# Senate Fails To Invoke Cloture On Bankruptcy Bill

JUDICIARY

THE SENATE FAILED Tuesday night to invoke cloture on a motion to proceed to consideration of bankruptcy reform legislation.

On a strictly party line vote of 53-45 — with one senator voting present — the Senate declined to take up a measure most observers agreed would pass easily if it were brought to a vote.

The bill, which would make it harder for people declaring bankruptcy to get out of paying certain debts, was filibustered by Democrats — who claimed they were shut out of the amendment process.

**Sen. Russell Feingold**, D-Wis., accused **Senate Majority Leader Lott** of sealing its fate by filing for cloture on the bill just "a few seconds" after bringing it to the floor.

But Republican sponsors accused Democrats of trying to turn the bill into a "Christmas tree" of non-germane amendments — involving such issues as the minimum wage and family farm relief.

Senate Democrats, who had been planning to offer a minimum wage hike amendment to the bankruptcy bill, denied themselves a vote on that issue by voting against cloture for the overall bill.

But **Senate Health, Education, Labor and Pensions ranking member Edward Kennedy**, D-Mass., said afterward that he will attempt to attach his minimum wage amendment to all other pieces of legislation brought up on the Senate floor.

"I intend to take advantage of every opportunity to bring the minimum wage to a vote this year," Kennedy told reporters. Kennedy's amendment would raise the minimum wage by $1 over two years.

A Lott spokesman said Tuesday that when there is a minimum wage debate, Republicans will offer "an alternative vision of how to help low-income workers."

He declined to be specific, but aides have talked about adding tax breaks and compensatory time legislation to a minimum wage bill.

Meanwhile, the House GOP leadership now appears to be leaning toward bringing up a bill increasing the minimum wage by $1 over four years, aides said. The longer time frame would make the increase more palatable to businesses.

As part of such an increase, Republicans likely would add — through a House floor rule — legislation changing the Fair Labor Standards Act to implement ideas such as comp time, a move opposed by Democrats.

The bankruptcy reform measure has several Democratic cosponsors. Noting the Senate's overwhelming support last year for similar bankruptcy legislation, the bill's chief sponsor, **Senate Judiciary Administrative Oversight and the Courts Subcommittee Chairman Charles Grassley**, R-Iowa, expressed his frustration.

"What has happened?" he asked.

Grassley tried to couch the cloture vote as a litmus test of members' dedication to the family farmer, pointing out the bill makes permanent Chapter 12 bankruptcy protection for farmers — otherwise set to expire this year.

"It would be an extreme act of irresponsibility to let Chapter 12 die ... [because] the bill is continually blocked by unrelated amendments," Grassley said.

Neither Lott nor **Senate Minority Leader Daschle** spoke on the floor before the vote, although they could be seen consulting with one another. Lott's spokesman told reporters before the vote, however, that attempts to resurrect the bankruptcy bill could come as early as next week — or next year.

Long-time observers of the bankruptcy debate said Tuesday that they believe Lott will not schedule any more time for the bill this year.

*— BY PAMELA BARNETT, MATTHEW MORRISSEY AND GEOFF EARLE*

## J.C. WATTS, AUTHOR

■ HOUSE REPUBLICAN CONFERENCE **Chairman J.C. Watts** of Oklahoma is set to publish his autobiography next year — a book that will tell the story of Watts' journey from his childhood in Eufaula, Okla., to the fourth highest post in the House, the *Tulsa World* reported Tuesday.

A spokeswoman for New York-based publisher HarperCollins said the release date of the book, *The Roots Run Deep*, has been pushed back to sometime next year. Watts and coauthor Byron Laursen are still writing the book, a Watts spokesman said.

