter sent to Representative Jerold Nadler]

March 17, 1999

Senator Charles Grassley
Chairman
Subcommittee on Administrative Oversight and the Courts
Judiciary Committee
308 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

I am pleased to join you in introducing the "Bankruptcy Reform Act of 1999." I do so because I believe that it is important to begin moving the bill forward in good faith and in a bipartisan manner.

Over the past few weeks, I have been working with you to draft legislation which better reflects the priorities that the Senate voted 97-1 to support last year. Last year's Conference Report abandoned many of those principles, but I believe the bill that we are introducing today has gone far in restoring them. The new bill adds greater flexibility in the means test repayment formula and by giving judges greater discretion in considering whether to transfer a debtor from Chapter 7 to Chapter 13. It provides increased consumer protections against abusive reaffirmations and creditor misconduct and limits the debts that are presumed non-dischargeable post-bankruptcy.

There is genuine concern that the bankruptcy system allows debtors to erase even that portion of their debt that they have the ability to repay. We must ensure, however, that as we make it more difficult for the unscrupulous to manipulate and abuse the bankruptcy system, we avoid penalizing the many families who legitimately -- and desperately -- need a fresh start. The majority of people who file for bankruptcy -- low- to middle- income working class families -- turn to the consumer bankruptcy system for help in managing overwhelming financial problems. They are honest, hardworking Americans who have fallen into financial trouble as a result of unexpected life events, such as a divorce, a medical crisis, or the loss of a job.

While I join you today, I want to be clear that I do not view this bill as a final product. There are a number of areas in which I think the bill must be improved and will work in the coming weeks to address those areas in further discussion with you, as well as in Committee and on the Floor.

Judicial Discretion

- I believe that although we have taken significant steps to provide additional flexibility in the means test, still more discretion should be given to the bankruptcy judge to determine which debtors truly have the ability to repay a sufficient portion of their debts that they should be required to file in Chapter 13. Forcing debtors who lack such an ability into a five year repayment plan virtually guarantees the failure of that plan injuring not only the debtor, but each of his creditors in the process. I will support efforts to further strengthen the judicial discretion provided in the bill.

IRS Standards

- The standards used by the IRS in determining a taxpayer's ability to pay a delinquent tax liability are inappropriate as a basis for determining a debtor's living expenses in bankruptcy. These standards were not formulated with bankruptcy in mind and provide virtually no flexibility to account for the debtor's actually expenses. While I would prefer that the court consider the actual and individual living expenses of each debtor, I am cognizant of the burden that this would place on both the system's resources and the parties in a case. I would be willing to support the compromise that we have discussed in which the Administration would draft bankruptcy appropriate standards.

Liability of the Debtor's Attorney

- The debtor's attorney should in no way be held liable or have a financial disincentive to file in Chapter 7 unless in so doing they violate Rule 11 standards of attorney conduct. To require a penalty in any other case is not only unjust, but will force attorneys to run afoul of their ethical obligations to act in their client's best interest. I will strongly support efforts to strip this provision from the bill.

Non-dischargeability of Debts

- The bill we are introducing today makes good progress in limiting the debts that are presumed non-dischargeable post-bankruptcy. I believe, however, that we should go further to ensure that we do not so limit those debts that can be discharged at the close of a Chapter 13 repayment plan, that we effectively deny the debtor a fresh start - the principle which is at the very heart of the bankruptcy system. For example, when a creditor alleges that a debt has been fraudulently incurred and is therefore non-dischargeable, the creditor should bear the burden of proving that allegation. To require that the debtor assume this burden, is both unworkable and unfair. It flies in the face of a principle that is at the heart of our legal tradition and is reflected in both civil and criminal court - the accused is innocent until proven otherwise. I will work to assure that in bankruptcy too the burden rests on the proper shoulders as well as to ensure that the universe of debts made non-dischargeable is not a significant expansion from current law.

Protecting the Debtor from Abusive or Coercive Reaffirmations

- Reaffirmations are one of the tools on which debtors can rely in getting back on their feet. They are also, however, an area of current law in which debtors are afforded insufficient protection from coercion by a creditor and may ultimately end up reaffirming a debt that they unable to afford. The provisions we have included in this bill are an improvement on both the Conference Report and on current law, but they do not go far enough. It is important to provide some form of judicial review of reaffirmations even in cases in which the debtor is represented by counsel to ensure that the interests of both the debtor and his/her other creditors are adequately protected. Stronger penalties against creditors who attempt to coerce the debtor into signing a reaffirmation are also needed to deter abusive reaffirmations and protect the debtor from the often disproportionate resources at the creditors disposal.

