March 30, 1999 -- Draft #3

MEMORANDUM TO THE PRESIDENT

THROUGH: THE CHIEF OF STAFF

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. If the Senate had voted on the Conference Report, we do not know what the outcome would have been, but Senator Durbin threatened delay and bill lobbyists predicted Republican gains in the 1998 election and decided to wait. 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, 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 to influence the legislation, it is likely that you will be presented legislation that you will not want to sign, yet with sufficient support to override your 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 attacking the bill's failure to tackle abuses by credit card companies and the 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 would give him and other House Democrats a viable pro-reform and pro-consumer bill to support and 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. Doing so is critical to a credible veto threat.

In the Senate, we originally hoped that Senator Torricelli would not co-sponsor Senator Grassley's bill, 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 with enthusiasm that you sign the resultant legislation.

We recommend the four-prong strategy described below.

1. <u>Exploit Vulnerabilities</u>

Unfortunately, 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 Sympathetic 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. For example:

- The current test would not allow a debtor to continue to help his non-dependant mother meet expenses so that she could live on her own and stay out of a nursing home. Under the formula applied, only expenses of dependants may be considered. The court would need to find that "extraordinary circumstances" made additional expenses "necessary." If not, he would be denied access to Chapter 7's "fresh start" and the funds used to pay for his mother's housing would instead go to pay off his credit cards, for example.

- The current test could potentially require a debtor to change jobs in order to lower transportation costs and free up money to repay their creditors. This notwithstanding that the job that presents the best opportunity for future income is in an area in the suburbs where she cannot afford to live, requiring the woman to spend money and time getting to work each day.

- The current test could force a single mother to move her family from her home if her rent payments were above the county median even though that location might be important because it allowed her to leave the children under a relative's care lowering child care costs.

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 not make a motion to find "abuse" for below median income debtors, the bankruptcy courts and trustees would be required to apply the means test to determine whether there was "abuse" to all debtors.

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

In the famous Sears case, Sears harassed creditors 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 in damages to a thousands of debtors. Under the House bill, creditors could harass debtors to repay discharged debt with little fear of repercussions as class actions would be barred and penalties limited. [NEED TO CONFIRM FACTS.]

Similarly, 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. Creditors coerce debtors into reaffirming debts through various practices -- threats to challenge the bankruptcy proceedings if they do not reaffirm their debt, promises of fresh credit lines in exchange for reaffirmation, and harassing collection efforts aimed at debtors who do not realize their rights during bankruptcy proceedings. These reaffirmations are almost always economically irrational. Agreeing to repay $1000 in order to get a $1000 line of credit is like accepting credit with an effective interest rate of 100%. Credit cards for bankrupt debtors is now a niche market aggressively advertised. The high rates of interest on these cards are still more beneficial than the cost of reaffirmation. The Bankruptcy Review Commission concluded that reaffirmations of unsecured debt should be banned outright. Yet the bills provide no new effective protections for consumers. Last year, we proposed a "coercion" check -- a review by the bankruptcy court of any reaffirmation to ensure that it was in the debtors interest. The Administration is considering a variety of proposals that we could market as important consumer protections against coercion -- including granting standing to object to reaffirmations to custodial parents and former spouses whose alimony and child support payments may be threatened because the debtor will be repaying the reaffirmed creditor out of limited resources.

C. Consumer 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) 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. Most of these provisions were stripped in conference, leaving only a requirement for the Federal Reserve to study what further disclosures would be helpful.

Legislation incorporating these provisions has been introduced in the Senate. 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 "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. In addition, 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 they are harmed. However, two concerns remain and we can continue to argue credibly that these bills will harm the collection of child support and alimony *in some cases.*

Specifically, 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, after debtors receive Chapter 7 or Chapter 13 discharges of their debts, some will have obligations to repay these new nondischargeable debts to their credit card companies. At that point, there is no court supervision or other mechanism to ensure that child support and alimony are paid first. If a debtor is being dunned by a credit card company with an enforceable debt, the custodial parent or former spouse is unlikely to be as effective as the card company in seeking payment. In addition, under pressure from creditors, many debtors reaffirm unsecured debts on unfavorable terms. And 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.

In addition, the bill raises another concern for the payment of child support and alimony. If debtors with the capacity to repay some of their debts are required to do so the payment of child support and alimony should improve because these payments will be made under a court supervised Chapter 13 repayment plan. However, 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 Head.

Some of the most famous cases of abusive bankruptcy filings involve celebrities who live in multimillion dollar mansions protected by "homestead exemptions" but walk away from other debts. 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 these biggest loopholes used by the wealthy.

2. Try to Improve the Legislation

While the Republicans are not presently receptive to significant changes in the bills at the moment, 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," requiring judges to explain when they vary from formulaic standards and lowering the costs to creditors of bringing motions to keep debtors from using Chapter 7 when they could repay under Chapter 13. 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, they 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.

Congress of the United States

Washington, DC 20515

Nicole — Can you pls call me about this md

March 4, 1999

The President
The White House
Washington, DC 20500

Dear Mr. President:

We are writing to thank you for the leadership role you showed during last year's bankruptcy debate. The message sent by the White House, and the personal involvement of both you and the First Lady, succeeded in stopping legislation that would have undermined the rights of families and small businesses in financial crisis, interfered with the rights of custodial parents, and substantially raised the costs of the bankruptcy system.

For these reasons, organizations as diverse as the National Bankruptcy Conference, the American College of Bankruptcy, the Commercial Law League of America, the National Women's Law Center and the Consumer Federation of America, among others, spoke out forcefully against the House bill and the Conference Report. Your strong stand in support of reasonable and balanced reform made a real difference in this debate.

There have been those in the House and Senate who have questioned the Administration's resolve in this matter and whether the Administration will continue to insist that legislation be balanced, fair and workable. The sponsors of last year's bill have been so arrogant and reckless as to introduce last year's Conference Report, which drew a strong and credible veto threat, without even making technical corrections or fixing typo's in last year's draft, much less address the significant issues you raised.

We believe that, by reiterating your previously clear and strongly stated views on this legislation, you will enable us, working with bankruptcy professionals, to persuade the sponsors that they need to listen to reason. We hope that, as this legislation seems to be headed for a fast track, you will make a statement in the very near future.

The President
March 4, 1999
Page Two

Thank you again for your leadership on this important issue. We look forward to working with you to ensure that bankruptcy reform is fair, balanced and workable.

Sincerely

John Conyers, Jr.
Ranking Democratic Member
Committee on the Judiciary

Jerrold Nadler
Ranking Democratic Member
Subcommittee on Commercial and Administrative Law

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

THE DIRECTOR

March 23, 1999

The Honorable Jerrold Nadler
Subcommittee on Commercial and
Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Nadler:

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 appreciates your kind words about the role that he and the First Lady played during last year's debate on bankruptcy reform. He also appreciates your continued dedication to this issue.

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.

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 disappointed that the Conference Report failed to include key provisions of the Senate bill, thus failing the test of balance. In my letter to Congressional leadership dated October 9, 1998, I noted that the President's senior advisors recommended that the President veto the Conference Report. Our position from last year has not changed.

During this year's debate, the Administration will continue to encourage Congress to find an appropriate balance. 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 debtors with a strong likelihood of success are denied access to Chapter 7.

- **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 both debtors and creditors. 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 other important concerns and to produce responsible, balanced bankruptcy reform.

Sincerely,

Jacob J. Lew
Director

Identical Letter Sent to the Honorable John Conyers, Jr.

FYI on bankruptcy & child care.

Bankruptcy Reform Markup Highlights Discord Over Bill

JUDICIARY

OPENING STATEMENTS by members of the Senate Judiciary Committee at a markup Thursday of bankruptcy reform legislation underscored the vast ideological differences between and within the parties that appear bound to plague the rest of the markup and ensuing floor debate.

The markup is scheduled to continue next week, possibly Thursday.

In addition to the bill's other troubles, a dispute over abortion Thursday threatened to scuttle the bill.

A proposal by **Sen. Charles Schumer**, D-N.Y., would require bankrupt people found to have violated laws protecting abortion clinics to pay those penalties. **Sen. Joseph Biden**, D-Del., said the plan could kill the bankruptcy legislation, the *Associated Press* reported.

The way "to make sure nothing happens [with legislation] is to say 'abortion,'" said Biden, who supports the bankruptcy overhaul bill.

At the same time, **Sen. Robert Smith**, R-N.H., is pushing an amendment that would prohibit doctors who declare bankruptcy from writing off penalties they owe from medical malpractice claims related to abortion.

While at least some GOP members of the committee say they harbor reservations about the overall bill — **Sen. Jeff Sessions** of Alabama is one — all of those present at Thursday's meeting made clear their intention to vote for the bill in committee.

The greatest range of opinion on the bill clearly rests on the Democratic side, where deep divisions were obvious.

Sen. Edward Kennedy, D-Mass., blasted the measure as a "special interest" bill that would hurt middle-class families — and excoriated bill sponsors for failing to include a number of consumer protections that would hold credit card companies partially responsible for skyrocketing personal debt.

"This legislation basically stinks," declared Kennedy.

Bill sponsors defended their decision to omit the provisions cited by Kennedy — noting that it was the only way to avoid a joint referral with the Senate Banking Committee — and promised the debate would resume on the Senate floor.

But Kennedy, along with **Sens. Russell Feingold**, D-Wis., and **Dianne Feinstein**, D-Calif., raised numerous other problems with the bill. And while Feinstein remains something of a question mark as to how she will cast her vote in committee, neither Kennedy nor Feingold left any doubt as to their position.

Judiciary ranking member Patrick Leahy, D-Vt., also indicated he would vote no, while **Sen. Herbert Kohl**, D-Wis., announced he would vote for the bill, with reservations.

The bill's sponsors on the committee, including **Administrative Oversight and the Courts Subcommittee Chairman Charles Grassley**, R-Iowa, **subcommittee ranking member Robert Torricelli**, D-N.J., and Biden — whose home state contains the headquarters of such large credit card issuers as MBNA and First USA Bank — clearly intend to present a united front.

That, in turn, raises questions as to whether either side will have the votes to pass any significant amendments.

Although the committee will consider 26 amendments in all, speculation is the bill will leave the committee near its original form.

That apparently would suit **Judiciary Chairman Hatch**, as he urged all members to hold as many amendments as possible for the Senate floor — at which point, Hatch asserted, the bill will be given "plenty" of time.

In another banking-related development, a much anticipated meeting among Senate leaders in the financial services debate — including **Majority Leader Lott, Minority Leader Daschle, Banking Chairman Gramm** and **ranking member Paul Sarbanes**, D-Md., has been postponed until next week, according to sources.

These sources noted that the Kosovo conflict has made scheduling the bill strategy session difficult.

— *By Pamela Barnett*

Childcare Tax Credit Push Is On

■ AFTER WINNING a promise in the budget resolution for childcare tax cuts, **Senate Health, Education, Labor and Pensions Chairman Jeffords** and **Sen. Christopher Dodd**, D-Conn., Thursday reintroduced legislation outlining a wish list of specific tax cuts.

Rep. Benjamin Gilman, R-N.Y., Thursday introduced a companion bill in the House. Their plan calls for $36 billion in tax cuts over five years to help families pay for professional child care or to help subsidize a parent to stay at home.

Jeffords, **Senate Budget Chairman Domenici** and other Senate Republicans joined all 45 Democrats to support an amendment, eventually contained in the final budget resolution, calling for $3 billion over five years in tax cuts for child care. Another $3 billion is set aside to expand an existing childcare block grant. While those levels are well short of the money required to fund their tax cut bill, Jeffords, Dodd and Gilman told a news conference that itemizing money for childcare tax cuts was a victory for their cause.

"Low-income working families need subsidies that are high enough so they have an opportunity to choose the type of child care they want for their children," Jeffords said.

The plan would increase the current $500 child tax credit to $900 per child, and increase a number of other tax credits and deductions for families needing child care.

There also would be a tax credit for businesses that contribute to child care for their employees.

Jeffords and Dodd tried to move similar legislation in the last Congress.