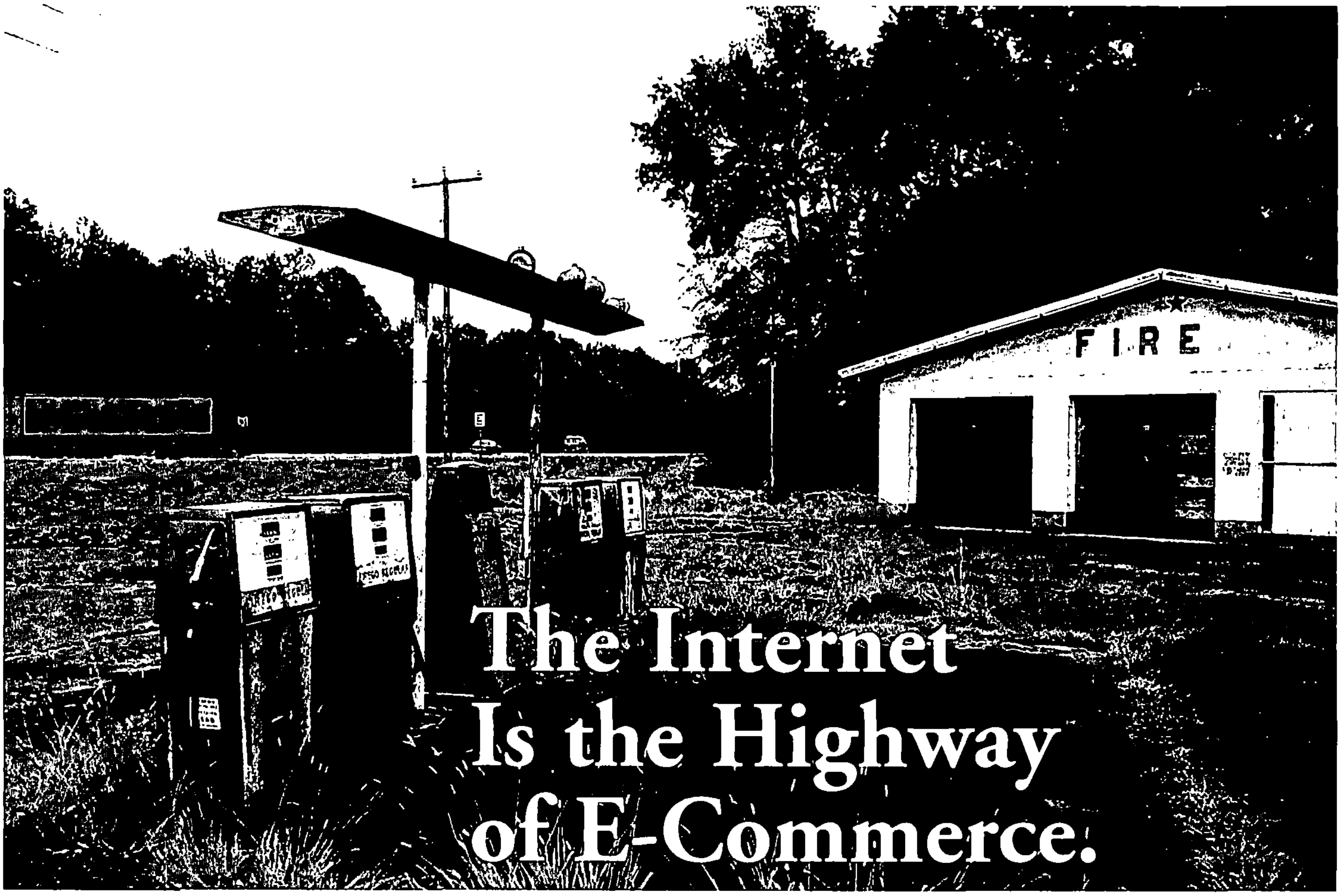
The book will cover Watts' days as a football star at the University of Oklahoma and his time in the Canadian Football League.

Watts said he was approached with "multiple book offers" in early 1997 after delivering the GOP response to President Clinton's State of the Union address.

House rules required that Watts obtain approval from the House Ethics Committee — which prohibited Watts from receiving an advance but allowed him to receive unlimited royalties, which must be reported as "unearned income."

Watts, the only black Republican in Congress, was an early supporter of Texas Gov. George W. Bush's GOP presidential bid and is considered a potential vice presidential running mate.

Ironically, it was HarperCollins' 1994 deal with former **House Speaker Gingrich** that prompted the House to write new rules on book advances and royalties.

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Yet some people in Washington still want to prevent America's local telephone companies from building the "on-ramps" to the information super highway.

The Telecommunications Act of 1996 was intended to apply to telephone and cable networks. But now those rules are mistakenly being applied to the Internet.

Several bills are moving through Congress to fix this problem. Legislation authored by Congressmen Billy Tauzin and John Dingell, Bob Goodlatte and Rick Boucher, and Senator John McCain would permit local telephone companies to build these networks and accelerate deployment of high-speed connections to the Internet.

The legislation does <u>not</u> change the restrictions on phone companies entering the voice long distance business, but it does let *everybody* build on-ramps to the Internet.

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# CongressDailyAM

MONDAY **TUESDAY** WEDNESDAY THURSDAY FRIDAY
**SEPT. 21, 1999**

## Clock Runs Down On Approps; Bankruptcy Vote Today

OUTLOOK

APPROPRIATORS HAVE A FULL PLATE this week if they are to use the next 10 days before the current fiscal year ends to wrap up work on all 13 FY2000 spending bills, as they have pledged to do. To date, four conference reports have been completed: Military Construction, Legislative Branch, District of Columbia and Treasury-Postal. But only Military Construction has been signed into law. GOP leaders have urged appropriators to finish more conference reports this week, with the most likely candidates being Agriculture, Defense and Foreign Operations, followed by Energy and Water and Transportation.

The House has passed all but the Labor-HHS bill — which at presstime still had not been scheduled for markup — while the Senate must vote on the Interior and VA-HUD bills as well as mark up and pass a Labor-HHS bill. The Senate is expected to finish the Interior and VA-HUD bills this week, but no action has been scheduled on Labor-HHS.

Also this week, a cloture petition on bankruptcy reform legislation filed by **Senate Majority Leader Lott** last Thursday matured over the weekend, and a vote on cloture is slated for today. Lott and Democratic leaders have been working on a unanimous consent agreement, in order to limit Democratic amendments and make deals on certain non-germane proposals that the mi-

continued on page 10

## Soc. Sec. Replaces Caps In Debate

BUDGET

SINCE CONCEDING last week that the FY2000 spending cap has effectively been busted, Republican leaders say they are now focused on preventing a "raid" on the Social Security surplus.

But while preserving this surplus — payroll tax revenues and interest collected in excess of what is needed to pay beneficiaries — may be sound long-term fiscal policy, several sources said in the short term, how the Social Security surplus is used will have no immediate effect on beneficiaries.

Regardless of what happens to the Social Security surplus in FY2000, beneficiaries will get their monthly checks — money to which they are entitled and the government must pay unless Congress amends the Social Security statute.