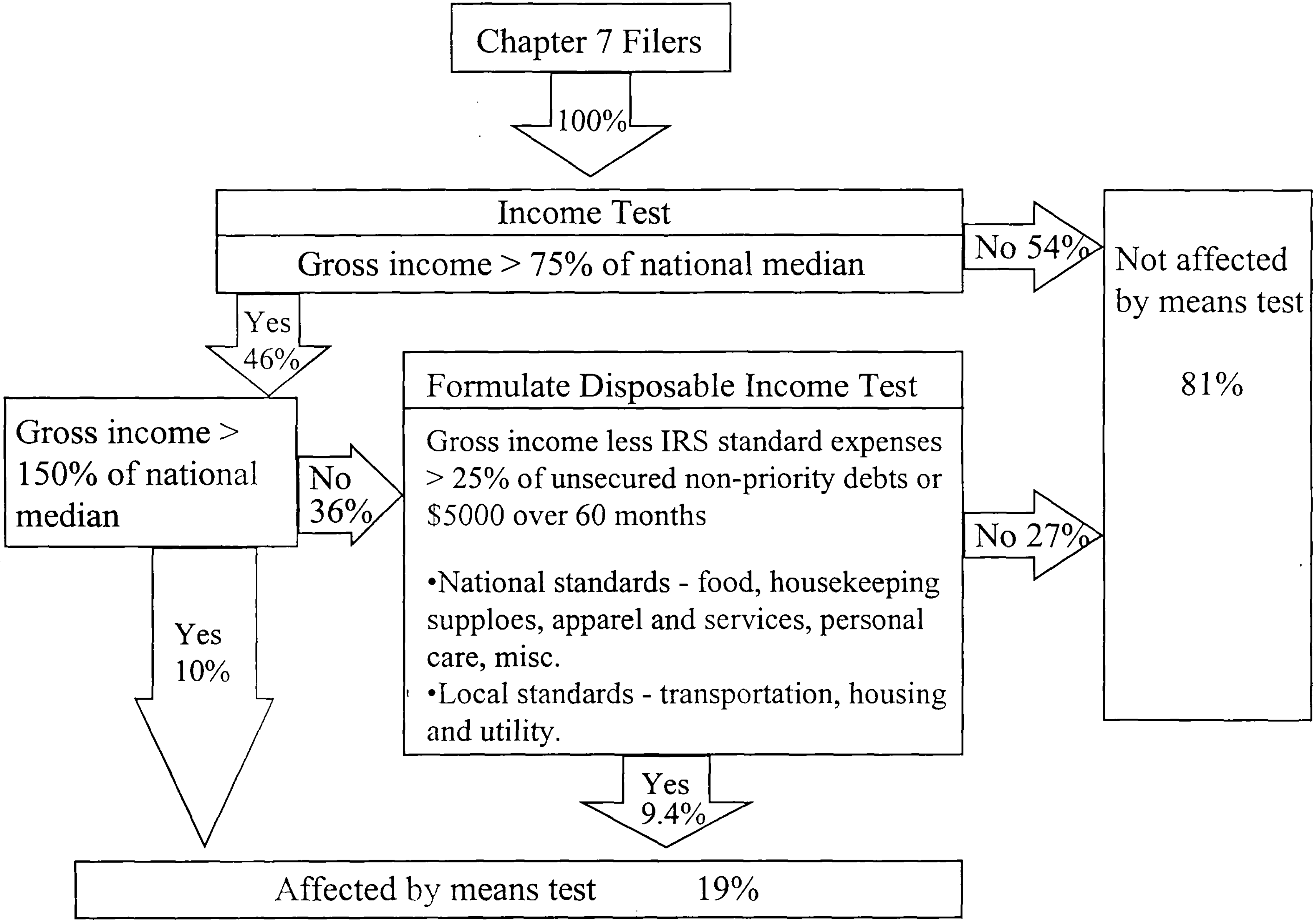
Disclosure/Truth in Lending Provisions

- While I recognize the jurisdictional issues involved, I believe that in crafting legislation to protect the bankruptcy system from abuse, we must look at the forces that drive many debtors to file in the first place. We must seek a balanced bill that addresses both debtor abuses and overreaching by the credit industry. The bill passed last year by the Senate contained such provisions, but many of those were either stripped out or weakened in Conference. It is critical to crafting a balanced bill that when the bill leaves the Senate, these concerns be addressed.