— *By Matthew Morrissey*

Comparison of H.R. 833 substitute amendment (ex. titles IX-X), as amended in subcommittee markup

Topic	As introduced	Substitute
Means test (102) - requirement to file initial statement re abuse	10 days before 341 meeting; amends 704	10 days after 341 meeting; amends 707
Means test - median income threshold	various drafting errors	all corrected to refer to median family income with allowances for family larger than 4
Means test - IRS standards	refers to Other Necessary Expenses	refers to "applicable expenses for the categories specifically listed as Other Necessary Expenses"
Means test - definition of household	N/A	**new**; not to include legally separated spouse unless joint case
Notice of alternatives (103)	describes purposes of chapters and available credit counseling services	adds warnings about concealment, false oaths, and possibility of audit
Post-filing financial management education (104 & 302(b))	only a test program in 3 districts, but discharge may be denied if all debtors fail to attend	discharge still denied except in those districts where UST makes a determination that such services are not available; test program will serve as financial management course in those districts selected
Debt relief agencies - disclosures (106)	disclosures regarding valuation of assets, exemptions, completing schedules may be made in writing or orally	such disclosures must be in writing
Debt relief agencies - enforcement (108)	debtor may recover fees	debtor may recover fees and actual damages and attorneys' fees

Topic	As introduced	Substitute
Promoting ADR (111)	Court can reduce claim if creditor unreasonably refused to negotiate if debtor made offer to repay 60% of loan	Not applicable if debt is entitled to priority or if debtor could pay percentage greater than offer in chapter 13
Savings earmarked for postsecondary education (115)	exempts funds in education IRA and tuition program	eliminates references to tuition program
Trustee liability	N/A	**new** (117); trustee not liable personally or under bond unless grossly negligent; not liable at all if debtor subsequently ineligible; not liable for disseminating statistics or other information unless actual knowledge false; may not be sued without leave of bankruptcy t
Abusive filing (120)	Court may enter in rem order	Adds language requiring courts to accept order for filing in land records
Statement of intent regarding personal property (121)	Stay lifted 45 days after 341 meeting unless debtor reaffirms or redeems; court may extend period	Adds that debtor must ask for extension of period before its expiration
Relief from stay if property not surrendered (122)	If property not surrendered within applicable deadline, stay automatically lifted; extensions allowed	Adds that debtor must ask for extension of period before its expiration
Disposable income objection to chapter 13 plans	N/A	**new** (132); disposable income determined using section 707 definition of net income, i.e., using IRS standards; must apply all disposable income to pay unsecured creditors

Topic	As introduced	Substitute
Limitation in chapter 13 on modifying rights of secured claim holders secured by principal residence	N/A	**new** (302(g)(4)); includes all property used as principal residence within 180 days before filing
Trustee's right to return goods to creditor	N/A	**new** (302(I)); amends 546(g) (second instance) to state that return subject to rights of third parties
Small business debtor - definition (402)	only debtors with less than $4 million and active creditors committee	deletes reference to active creditors committee
Small business debtor - filing of plan (407)	must file in 90 days; debtor may ask for extension	exception if court determines creditors committee sufficiently active and responsive; any party in interest may ask for extension
Small business debtor - confirmation of plan (408)	must confirm in 150 days	exception if court determines creditors committee sufficiently active and responsive
Small business debtor - serial filers (412)	Stay not applicable in certain situations - language garbled in apparent drafting error	error corrected; stay does not apply if small business debtor in dismissed or confirmed case in last 2 years, or successor to such a debtor; not applicable if current case filed involuntarily by noninsider or debtor can demonstrate (1) unforeseeable circumstances beyond debtors' control and (2) more likely than not to confirm plan

Topic	As introduced	Substitute
Grounds for dismissal or conversion (413)	Expanded list of examples of "cause"	deletes failure to attend 2004 meeting as cause; only court, UST, or BA can bring motion under certain grounds; court may impose sanctions for act or omission of debtor
Debtors' duties (603)	Additional duties	Reference to preparing statement of projected monthly net income deleted
Notice of confirmation hearing in chapter 13	N/A	**new** (603(b)(4)); court's notice must also contain info on income and expenses from schedules
Period to file plan in chapter 13 (605)	90 days	**deleted**
Length of chapter 13 plan (606)	language garbled in apparent drafting error	error corrected; plan length is 5 years if debtor at or above median; if below median, length is 3 years but may be extended to 5 years for good cause
Statistics (701)	duty of AO; categories enumerated	some additional categories relating to dismissals and completion of plans added
Special rule limiting avoidance of lien for benefit of insider (1117)	special rule for security interest granted for benefit of insider between 90 days and 1 year; only avoided with respect to insider	adds provision stating that amendment will only apply to pending and new cases
Exemption cap	N/A	**new** (150); $250,000 ceiling for homestead exemption
Fee sharing	N/A	**new** (217); permits fee sharing with bona fide public service attorney referral program

Teaming draft Proposal 3/30

admin 10% - this plus discretion

Income	Share of Ch. 7 filers	Full Means Test			Targeted Screen		
		Share of Ch. 7 filers subjected to full test	Share of filers with repayment potential captured by test	Administrative costs of test over 5 years	Share of Ch 7. filers subject to test	Share of filers with repayment potential captured by test	Administrative costs of test over 5 years
<75%	54%	all (54%)	0-0.5%	$2.7 M	income screen: all full test: 0%	0	$1.4 M
75-150%	36%	all (36%)	8.3-9.3%	$1.8 M	income screen: all full test: 9.4% 1/4 of this cat	8.3-9.3%	$1.5 M
>150%	10%	all (10%)	4.7%	$0.5 M	full test: all (10%)	4.7%	$0.5 M
Total	100%	100%	13-14.5%	$5 M	19.4%	13-14%	$3.4 M

Note: The filers affected and the net amounts recovered after costs from debtors with incomes less than 75% of the national median are difficult to estimate. Ernst & Young state that very few such debtors would be so identified. The costs do not reflect any challenges. While some may indeed be challenged, the additional litigation costs, or costs of misclassifying such debtors into Ch. 13, may well offset the additional repayment expected from these challenges.

based on nat'l median income

full test: less than 20%.

25 YEARS EXPANDING THE POSSIBILITIES

NATIONAL WOMEN'S LAW CENTER

Testimony of Joan Entmacher, Vice President and Director of Family Economic Security, National Women's Law Center Hearing on H.R. 833, the "Bankruptcy Reform Act of 1999," Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, U. S. House of Representatives, March 18, 1999

Chairman Gekas and members of the Subcommittee on Commercial and Administrative Law, my name is Joan Entmacher. I am Vice President and Director of Family Economic Security of the National Women's Law Center. I appreciate the opportunity to testify before you today on behalf of the Center concerning the child support implications of H.R. 833.

The National Women's Law Center is a non-profit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major policy areas of importance to women and their families including employment, education, women's health, and family economic security, with special attention given to the concerns of low-income women and their families. Most relevant to this hearing, the Center has worked for more than two decades on child support issues, especially on behalf of the interests of low-income women. Center staff have presented testimony on child support to Congress, commented on child support regulations of the Department of Health and Human Services, litigated child support cases and met with officials in the Administration, Congress and the states in furtherance of the Center's efforts to improve child support enforcement across the country. A Center staff member also served on the U.S. Commission on Child and Family Welfare, established by Congress to provide recommendations on custody and visitation issues that affect the children of separating, divorcing and unmarried parents.

The Center received a grant of $92,456 from the U.S. Department of Education for the period 11/95 to 4/97, and another grant of $92,456 from the U.S. Department of Education for

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the period 10/96 to 3/98, unrelated to its child support work.

My testimony will discuss the impact of H.R. 833 from two perspectives: first, the perspective of parents, especially single mothers, forced into bankruptcy and struggling to support their children at the same time; and, second, from the perspective of parents, again usually single mothers, who are owed support by someone who has filed for bankruptcy. The groups are about of equal size; of the estimated 300,000 bankruptcy cases filed in 1997 involving alimony and child support orders, about half involve women who filed for bankruptcy as they tried to stabilize their economic position after divorce, and half involved women as creditors seeking support from someone who filed for bankruptcy.[1]

This bill certainly was not intended to hurt these women and their children. But it was intended to, and does, provide greater rights for institutional creditors -- credit card companies, secured lenders, and states. And in the context of bankruptcy -- where resources are, by definition, insufficient -- increased rights for some creditors come at the expense of other creditors, and debtors.

The bill is not carefully targeted at the small group of debtors who may be abusing the system. It will hit the most economically vulnerable, including single mothers and children, especially hard -- notwithstanding the child support provisions that have been included in the bill.

WOMEN AS BANKRUPTCY DEBTORS

In this debate over bankruptcy reform, a lot of numbers have been cited, especially statistics on the increase in bankruptcy filings in recent years. What gets lost in the debate over the numbers, however, is that each number represents a person with a particular story -- and that person is increasingly likely to be a woman.[2]

The statistics tell us a little about her. Unlike her male counterpart, she is probably a single parent,[3] and is more likely to be caring for aging parents.[4] She earns less than the men who file for bankruptcy,[5] and is disproportionately represented among the neediest debtors.[6] Interestingly, her *earnings* are not all that different from those of women who don't file for bankruptcy, but her *income* is lower -- with unpaid child support and alimony accounting for much of the difference.[7] There's a high probability she filed when she got divorced, or when the support checks stopped coming,[8] when she lost her job, or got shifted to part time and lost her medical insurance -- just after her employer learned she was pregnant.[9] She may have filed after she tried to escape domestic violence.

She, and her children, are especially poor and vulnerable. They are the people for whom the bankruptcy system was intended to provide a safety net. But many provisions of this bill hit them especially hard.

- **The bill makes it harder to access the bankruptcy process.**

The means test will make it more difficult, and expensive, even for women whose household income is clearly below the median to access the bankruptcy process. And women whose average income was at the median during the last 180 days -- before the support checks stopped -- or women whose child care expenses exceed the IRS standards -- may be denied access to Chapter 7.

Another barrier -- at least for the unsophisticated -- is created by the counseling provision (§302). Debtors who aren't thinking strategically about filing bankruptcy, but who wait until the sheriff is at the door will have to satisfy the counseling requirements, or successfully petition for an exemption, before they can get the protection of the automatic stay.

- **The bill makes it harder for women to save their homes, their cars, and essential household items through the bankruptcy process.**

An innovative program in Pennsylvania -- the Women Against Abuse Save-A-Home Project -- has worked to protect victims of domestic violence from becoming homeless, using the protections of the automatic stay to keep battered women from being evicted while they try to get their finances reestablished. If this bill passes, their job will be a lot harder. Even if they manage to access the bankruptcy process and secure a stay on behalf of a battered woman, landlords will be able to keep going with an eviction if the woman fails to make a rent payment after the case is filed (§139).

The bill also makes it harder for women to hold onto the used car they need to get to work, or the refrigerator and washing machine they need to care for their families, if they purchased them on credit within the last five years. To keep these essential items, women would now have to pay the creditor not just the value of the property, but the full outstanding balance -- which could be much more than the property is worth (§§124-125). Indeed, the balance could be more than the purchase price, due to high interest charges and late fees. At the very beginning of a Chapter 13 -- when she is struggling to get her finances sorted out -- the bill would require her to make "adequate protection payments" -- double payments -- to secured creditors if she wanted to keep her property (§137). And these higher payments, in turn, make it less likely that a woman will be able to make the mortgage payments required to hang onto her home under Chapter 13.

Only a very limited list of household goods are protected from repossession -- or threats of repossession (§148). The list is painfully explicit -- 1 radio, 1 television, 1 VCR per household. Tape players, CD players: not on the list. Educational materials, toys, and hobby equipment for minor children are protected; 18 year-Olds can bid the mementoes of their childhood goodbye. A personal computer is protected, but only if it's used primarily for minor children; older children who use a computer for research and parents who do some work at home are out of luck. In contrast, no dollar limits are placed on the homestead exemption -- owners of multimillion dollar estates in Florida, Texas, and a few other states are secure (§126). And the alternative the bill adopts to capping the homestead exemption -- making state exemptions inapplicable to debtors who have not lived there for two years -- may inadvertently deny any exemptions to a person who moved to find a job, or a woman who moved to escape domestic violence.

- **Even after bankruptcy, women will be burdened with more debt -- especially credit card debt -- making it harder for them to support their families.**

The bill redefines the "luxury goods" exception. It provides that debts of $250 or more owed to a single creditor -- that is, the aggregate on one credit card -- for cash advances or luxury goods charged within 90 of bankruptcy are nondischargeable. To be sure, the bill gives the debtor the right to show that the charges were for necessities, not for luxuries. But low income debtors without counsel, disproportionately women, will be less able to challenge a claim of nondischargeability. And if the purpose of the provision is to place a "limitation on luxury goods," as the section title suggests -- that is, to catch people who go on spending sprees right before they file for bankruptcy -- why does the presumption apply to people who are charging, or taking cash advances, that average less than $25/week? (§135)

In addition, any debt incurred to pay a nondischargeable debt within 90 days of filing would be nondischargeable, even if there were no intent to discharge the debt in bankruptcy (§149). And many debts, especially credit card debts, that can now be discharged through completion of a Chapter 13 plan would now survive -- leaving a woman with less to support her family.

- **These and other provisions give creditors more leverage to secure reaffirmations while, at the same time, the bill strips debtors of important protections against creditor abuse.**

H.R. 833 gives creditors many additional rights which they can use in a bankruptcy proceeding -- or can threaten to use, and thus pressure debtors to reaffirm debts that would be dischargeable. At the same time, the bill would strip debtors, especially less affluent debtors, of their most, and perhaps only, effective form of redress: the class action lawsuit or suit for punitive damages (§§116, 117).

- **The bill does not fully protect income earmarked for support for those women in bankruptcy who are receiving support payments.**

The bill does exempt child support, foster care payments from the definition of disposable income (§132). However, income from support payments is included when applying the means test (§102). And the bill does not ensure that alimony and child support payments received within six months after filing a bankruptcy are excluded from the property of the estate, and not distributed to creditors, in states which lack such an exemption.

WOMEN AS SUPPORT CREDITORS

Looking at the bill from the position of women as support creditors in a bankruptcy, rather than as debtors. raises some additional issues -- but many of the provisions that are a concern for women as debtors are also a problem for women as creditors. The reason is that bankruptcy is a classic zero sum game: when resources are limited, increasing the rights of some creditors may come at the expense of other creditors, as well as the debtor.

Some have said that this bill protects families owed support: that even though the bill increases what credit card companies and secured lenders can demand from debtors, the child support provisions of this bill ensure that the claims of these powerful creditors won't come at the expense of families owed support. Unfortunately, that is not the case. Indeed, the child support provisions of the bill expand the rights of another yet group of institutional creditors whose interests, in some cases, may conflict with those of families owed support: state and county governments collecting support on their own behalf, rather than for families.

The testimony will address how the bill affects the ability of families to collect support at two stages: during the bankruptcy process and after the bankruptcy is over.