Since last running a non-Social Security surplus in 1969, the government has issued IOUs in the form of Treasury notes to the Social Security trust fund and used its surplus to cover other governmental expenses — and every year since 1969, beneficiaries have gotten their checks.

The Center on Budget and Policy Priorities late last week stated that "the Social Security trust funds receive the same amount of Treasury bonds — and thus have the same amount of assets — regardless of whether the Treasury uses the surplus funds to help fund other government programs or to pay down the debt."

**House Ways and Means Chairman Archer** last week objected to any continued use of excess Social Security funds. Archer told *CongressDaily* that spending the FY2000 Social Security surplus "means that money won't be there to save Social Security."

A spokesman for **Speaker Hastert** added that preserving the Social Security surplus "puts the country on stronger financial footing, [by] putting Social Security on stronger financial footing."

But one House GOP aide said that while pre-

continued on page 8

### TODAY'S HIGHLIGHTS

**This Week's Floor Schedule**

**Senate**

The Senate convenes today at 2:15 p.m. Votes to invoke cloture on bankruptcy reform legislation and the nomination of Ted Stewart will begin at 5:30 p.m. Action on appropriations also is possible this week.

**House**

The House convenes today at 12:30 p.m. to consider 11 bills under suspension of the rules and milk marketing legislation. For the balance of the week, the House calendar includes the National Monument NEPA Compliance Act, the Interstate Class Action Jurisdiction Act, and the Health Research and Quality Act.

*(Committee schedules begin on page 13.)*

**Inside Stories**

**Charlie Cook's *Off To The Races***

Sarah Rosen Wartell
09/21/99 10:38:29 AM

Record Type: Record

To: Melissa G. Green/OPD/EOP@EOP

cc: See the distribution list at the bottom of this message
Subject: Background on Hatch Bankruptcy Proposals

I haven't seen them yet (nor had the bill manager -- Senator Grassley), but based on conversations with Grassley's staff, it sounds like the amendments referred to in today's Washington Times story include the following:

(1) **Domestic Support**: The bill as introduced in the Senate included provisions written by State's Attorneys to enhance their ability to collect reimbursement from debtors of public welfare payments that the states paid to women and children owed child support and alimony. When states pay welfare to women who would not have needed it if they had been paid the support they were owed, the state can collect the back-due support from the "deadbeat" parent. Women's and children's groups complained that these provisions actually would put the states collecting back-due child support and alimony ahead of the women trying to collect current due payments for their families. At subcommittee mark-up, Senator Torrecelli offerred and amendment written by the women's groups to put women and children first. It was accepted and is in the committee report. However, the State's Attorneys had technical problems with the fix. The new Hatch amendment reflects a deal negotiated between the State's Attorneys and the Women's groups, under the auspices of Senators Hatch and Torrecelli. It has bipartisan support, but it can't be fairly described as helping address our concers -- in fact it goes the other way. But, it probably strikes the right balance.

(2) **Education Savings:** This amendment will exclude certain education savings accounts from the bankruptcy estate. Senators Dodd and Biden have also been interested in similar amendments. The Administration has not spoke directly to the issue, but DoJ did say that we oppose open-ended exclusions for pensions, which create an opportunity for the wealthy to move significant assets into IRAs and other voluntary pension accounts and shield the assets from creditors. We supported look-back provisions (can't move assets on the eve of bankruptcy) and high caps in the pensions area. We would support similar limitations on the educational savings accounts. Senator Grassley is strongly opposed to the open-ended exclusion and plans to talk to Senator Hatch about limiting its scope. But clearly it will be hard to oppose protecting educational resources on the Senate floor.

(3) **Debt Counseling:** This addresses an issue that has never been raised before. Apparently, if a consumer consults a credit counselor voluntarily, an adverse notation goes on their credit report. This amendment would prevent counselors from reporting who uses credit counseling services. This seems pro-consumer. Hatch is concerned that Senator Gramm will oppose it on jurisdictional grounds.

(4) **Fraud:** This amendment will establish procedures for bankruptcy judges to refer suspected fraud to federal prosecutors and require DoJ and the FBI to assign agents to investigate bankruptcy fraud. The Senate bill already includes a provision that does the same thing for suspected abuse of reaffirmations or violations of the discharge injunction. DoJ mildly opposed Congress' efforts to direct their use of resources, but not the intent.

(5) **Crime Victims:** It is least clear what this will do. Apparently, victims of crime could ask a bankruptcy

court not to dismiss the bankruptcy case of a debtor convicted of violent crime or drug offense. It appears to be solely punitive. If you were trying to protect them from discharging damage awards to the victim, it would be structured differently to make the debt nondischargeable. This appears to be just another effort to show support for victims' rights.

**Summary:** ***There is nothing much new or really significant here. Nothing completely outrageous or particularly helpful.*** If the Domestic Support language worked out with the women and children's groups survives the conference (because it now has the support of the States' Attorneys), it will be yet a further improvement in the child support and alimony collection issue to which we could point. The debt counseling amendment appears to be pro-consumer but does nothing to address our other concerns that the counseling requirements in the bill will deter some from filing bankruptcy altogether. We might want to encourage placing some caps on educational savings accounts exclusions by talking with staff.

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## GUIDANCE ON BANKRUPTCY
**September 13, 1999**

### Talking Points

- 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 cooperation will produce more balanced legislation this year.