I want to thank you again for your cooperation in crafting the bill that we are introducing today. You have my commitment that I will continue to work with you to enact bipartisan bankruptcy reform. I look forward to continuing to work with you towards that goal.

Sincerely,

Robert G. Torricelli
Ranking Member
Subcommittee on Administrative
Oversight and the Courts



Chapter 7 Filers
100%
Income Test
Gross income > 75% of national median
No 54%
Not affected by means test
81%
Yes 46%
Gross income > 150% of national median
No 36%
Formulate Disposable Income Test
Gross income less IRS standard expenses > 25% of unsecured non-priority debts or $5000 over 60 months
•National standards - food, housekeeping supploes, apparel and services, personal care, misc.
•Local standards - transportation, housing and utility.
No 27%
Yes 10%
Yes 9.4%
Affected by means test 19%

HARVARD LAW SCHOOL

CAMBRIDGE • MASSACHUSETTS • 02138

To: Nicole Rabner and Sarah Rosen

(202) 456-2878 (202) 456-2223

Organization:

Location:

Fax Number:

From: Prof. Elizabeth Warren

HLS Address: HA 200

Phone: (617) 495-3101

Total Number of Pages (including cover sheet) ______ Description ______

Notes

As promised, the first installment.

April 12, 1998

Sears Personal Bankruptcy Debtor Class Litigation
The Garden City Group, Inc. Settlement Administrator
P.O. Box 9439
Garden City, N.Y. 11530-9439

RE: FINAL REJECTION NOTICE INELIGIBLE CLAIM

CLAIM NO. 2037250

TO WHOM IT MAY CONCERN:

I totally disagree with the above determination based on the grounds listed below:

(1) Intimidation
(2) Coerced
(3) Fear
(4) Unknown
(5) My Lack of Knowledge

I will try my best to explain the above grounds.

Your letter states the Sears found the reaffirmation agreement was properly filed with the court. But what Sears didn't know was that the women representing Sears was very intimidating towards me.

I never filed bankruptcy before when I first walked into the room where the women from Sears was waiting for me, (before I went into the court room itself). While she was explaining the reaffirmation papers to me that she wanted me to sign, I truthfully wasn't paying attention because I was crying and so upset that I had failed to be able to pay my debts in the first place, (other wise I wouldn't have been in a backruptcy court).

The women from Sears used intimidation, my lack of knowledge, my fears of the unknown situation I was in, my lack of knowledge of these court room procedures and coerced me into signing those two (2) papers. I remember telling the women that I don't have $150.00 per month to pay for these two debts while I was signing the two papers for her. (Otherwise I wouldn't be filing backruptcy in the first place). I thought to myself when I get inside the court room I will explain this to the judge exactly what I have previously written, how the women from Sears made me sign the reaffirmation agreements, but the judge never brought up Sears to me in the court room proceedings. I remember thinking when I left the court room, "My Lord how am I going to pay this $150.00 to Sears eacl month.

Well I worked two full time jobs for almost seven years after my divorce with my seven children. The two full time jobs affected my health and I couldn't work them any more. That is when I stopped paying Sears the $150.00 a month. I also lost my home which I lived in for 25 years, so now I have nothing!

I pray someone will review my claim status and not find me ineligil based on the above information.

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. letter	From Claim no 2019823 to Settlement Administrator (partial) (1 page)	04/09/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Domestic Policy Council (Nicole Rabner)
OA/Box Number: 15419

FOLDER TITLE:

Bankruptcy-Internal Memos/Papers 1999 [3]

2012-1035-S
kc1080

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

[001a]

P6/(b)(6)
PO Box 144811
Austin Tx 78758

Claim No 2019823
April 9, 1998

Dear Settlement Administrator:

I filed bankruptcy to obtain a discharge of my debts owed to merchants. As you can see on my original worksheet Sears, was listed as an unsecured debt, which would have been discharged.

On March 6, 1997, at US Bankruptcy Court, West District of Tx, 903 San Jacinto suite 322, Austin, Tx, I ended up refirming a debt with Sears, even through the debt would have otherwise been discharged by the bankruptcy judge.

I was already emotional from having to attend my bankruptcy hearing. My lawyer said, a representive from sears would like to talk to me in the hallway. This representive said, I either had to return the bansaw, that was purchase on Dec 11, 1996, to clear my debt. I explain that I no longer had the bansaw. I was told if I didn't return it, since I no longer had it, I would have to sign a reaffirmation agreement. I feel I was coax into this agreement which, was not in my best interest. This was not a voluntary action on my part. This was a spur-of-the moment agreement in the hallway. I signed this agreement outside the bankruptcy court in the hallway, which could have been, discharged in the bankruptcy proceeding.