Collection of Support During Bankruptcy

The child support provisions of the bill, §§141-147, relate only to the collection of support during bankruptcy. And even from that limited perspective -- which doesn't include the concerns of women as debtors, or women trying to collect after bankruptcy -- the effects of the provisions on families are mixed. Some are positive; some are not. The bill does, however, confer clear advantages to states and counties that they do not enjoy under current law, which may explain some of the governmental support for the child support provisions.

- **The bill changes the priority of child support, especially child support owed to the state, during bankruptcy.**

Under current law, child support owed directly to families is a priority debt. Child support assigned to the state to reimburse assistance to families is nondischargeable, but it is not a priority debt. The bill would define "domestic support obligation" to include child support owed to the family or to a governmental unit, giving states a new priority status in Chapter 7 and Chapter 13 (§141).

In Chapter 7, the bill moves the priority of domestic support obligations from seventh to first. Within this priority, claims owed to families are to be paid first, and claims owed to the state second.[10] The change is well-intentioned, but largely symbolic, and may actually make it harder for families and states to collect support. It will have limited practical benefit, because most Chapter 7 cases do not have assets to distribute, and it is rare for cases to combine the kind of commercial claims that now occupy priorities two through six with a child support claim.[11] Notwithstanding the limited impact, the National Women's Law Center endorses giving child support claims a higher priority than they now have. However, putting child support ahead of administrative expenses may make it impossible for anyone to collect; if administrative expenses are not paid, there may be no one to administer the estate, and any assets may be abandoned back to the debtor, instead of being liquidated for the benefit of support recipients and other creditors..

In Chapter 13, the bill would require that all domestic support obligations -- including all arrears owed to states -- be certified as paid in full before a discharge under Chapter 13 can be granted. Under current law, only child support owed to the family must be paid in full before a discharge can be granted. And current law gives a woman owed support the option to agree to allow the Chapter 13 discharge to proceed, even if her arrears have not been fully paid. That might be in her best interest: her claim for arrears is nondischargeable, and allowing other debts to be discharged may make it easier for her to collect both current support and arrears in the future. Especially when combined with the other increased payments that must be made to secured creditors under Chapter 13, the requirement that state arrears as well as family arrears must be paid in full would make it more difficult for a debtor to get a Chapter 13 plan confirmed and successfully completed, and adversely affect the family.

A better approach, that protects families while giving greater rights to the states, would be to require a Chapter 13 plan to provide for the full payment of current support, whether owed to the family or the state. In addition, as under current law, arrears owed to the family would have to be paid in full, unless the individual agreed otherwise. Payment of state claims for arrears in Chapter 13 would be required to the extent the debtor can pay them out of disposable income. This would put states ahead of credit card companies and other unsecured creditors in Chapter 13, and require debtors to make all current support payments, including those assigned to the state, but would avoid blocking approval of a Chapter 13 plan that might work well for the family, because it was simply impossible to repay arrears owed to the state in full.

- **The bill creates some additional exceptions to the automatic stay for governmental support enforcement activities during bankruptcy.**

Under current law, as amended by the bankruptcy reform act of 1994, a number of support-related actions are exempt from the automatic stay, including actions to establish paternity, to establish or modify an order for alimony, maintenance and support, or to collect support or alimony from property that is not property of the estate, such as the postpetition earnings of a debtor who has filed under Chapter 7. Under Chapter 13, however, postpetition earnings are property of the estate. Although bankruptcy trustees routinely grant exceptions to the automatic stay to allow income withholding for current support in Chapter 13,[12] a motion is required -- and this can delay the receipt of badly needed support by some families.

The bill would create additional exceptions to the automatic stay for enforcement actions undertaken by state and county child support agencies, including income withholding in cases being enforced by public agencies; actions to withhold, suspend or restrict drivers', professional and occupational, or recreational licenses; reporting overdue support to credit bureaus; intercepting tax refunds; and enforcing medical support (§144).

The National Women's Law Center strongly supports changes to the bankruptcy code that would make it make it easier and quicker for families owed support by a debtor who has filed for bankruptcy to collect that support, including an exception for all withholding orders for current support and alimony. Unfortunately, the additional exceptions to the automatic stay created by the bill would help only a fraction of the families owed support, and would make it more difficult for some families to collect arrears owed to them. The provisions fail to ensure that families owed support will get their money before the secured creditors, whose rights would be substantially expanded by the bill, for several reasons.

First, the provisions of the bill only apply to income withholding orders issued by government agencies under §466(b) of the Social Security Act. However, an estimated 40-50% of all child support cases, and all alimony-only cases, are enforced privately, not by government child support agencies.[13] These families would not be helped by the changes in the law.

Second, although income withholding is extremely effective when an order is in place against an obligor with regular income, within the government enforcement system, many families lack a support order, much less a wage withholding order. In FY 1997, more than four out of ten cases in state child support systems across the country lacked a support order. In only 22% of all cases, and 38% of cases with orders, was some collection -- not necessarily full collection -- made. Nationally, only 54% of current support owed, and only 8% of prior year support owed, was collected in FY 1997.[14] Moreover, because bankruptcy cases often involve someone who has lost a job, or suffered reverses in a small business, the effectiveness of income withholding orders in bankruptcy cases is likely to be more limited than in the caseload generally.

A recent series in the Los Angeles Times documented the problems with child support enforcement in Los Angeles County -- and the human costs of those delays.

> When Catherine Sanford applied for welfare in 1996, she viewed it as a desperate, stopgap measure in the hopes that the district attorney's office would swiftly find the father of her 2-year-old daughter, a married man who owned a business. She said she was inspired by news accounts of Garcetti's resolve to crack down on deadbeat dads. The stakes were high: She was losing her house.
>
> On her welfare application, Sanford named the girl's father and provided his home and work addresses, as well as his Social Security number. As required, welfare officials notified the district attorney's office to begin the collection process.
>
> "I believed the God would take care of [them]," Sanford said of her daughter and a second child. "And he does. But his timing is different than mine."
>
> So was the district attorney's.
>
> The case languished, and Sanford's life crumbled.
>
> The child support bureau initiated a complaint against the father but did not begin court proceedings. Sanford soon lost her Altadena home and was forced to move her family into homeless shelters while working part time as a security guard.
>
> Last month, she got word that the district attorney's office had secured a payment order in her case, although she is still waiting for the checks.
>
> "I gave them all the information that was needed," she said, "and they still stalled."[15]

In recent years, Congress has given government child support agencies many additional enforcement tools. The National Women's Law Center has worked with other advocates and representatives of state child support enforcement agencies for more than two decades to secure those reforms. Unfortunately, the tools -- even when mandated by Congress -- are not being fully utilized. In 1988, over ten years ago, Congress required states to automate their child support enforcement systems statewide, so that -- among other things -- income withholding orders could be generated automatically, whenever the computer located someone who owed child support working anywhere in the state. The deadline for developing the systems -- after Congress extended the deadline for two years -- was October, 1997. To date, only 37 state systems have been certified. Some additional state systems are under review; however 9 states, including California, have not even begun the review process.[16]

Third, even if an income withholding order has been obtained by the agency on behalf of a family, it may not fully protect the rights of the family under Chapter 13 to secure full payment of arrearages, unless the family agrees otherwise. Even if the order included partial payment towards arrears, it would be purely fortuitous if the existing withholding order secured full payment of arrears during the life of the Chapter 13 plan. To fully protect the rights of the family, the child support agency still would have to appear in the Chapter 13 proceeding.

Fourth, exempting procedures to collect arrears owed to the state from the automatic stay may make it more difficult, in some cases, for families to collect the support they are due. For example, under the 1996 welfare law, in any case in which child support is assigned to the state, states will continue indefinitely to have the first priority claim on money collected through intercepting federal tax refunds. Only after the state's claim to assigned support has been satisfied will families get a portion of money collected through the federal tax intercept (42 U.S.C. 657(a)(iv)). The tax intercept process is the most effective tool in the child support enforcement arsenal for collecting arrears.[17] When it is used to collect arrears owed to families, it should be exempt from the automatic stay . However, allowing the exception when the state is collecting assigned support may mean that the state gets its money first – and there's not enough left for the family.

Finally, the other enforcement tools that would be exempted from the automatic stay by the bill -- license revocations and credit bureau reporting -- won't do much to help child support creditors get to the debtor's money ahead of the secured creditors. These tools are very helpful in getting the attention of a debtor who cannot be reached by income withholding, because he or she is self-employed (or works off the books). But license revocation, by itself, doesn't bring in money; the agency would still have to try to collect in Chapter 13. And reporting a debtor already in bankruptcy to a credit bureau isn't much of an additional sanction. These provisions are of especially limited utility given the fact that the bill also gives secured creditors bigger and more numerous claims to the debtor's limited resources. These provisions protect state agencies from being cited for violations of the automatic stay, but they don't ensure that families will get their money ahead of secured creditors.

Support collections after bankruptcy

In considering the impact of H.R. 833 on child support, it is important to keep in mind the special nature of child support debt. Child support is a continuing, long-term obligation; it lasts for 18 years or more. So it is necessary to consider the impact of the bill not just during the several months of a Chapter 7 proceeding, or even the several years of a Chapter 13, but throughout the life of a child.

As discussed above, under H.R. 833, more debts would survive a discharge at the end of the bankruptcy process. Under increased pressure, more debts would be reaffirmed. And even fewer debtors will be able to successfully complete the bankruptcy process, and get a discharge of any of their non-support debts. Thus, women owed support post-bankruptcy -- those with ongoing support claims and those who were unable to collect their arrears during the bankruptcy process -- will be in stiffer competition with commercial creditors.

The bill does not include any provisions that would give special protection to support post-bankruptcy. A provision added to last year's House bill that would have required other creditors who collect certain nondischargeable debts to hold the money in trust for two years for payment of support claims was dropped from the conference report and H.R. 833.

Some child support agency representatives say that even so, there is no problem because child support agencies can always get to the money ahead of other creditors. However, when the collection record of child support enforcement agencies is compared to the collection record of commercial creditors, there is cause for concern.

On March 11, 1999, Bruce Hammonds, Senior Vice Chairman and Chief Operating Officer of the MBNA Corporation, testified to this subcommittee that more than 96% of credit card accounts pay as agreed. In contrast, the U.S. Department of Health and Human Services reported that in FY 1993, some collection was made in 18.3% of cases in the child support system; by FY 1997, that percentage had increased -- at a rate of less than one percentage point per year to 22.1%. The percentage of cases with some collections compared to cases with orders increased at a slightly faster rate: from 32.9% in FY 1993 to FY 38.4% in 1997.[18] Nevertheless, it will be some time before we can be confident that state and county child support agencies will prevail in a competition with commercial creditors.

Conclusion

Single mothers and their children are among the most economically vulnerable groups in our society. H.R. 833 would put them at even greater risk. I hope this Subcommittee will carefully reconsider the provisions of this bill from their perspective -- and develop a balanced reform bill that protects families, not the credit industry.

ENDNOTES

1. Warren, "Bankruptcy and Single Parents" (April 1998).

2. Schuchman, "The Average Bankrupt: A Description and Analysis of 753 Personal Bankruptcy Filings in Nine States," 983 Com. L. Rev. 288, 289 cited in Driscoll, "Consumer Bankruptcy and Gender," 83 Georgetown L.J. 525, 533 (1994); Coughenour & Hug, "The Final Report of the Ninth Circuit Gender Bias Task Force," 67 S. Cal. L. Rev. 745, 897 (1994); Sullivan et als., *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* (1989); Pollak, "Gender and Bankruptcy: An Empirical Analysis of Evolving Trends in Ch. 7 and Ch.13," 102 Comm. L.J. 333,335-36 (1997)(Pollak's study of bankruptcy filings in Nebraska in 1996-7 found that the number of individual women filing exceeded the number of men).

3. Driscoll, *supra* n. 2, at 537.

4. Davis, "Bankruptcy: A Moral Dilemma for Women Debtors," 22 Law & Psych. Rev. 235, 241 (1998).

5. Driscoll, *supra* n. 2. at 534. citing Sullivan at 152.

6. Commission on Gender, Race and Ethnicity, "Report of the Third Circuit Task Force on Equal Treatment in the Courts," 42 Vill. L.Rev. 1355, 1537 (in the general Chapter 7 consumer population, 30% are women and 70% are men and joint filers; among the neediest filers, women represent 72% of the population and men and joint filers 28%).

7. Driscoll, *supra* n. 2, at 535, citing Sullivan at 156.

8. Coughenour & Hug, supra n. 2, at 897-98; Jackson et als., "Report of the Special Committee on Gender to the DC Circuit Task Force on Gender, Race, and Ethnic Bias," 84 Geo. L.J. 1757; Sullivan, *supra* n. 2, at 156.

9. Wiseman, "Women in Bankruptcy and Beyond, 65 Ind. L.J. 107, 112 (1989).

10. Exempting the tax intercept procedure from the automatic stay when it is used to collect arrears for the state may frustrate the intent of this provision to ensure that families are paid before states if there are assets to distribute under Chapter 7. See *infra*.

11. Howard. "A Bankruptcy Primer For The Family Lawyer," Special Issue on Family Law and Bankruptcy 31 Fam. L.Q. 377, 382 (1997).

12. Straus, *Bankruptcy Law And Procedures For IV-D Attorneys* at 11 (1998).

13. The most recent published Census Bureau data reports that 35% of custodial parents requested help from a government agency for obtaining child support. *Child Support for Custodial Mothers and Fathers: 1991*, p. 11. The federal Office of Child Support Enforcement has estimated that since 1991, the percentage of child support cases enforced by through the IV-D system has increased to 50-60%.