- This year, the House again produced a flawed and unbalanced bill. During Committee mark-up and on the floor, Chairman Hyde offered a series of amendments that would have added balance and fairness to the means test. These amendments would have gone some way to addressing the Administration's concerns with this important element. Unfortunately, these amendments were rejected.

- In the Senate, Senators Grassley and Torrecelli have made a few important improvements over the House bill. They have taken a constructive step, but more needs to be done. When the bill is considered on the Senate floor, we hope they will adopt important amendments including provisions to:
  - provide meaningful credit card disclosures for consumers,
  - protect debtors from coercive creditor behavior,
  - fully protect alimony and child support,
  - reduce cost, paperwork burdens, and inefficiency in the bankruptcy process,
  - protect from creditor reach funds to pay essential costs to retrain displaced workers, support elderly parents, adopt a child, or protect a family from domestic abuse, and
  - limit loopholes used by the wealthy to shield assets from their creditors.

- We believe that the path to bankruptcy reform is balance. We look forward to working with Congress to get a bill done.

### Background

#### *Problems with the Current Bills*

- The bills uses a rigid and formulaic approach that denies judges adequate discretion to decide whether the debtor has the capacity to succeed under a Chapter 13 repayment plan or should be given access to Chapter 7 full discharge of debts. We are proposing a variety of technical changes that would ensure fair application of the test without importing wide-open discretion which the creditors fear.

- At the same time that the bills squeeze the overextended moderate income debtor, it leaves in place major loopholes used by the wealthy to shield assets from creditors. (See NYTs Floyd Norris Editorial: "Bankruptcy Reform that Spares the Wealthy."

- If fails to limit abusive creditor practices, including coercive affirmations and violations of the automatic stay, and the House version rolls back consumer protections.

- Finally, it leaves some debts to compete with child support and alimony after bankruptcy.

***Legislative Status***

- The House passed a bill last spring by a 30+ veto-override margin. While many Democrats voted for a Democratic Alternative, they also voted for the underlying bill, even though Rep. Gephardt, who previously supported the House bill, issued a statement opposing the base bill and urging support for the alternative.

- In the Senate, most major amendments were delayed from Committee to the floor.

- Lott has committed to bringing the bill up. Currently expected late Tuesday or Wednesday, but could be delayed further if they bring up Transportation Appropriations first.

- The Republicans and industry have worked out a credit card disclosure amendment with Senator Torrecelli that they will offer first. We think it is too little, but may need to use it to justify the President's signature, so our criticism is muted. We support most of the further disclosure requirements that will be proposed by other Democrats, but not all. (Treasury has some concerns regarding limitations on credit card debt offered to minors.) Say: "While we support the Torrecelli amendment, we support provisions to go further -- to require responsible behavior of credit card companies as well as consumers – to provide better balance."

- The Administration has been working with Senators Sessions and Reed on an amendment to protect debtors from coercive reaffirmations. However, we have not closed the deal yet, as some retailers are balking. If an agreement is reached, the Administration will support the amendment and say it addresses our concerns in this one area, but we will make no commitment not to criticize other concerns in the bill.

- Democrats have drafted over 50 amendments, although we expect many of those to fall away when the debate begins.

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Nicole

# Bankruptcy reform helps women and children. Distorting the facts about reform helps no one.

*The truth is that bankruptcy reform gives much-needed help to single parents and their children who are dependent on family support payments.*

Today, parents who owe child support or alimony can avoid making these payments by simply filing—and then withdrawing—a bankruptcy application. The Bankruptcy Reform Act (S. 625) will put a stop to deadbeat parents who abuse the system to avoid their responsibilities to their families.

The bill will also:

- **Make child support and alimony payments the top priority—no exceptions. Current law makes these family support payments the seventh highest priority in obligations to be paid.**
- **Require a debtor to pay all past due child support and alimony before any debts can be erased in bankruptcy.**
- **Provide single parents with key information, including an alert that their ex-spouse has filed for bankruptcy; phone numbers of the closest child support collection agencies; and last known address information for a parent who has "disappeared."**

Bankruptcy reform will vastly improve the collection of child support and alimony in bankruptcy. Don't let politics stand in the way of this helping hand for single parents and their children.

KNOW THE FACTS. SUPPORT S. 625

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# PAYBACK TIME FOR HIGH-FEE LENDERS

BY LOUIS JACOBSON

RICHARD A. BLOOM

**JAMES ZANIELLO:** The trade group's code of conduct bars member companies from seeking criminal charges against consumers who default on payday-advance loans.

A new and hugely popular method of providing short-term, high-interest loans to cash-strapped Americans has spawned an intense lobbying battle both in Washington and in numerous state capitals.

Despite a robust economy, payday-advance companies have thrived in the 1990s by offering loans to consumers with jobs and checking accounts. These individuals are often struggling to pay unexpected bills, such as those for medical emergencies or car repairs. Here's how it works: A company advances money to a worker, who writes a check for the loan amount—plus interest or a fee—and agrees to pay the money back after the next payday.

For some consumers, a cash advance amounts to a financial lifesaver. But critics, such as the Consumer Federation of America, contend that the huge fees charged by companies amount to "legal loan-sharking."

The business is booming. The number of outlets has exploded from almost zero in 1994 to approximately 5,000 in 1999. In Indiana, according to a 1998 CFA study, the number of payday-advance lenders jumped from 11 in 1995 to 59 in 1997, and the volume soared from $12.7 million to $98 million during the same period.