To reaffirm my unsecured debt provided no benefit to me, because I can obtain a credit card, secured by a deposit at less expense, then signing a reaffirmation agreement and paying back debt that could have been discharged.

The purpose of me filing bankruptcy was to obtain a discharge of my debt... So, instead of having a "fresh start" with the bankruptcy discharge, I have this old debt hanging over my head, which could have been discharged. I am now making payment on a debt that did not have to be reaffirmed......

Sincerely,

P6/(b)(6)

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001b. form	Sears Personal Bankruptcy Debtor Class Litigation Dispute Form, Claim no 2022421 (partial) (2 pages)	08/13/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Domestic Policy Council (Nicole Rabner)
OA/Box Number: 15419

FOLDER TITLE:

Bankruptcy-Internal Memos/Papers 1999 [3]

2012-1035-S
kc1080

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

08/31/98 WED 13:37 FAX 16174966118 HARVARD LAW 004

SRW

Sears Personal Bankruptcy Debtor Class Litigation
The Garden City Group, Inc., Settlement Administrator
P.O. Box 9439
Garden City, N.Y. 11530-9439
Toll Free: 1-(800)-529-4500

97-1222

Must be Postmarked by **August 24, 1998**

[001b]

DISPUTE FORM

PLEASE READ THE FOLLOWING, FILL IN THE INFORMATION REQUESTED AND ATTACH THE DOCUMENTS REQUESTED AND SIGN WHERE INDICATED.

CORRECTIONS: Write any name and/or address changes here:

Claim Number: 2022421 0017040174

DOCKETED

P6/(b)(6)
P O BOX 9135
LAWAI HI 96765-0193

Your Sears account number:

MAIL THIS COMPLETED FORM AND ALL ATTACHMENTS BEFORE AUGUST 24, 1998 TO BOTH ADDRESSES BELOW:

United States Bankruptcy Court District of Massachusetts, Eastern Division 10 Causeway St. Boston, MA 02116 Attention: Sears Settlement Dispute Hearings	The Garden City Group, Inc. Settlement Administrator P.O. Box 9439 Garden City, NY 11530-9439 Attention: Sears Settlement Dispute Hearings

Supporting Documents

Your claim may be in dispute because one or a number of documents necessary to prove an element of your claim is either missing or disputed. You should submit copies of all of the documents outlined below which you have. **NOTE:** If you have already submitted copies of these documents to the Settlement Administrator, you do not have to resubmit those documents now, although you may do so if you wish.

Check If Attached:

Proof of your Chapter 7 bankruptcy filing

- [x] Order of discharge in your bankruptcy case.
- [x] Other proof (such as Voluntary Petition, Notice of Case Commencement, docket sheet, or other documents).

Proof of your reaffirmation agreement with Sears

- [x] Reaffirmation agreement with Sears.
- [x] Sears billing statement from after your bankruptcy filing.
- [x] Other proof (such as letters or other documents referring to post-bankruptcy payments to Sears).

Proof of your reaffirmation payments to Sears

- [x] Billing statements (post-bankruptcy).
- [x] Canceled checks, money orders, in-store payment receipts.
- [x] Other proof

Description of Dispute

In the space below, describe the benefits you believe you are entitled to under the settlement, and why you believe you are entitled to them. If this form does not contain enough room to complete your written statement, attach additional sheets of paper containing your written statement to the form.

I feel I am entitled to receive a cash compensation benifit in the amount of $ 4,000.00 . Only the amount to pay off my debt which I had always wanted discharged. I never had any intentions of reaffirming my debt with Sears. The above amount also includes payments I have made since filing bankruptcy. I signed the reaffirmation agreement under duress and all but short of being coered, all taking place while court was in session!! Prior to court all verba

ADDITIONAL SPACE AND SIGNATURE ON THE OTHER SIDE

337

[0016]

Description of Dispute - CONTINUED

In the space below, describe the benefits you believe you are entitled to under the settlement, and why you believe you are entitled to them. If this form does not contain enough room to complete your written statement, attach additional sheets of paper containing your written statement to the form.