14. All data from Department of Health & Human Services, Office of Child Support Enforcement, *Child Support Enforcement FY 1997 Preliminary Data Report* (August 1998).

15. Krikorian and Riccardi, "In Most Child Support Cases, D.A. Comes Up Empty-Handed," Los Angeles Times, p. A1, A9 (October 11, 1998).

16. The states are California, Indiana, Kansas, Michigan, Nebraska, Nevada, Ohio, Pennsylvania, and South Carolina. The District of Columbia and the Virgin Islands also are lagging behind.

17. In 1997, collections through the federal tax intercept were $1.1 billion. U.S. Department of Health & Human Services, News Release, "Child Support Collections Reach New Records," Dec. 31, 1998. In FY 1997 (a slightly different time period), a total of $3.4 billion in prior year's support was collected. *FY 1997 Preliminary Data Report, supra* n. 14.

18. *FY 1997 Preliminary Data Report, supra* n. 14, Table 2.

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March 30, 1999 -- Draft #1

MEMORANDUM TO THE PRESIDENT

THROUGH: THE CHIEF OF STAFF

FROM: **GENE SPERLING** **LARRY STEIN** **MELANNE VERVEER** **SARAH ROSEN** **BRODERICK JOHNSON** **JOEL WIGINTON** **NICOLE RABNER**

RE: **BANKRUPTCY REFORM STRATEGY**

ACTION FORCING EVENT: Bankruptcy legislation is moving rapidly through both the House and the Senate. Last year, in the Senate, we worked closely with Senator Durbin, resulting in a 97-1 vote for a moderate and balanced bill. Unfortunately, the moderating provisions were largely abandoned in Conference, and we issued a veto threat on the ~~We advised Congress that your advisors would recommend a veto of~~ the Conference Report. We held our brea~~d~~th uncertain what the outcome would be if the Senate voted on the Conference Report, but Senator Durbin threatened delay and time ran out. In the House, that Conference Report was approved by a vote of 300--125, a veto-proof majority. While Congressman Nadler is working to enlist greater support for a more moderate approach, we cannot be sure to do better in the House this year than last. Meanwhile, in the Senate, there seems to be less support than previously among Democrats for fighting unbalanced legislation. It is possible to imagine that you will be presented legislation that you will not want to sign, yet with sufficient support to make a veto override a possibility.

RECOMMENDATION: We seek your approval of a strategy designed to reduce the likelihood of this outcome. Specifically, we seek authority to: (1) exploit publicly the vulnerabilities of the legislation (by attacking the bill's failure to tackle abuses by credit card companies and the lingering danger it presents to child support and alimony collection); (2) work with Senators Durbin, Kennedy, Leahy and others to develop a floor strategy and identify message amendments which could motivate Republicans to compromise; and (3) simultaneously work with bill proponents (including Senators Torricelli and Grassley) to advance alternative provisions that would substantively improve the current bills.

THE STATUS OF BANKRUPTCY LEGISLATION IN CONGRESS

In the House, Representative Gekas, along with a number of Democratic cosponsors, introduced H.R. 833, which is virtually identical to last year's Conference Report. It now has 93 cosponsors, including over 30 Democrats (*e.g.*, Representatives Boucher, Kennedy, Holden, Menendez, Roemer, Maloney, and Velazquez). In addition, although he is not currently a cosponsor, Representative Gephardt supports the Gekas bill.

In the Senate, Senators Grassley and Torricelli introduced a bill earlier this month (S.625) that used the Conference Report as a starting point, but incorporated some moderating changes required by Senator Torricelli as a precondition of his sponsorship. Senator Biden is also a co-sponsor and five or six other Democrats have contacted Senator Torricelli's staff about co-sponsoring the bill. Well positioned Democratic staff believe there may be enough votes in the Senate to override a Presidential veto. Senator Daschle, who wants a bankruptcy reform bill, will likely support S. 625 in the end if enough Democrats move in that direction. Senator Leahy also may vote for the Grassley-Torricelli bill in Committee as a "demonstration of support for the Ranking Member." Didn't Stein seem skeptical? (Senator Torricelli replaced Senator Durbin on the relevant subcommittee when Senator Durbin left the Judiciary Committee.)

You will recall that last year, Senator 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."

The House Subcommittee marked up the Gekas bill last week. The Subcommittee approved the bill on a party-line vote, reserving most amendments for the full Committee. The Senate Judiciary Committee postponed ~~their~~ its mark-up until after recess, so we expect both House and Senate Judiciary Committee markups the week of April 12-16th. The bills should move to the floor in both chambers soon thereafter.

We have been contacted by a number of House and Senate Democrats who are looking to the White House for political guidance and leadership on this issue. Many Democrats want to support bankruptcy legislation and will support the bills moving in each chamber unless given a viable alternative and strong rationale not to do so.

In the House, Representatives Conyers and Nadler wrote to you praising 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 that he can prevent some Democrats, who last year supported the Conference Report, from doing so this year. We believe that his likelihood of success would be increased if we could frame the dispute in terms that are compelling to Democrats.

Meanwhile, in the Senate, our original plan was to keep Senator Torricelli off the bill to

The First Lady called Torricelli to thank him for his leadership and urge him to stay strong on these issues.

demonstrate to other Democrats that the bill was not ready for the caucus' support. Many Members follow the lead of the Ranking Member on such complicated and esoteric issues, as they did with Senator Durbin last year.

Unfortunately, Senator Torricelli agreed to cosponsor S. 625. # He did, however, write a letter to Senator Grassley outlining six areas where he felt the bill needed 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 for improvement that Torricelli outlined. We are skeptical, however, that the Republicans will be willing to accept many of these amendments either in Committee or on the floor. Without the pressure of time, with some confidence that they may get a veto-proof majority, and with little indication yet that the Administration is prepared to put up a fight, they have little reason to further acquiesce when House members and industry leaders are urging them to stand pat. 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. In addition, indications from his staff suggest that, in the end, Senator Torricelli would not oppose the bill even if the additional changes he seeks are not made. Republicans can surely sense that. Finally, whatever changes are made in the Senate, we can expect that, as last year, much of that progress will be undone in any conference with the House. may ?

OUR SUBSTANTIVE CONCERNS

As more fully detailed in the Lew letter, our concerns are the same as last year:[1]

Access to Chapter 7: The "means test" imposed by both the Grassley and Gekas bills may deny access to Chapter 7 to debtors who genuinely do not have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. The procedures established do not afford ~~the~~ debtors a meaningful opportunity to have their ~~her or his~~ specific circumstances considered and do not give the court ~~the~~ necessary discretion ~~to determine whether they genuinely have the capacity to repay a portion of their debts~~. In addition, elements of the means test formula in both bills (including the time period over which capacity to repay is measured and both the minimum percentage of debt and minimum dollar amount of debt that the debtor is expected to repay) are set to require debtors to undertake a Chapter 13 repayment plan even when they do not have a strong likelihood of success.

Nondischargeable Debts: Both bills create new categories of nondischargeable debt -- debts incurred on the eve of bankruptcy and debts incurred to pay nondischargeable debts (e.g., paying taxes with a credit card). Generally, 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. While these categories

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[1] Due to Sen. Torricelli's efforts, the Grassley bill is somewhat better in the areas of the "means-test," reaffirmations, and nondischargeable debt.

were significantly narrowed during last year's debate, we believe they should be further limited. There is no evidence that the current protections against fraud and debt run-up prior to bankruptcy are ineffective and that the additional debts made nondischargeable by these bills meet the standard of an overriding public purpose. ***These new nondischargeable debts also will compete, post-bankruptcy, with the payment of child support and alimony.*** While many new beneficial provisions were added to the bills last year to better protect child support and alimony during bankruptcy, they were unable to eliminate the problem entirely. (See discussion below.)

Coercive Creditor Practices: Although both bills provide new opportunities for creditors to challenge debtors' use of the bankruptcy system under the 707(b) abuse test, they do not adequately limit prevalent abusive creditor practices such as coercive reaffirmations and violations of the automatic stay. The Conference Report actually rolled back existing protections (i.e. class action suits) by denying consumers an effective means for remedying the harm from such practices and eliminating the current authorization for penalties for intentional violations of debtors rights. While the most egregious of these rollbacks were eliminated in the Grassley-Torricelli bill, the Gekas bill continues to contain them.

Consumer Information and Protection: The House bill has insufficient, and the Senate bill has no, consumer credit card protections. Unlike last year's Senate bill, neither of the current bills require credit card companies to supply consumers more and better information so that they can understand and better manage their debts.

Homestead Exemptions: While both bills create a system that will deny certain moderate-income Americans access to the traditional bankruptcy "fresh start," neither bill adequately closes the homestead exemption loophole that can allow the wealthy to shield hundreds of thousands of dollars of wealth from their creditors.

RECOMMENDED STRATEGY

We propose that the Administration undertake a three-pronged strategy to: (1) exploit publicly the vulnerabilities of the legislation (by attacking the bill's failure to tackle abuses by credit card companies and the lingering danger it presents to child support and alimony collection); (2) work with Senators Durbin, Kennedy, Leahy and others to develop a floor strategy and identify message amendments which could motivate Republicans to compromise; and (3) simultaneously work with bill proponents (including Senators Torricelli and Grassley) to advance alternative provisions that would substantively improve the current bills. Each of the steps is explained in more detail below.

1. Exploit Vulnerabilities

Unfortunately, it is difficult to rally members or the public around complicated technical issues ? liked coerced reaffirmations or means test formulas. However, two issues raised by the bills resonate well: (A) protecting consumers from abusive credit card practices; and (B) protecting the collection of child support and alimony payments.

A. *Credit Card Abuse* or Consumer Protection from Credit Card Abuses and Coercive Reaff

Consumers are well aware of intense credit card marketing efforts and less than savory collection practices. Last year's Senate bill contained a number of important credit card provisions including: (1) a requirement that credit card companies disclose how long it would take (and how much it would cost) 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. Most of these provisions were stripped in conference, leaving only a requirement for the Federal Reserve to study what further disclosures would be helpful.

Mention lobbying $?

Legislation incorporating these provisions has been introduced in the Senate. 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. 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.

B. *Child Support and Alimony* Collection

The bankruptcy bills create or expand categories of nondischargeable debts -- i.e., debts that can be collected after bankruptcy. For reasons discussed above, the Administration opposes these provisions as a general matter of bankruptcy policy. In addition, last year, we argued that these new nondischargeable debts would impair the collection of child support and alimony. In response, the bills' proponents 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. Much of the problem was fixed. However, two concerns remain. We can continue to argue that these bills will harm the collection of child support and alimony *in some cases.*

Specifically, 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, after debtors receive Chapter 7 or Chapter 13 discharges of their debts, some will have obligations to repay these new nondischargeable debts to their credit card companies. At that point, there is no court supervision or other mechanism to ensure that child support and alimony are paid first. If a debtor is being dunned by a credit card company with an enforceable debt, the custodial parent or former spouse is unlikely to be as effective as the card company in seeking payment. And once the credit card payments are made, it is not practical to require the custodial parent or former spouse to go after the credit card company to assert a claim on those payments.

In addition, the bill raises another concern for the payment of child support and alimony. If debtors with the capacity to repay some of their debts are required to do so the payment of child support and alimony should improve because these payments will be made under a court supervised Chapter 13 repayment plan. However, 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.

We should not overplay this hand. In some cases, this will be dramatically improve the collection of child support and alimony. And, the circumstances in which child support and alimony payments will be impaired by this bill have been significantly reduced. However, they have not been eliminated. We need to explain this issue carefully to Democrats. The women's groups also will continue to make their concern on this issue felt.

2. **Floor 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, Senator Durbin ~~and Senator~~ 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.

3. **Good Faith Efforts to Improve the Legislation**

While we are not optimistic that the Republicans will be receptive to significant changes in the bills at the moment, we must continue to work in good faith with Senators Torricelli and Grassley 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 "self-executing," requiring judges to explain when they vary from formulaic standards and lowing the costs to creditors of bringing motions to keep debtors from using Chapter 7 when they could repay under Chapter 13. 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."

THE WHITE HOUSE

WASHINGTON

FACSIMILE COVER SHEET

TO: Sarah Rosen

FAX #: 62223

PHONE #: 65386

OF PAGES (INCLUDING COVER): 7

FROM: Nicole Rabner
Special Assistant to the President for Domestic Policy and Senior Advisor to the First Lady

COMMENTS: Comments to memo follow & supplement my earlier e-mail. Great job.

Nicole

- DRAFT McClellan Senate Banking Testimony -

Thank you Mr. Chairman, Senator Sarbanes, and other Members of the Committee for the opportunity to provide Treasury's views on issues related to bankruptcy reform. As you know, last year the Administration supported the balanced bankruptcy bill that you and your colleagues in the Senate approved by an overwhelming bipartisan majority. We look forward to working with the Congress this year to craft bankruptcy legislation that the President can enthusiastically sign.

It is important to consider bankruptcy reform in the context of the dynamic financial services industry. The changes occurring in financial services—the result of competition, innovation, and new technologies in such areas as information management and electronic commerce—have had enormous benefits for consumers and the economy, and offer potentially even greater benefits in the future. However, these changes have also increased the complexity of consumer financial services and business financial transactions, and have implications for putting consumers and the economy at risk.

In the remainder of my testimony, I highlight some particular concerns we have about proposed bankruptcy reforms.