Four companies—Ace Cash Express Inc., Check 'N Go, Advance America, and Check Into Cash Inc.—operate roughly half of the estimated 5,000 payday-advance outlets in the United States. Many are in Sun Belt cities, according to industry experts.

These four companies, plus approximately 20 smaller ones, formed the Community Financial Services Association of America earlier this year. Six weeks ago, the group opened its headquarters in the offices of a Washington lobbying firm, Smith, Bucklin & Associates Inc.

The industry faces a barrage of criticism. Jean Ann Fox, the CFA's director of consumer protection, said that payday-advance-company fees total hundreds of percentage points a year. Such advances put consumers in exceedingly risky positions. "These loans sanction the writing of bad checks and entice consumers into relying on very expensive debt to live beyond their means," the CFA report said.

Moreover, consumer groups complain that individuals who default risk facing criminal prosecution for passing bad checks, or civil lawsuits seeking damages.

The AARP, the influential lobby representing seniors, has joined the CFA in urging states to impose tougher restrictions on payday-advance companies. Relying on model legislation drafted by the CFA, Montana has already placed new restrictions on the industry, Fox said. California is considering similar legislation. And 19 states prohibit payday-advance lending. The other states either have laws allowing such practices or have no regulation.

The industry is also receiving some unwanted attention on Capitol Hill. Rep. Bobby L. Rush, D-Ill., has sponsored legislation that would outlaw payday-advance loans in any state that does not specifically authorize them and would impose caps on interest rates and fees. The Rush bill would also bar payday-advance outlets in states with tough regulations from affiliating with financial institutions in states with weaker oversight of the industry.

The consumer group assault has sparked an industry counterattack. In July, when the trade group moved into the offices of Smith, Bucklin, it hired one of the firm's lobbyists, James J. Zaniello, as its executive director. The association

- Campaign finance
- min wage

# BANKRUPTCY AND OTHER ISSUES
**September 9, 1999**

I. **Report of Outreach to Industry**

II. **Senate Schedule**

III. **Republican Strategy**
- Manager's amendment
- Torrecelli credit card amendment
- Reaffirmation "deal" with Administration (possibly in jeopardy)
- Pass homestead amendment on floor vote
- UC limited number of other Democratic amendments on the floor

IV. **Democratic Plans**
- Over 50 proposed amendments
- Minimum Wage (Kennedy)
- Farm (Dorgan)?
- No privacy amendments
- Numerous bankruptcy-related proposals, including most of the Administration's (See list)
- Amendments preventing discharge of gun, tobacco, and clinic access judgements in bankruptcy
- Expect list to be significantly winnowed down
- A few could be accepted by UC or incorporated in the manager's amendment

V. **Administration Strategy**
- Continue working with Democrats on amendments
- Do not put the President or First Lady further into the fray
- Look for opportunities to make modest improvements
- Possible homestead push?
- Expect Conference to drop more moderate Senate provisions

VI. **Statement of Administration Position**
- Timing (begining of debate or before final passage)
- If later, send separate guidance on amendments?
- SAP content? Current draft:

"…. S. 625, as reported, reflects some improvements over H.R. 833 as passed by the House. The Administration, however, continues to have serious reservations about S. 625 and strongly opposes some of its key provisions. …. Some of the Administration's major concerns would be addressed by amendments that we understand will be offered on the Senate floor. The Administration remains hopeful that bipartisan cooperation will result in responsible bankruptcy legislation that the President can enthusiastically sign."

VII. **Non-Bankruptcy Issues**
- Privacy

**Attachments**

- Administration's Proposed List of Amendments (indicating who will offer)
- Complete list of known potential amendments (indicating which might be accepted)
- Draft SAP

**Proposals for Modest Improvements to S. 625**
As of September 7, 1999

**Means Test**

1. *Changes Already Made in the House Bill:* Include additional factors in the means test that determine repayment capacity and success in Chapter 13, *and that are already included in the House bill.*

   a. Allow administrative expenses and reasonable attorneys' fees of 10 percent of projected payments under a chapter 13 plan. Schumer

   b. Allow continuation of educational expenses and charitable contributions, and exclude benefits received under the Social Security Act. ? Kennedy

   c. Allow additional expenses up to 5% of additional food and clothing expenses as in the House bill, and expand this provision to *all* National and Local formulaic standards. This provision is derived from a more flexible IRS enforcement guideline that *automatically* allows deviations that are small in magnitude to the formulaic expense standards without requiring substantial justification. It prevents a strict standard of review from being applied to individuals whose estimated repayment capacity from the means test exceeds the repayment threshold by only a few dollars, when they need those dollars for their usual expenses. ?

2. *Allow Expenses for Victims of Domestic Violence, Retraining for Displaced Workers, Adoption, and Care of Nondependent Family Members:* Clarify that certain expenses should take priority over credit card debts and "reasonable and necessary" expenses under the means test:

   a. Allow continuation of reasonable expenses for **the support of nondependent family members.** For example, many households provide important support and care for elder parents, allowing them to keep living in the community, but do not provide enough support for the parent to be counted as a dependent. Feingold

   b. Allow **displaced or unemployed workers seeking to return to work** reasonable expenses and adjustments in income for education, equipment, relocation, and other expenses related to moving from welfare, disability, or unemployment to work. Such expenses may substantially reduce government welfare costs and increase repayment capacity in the long run; disallowing them could prevent debtors from working their way out of debt. Kennedy

   c. Allow expenses associated with **adoption.** Dodd?

d. Allow additional expenses and income adjustments associated with protection of the debtor and family from **domestic violence**. Leahy?