and written correspondenced with my attorney pursuant to Sears was made quite clear that my choice was to return merchandise to Sears and have my debt discharged. Please see EXhibit "A", this form which my attorney asked me to fill out for all Credittors. As you can see I informed my attorney in writting that "NO" I do not wish to reaffirm Sears Debt. (My attorney's secretary gave me this copy from my file -post hearing.)I don't understand why Sear's even was permitted to approach me in court when I had already given my answer not to reaffirm.?? Plus I sat for at least 1/2 hour outside the courtroom doors where(Sears ~~Lorraine~~) and my attorney could have approached me instead of while court was in session and I could not ask questions and was under DURESS! There was no need for Lorraine ~~Sears to~~ harass me in court they could have thereafter. When I wen back to my attorney and complained and ask to re-open my case. See exhibit "D" My attorney did inform me that Sears/ ~~Lorraine~~ no longer shows up in court and no longer harasses Debtors in court.(The whole reason for my filing was to wipe my slate clean an to start fresh.)My attorney then sent his response/Exhibit "E", discouraging me fr re-opening my case,rather refusing to do so, for he returned my check.

Getting back to what took place while court was insession please see exhibit "B" My attorney was runningback and forth to Lorraine from Sears he was whispering to me:" we can get these values down" I didn't know what he was getting at. Plus as you can see exhibit "B" states nothing about 21% interest either!! The next thing I know I am being called before the Trustee. Exhibit "B" was not present before the Trustee however exhibit "C" was presented and I was asked to sign. Exhibit "C" is different than exhibit "B" for Sears added in that; "all of the terms and conditions as set forth in the origianl security agreement would resume. (Referring to interest etc.) This clearly was not understood or explained, nor presented in a professional manner. TO BE PRESENTED ALL OF THIS WHILE COURT IS IN SESSION WHEN YOU ARE NOT ABLE TO SPEAK FREELY, NOR WAS ANYTHING EXPLAINED IS SIMPLY UNFAIR. I was clearly under DURESS and all but short of being coered. I KNOW THIS IS UNACCEPTABLE PRACTICE FOR WHY HAS SEARS DISCONTINUED THIS PRACTICE?!! There is plenty of time prior to court or after court hearing.Sears is not soley at fault here , I feel my attorney is also at fault and should know bette and I hope someday his unethical practices will catch up with him!
I am hoping justice can be served. I do feel ashamed for my debt, however there are laws and there are proper ways to conduct business and with all my heart I do not feel Sears-(Lorraine)conducted business in a proper, fair manner!

Date: August 13, 1998 Signature of Claimant: P6/(b)(6)

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001c. form	Sears Personal Bankruptcy Debtor Class Litigation Dispute Form, Claim no 2056337 (partial) (2 pages)	07/27/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Domestic Policy Council (Nicole Rabner)
OA/Box Number: 15419

FOLDER TITLE:

Bankruptcy-Internal Memos/Papers 1999 [3]

2012-1035-S
kc1080

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

HARVARD LAW

SRW

Sears Personal Bankruptcy Debtor C Litigation
The Garden City Group, Inc., Settlement Administrator
P.O. Box 9439
Garden City, N.Y. 11530-9439
Toll Free: 1-(800)-529-4500

97-1222

Must be Postmarked by **August 24, 1998**

006

001c

DISPUTE FORM

PLEASE READ THE FOLLOWING, FILL IN THE INFORMATION REQUESTED AND ATTACH THE DOCUMENTS REQUESTED, AND SIGN WHERE INDICATED.

CORRECTIONS: Write any name and/or address changes here:

Claim Number: 2056337 2288125113

new address

P6/(b)(6)

P6/(b)(6)

P6/(b)(6)

ATWATER CA 95301

Atwater CA 95301

DOCKETED

Your Sears account number:

MAIL THIS COMPLETED FORM AND ALL ATTACHMENTS BEFORE AUGUST 24, 1998 TO BOTH ADDRESSES BELOW:

United States Bankruptcy Court District of Massachusetts, Eastern Division 10 Causeway St. Boston, MA 02116 Attention: Sears Settlement Dispute Hearings	The Garden City Group, Inc. Settlement Administrator P.O. Box 9439 Garden City, NY 11530-9439 Attention: Sears Settlement Dispute Hearings

Supporting Documents

Your claim may be in dispute because one or a number of documents necessary to prove an element of your claim is either missing or disputed. You should submit copies of all of the documents outlined below which you have. **NOTE:** If you have already submitted copies of these documents to the Settlement Administrator, you do not have to resubmit those documents now, although you may do so if you wish.

Check if Attached:

Proof of your Chapter 7 bankruptcy filing

- [x] Order of discharge in your bankruptcy case.
- [x] Other proof (such as Voluntary Petition, Notice of Case Commencement, docket sheet, or other documents).