Consumer bankruptcy reform

One motivation for consumer bankruptcy reform is the large increase in bankruptcy rates in recent years, despite very healthy economic growth and low unemployment. Experts have offered a large number of competing explanations for this trend, and it is likely that many factors are responsible.

Balanced reform of consumer bankruptcy law is essential to address the multiple causes. There is evidence of abuses by creditors as well as debtors that:

- may allow some debtors who are able to repay a substantial share of their debt to evade responsibility for repayment; and
- may prevent some debtors, especially those with limited means for obtaining counsel and sophisticated financial advice, from having equal access to the fresh start promised by the bankruptcy system.

Bankruptcy reform should not take indiscriminate aim at either side alone, and should not treat only the symptom rather than the underlying causes of the rise in bankruptcies. Furthermore, it is essential that reforms to the bankruptcy system address these problems in ways that do not jeopardize the repayment of debts with very high policy priority, including family support .

The essential features of a balanced reform bill include the following:

Consumer Protection. Consumers need better and more relevant information on their credit opportunities in order to manage their finances effectively and to get the most benefit from the diverse credit-related services now available. In the last decade, there has been an explosion in the kinds and amounts of financial services available to consumers. These changes have had many beneficial effects—making it easier for consumers to obtain the credit needed to start a household, pay college tuition, and make other investments to achieve their financial goals. But they have also made personal financial planning much more complex. The evidence indicates that, with limited time and resources, many households are not able to make many of the calculations and informed judgments needed in this new financial era to develop and follow a financial plan effectively.

Fair and effective determinations of access to Chapter 7 debt relief. The balance between requiring debtors responsibly to honor their contracts with creditors, and providing debtors a fresh start sufficient to ensure their return to economic health, is critical to maximizing the benefits of bankruptcy law to our society and economy. It is also important to minimize the administrative, judicial, and personal costs of achieving this balance.

The President believes that a means test should deny access to Chapter 7 debt relief only for those who genuinely have the ability to repay a portion of their debts successfully under a Chapter 13 plan. The Administration is strongly opposed to a rigid and arbitrary approach to determining whether a debtor can use the relief offered in Chapter 7, and did not allow debtors an opportunity to have their specific circumstances considered adequately by bankruptcy courts with discretion to determine whether they genuinely have the capacity to repay a portion of their debts.

Consideration must also be given to cost in implementing a means test. There is little to be gained by requiring debtors who have little ability to repay to present detailed evidence and justification for an inflexible means test that must be reviewed at substantial additional cost by trustees and courts. More costs are added if debtors with little capacity to repay are inappropriately referred to Chapter 13 proceedings to set up repayment plans destined to fail. We believe that it is possible to draft legislation that will work significantly better than HR 833—to try to identify at relatively low cost the small fraction of potential Chapter 7 filers who have a reasonable chance of successfully repaying their debts under a Chapter 13 plan.

Curbs on predatory creditor practices. Bankruptcy reform should curb abuses by creditors as well as debtors. For example, debtors should be protected against predatory creditor tactics to coerce inappropriate and unwise reaffirmations of debt. Last year's Senate bill took laudable steps in this direction.

Protection of priority debts after bankruptcy. Bankruptcy reform should not create substantial new categories of nondischargeable debt that could compete, post-bankruptcy, with child support, alimony, taxes, or other debt with high public priority. If new categories of nondischargeable debt are to be created, they should be narrowly tailored for situations where the debtor is clearly abusing the system.

We and the rest of the Administration stand ready to work with you in the days ahead to craft a consumer bankruptcy bill that achieves needed and balanced improvements in the bankruptcy system, and that helps consumers manage their debts more effectively.

Netting and termination of certain financial contracts in insolvencies

I would now like to turn to our views on the netting and termination of certain financial contracts in business bankruptcies. The increasing significance of certain financial transactions has motivated the President's Working Group on Financial Markets to examine the U.S. legal regime governing netting and termination of certain financial contracts in insolvencies. On March 16, 1998, as Chairman of the Working Group, Secretary Rubin sent the Group's legislative proposals to Congress.

Since its adoption in 1978, the Bankruptcy Code has been amended several time in order to provide that certain financial transactions, including securities contracts, commodities and forward contracts, repurchase and swap agreements, are excepted from the automatic stay that bankruptcy imposes for general commercial contracts. In each of these cases, the exception from the stay is justified to minimize systemic risk to financial markets that could result if such contracts were not permitted to be enforced.

The amendments that the Working Group has proposed are designed to strengthen the provisions of the Code relating to termination and close-out netting and related provisions for certain financial agreements and transactions. These provisions include clarifying that cross-product close-out netting is permitted for positions in securities contracts, commodity contracts, forward contracts, repurchase agreements and swaps; and that the provisions are applicable in the case of a municipality filing. We have attempted to limit the provisions to areas in which public policy goals are clearly served; we are seeking to protect markets, not particular types of creditors.

In addition, the Working Group proposed amendments to the banking laws that, along with the proposed amendments to the Bankruptcy Code, harmonize the definitions of financial contracts receiving the special treatment and provide protection for the federal deposit insurance funds with exposure in the case of a depository institution insolvency. Under the proposed amendments, exercise of the right of counter parties to terminate or net qualified financial contracts is suspended for a short grace period, to allow receivers of failed depository institutions to transfer financial contracts to another institution.

Cross-border insolvencies and bankruptcy tax provisions

Reform of cross-border insolvency laws and bankruptcy tax issues are germane to bankruptcy reform but may not fall within the jurisdiction of the Banking Committee. Title VIII of S. 625 would add a new chapter 15 to the Bankruptcy Code to address insolvencies that cut across international borders. These provisions are based on a model law on cross-border insolvency that was adopted on May 30, 1998 by the United Nations Commission on International Trade Law. Title VII of S. 625 makes amendments to bankruptcy tax provisions.

Conclusion

Thank you again for this opportunity to discuss issues related to bankruptcy reform. The revolution in technology and increased competition in financial services are giving Americans more numerous and complex financial choices than ever before, and are making possible larger and more complex business financial transactions than ever before. We look forward to working with you and others in Congress to construct balanced bankruptcy legislation that keeps pace with these changes in financial services. I am happy to answer any questions you may have.

Oral Statement of Joan Entmacher, National Women's Law Center, on H.R. 833, the "Bankruptcy Reform Act of 1999," March 18, 1999

Chairman Gekas and members of the Subcommittee, I'm Joan Entmacher. I appreciate the opportunity to testify before you today on behalf of the National Women's Law Center concerning the child support implications of H.R. 833.

I'll focus on the impact of the bill from the perspective of two especially vulnerable groups: parents, especially single mothers, forced into bankruptcy -- often because of an inability to collect child support from the noncustodial parent; and parents, usually single mothers, who need to collect support from someone who has filed for bankruptcy.

From the perspective of single mothers forced into bankruptcy as debtors, the bill would make life even harder. It would make it harder for them to access the bankruptcy process, and, if they got there, to save their homes, cars, and essential household items.

For example, many evictions would be exempt from the automatic stay, a provision that would hit battered women trying to avoid homelessness especially hard. There's a pitiful list of "exempt household goods": one radio, one tv; educational materials and hobby equipment for minor children, but 18 year olds can bid all their precious stuff goodbye. Compare that with the still unlimited homestead exemption.

More debts would survive bankruptcy, making it harder for a woman to get a fresh start and focus on supporting her children. For example, if a woman took cash advances of as little as $25/week, or charged as little as $25/week on one credit card, in the 3 months before filing, that might become nondischargeable debt under the new "luxury goods" exception. Some luxury.

Many of the same provisions that are a concern for women as debtors are also a concern for women who are support creditors in a bankruptcy, because the child support provisions of the bill do not ensure that the increased rights the bill would give to commercial creditors do not come at the expense of families owed support.

First, the child support provisions only affect the collection of support <u>during</u> bankruptcy. They've been endorsed by government agency representatives, and from their perspective, the provisions are clearly a plus. For families, the picture is mixed.

The bill gives government child support agencies acting as creditors themselves, not just on behalf of families, a higher priority than they have under current law. Especially in chapter 13, this could make it harder for families to collect the support they are due. The bill also makes child support first priority in Ch. 7, ahead even of administrative expenses. This is a nice symbolic move, but it may actually make it harder for any creditor to get paid, even in the few cases where there are assets. If administrative expenses are not paid, there may be no one to administer the estate. This means that any assets may be abandoned back to the debtor, instead of being liquidated for the benefit of support recipients and other creditors.

Another set of changes made by the bill that affects procedures during bankruptcy is to exempt some enforcement procedures used by government agencies from the automatic stay. When government child support agencies have gotten wage withholding orders on behalf of families, these changes could help families by making collection during the bankruptcy process easier and quicker. However, the provisions do not ensure that all, or even most, families will get the support they are due ahead of other creditors whose rights would be expanded by this bill. Wage withholding orders from government agencies are great collection tools when they exist -- but they don't in most cases. An estimated half of all support cases are outside the government system, and 40% of cases in the government system lack a support order, much less a wage withholding order.

During the period after bankruptcy, the child support provisions have no effect, but families may have many years of support still collect. And the other provisions of the bill will make that harder. Families owed support will have to compete with all the increased nondischargeable or reaffirmed debts of large commercial creditors. Some child support agency representatives say that's not a problem, because with the tools they've been given, child support agencies can get to any money first. Unfortunately, most agencies aren't using the tools they've been given very effectively. In FY 97, government child support agencies made some -- not necessarily full -- collection in only 22% of all cases. If they have to compete with the credit card industry -- whose representative testified last week that 96% of their accounts pay as required -- I'm afraid mothers and children will lose out.

I hope this Subcommittee will carefully reconsider the provisions of this bill, and put the interests of families ahead of those of the credit card companies and secured creditor.

THE WHITE HOUSE
WASHINGTON

– make time on schedule

✓ have Nicole meet
& Bill during

other –

LISA HILL FENNING
255 E. Temple Street, Suite 1682
Los Angeles, CA 90012
Tel. 213/894-3557
FAX 213/894-3731
E-mail: Lisa_Fenning@ce9.uscourts.gov

February 18, 1999

Hillary Rodham Clinton
The White House
Washington, D.C. 20500-2000

RE: Bankruptcy Reform - HR 3150

Dear Hillary:

I just wanted to thank you for your personal efforts, and for the efforts of the Administration in general, during last year's struggle over bankruptcy reform. The Administration's willingness to insist on fair and effective bankruptcy reform legislation played a crucial role in preventing enactment of a bill that would have been unworkable. At the October National Conference of Bankruptcy Judges in Dallas, the board of the Conference, as well as many judges individually, expressed their deep appreciation for the Administration's firm stance, for which you were given substantial personal credit.

Once the new Congress is organized and functioning, the battle over bankruptcy reform will start up again. The general expectation is that the Conference Bill from last session will be the starting point for discussion this spring. The same general issues of fairness and effectiveness are still presented by the proposed formulas for "means testing." But the means testing formula is not the only area of concern. Even if a compromise were worked out on that issue, many other provisions warrant close scrutiny by the Administration.

Legislation of this significance -- that directly affects millions of people and businesses -- deserves a careful, collaborative drafting process. I urge the Administration to work with Congress to develop a comprehensive, balanced bill to reform the bankruptcy laws and procedures.

I hope that you will continue to take a personal interest in these important issues. I expect to be in Washington, D.C., from April 15 - 18th. I would appreciate an opportunity to meet with you to discuss the bankruptcy reform issues, and with the appropriate White House staff. I will contact you closer to that date to see if a meeting would be possible.

In the meantime, I thank you on behalf of my colleagues for your interest and efforts last year.

Very truly yours,

Lisa Hill Fenning
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
CHAMBERS OF JUDGE LISA HILL FENNING
ROYBAL FEDERAL BUILDING & COURTHOUSE
255 EAST TEMPLE STREET, SUITE 1682
LOS ANGELES, CALIFORNIA 90012

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Hillary Rodham Clinton
The White House
Washington DC 20500-2000

20500/2000

National Bankruptcy Conference Comparison of the Consumer Bankruptcy Provisions of S. 625 and S. 1301 (H.R. 3150 as passed by the Senate in the 105th Congress)

The attached chart compares the consumer bankruptcy provisions of S. 625, the Senate bill introduced in the 106th Congress, with the consumer bankruptcy provisions of S. 1301, the bill passed in the Senate by a vote of 97 to 1 in the 105th Congress. The significant differences between the two bills include the following:

- Regardless of whether a debtor's income is greater than or equal to the national or regional median, S. 625 mandates that every chapter 7 individual debtor is scrutinized under the means test by the United States trustee, and courts must presume that a case is abusive if a debtor can pay the lesser of 25% or $15,000 according to the means test, subject to analysis of special circumstances. The S. 625 means test relies heavily on IRS collection allowances designed for use on a case by case basis, not as an automatic template, and that do not coordinate well with other components of the means test. The means test disfavors renters and individuals who rely on public transportation, unduly favors owners of homes and brand new cars, and is highly susceptible to manipulation by sophisticated planners. S. 1301 gives courts discretion to dismiss or convert a case if the debtor can fund a chapter 13 payment plan producing a return of 30% or more to unsecured creditors, without the cost and complexity of certifying ability to pay in every case as required by S. 625.

- Notwithstanding the laudable intention to increase personal responsibility, S. 625 is devoid of provisions requiring reasonable consumer credit disclosures of the true cost of open end credit such as credit cards. Those disclosures would go a long way toward helping families exercise personal responsibility and limit financial vulnerability that often leads to bankruptcy in conjunction with other catastrophic events. S. 1301 contains several such provisions.