3. ***Incorporate Rules Used In Applying the IRS Standards to Tax Collection to Increase Bankruptcy Collections and Fairness:***

a. Allow expenses above formula amounts if the debtor can show that, if such expenses were not allowed, the debtor would in fact have higher necessary expenses and thus less disposable income for debt repayment. For example, if the debtor is paying rent above the allowable amount but penalties for termination of the lease and moving expenses would result in less overall disposable income, the additional rental expense should be allowed over the life of the lease. If the debtor is paying rent above the allowable amounts but has low child care expenses and can show that, if forced to move, higher child care expenses would more than offset savings from lower rent, then the additional rent should be allowed. Schumer

b. Allow low expenses in some formulaic expense categories to offset high expenses in others. For example, some debtors have above-formula housing expenses but below-formula transportation expenses, because they reside close to their job. Such expenses would be considered appropriate if the total actual expenses for both categories were less than the total formulaic expenses for both categories. Schumer?

4. ***Reduce unnecessary costs and inefficiency in the reformed bankruptcy system:*** Streamline application of the means test and reduce costly paperwork collections without impacting debt repayment under the new system.

a. Debtors with incomes of 100-150% of median should not be required to document all of their other necessary expenses unless a preliminary screen based on formulaic expenses and nondischargeable debts shows that they can repay. Durbin

b. Eliminate provisions requiring debtors to file unnecessarily three years of tax returns (and requiring expensive storage and retrieval systems), requiring filing only when requested by creditors. Leahy

5. ***Create a True Safe Harbor for Below-Median Income Debtors:*** The current bill, even as modified by the manager's amendment, would require low-income debtors to file extensive documentation of expenses that will not be used for any bankruptcy purpose. These additional filings create unnecessary paperwork and a barrier to bankruptcy for low-income filers with no likely capacity to repay. There is simply no justification for leaving these requirements in place. Schumer/

a. Only require below-median income debtors to document their income; do Durbin not require them to provide full means test documentation (since not subject to means test motions). Also – technical amendments to existing safe harbor language.

Schumer/ Durbin

6. ***Clarify that small variations are permitted from the means test housing, food, and transportation expense allowances where reasonably necessary [where reasonable and necessary?] to ensure fairness:*** Many households have expenses that are somewhat higher than the median for reasons that are hardly extravagant. Small variations should be permitted where necessary for fairness.

Schumer???

a. Allow **additional housing expenses of up to 10% for gross rent and for housing costs other than mortgage if reasonably necessary**. Without such a variance, some debtors could be arbitrarily forced to leave their homes, communities, school districts, when their housing expenses are slightly above the county median yet are not unreasonable or extravagant, while others less well off would not suffer the same fate. For example, according to the 1990 Census, the median gross monthly rent in the Census Tract in North Woodhaven, Queens, was $640, 15 percent larger than the median rent for the county. Applying the housing standards inflexibly could force debtors of this community to move far from their jobs, or forego other necessary expenses. Yet this is not a particularly wealthy community -- its median income was less than the median income of the county as a whole ($34,200). By comparison, the median gross rent in the Census Tract just north of Howard Beach is less than the county median, so far fewer filers from this community would have to move. Yet their resources are in fact greater--their median income is $2,000 above the county median income. What is fair or rational about forcing lower income debtors to move from Woodhaven, but not higher income debtors from Howard Beach?

Dodd??

b. Allow **additional adjustments to food expenses of up to 10 % if reasonably necessary**. Many households have above-average food expenses for perfectly ordinary reasons. For example, debtors who have children who are older than average also have food expenses that are 15 % more than the average. This variance would allow consideration of the ages of the children to be feed on the food allowance.

c. Allow **adjustment of 15% in transportation expenses other than ownership costs of vehicles if reasonably necessary**. Non-ownership transportation expenses (e.g., bus fare) increase enormously as the size of the debtor's family grows, nearly independently of the number of owned or leased cars. Indeed, households with fewer cars often have much higher non-ownership expenses. Such expenses are even larger when the additional family members also earn income for the family; and so not allowing them could substantially reduce a household's ability to repay debt. In addition, many debtors have work situations that require high transportation expenses. For example, the non-ownership expenses are about 15% higher for families of 4 people than for 2 people; public transportation expenses are nearly 30% higher for the same size difference.

6. *Develop means test standards appropriate for bankrupty, based on the IRS guidelines, without increasing judicial discretion.*

   a. Treasury and Justice should be required to develop expense standards appropriate for bankruptcy based on the IRS guidelines. Chairman Hyde made a similar proposal, pointing out that the IRS standards were designed for tax collection in IRS processes with substantial administrative discretion, not debt repayment after bankruptcy in courts with more limited judicial discretion. In this context, more carefully tailored standards are required. The current bill, as amended by the managers' amendment, fails to authorize DoJ and Treasury to develop bankruptcy-specific expense standards. Schumer Durbin

7. *Improve the Accuracy of the Means Test (as a test of capacity to repay).*

Schumer

   a. Amend Section 704 to allow U.S. Trustees to consider required payments of arrearages and other debt expenses and administrative costs and attorneys fees not included in the means test in determining capacity to repay. [Query: Does Schumer want to amend the means test or allow Trustees to consider this fact in making a motion?] Arrearages and administrative costs can be large and will be required to be repaid under a Chapter 13 repayment plan. A test that assesses capacity to succeed under a Chapter 13 plan that doesn't take into account these expenses arrearages will not accurately identify those truly able to succeed, and will instead increase the number of failed Chapter 13 plans.