Proof of your reaffirmation agreement with Sears

- [ ] Reaffirmation agreement with Sears.
- [ ] Sears billing statement from after your bankruptcy filing.
- [ ] Other proof (such as letters or other documents referring to post-bankruptcy payments to Sears).

Proof of your reaffirmation payments to Sears

- [x] Billing statements (post-bankruptcy).
- [x] Canceled checks, money orders, in-store payment receipts.
- [ ] Other proof

Description of Dispute

In the space below, describe the benefits you believe you are entitled to under the settlement, and why you believe you are entitled to them. If this form does not contain enough room to complete your written statement, attach additional sheets of paper containing your written statement to the form.

I would like to begin by saying I'm sending you copies of all the billing statements I could find + copies of the cancelled checks. We have no cancelled checks ~~from~~ from the time we lived in Florida due to the bank held them by our request. I'm not sure how we could get copies at this point. Now on the day we went to the bankruptcy hearing we were approached by a woman from Sears She explained to

ADDITIONAL SPACE AND SIGNATURE ON THE OTHER SIDE

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Description of Dispute - CONTINUED

In the space below, describe the benefits you believe you are entitled to under the settlement, and why you believe you are entitled to them. If this form does not contain enough room to complete your written statement, attach additional sheets of paper containing your written statement to the form.

001C

us who she was. At the time I (Debra) was due in two weeks to give birth. The woman told us that we needed to either pay our bill in full or return items such as sofa, washing machine + vacumn. We weren't going to the hearing because we had move and we couldn't afford to replace these items which we needed. We explained these things and found our attorney. The woman than said that we could keep the items if we signed a paper saying we would continue making payments and that the payments would never exceed $62.00 a month. We signed of course. The woman than left the building and shortly after we went into the hearing. When the judge asked if any creditor was there, there were none. Everything was discharged. This was late afternoon and Debra went into labor and was taken to the hospital. She gave birth early the following morning. Now, we later received papers from the court and received only 1 reaffirmation aggreement from the court, but it was not from Sears. Now we don't believe Sears did file the papers we signed. But, if they did, the agreement on them was the payment was not to exceed $62.00, but as you can see on the statements it eventually did. If I had had copies of a reaffirmation agreement I would have used that with Sears to not allow our payments to change. Also the woman bullied us into signing papers and the stress of this bought on my wifes labor. We due feel we are entitled to cash compensation for several reasons of which are ① We were bullied into signing papers ② We don't believe the paper were properly filed, as we never received any copy pertaining to this and we saved all papers we received that was related in any way to the bankruptcy, and ③ our payments were not to exceed $62.00 a month and they eventually did.

Date: 7-27-98 Signature of Claimant: P6/(b)(6)

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001d. letter	Disputing citizen to Clerk of the US Bankruptcy Court re Sears Claim Dispute Notice (partial) (1 page)	12/01/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
First Lady's Office
Domestic Policy Council (Nicole Rabner)
OA/Box Number: 15419

FOLDER TITLE:

Bankruptcy-Internal Memos/Papers 1999 [3]

2012-1035-S
kc1080

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

97-1222 [001d]

December 1, 1998

Clerk
United States Bankruptcy Court
1101 Federal Office Building
10 Causeway Street
Boston, Massachusetts 02222-1074
Attention: Sears Claim Dispute Notice

DOCKETED

To whom it may concern:

After reviewing Sears' copy of the reaffirmation agreement, I disagree with their decision that I should not be included in this class action case.

If Sears did file this agreement with the court, it was filed under false pretenses, and was agreed upon under blackmail type circumstances. I was not aware of bankruptcy legalities and did not understand that when Sears threatened that, if I did not sign the agreement, they would repossess purchases that I had made at Sears, such as tires on my car. I did not understand at that time, that this was just a threat.

If, in fact, the agreement was filed with the Court, as Sears states, the information in the agreement has not been upheld by Sears. The agreement states that a payment of $39.00 per month will be paid until the balance is paid in full. Each month, I am billed a minimum payment (Less than $39.00). Not only is the payment amount incorrect, I feel this was done to allow Sears to collect additional interest.

Since we have been disputing this agreement with Sears, an amount of $122.00 has been deducted from our balance. When we asked for explanation for the deduction from Sears, we were told that interest charged during the reaffirmation agreement was not legal and, therefore, Sears deducted the $122.00. However, interest paid over the years on my balance has not been deducted.

For all these reasons, I feel that I am a part of this class action. If it is necessary to have a hearing on this matter, I would like to appear at the hearing by telephone on February 11, 1998. Please notify me of the outcome, as well as the hearing date and time if applicable.