- S. 625 does not prevent asset-rich individuals from abusing the bankruptcy system. S. 1301 caps homestead exemptions at $100,000 and expresses the sense of the Senate that any meaningful bankruptcy reform must include that limitation.

- Although S. 625 explicitly authorizes government officials to address illegal reaffirmation agreements, S.1301 re-institutes much needed court review of reaffirmation agreements that may be technically legal but are the ill-advised product of coercive tactics and are antithetical to the purposes of chapter 7 debt relief.

- S. 625 alters the business bankruptcy system in ways that may harm the interests of various groups, such as trade creditors and employees, and may hamper reorganization for viable businesses. S. 1301 contained fewer such amendments. Discussion of these business bankruptcy amendments may be found in a section by section analysis of S. 625.

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Means test - mechanism	**Sec. 102:** U.S. trustee must review all individual chapter 7 cases, regardless of income level, for ability to pay under means test, and court must presume case is abusive if debtor can pay lesser of 25% or $15,000 according to means test, subject to analysis of special circumstances. Case trustees, U.S. trustees and courts may challenge any case based on means test regardless of debtor's income, but U.S. trustees must litigate against all debtors caught by means test with income at or above median (higher of national or regional family income for family of lesser or equal size with no upward adjustment for families with more than 4 members). Creditors may challenge debtors with income at or above median (higher of national or regional median for family of equal or lesser size, but no upward adjustment for families with more than 4 members). Cases also may be dismissed or converted for bad faith or totality of circumstances (*e.g.*, whether case was filed to reject personal services contract). Ability to pay is determined by deducting various IRS collection standards (excluding payments for debts), secured debts, and priority debts from monthly income (based on monthly average from all sources derived within prior 180 days). IRS housing expense allowance is not divided into mortgage and maintenance portions and does not coordinate well with secured debt deduction and appears to favor homeowners over renters. Means test favors debtors with new cars over debtors with old cars or no cars. It is unclear whether car lease payments qualify as "payments for debts." IRS guidelines determine "necessary expenses" on case by case basis; thus each bankruptcy case will require individualized scrutiny of expenses for child care, health care, dependent care of elderly, taxes, union dues, and similar expenses.	**Sec. 102**: On motion to dismiss or convert made by court, U.S. trustee, or case trustee (or creditor if debtor's income is above median household income, with upward adjustment for families with more than 4 members), court considers whether debtor can pay 30% of nonpriority unsecured claims out of disposable income in chapter 13 plan and whether debtor filed petition in bad faith.

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Means test - consequences of unsuccessful creditor motions	**Sec. 102:** Debtor entitled to recover reasonable costs if creditor unsuccessfully brings motion to dismiss or convert that was not substantially justified or that was brought to coerce the debtor to waive legal rights. Creditors holding claims of less than $1000 are not subject to this provision, providing greater leverage for those creditors to threaten to take such actions.	**Sec. 102**: SAME
Means test - fee shifting against debtor's lawyer	**Sec. 102:** Trustees who prevail in getting chapter 7 debtor's case dismissed or converted may recover costs and attorneys' fees against debtor's attorney if attorney's action in filing chapter 7 for client was not substantially justified, driving a wedge in attorney-client relationship by creating financial disincentive for lawyers to represent clients' best interests.	**Sec. 102**: SAME
Consumer credit disclosures - cost of credit card borrowing	NONE	**Sec. 209:** Requires disclosure of minimum monthly payment on the borrower's balance in dollar amount and as a percentage of the balance. Requires disclosure of months/years to pay balance and total cost if borrower makes only minimum monthly payments and incurs no additional debt. Credit solicitations accompanied by worksheet to help consumers determine ability to assume more debt, a disclosure that "preapproval" does not mean that the borrower can afford the credit, and notification that borrower is entitled to copy of credit report.
Consumer credit disclosure - home equity	NONE	**Sec. 207:** Lender must disclose in loans/lines of credit that the interest on portion of credit extension that is greater than fair market value of the dwelling is not tax deductible.
Consumer credit - prohibition on punishing personally responsible borrowers	NONE	**Sec. 405:** Lender may not refuse to renew, continue to offer credit, or charge fee solely because consumer has not incurred finance charges in connection with extension of credit.

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Credit cards- Luxury goods and cash advances	**Sec. 310:** Credit card cash advances aggregating more than $750 within 70 days before bankruptcy are presumed nondischargeable. Debts owed to single creditor aggregating more than $250 for luxury goods or services incurred within 90 days before bankruptcy are presumed nondischargeable. Given realities of consumer bankruptcy, a presumption of nondischargeability is same as declaring debt nondischargeable because chapter 7 debtors generally cannot afford to rebut the presumption in litigation. This is special interest favoring credit card companies without compelling justification.	**Sec. 316:** Creates presumption of nondischargeability for consumer debt incurred within 90 days before bankruptcy of $400 or greater and not reasonably necessary for maintenance or support of debtor or dependent child of debtor. Presumption of nondischargeability is the same as declaring the debt nondischargeable because most debtors cannot afford to rebut presumption in litigation. This version is more narrowly crafted and is slightly preferable to S. 625 provision.
Credit cards - debts incurred to pay nondischargeble debts	**Sec. 314:** Makes debts nondischargeable if incurred to pay otherwise nondischargeable obligations within 70 days before bankruptcy (except if debtors owe domestic support obligations for which claims have been timely filed). Claims are not filed in the vast majority of "no asset" chapter 7 cases, making exception for support claims relatively meaningless. Even if it were effective, it may be inappropriate to give greater debt relief to divorced families than intact families. Beyond 70 days, makes debts nondischargeable if incurred with intent to discharge newly-created debt in bankruptcy. This is special interest favoring credit card companies without compelling justification.	**Sec. 315:** Makes debts nondischargeable if incurred to pay otherwise nondischargeable obligations with intent to discharge newly-created debt in bankruptcy. This version is drawn more narrowly and thus is slightly preferable to S. 625 version.
Chapter 13 nondischargeability	**Sec. 315:** Makes more debts nondischargeable after completion of a 3 to 5 year chapter 13 payment plan (*e.g.*, debts arising from willful and malicious injury causing death or personal injury; defalcation; false representation). Restricting chapter 13 discharge will produce more credit card nondischargeability claims, which will be litigated using resources otherwise available for creditors. **Sec. 707:** Tax debts are nondischargeable even after completion of 3 to 5 year payment plan.	**Sec. 314:** SAME as S. 625 sec. 315. NONE

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Credit card nondischargeability - clarification of standard	NONE	**Sec. 202:** Codifies some common law elements of fraud and false representation for purposes of nondischargeability (debtor made materially false representation on which defrauded person justifiably relied).
Reaffirmation review	**Sec. 204:** Entitles debtor to hearing regarding reaffirmation of totally unsecured debt, but requirement is easily waivable by signing a statement. This amendment will not make meaningful change to current law. Even if debtors fully comprehended their rights, experiences with current law suggest that most debtors will waive hearings after being strongly encouraged by creditors to do so. Moreover, reaffirmations most in need of review - reaffirmations of nominally secured debts on retail charge cards - are not addressed in this amendment. Amendment also fails to enhance disclosures made in connection with reaffirmation agreement regarding actual costs of repaying debt at new terms	**Sec. 211:** Requires court approval of reaffirmations of unsecured or nominally secured debts (item with value of $250 or lower at point of purchase). Among elements that court considers are whether agreement imposes undue hardship on dependents/support recipients and whether reaffirmation was result of threats of repossession of low value property. Agreement must disclose how much of the reaffirmed debt is attributable to principal, interest, late fees, and other costs. Disclosure of true costs of reaffirmation agreements along with independent nonwaivable court review are key elements of bankruptcy reform.
Exemptions - homestead	**Sec. 307:** Must live in a state for 730 days preceding bankruptcy to use that state's exemption laws. May deprive lower and middle class debtors of all property exemptions if they have moved. Should clarify that"transient" debtors use federal exemptions. **Sec. 308:** Disallows or reduces exemption of homestead equity if debtor converted nonexempt assets to exempt assets within 730 days before bankruptcy with intent to hinder, delay or defraud.	**Sec. 212:** Expresses sense of Senate that bankruptcy reform requires cap on state homestead exemptions. **Sec. 320:** Amends 11 U.S.C. § 522 to cap state homestead exemptions for bankruptcy purposes at $100,000. These provisions are key to any effective and balanced bankruptcy legislation.
Exemption - retirement and educational savings	NONE	**Sec. 301.** Provides uniform exemption for tax-favored qualified pension plan assets and protects retirement assets that are rolled over into new qualified plan. **Sec. 335:** Excludes from property of estate funds placed in qualified tuition funds and education IRAs at least 180 days prior to bankruptcy.

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Eviction of tenants/ debtors	**Sec. 311:** Enables residential landlords to evict debtors without first seeking court permission, denying debtors the right to catch up on rent after filing for bankruptcy. Deprives renters of breathing spell from collection given to homeowners, exacerbating discriminatory effects of means test against renters. Allows landlord to determine subjectively whether automatic stay applies, benefit unavailable to other private creditors.	**Sec. 709:** SAME
Creditor abuse - willful violation of discharge injunction	**Sec. 202:** Willful failure to credit payments in accordance with repayment plan violates discharge injunction. **Sec. 204:** Provides additional law enforcement mechanisms on state and federal level for illegal reaffirmations. **Sec. 402:** Penalizes violations of discharge injunction, but bans class actions (amendment is at end of small business provision)	**Sec. 203:** Further delineates violations of discharge injunction to include creditor's willful failure to properly credit payments and failure to comply with reaffirmation requirements. Remedy is costs, attorneys' fees, and damages.
Creditor abuse- enjoining threats	**Sec. 203:** Clarifies that automatic stay enjoins communications threatening to challenge debtor's ability to pay, dischargeability of a debt, or to repossess collateral for purpose of coercing reaffirmation agreements, but does not apply to creditor's recitation of legal rights. "Recitation of rights" exception authorizes deceptive threats and must be omitted if this provision is to prevent, rather than promote, coercive activities.	**Sec. 210:** Clarifies that automatic stay enjoins communications threatening to challenge debtor's ability to pay, dischargeability of debt, or to repossess collateral. Recognizes increased leverage provided by legislation for more aggressive creditors to seek preferential treatment.
Creditor abuse - predatory lending	NONE	**Sec. 206:** Disallow secured claims that violate TILA 129(a) - (i). Rewards honest creditors that comply with law, who may get larger share of distribution.
Creditor abuse - inflated or fraudulent claims	NONE	**Sec. 201:** Debtor may collect reasonable attorneys' fees in connection with objecting to claim if court disallows or reduces claim by more than 20% and basis for inflated claim was not substantially justified. May be entitled to damages. Trustee should be authorized to use provision.

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Creditor abuse - wrongful motions denying discharge	NONE	**Sec. 202:** Entitles debtor to reasonable attorneys' fees and costs for creditor's unsuccessful nondischargeability motion, along with damages if creditor's position was not "substantially justified." **Sec 205:** Entitles debtor to reasonable attorneys' fees and costs if creditor unsuccessfully seeks denial of debtor's global discharge or withdraws its motion. Damages available if creditor's position was not "substantially justified."
Treatment of secured debt - inflation of value	**Sec. 306:** Debts secured by cars incurred within 5 years before bankruptcy shall be treated as fully secured, regardless of value of car. Debts secured by other items incurred within 6 months before bankruptcy are treated as fully secured, regardless of value of collateral. Further enhances rights of retailers who take purchase money security interests in worthless goods and finance companies who take blanket liens on household goods such as cassette tapes, typewriters, and lawnmowers. Diverts value from other creditors, undercuts goal of bill to increase debt repayment in chapter 13, and encourages surrender and repossession of property.	**Sec. 302:**. Secured claims in chapter 13 will be treated as fully secured even if collateral is nearly valueless. Diverts value from other creditors, undercuts goal of bill to increase debt repayment in chapter 13, and will encourage surrender and repossession of property. Further enhances rights of retailers who take security interests in worthless goods.
Treatment of secured debt - delayed release of lien	**Sec. 306:** Clarifies that secured creditor retains its lien until payment of entire debt or until debtor's receipt of chapter 13 discharge. Fair approach that resolves split in case law, but meaningless if value of claims is inflated.	**Sec. 302:** SAME.
Treatment of secured debt - effect of conversion	**Sec. 309:** Provides that secured claims are "unstripped" if debtor converts to chapter 7 after failing in chapter 13 payment plan. Debtors' chapter 13 payments are not credited directly against allowed secured claim. Should be amended to clarify that chapter 13 payments are credited if debtor "redeems" property in chapter 7.	**Sec. 310:** SAME

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Secured claims - ridethrough of secured debt	**Secs. 304, 305:** Creditor may seize collateral if debtor does not redeem property or reaffirm debt, unless court determines that collateral is of consequential value to bankruptcy estate. Section 305 limits creditor's right to take property if creditor refused to allow debtor to reaffirm at original contract rate. However, that limitation is absent from 304, along with other conflicts between provisions. It should be added to section 304 so that creditors cannot inflate reaffirmed debts with additional charges.	**Sec. 318:** If debtor does not reaffirm debt or redeem collateral securing a claim greater than $3,000 or assume lease with similar terms, automatic stay is terminated without notice or hearing.
Secured claims - chapter 13 "adequate protection payments"	**Sec. 309:** Requires that chapter 13 debtor make cash payments to lessors and secured creditors at contract rate until secured creditors start receiving plan payments. Essentially requires that debtor make duplicate payments without having duplicate income. No court discretion to reduce contractual payments even if adequate protection could be provided with much smaller payments. Makes turnover provisions inapplicable to creditor that repossessed property prior to the bankruptcy filing.	**Sec. 319:** SAME, but payments need not be at contract rate, making provision slightly more workable.
Secured claims - housing in chapter 13	**Sec. 306:** Defines debtor's principal residence as "residential structure, including incidental property, without regard to whether that structure is attached to real property." Overrides some state laws by including mobile homes not affixed to real property.	**Sec. 321:** SAME
Household goods definition	**Sec. 313:** Lists items that may be considered household goods. More than one radio is not a household good. A computer is household good only if it is used primarily for education or entertainment of minor children. Definition omits items such as garden tools, portable tape players, and perhaps even family heirlooms of nominal monetary value	**Sec. 317:** Instructs Federal Trade Commission to promulgate regulations defining household goods for federal exemption purposes.