9. Improve predictive capacity of means test by taking into account expected future changes.

   a. Allow the U.S. Trustees to consider expected changes in future income or expenses compared to the past 6 months (e.g., from expected job loss, training completion, or changing child care needs) in determining capacity to repay. This amendment would minimize the referral of cases to Chapter 13 that simply will not be able to confirm a successful plan. ??

**Credit Card Disclosures**

The most effective way to reduce the number of bankruptcies is to give consumers the information they need to manage their credit card debts effectively -- information that creditors can provide at low cost. An amendment expected to be offered would provide a general disclosure to all consumers and more specific information only if they call an 800 number. While we believe more tailored disclosure is appropriate for all consumers, intermediate measures to target those most in need or seeking more information would:

1. ***Provide Greater Disclosure for At-Risk Debtors:*** Provide automatic disclosures about the financial implications of making only a minimum payment, with the monthly credit card statement, at least to consumers who are most likely to benefit from this information -- i.e., those who made the minimum payment only in the previous month (or 2 months). If this information can be custom-generated for any consumer who calls an "800" number, which is costly to set up and staff, it could certainly be provided automatically to a limited number of easily-identifiable "high-risk" consumers. Dodd

2. ***Provide Better Information to those Who Call the 800 Number:*** Borrowers who are interested in the impact of making minimum payments may better understand the issue if told the total dollar amount that they would be required to repay, if making only the minimum payment, in addition to the total number of payments that it would require. none

**Reaffirmations**

Sessions-Reed ?

[If agreement can be reached on the proposed Sessions-Reed amendment without creating any loopholes to its important protections, and if Senate leadership will commit to protect the amendment in Conference, it should be strongly supported. ]

**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. The Administration remains concerned that additional credit card and other nonpriority debts that are made nondischargeable by S. 625 will compete after bankruptcy with these societal priorities. There is no evidence of widespread abuse of credit cards on the eve of bankruptcy, particularly for low-income filers.

1. ***Change provision for dischargeability of cash advances from $750 to $1000 within 70 days.*** Cash advances are generally used for necessary not luxury expenses. This is still a tightening of dischargeability from current law. Dodd

Good idea

2. ***Retain current law provisions on nondischargeability for below-median income debtors***. Risk of abusive bankruptcy planning by these debtors is low, while the need for cash or juggling debts on the eve of bankruptcy is likely to be greater. none

**Loopholes for Wealthy**

Fair bankruptcy reform should close loopholes that allow many wealthy debtors to avoid their responsibility to repay a significant portion of their debt. Bankruptcy reform should not impose very strict requirements of debt repayment on moderate- and low-income debtors, while allowing wealthier debtors to shelter many hundreds of thousands of dollars in assets.

1. ***Include a reasonable cap on homestead exemptions.*** Any limit, even a very high one, would be an important step toward increasing debt repayment by those who really can afford to do so. Kohl

2. ***Include a "bright line" time limit on assets transferred to the homestead on the eve of bankruptcy, for example within 365 days.*** The current Senate bill reduces the value of the homestead exemption on purchases within 730 days, provided that intent to defraud is demonstrated. But "eve of bankruptcy" provisions that do not require proof of intent are imposed by the bill on low-income debtors. There shouldn't be a double standard. none

Notes indicate likelihood of passage

if not marked, prospect is remote.

[redacted]

Record Type: Record

To: sarah rosen wartell/opd/eop@eop

cc: Brooke B. Livingston/WHO/EOP@EOP
Subject: Updated Bankruptcy Amendment List

**Substitute**

Durbin -- Although it much less likely than before, Durbin is still considering offering -- or more likely just floating -- last year's Senate bill, S. 1301, as a substitute.

**Means Testing**

Schumer/Durbin -- The safe-harbor amendment -- protection for debtors who earn below the median income from creditor motions of all kinds, trustee 707(b) motions, and from the paperwork requirements of the means-test. partial likely

Durbin -- The efficiency amendment -- for debtors who earn between 100-150 percent of the median income do a cursory evaluation of their ability to pay prior to running the full means-test on these debtors.
possible but not likely

Schumer -- Giving Treasury the express authority to promulgate bankruptcy specific standards.

Schumer -- An amendment expressly noting that the flexibility employed with the IRS standards should be used in the bankruptcy context as it is in the tax collection context.
possible but not likely

Schumer -- The accuracy Amendment -- expressly allowing the U.S. Trustee to consider arrearages, administrative expenses, attorneys fees, etc. in determining the debtor's ability to repay.
partial likely, rest possible

Feingold -- Part of the sympathetic debtor amendment -- nondependent family members (perhaps combined with an express protection for long-term care expenses).
possible

Kennedy -- Part of the sympathetic debtor amendment -- displaced workers.
possible

Dodd -- Part of the sympathetic debtor amendment -- adoption expenses.
possible

Leahy -- Part of the sympathetic debtor amendment -- domestic abuse expenses.
possible

Durbin -- Durbin is still tossing around the idea of offering the Hyde amendment or parts of the Hyde amendment. As noted above, they are working with Schumer and us on other means test amendments, but they still appear to believe that the Hyde amendment might win due to the rhetorical advantage of invoking Hyde's name and his speech on the House floor.