Sincerely,

P6/(b)(6)

P6/(b)(6)
Parma, Ohio 44129
P6/(b)(6)

cc: Mark N. Polebaum, Esq.
Heidi C. Paulson, Esq.
Hale and Dorr LLP
60 State Street
Boston, MA 02109

Frederic D. Grant, Jr., Esq.
John Roddy, Esq.
Grant & Roddy
44 School Street, Suite 400
Boston, MA 02108-4200

533

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
v.	)	**CRIMINAL NO.**
SEARS BANKRUPTCY RECOVERY MANAGEMENT SERVICES, INC., Defendant	)	**VIOLATION: 18 U.S.C. §157 (Bankruptcy Fraud)**

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

A. INTRODUCTION

1. At all times relevant to this Information, SEARS, ROEBUCK AND CO. ("SEARS") was headquartered in Illinois and doing business throughout the United States, including in Massachusetts. The business of SEARS includes retail sales of home furnishings, clothing, appliances, and the like.

2. As part of its business, SEARS, through its credit business and another wholly-owned subsidiary, granted credit and issued SEARS credit cards to some of its customers for the purchase of goods and services at SEARS' stores. SEARS' credit business had approximately 10,000 employees. At all times relevant to this Information, the portion of the credit business performing the bankruptcy recovery function ("SEARS' Recovery Unit"), handled the business of trying to recover monies from SEARS' credit card customers who had filed for bankruptcy. SEARS was a creditor in those bankruptcy proceedings.

3. At all times relevant to this Information, defendant

SEARS BANKRUPTCY RECOVERY MANAGEMENT SERVICES, INC. ("SEARS BANKRUPTCY") was a wholly-owned subsidiary of SEARS. SEARS BANKRUPTCY was formerly known as SEARS Finance Corporation. As of the date of this Information, SEARS BANKRUPTCY has acquired substantially all of the assets and has assumed liabilities relating to SEARS' Recovery Unit, and has entered into a written contract with SEARS to provide bankruptcy recovery services.

B. **THE BANKRUPTCY PROCESS**

4. A bankruptcy case is begun when a person files a bankruptcy petition. The principal benefit to the debtor from filing for bankruptcy is the discharge of his or her debts. When the bankruptcy court grants a debtor a discharge of debts, all of the creditors listed in the bankruptcy are prohibited from taking any collection action against the debtor for pre-bankruptcy debts.

5. Despite the bankruptcy discharge, a debtor may choose to make payments voluntarily to pre-bankruptcy creditors. However, a creditor may not take any steps to try to collect on those pre-bankruptcy debts, including conditioning new loans, future services or business relationships on the repayment of the discharged debts.

6. A debtor may also choose to enter into what is known as a "reaffirmation agreement" with a creditor. Such agreements have the effect of legally obligating the debtor on a debt or a portion of a debt which would otherwise have been discharged through his or her bankruptcy.

7. In order for a reaffirmation agreement to be effective, the debtor and creditor must comply with all the requirements set forth in the Bankruptcy Code concerning the reaffirmation of debt. If the requirements are not met, the reaffirmation agreement is of no effect and the debts listed in it are discharged along with all others.

8. One requirement of all reaffirmation agreements is that they be filed with the Bankruptcy Court.

9. Another requirement for all reaffirmation agreements entered into by debtors who do not have lawyers representing them is that the Bankruptcy Court hold a hearing, at which the Bankruptcy Court is required to advise the debtor of the effects of the reaffirmation agreement, and make an independent determination that the reaffirmation agreement does not impose an undue hardship on the debtor or a dependent of the debtor and that it is in the debtor's best interest.

10. The purpose of the filing and hearing requirements is so the Bankruptcy Court can maintain oversight over reaffirmation agreements entered into by debtors. Specifically, these requirements are designed to protect debtors from being coerced into signing such agreements and to assure that they fully understand the consequences of such agreements.

C. THE SCHEME TO DEFRAUD

11. Beginning in or about 1985, and continuing until in or about April, 1997, in the District of Massachusetts and elsewhere, the defendant herein,

SEARS BANKRUPTCY RECOVERY MANAGEMENT SERVICES, INC.

did devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

12. The scheme consisted of inducing some bankruptcy debtors to enter into "reaffirmation agreements" and leading such debtors to believe that the agreements would be filed with the bankruptcy court and were binding contractual obligations, when in fact SEARS' Recovery Unit knew that it was not going to file such agreements and that the debtors had no obligation to pay the otherwise discharged debt.