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Prebankruptcy counseling eligibility prerequisite	**Sec. 105:** An individual cannot file for bankruptcy without receiving credit counseling within 90 days beforehand. Debtor may seek waiver from court for exigent circumstances, but only if she unsuccessfully requested counseling for 5 day period, which will not help those facing foreclosure, repossession and utility shut-offs. Waiver expires 30 days after bankruptcy filing. Some debtors will have to pay additional fee for counseling services to gain bankruptcy system access. Debtors in remote geographical locations are not exempt from this requirement, although U.S. trustee may determine whether adequate services are available. **Sec. 103:** Debtors must obtain notice describing bankruptcy and nonbankruptcy counseling options and submit certificate verifying receipt of notice	**Sec. 321:** SAME **Sec. 301:** SAME
Incentives for prebankruptcy workouts	**Sec. 201:** Court may reduce unsecured consumer debt claim by up to 20% if debtor proves by clear and convincing evidence that creditor refused to negotiate reasonable alternative repayment schedule offered by debtor prepetition. Protects credit counseling repayment plan payments from avoidance as preferential payment. Provision should be made available to trustees too, if it is retained, because debtors will not have incentives to use it.	**Sec. 202:** Prevents creditor from requesting determination of dischargeability if debtor proves that he made good faith effort to negotiate reasonable alternative repayment schedule and creditor unreasonably refused to negotiate. **Sec. 205:** Creditor cannot object to discharge if debtor proves she made good faith effort to offer or negotiate reasonable repayment schedule unreasonably refused by creditor.
Systematic audits of consumer cases	**Sec. 601:** Randomly select at least 1 in 250 cases for audit. Cases also will be audited if schedules showed income and expenses reflecting greater than average variances from district norm on account of higher income or expenses (which could produce a significant number of additional audits). Material misstatements lead to revocation or denial of discharge or criminal referrals.	**Sec 307:** SAME, but calls for 1 in 500 cases to be audited (a more realistic ratio, considering that significant number of cases varying from district norm will be audited as well).

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Debtor education	**Sec. 104:** 3-district pilot program for debtor education. **Sec. 105:** Conditions bankruptcy discharge for individual debtor on the completion of financial management course. Waiver possible in chapter 13 if no educational courses are available, but waiver not provided for chapter 7 debtors. **Sec. 225:** Expresses sense of Congress that financial management should be taught in elementary and secondary school.	**Sec. 321:** Conditions bankruptcy discharge for individual debtor on completion of financial management course.
Repeat filings	**Sec. 302, 303:** On debtor's 2nd filing within 1 year, automatic stay terminates after 30 days unless filing is in good faith. Presumes filing is not in good faith if prior case was dismissed due to failure to file documents or other administrative problems, and requires that debtor rebut presumption by clear and convincing evidence. Delineated presumptions do not indicate lack of good faith and should be deleted. Automatic stay presumptively does not apply at all for 3d filing within 1 year. Authorizes *in rem* orders if bankruptcy filing was part of scheme to hinder, delay, and defraud creditors. Contains exception to automatic stay allowing creditors to act if debtor is ineligible for bankruptcy before court determines ineligibility, which may lead to wrongful repossessions and foreclosures. **Sec. 312:** Prevent chapter 7 debtor from receiving discharge if he received discharge in prior chapter 7 or chapter 11 case commenced within 8 years (current law is 6) before filing of instant case. Restricts discharge of chapter 13 debtor if debtor received discharge within 5 years before instant case.	**Sec. 303:** SAME (with some differences in wording of presumptions; no reference to 3d filing) **Sec. 731:** SAME

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Consumer credit-studies of consumer lender practices	NONE	**Sec 213:** Directs Federal Reserve to study industry practices of soliciting and extending consumer credit indiscriminately and effects on aggregate consumer debt level and insolvency. **Sec 214:** Directs Federal Reserve to study adequacy of disclosures regarding security interests in connection with credit cards and retail charge cards, whether consumers understand implications, and whether security interests are used to coerce borrowers to sign reaffirmation agreements.
Consumer credit-liability for unauthorized use of dual use debit cards.	NONE	**Sec 208:** Amends the Electronic Fund Transfer Act to delineate the circumstances in which consumers are liable for unauthorized fund transfers.
Restrictions on debtors' lawyers and petition preparers	**Secs. 102, 319:** Codifies Fed. R. Bank. P. 9011 (Rule 11 sanctions) for mandatory application (no court discretion) to debtors' attorneys, subjecting them to civil penalties, payable to the panel trustee or the U.S. trustee. Expresses sense of Congress that Rule 9011 of Federal Rules of Bankruptcy Procedure should be codified to apply to debtors' lawyers with respect to debtors' submissions. **Secs. 223, 224:** Delineates requirements for attorney, petition preparer, or any entity considered debt relief agency. Provisions blur distinction between attorneys and petition preparers, exacerbating problems with unauthorized practice of law.	**Sec. 102**: SAME as S. 625 sec. 102. NONE
Filing fee waiver for indigent debtors (in forma pauperis)	NONE	**Sec. 407:** Authorizes court to waive bankruptcy filing fee for individual debtors unable to pay that fee in installments. A Federal Judicial Center study of pilot fee waiver program found it worked well.

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Informational requirements	**Secs. 315, 316:** Imposes informational requirement such as 3 years' worth of tax returns, pay stubs, and statements calculating current income expenses and anticipated income increases, and annual budgets for chapter 13 debtors. Creditors are entitled to access to submissions. Administrative Office of United States Courts must establish procedures safeguarding confidentiality of tax information. Debtor may be required to establish identity using photograph identification. Chapter 7 cases are automatically dismissed if debtors do not submit all required information within statutory deadline, even if delay is attributable to IRS.	**Sec. 301, 312:** SAME
Chapter 13 - timing	**Sec. 317:** Chapter 13 plans must be submitted within 90 days after filing for bankruptcy. Confirmation hearing must be held no later than 45 days after section 341 meeting (e.g., before plan is even filed). Some court discretion for extensions. **Sec. 318:** Repayment plans are 5 years for chapter 13 debtors whose cases are converted from chapter 7.	**Secs. 304, 313:** Plan must be submitted within 90 days after filing for bankruptcy and confirmation hearing held no later than 45 days thereafter. Confirmation hearing held no earlier than 20 days after section 341 meeting if creditor objects to confirmation. NONE
Chapter 13 - codebtor stay	NONE	**Sec. 305:** Limits stay protecting codebtor (*e.g.*, not in bankruptcy case but jointly liable for debt) if debtor did not receive consideration for creditor's claim.
Chapter 13 disposable income and payments for dependents	**Sec. 217:** Child support payments, foster care payments, and disability payments for dependent child are excluded from "disposable income" available for payment of unsecured creditors in chapter 13 payment plans.	**Sec. 335:** SAME
Creditors at section 341 meetings	**Sec. 415:** Permits nonlawyer creditor representatives to appear and participate in section 341 meetings, overriding laws of some states governing unauthorized practice of law.	**Sec. 308:** SAME

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Creditor notice requirements and consequences of technically incorrect notice	**Sec. 315:** Creditor may file with court and serve on debtor desired address for notice, which shall be used 5 days thereafter. Any entity may submit address for notice in cases under chapters 7 and 13, which shall be used in cases as of 30 days thereafter. Failure to send notice in accordance with these procedures may invalidate legal effect of notice, even if person who acted in violation of automatic stay received actual notice. This provision is improved over earlier versions, but needs revision to address technical problems in clerks' offices. Filing registry cannot be updated every 5 days. Quarterly or bi-annual updates would be far more feasible, as provided for government units in section 702 of the bill.	**Sec. 309:** Requires that notice to creditor include account numbers and specific addresses or agents listed on "last communication" before bankruptcy from creditor to debtor. Creates court filing registry for designated addresses. Failure to direct notice to appropriate person may invalidate legal effect of notice, notwithstanding actual notice.
Automatic stay relief	**Sec. 320:** If a court does not rule within 60 days on motion for automatic stay relief, stay terminates automatically unless parties agree to extension or court orders extension for good cause.	**Sec. 311:** SAME
General tax provisions	**Title VII:** Imposes new requirements on debtors for benefit of taxing authorities and increases entitlements of taxing authorities in consumer cases, as well as business cases.	NONE
Domestic support obligations	**Secs. 211-219:** Definition encompasses prepetition and postpetition support obligations, includes obligations to the government as well as obligations to exspouses and children. Alters list of priority debts in 11 U.S.C. § 507(a), putting support obligations first. Conditions plan confirmation and discharge on payment of domestic support obligations. Exceptions to automatic stay to permit continued garnishment in chapter 13 and enforcement against delinquent exspouses. Makes all <u>nonsupport</u> property settlements nondischargeable. Permits ex-spouses and government to collect domestic support obligations from any exempt property after bankruptcy, overriding state law.	**Secs. 323-329:** SAME, except excludes trustees' obligations to assist support recipient in determining enforcement options.

Issue	S. 625 (Grassley 106th)	S. 1301 (Grassley 105th)
Treatment of retirement funds - exemptions, loans	NONE	**Sec. 330:** Provides uniform retirement fund exemption. Permits continued wage deduction for retirement fund loan payment. Excepts from discharge loans from retirement plans. Prohibits chapter 13 plan from "materially altering" terms of retirement plan loan.
Funds earmarked for postsecondary education	NONE	**Sec. 336:** Excludes from "property of the estate" money placed into qualified tuition funds and education IRAs at least 180 days before bankruptcy.
Nondischargeability and priority of drunk driving and drunk boating debts	**Sec. 226:** Clarifies that exception to discharge for debts arising from drunk driving covers drunk boating. Gives priority status to drunk driving and drunk boating claims. **Sec. 1212:** Expands exception to discharge for drunken use of watercraft or aircraft (overlaps with sec. 226).	**Sec. 331:** SAME **Sec. 714:** SAME
Nondischargeability of condo fees	**Sec. 414:** Expands current exception to discharge for condominium fees and assessments to apply regardless of whether debtor or debtor's tenant occupies unit.	**Sec. 406:** SAME, but also states that condominium fees or assessment agreements are not executory contracts for purposes of section 365 of Bankruptcy Code.

AMERICAN BANKRUPTCY INSTITUTE

44 Canal Center Plaza, Suite 404 • Alexandria, VA 22314 • (703) 739-0800 • fax (703) 739-1060

March 23, 1999

Via Facsimile 202-456-2878
Mr. Gene Sperling
Director, National Economic Council
Executive Office of the President
Washington, D.C. 20005

RE: American Bankruptcy Institute Annual Spring Meeting
Friday, April 16, 1999, J.W. Marriott Hotel, Washington

Dear Mr. Sperling:

This is to invite you to address the opening plenary session of the American Bankruptcy Institute's Annual Spring Meeting, on April 16, 1999 at 8:30 a.m. The meeting is at the J.W. Marriott Hotel in Washington.

As you may recall from your talk to this group several years ago, the ABI is the nation's largest organization of bankruptcy professionals, with over 6,500 members. ABI is non-profit and non-partisan. Although ABI does not take an advocacy position on the pending bankruptcy reform, our 500 members in attendance would be most interested in hearing the Administration's views on the legislation.

The opening session, from 8:30 to 10 a.m., is devoted to the prospects for reform this year. We would like you to deliver 10-15 minute remarks to begin the session. A separate panel discussion with Hill staff and others will follow your remarks.

Please let our office know as soon as possible if you can join us. We look forward to seeing you next month.

Sincerely,

Samuel J. Gerdano
Executive Director

cc: Ms. Sarah Rosen
Ms. Nicole Rabner

Nicole R. Rabner

03/25/99 05:52:41 PM

Record Type: Record

To: Joel K. Wiginton/WHO/EOP

cc: Sarah Rosen/OPD/EOP, Broderick Johnson/WHO/EOP
Subject: Nadler on Bankruptcy

Congressman Nadler just called me. He wanted to thank the First Lady for any role she had in getting the letter from Lew to him and Conyers. Nadler said it was exactly what they need to work early to ensure that any possible Presidential veto is sustained by the House. Nadler reported that he spoke with Gephardt about bankruptcy today, gave him a copy of the Lew letter, and pressed him to speak out on this and say that any bill the caucus could embrace must be balanced. While admitting that Gephardt was non-committal, Nadler appears quite optimistic that he and his colleagues could generate support to sustain a veto.