13. The scheme began in response to an increased volume of bankruptcy filings by SEARS' credit card customers, and SEARS' perception that some bankruptcy judges were hostile to it and/or to reaffirmation agreements.

14. In furtherance of this scheme, SEARS and its Recovery Unit did, among other things, the following:

a. Established a nationwide program in which it sought to obtain reaffirmation agreements from most debtors who filed for bankruptcy and owed SEARS money.

b. Used a SEARS' reaffirmation agreement form that represented directly and by implication that it would be filed with a

Bankruptcy Court. The typical form agreement used by SEARS' Recovery Unit was in the form of a bankruptcy court pleading, with a standard court heading of "In the United States Bankruptcy Court for the ____ District of ________." The standard form also informed the debtor that he or she had the right to rescind it prior to discharge or within a certain period "after this agreement is filed with the court." At the bottom of each such form agreement was a section entitled "Order Approving Reaffirmation Agreement" and a line for a bankruptcy court judge to sign.

c. Did not inform debtors that the agreement was not to be filed with the Bankruptcy Court or that any payments under such agreement were entirely voluntary on the part of the debtor and could be stopped at any time without SEARS having any legal ability to enforce the reaffirmation agreement . Nothing in the form reaffirmation agreement indicated that payments by debtors under the agreement were being made on a purely voluntary basis.

d. Misled debtors to believe that the reaffirmation agreement was a binding contractual obligation to pay a debt to SEARS, when in fact the debt was going to be discharged. The reaffirmation agreement form used by SEARS' Recovery Unit stated that the debtor "reaffirm[s], promise[]s and agree[s]" to pay SEARS; that upon default of any one installment, "the entire balance set forth above, with finance charges shall be due and payable immediately;" and debtor "promises, reassumes and agrees to be bound by all the terms and conditions as set forth in the original security agreement" with SEARS.

e. In some situations, SEARS' Recovery Unit failed to obtain a written reaffirmation agreement from debtors, but instead obtained an oral agreement to continue paying the debt. SEARS led debtors to believe such oral agreements were also binding contractual agreements, and sent account statements and made follow-up telephone calls to induce debtors to pay.

f. To further mislead debtors into believing they had an obligation to pay the discharged debt to SEARS, after obtaining the signed reaffirmation agreements, SEARS regularly sent monthly bills to such debtors.

g. To further mislead debtors into believing they had an obligation to pay the discharged SEARS' debt, SEARS would place telephone calls to those debtors who stopped paying after signing the reaffirmation agreements to find out if they intended to pay.

h. In some circumstances, SEARS would even initiate legal actions to recover both post-petition and pre-petition debt, assuming that the debtor would not know the reaffirmation agreement had not been filed and therefore, was not legally binding and enforceable.

i. SEARS instituted a nationwide training program consisting of a written manual and oral presentations, both of which counseled against filing reaffirmation agreements in certain circumstances, including when the particular bankruptcy judge was known to regularly reject such agreements, when the debt involved was primarily unsecured, and when the debtor involved was not represented by an attorney.

15. The policy and practice of not filing reaffirmation agreements where bankruptcy judges were unlikely to approve them was known and approved of by some now former senior personnel in SEARS' credit business, as well as some now former lawyers in SEARS' legal department.

16. The written policy was drafted by personnel in SEARS' credit business and SEARS' legal department. It was distributed nationwide. It was reinforced during bankruptcy training seminars conducted jointly by members of the credit business and legal department.

17. As a result of this fraudulent scheme, SEARS obtained millions of dollars on discharged debts to which it had no legal right from thousands of debtors nationwide, including in Massachusetts.

D. COUNT 1 - BANKRUPTCY FRAUD (18 U.S.C. §157)

18. Paragraphs 1-17 of this Information are realleged and incorporated herein.

19. On or about June 14, 1995, in the District of Massachusetts, the defendant

SEARS BANKRUPTCY RECOVERY MANAGEMENT SERVICES, INC.,

having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so, as set forth above, did make false and fraudulent representations, claims and promises concerning and in relation to a proceeding under Title 11 (the Bankruptcy Code), specifically the following bankruptcy case:

1. In re: Michael J. Halchuk, case number 95-13062, filed on or about May 3, 1995, in the U.S. Bankruptcy Court for the District of Massachusetts in Boston.

All in violation of Title 18, United States Code, Sections 157 and 2.

DONALD K. STERN
United States Attorney

By: ______________________
MARK J. BALTHAZARD
Assistant U.S. Attorney