Nadler also noted a few things about the subcommittee markup: (1) they added a $250,000 cap on the Homestead Exemption, which, Nadler predicts, will be taken out in full committee, putting the Republicans on record protecting the wealthy; and (2) they modified the definition of child support to include $ owed to the state from dead beat parents -- this could mean, Nadler said, that debtors could be unable to confirm a Chapter 13 plan (because they don't have sufficient $ owed for back support payments to the state) and that, post-bankruptcy, single parents are pitted against the state in terms of collection.

Finally, Nadler noted Sen. Gramm's comments today that "over my dead body" will any consumer protection items be added to the bankruptcy bill as setting a course for a showdown with a bill that has no balance in terms of asking responsibility of creditors.

MEMORANDUM

TO: GENE SPERLING
LARRY STEIN

FROM: SARAH ROSEN
JOEL WIGINTON
BRODERICK JOHNSON
NICOLE RABNER

DATE: MARCH 26, 1999

RE: BANKRUPTCY REFORM STRATEGY

The Status of the Bankruptcy Reform Bills

As you know, late last month Rep. Gekas, along with a number of Democratic cosponsors, introduced a bankruptcy reform bill, H.R. 833, which is for all practical purposes last year's Conference Report. In addition, Sens. Grassley and Torricelli dropped the Senate bankruptcy reform bill, S. 625, earlier this month. The Grassley-Torricelli bill used the Conference Report as a starting point, but was brought somewhat back toward the center by Sen. Torricelli as a precondition of his cosponsorship.

The House Subcommittee marked up the Gekas bill this week. Most amendments were reserved for the Full Committee. The Subcommittee approved the bill on a party-line vote.[1] The Full Senate and House Judiciary Committees will likely markup their respective bills the first week after the spring recess (the Senate on April 15th). Both bodies are likely to take up the bills on the floor soon thereafter.

On March 23, 1999, Jack Lew sent a letter to Reps. Conyers and Nadler noting that the President's Senior Advisors had recommended a veto of the Conference Report last year and that "our position . . . has not changed."

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[1] Two amendments passed in the Subcommittee markup: (1) a $250,000 cap on the homestead exemption (Rep. Nadler predicts this will be taken out in Full Committee); and (2) the definition of "child support" was modified to include money owed to the state from dead-beat parents (Rep. Nadler noted that this amendment will mean that debtors may be unable to confirm a Chapter 13 plan (because they will not have a sufficient amount of money to pay back support payments to the state) and that, post-bankruptcy, single parents will be pitted against the state for purposes of collection).

Our Substantive Concerns

As more fully detailed in the Lew letter, our concerns are the same as last year:[2]

- **Access to Chapter 7:** The "means test" imposed by both the Grassley and Gekas bills may deny access to Chapter 7 to debtors who genuinely do not have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. The means test does not provide the court with the necessary discretion to afford the debtor a meaningful opportunity to have her or his specific circumstances considered. In addition, both bills employ thresholds for being forced into Chapter 13 (*i.e.*, the time period for repayment, the percentage of debt the debtor can repay, and the raw amount the debtor can repay) which are too low to ensure that those debtors who are denied access to Chapter 7 have a strong likelihood of success in Chapter 13.

- **Nondischargeable Debts:** Both bills make some 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. There is no evidence that the current protections against fraud and debt run-up prior to bankruptcy are ineffective and that the additional debts made nondischargeable by these bills meet the standard of an overriding public purpose.

- **Coercive Creditor Practices:** Although both bills provide new opportunities for creditors to challenge debtors' use of the bankruptcy system under the 707(b) abuse test, they do not adequately limit prevalent abusive creditor practices such as coercive reaffirmations and violations of the automatic stay.

- **Consumer Information and Protection:** The House bill has insufficient, and the Senate bill has no, consumer credit protections. Unlike last year's Senate bill, neither of the current bills require credit card companies to supply consumers more and better information so that they can understand and better manage their debts.

- **Homestead Exemptions:** While both bills create a system that will deny certain moderate-income Americans access to the traditional bankruptcy "fresh start," neither bill adequately closes the homestead exemption loophole that can allow the wealthy to shield hundreds of thousands of dollars of wealth from their creditors.

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[2] Due to Sen. Torricelli's efforts, the Grassley bill is somewhat better in the areas of the "means-test," reaffirmations, and nondischargeable debt.

The Current Political Situation

We have been contacted by a number of House and Senate Democrats who are looking to the White House for political guidance and leadership on this issue. Many Democrats want to support bankruptcy legislation and unless they have a clear alternative, Senate Democrats will likely support the Grassley bill and House Democrats will likely support a bill that closely resembles last year's Conference Report. If so, the President may be presented with a bill he does not want to sign, and possibly a veto override. We, therefore, wanted to seek your views on a long-term political strategy.

As you will recall, last year the House passed the Conference Report by a 300 to 125 margin, despite the Lew veto threat letter.[3] The Senate, which passed its bill by 97-1, never voted on the Conference Report. This year's Gekas bill (last year's Conference Report) currently has 93 cosponsors, including over 30 Democrats (*e.g.*, Reps. Boucher, Kennedy, Holden, Menendez, Roemer, Maloney, and Velazquez). In addition, although he is not currently a cosponsor, Rep. Gephardt also supports the Gekas bill.

In the Senate, the Grassley bill is cosponsored by Sens. Torricelli, Biden, Johnson, and Sessions.[4] Although the Senate generally appears more moderate on this issue, we have heard from well positioned Democratic staff that they believe there may also be enough votes in the Senate to override a Presidential veto.[5] In addition, Sen. Daschle, who wants a bankruptcy reform bill, will likely support the Grassley bill in the end if enough Democrats move in that direction. Moreover, Sen. Leahy will likely vote for the Grassley bill in Committee as a "demonstration of support for the Ranking Member." Finally, the Senate Republicans do not believe that the Administration will weigh in on this issue this year. In particular, Sen. Grassley believes that his bill is just far enough to the center of the Conference Report to not garner a veto threat.

In addition, Sen. Gramm recently noted publicly in a Banking Committee hearing his opposition to any bankruptcy bill which contains the credit consumer protections that we view as very important. Privately, Sen. Gramm has reportedly said that a bill with these consumer protections "will pass over [his] dead body."

We have largely focused our efforts in the Senate. Reps. Conyers and Nadler,

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3 Note, however, that the Lew veto threat letter on the Conference Report was dated the same day as the House vote. It is possible, therefore, that the Lew letter did not have a much impact as desired.

4 Sen. Torricelli's staff reports that five or six other Democrats have contacted them about cosponsoring the Grassley bill.

5 Note, however, that last year's Senate vote does not supply us with reliable information on how Members will vote this year, because it is clear that many if not most Democrats would have voted for a bill that was further to the right.

however, believe that, armed with the new Lew letter, they can persuade many House Democrats (including Rep. Gephardt) to oppose a bill that fails the test of balance and fairness. Indeed, Rep. Nadler recently called the First Lady's staff to thank the First Lady for any role she had in getting the letter from Lew to him and Rep. Conyers. Rep. Nadler said it was exactly what they need to ensure that a possible Presidential veto is sustained by the House.

Our original plan was to keep Sen. Torricelli, the Ranking Member, off the Grassley bill to demonstrate to other Democrats that the bill was not ready for the caucus' support. We felt that bankruptcy is such a complicated and esoteric area, that many Members would follow the lead of the Ranking Member. This proved true last year with Sen. Durbin.

Although he signed on to the Grassley bill, Sen. Torricelli wrote a letter to Sen. Grassley outlining six areas where he felt the bill needed to be improved before it leaves the Senate.[6] Although we would like to see some other changes as well, we largely agree with the six areas for improvement that Torricelli outlined. The issue is whether it is realistic to believe that these improvements can be achieved, and if so, how best to go about doing so. Sen. Torricelli's staff feels that they can make these improvements by offering amendments in Committee and on the floor. We believe, however, that in the current political climate, this is unlikely. If the Republicans believe that they can obtain a veto-proof majority, they have little reason to further acquiesce to Sen. Torricelli and the remainder of the Democrats. Indeed, in making his deal with Sen. Grassley, Sen. Torricelli himself agreed to *not* support some of the likely Democratic amendments. Moreover, much of the Republican's willingness to deal on this issue last year was the result of the waning Congress; no such time pressure exists this year.

It is true that Sen. Grassley is more reasonable on bankruptcy than many Republicans, but we do not believe that he will be able to hold off Sen. Hatch and others who would strongly like a bankruptcy bill that mimics the Conference Report. In fact, we believe that unless we give the Democrats more traction on this issue, the bill that is passed out of the Senate will move back toward the Conference Report. In addition, there is no assurance that the Republicans will not do as they did last year and come back from Conference with a bill that is much more conservative than the bill passed out of the Senate.

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[6] The First Lady called Sen. Torricelli to bolster him on this issue, but they did not speak until just after Sen. Torricelli had agreed to cosponsor the Grassley bill. Sen. Torricelli assured the First Lady that he intended to insist on the demands outlined in his public letter to Sen. Grassley, in order for him to remain a cosponsor to the bill. Sen. Torricelli does not note in his letter to Sen. Grassley, however, that he would not support the Grassley bill in its current form. Indeed, his LD has noted that Sen. Torricelli could personally support a bill that was more conservative than the current Senate bill. The question remains whether he will hold the line and work for a bill that the Administration and the majority of the Democratic caucus can support.

Recommended Strategy

Unfortunately, it does not appear as if Sen. Torricelli is going to hold a more moderate line as did Sen. Durbin last year. We believe, therefore, that it would be unwise to allow him to lead the effort as did Sen. Durbin. Thus, we need to: (1) identify a leader in the Senate; (2) influence the process by offering substantive alternatives on the most controversial issues; (3) change the rhetoric of the debate; and (4) encourage key Democrats to work for a bill that the Administration can support.

First, we believe that Sen. Durbin should drop a more moderate bill. There are two options: the Senate bill from last year or a reportedly "moderate bill" prepared by the National Bankruptcy Conference (the "NBC"). [7] If Sen. Durbin drops the Senate bill from last year, he can point to the fact that this is a bill that garnered the bipartisan support of all but one Senator. If he drops the NBC bill, he can note that it was prepared by a nonpartisan group of bankruptcy experts. In either case, although an alternative bill is not likely to move independently, it will give Democrats a viable option to support, rather than just opposing the Grassley bill. In addition, it would reinstate Sen. Durbin as a key player in the debate.[8]

We do not believe that an alternative Durbin bill will be effective, however, unless it has a number of cosponsors. Possible cosponsors include Sens. Kennedy, Kohl, Feingold, Schumer, Sarbanes, Dodd, and Boxer. Sen. Durbin's staff has asked for our assistance in recruiting these Senators' support for their bill.[9]

Second, the Administration needs to influence the debate by offering substantive alternatives on two of the most controversial issues: means testing and reaffirmations.

On means testing, the central debate is over how much discretion to leave to judges. We are working on designing a process to make the presumptive guidelines we proposed last year more "self-executing" and to make it more difficult for a judge to diverge from the guidelines without a good reason, while still leaving in place adequate discretion. If we can work out these details, we may be able to enlist Democratic support for this alternative.

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[7] We have not yet seen the "NBC bill," so we are currently not in a position to recommend this particular bill to Sen. Durbin. We will review both last year's Senate bill and the NBC bill to determine which would be preferable -- both substantively and politically -- for Sen. Durbin to introduce.

[8] It should be noted that although Sen. Durbin has approached us to gain our advice on the matter, he and others are likely to drop an alternative bill whether the Administration supports them or not.

[9] Supporting Sen. Durbin (either directly or implicitly), however, undercuts Sen. Torricelli. Normally we would be greatly concerned about this, but, as noted above, it appears as if Sen. Torricelli may be leading us down a path which will result in a bill that the President would not want to sign. Moreover, he undercut the Administration and the more moderate and liberal Democrats by signing on to the Grassley bill so early in the process.

On reaffirmations, it will be much harder. The debate is between the current system (in which existing disclosures appear to do little to prevent debtors from being coerced into reaffirming debts even though it is economically irrational to do so) and our proposal which would require judicial review of every reaffirmation. Treasury and the U.S. Trustees are working to create alternatives that we could offer.

Third, we need to devise a rhetorical strategy (including message amendments) that draws the focus of the debate away from "dead-beat" debtors. Last year, the women and children message was quite effective. We must, however, expand our message so the Republicans cannot merely amend a couple sections and declare the bill fixed.

We believe that the President's consumer protection initiative is a good rhetorical message to build upon in order to change the political dynamic. We can use this initiative as a basis for arguing for more balance in the bill and for more creditor responsibility. The Democrats can easily support such a message. Moreover, insisting on some consumer protection measures as a *quid pro quo* may be something that can rally Democratic support when the President elevates the issue.[10]

Finally, we believe it would be beneficial for a Senior White House Advisor to call Sens. Torricelli, Daschle, and others to ensure that they will work for a bill that the Administration and the a majority to the Democratic caucus can support. In addition, it would be helpful for Administration staff to meet with Republican staff to outline our concerns and to put them on notice that we are going to be an active participant in the debate and that the current bills are unacceptable.

In the House, we should assist Reps. Nadler and Conyers in their attempt to strengthen Democratic resolve against the Gekas bill or to improve upon whatever bill emerges from the House. Rep. Nadler, in particular, clearly would like to assert greater influence in this year's debate than he did during the last Congress. In that vein, he has been working on a reasonable alternative around which to rally Democrats.[11] Minority Leader Gephardt has been signaling a desire to work with Reps. Nadler and Conyers.

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[10] In addition, we can work on a message which portrays the reaffirmation issue as a consumer abuse issue.

[11] This is reportedly the same NBC bill referred to above.