Dodd -- An amendment that would protect any money that is supposed to be earmarked for kids as the debtor goes through the system.

**Reaffirmations**

Reed/Sessions -- If the deal holds up, they will likely offer the compromise Treasury was able to secure.
will pass if offered

Kennedy -- Kennedy's office has softly implied that if they are not happy with the Reed/Sessions amendment that they may offer the reaffs language from last year's Senate bill.

**Credit Card Disclosures**

Torricelli-Grassley -- They will offer the credit card disclosure amendment that Torricelli negotiated with the credit card companies. will pass

Sarbanes/Durbin -- They are contemplating everything from offering the disclosure provisions from last year's Senate bill to a series of improvements to the Torricelli-Grassley amendment.

Dodd -- They are considering doing a stronger credit card disclosure amendment (in particular targeting at risk debtors with more specific and automatic disclosures).

Schumer -- Teaser-rate disclosures (if not content with this provision in the Torricelli-Grassley amendment).

Reed -- Disclosure that debt greater than the security interest in a home is not deductible (if not in the Torricelli-Grassley amendment).

Reed -- No penalty or cancellation if pay credit card balance off on time (if not in the Torricelli-Grassley amendment).

Durbin -- Predatory lending; if violate TILA, lose rights in bankruptcy.

**Homestead**

Kohl/Sessions -- 100,000 dollar cap. will pass (drop in conference)

**Cram Downs**

Kohl -- 6 months on all goods with a purchase money security interest.

**Nondischargeable Debt**

Dodd -- will likely tackle both the cash advance and dischargeable debt used to obtain nondischargeable debt issues with adjustments to the time and money amounts.

**Consumer Credit Counseling**

Durbin -- A two part amendment: (1) allowing the debtor to satisfy the credit counseling requirement over the phone; and (2) requiring court approval before a filing can be dismissed for failure to satisfy the credit counseling requirement. partial likely, all possible

Feingold -- They may do an amendment expanding the definition of exigent circumstances (in particular if Durbin is unsuccessful in getting his amendment accepted).

Hatch -- An amendment limiting what information a credit counselor can share with a credit reporting agency. likely

**Women and Children**

Dodd -- As noted above, Dodd is likely to do some nondischareable debt amendments.

Dodd -- As noted above, Dodd is likely to do a carve-out for money owed for women and children in the means-test.

Dodd -- An amendment expanding the definition of household goods and requiring a hearing to rebut a presumption in favor of the debtor on this issue.

Dodd -- An amendment that would protect the refund obtained by a debtor via the Earned Income Tax Credit from being included as income in the means-test.

**Miscellaneous**

Kennedy -- Minimum Wage possible ??

Kennedy/Schumer -- An amendment protecting social security benefits (the same amendment that Sheila Jackson Lee got accepted on the House floor). likely

Kennedy -- The solicitation of minors amendment -- if younger than 21 and a dependent as defined by the IRS, then would have to show independent income or have parent's signature to obtain a credit card. In addition, a disclosure of the common law principal that most contracts made with a minor are unenforceable.

Kennedy -- Chapter 11/labor amendment(s) -- an amendment or series of amendments to address some of the business bankruptcy provisions with which labor is concerned.

Durbin -- The nondischargeability of damage awards levied against gun manufacturers. ?

Feingold -- No mandatory, binding arbitration of disputes between a debtor and a credit card company.

Feingold -- IFP likely

Feingold -- Reinstatement of the apartment tenant automatic stay.

Feingold -- Family farm amendments -- Four small amendments increasing the dollar maximum and definitions of "family farm" to expand the number of small farmers who are eligible for Chapter 12.

Feingold -- The nondischargeability of FEC fines.

Cleland -- Disclosure of mandatory, binding arbitration clause contained in most credit card agreements.

Leahy -- Tax returns -- an amendment that would provide that a debtor would have to provide proof of income, but that s/he would only have to provide *three years* of tax returns if a party in interest makes such a request (as opposed to an automatic requirement).

Leahy -- An amendment clarifying a debtor's right to judicial review (as suggested by the Judicial Conference). possible

Schumer -- The FACE amendment.

Dodd -- Protection of educational savings accounts. possible

Kohl -- The back-pay amendment -- insuring that more of the wages of employees (who are creditors of the estate) of a business that files for Chapter 11 are paid out to the employees at a higher priority. possible

Kohl -- The employee benefits contributions amendment -- protecting the money employees make into the possible employee benefit accounts when the employer files for Chapter 11.

Dorgan -- Possible substantive Ag amendments.

Feinstein/Biden -- An amendment increasing filing fees to pay for the increase cost to the bankruptcy system created by this bill. in some form likely

Wellstone -- The payday loan amendment -- if make a "payday" or some other very high interest loan, lose rights in bankruptcy as to that loan.

Wellstone -- An amendment requiring banks with over $200 million in assets to provide free checking accounts to low income persons.

Hatch/Biden -- An amendment capping the amount of a debtor's retirement savings that can be protected during bankruptcy (likely at $500,000). possible

**Draft -- Not for Release**

September 8, 1999
(Senate)

**S. 625 - Bankruptcy Reform Act of 1999**
(Grassley (R) Iowa and eight cosponsors)

The President supports bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly. He is disappointed that the House failed to produce legislation that he could support. S. 625, as reported, reflects some improvements over H.R. 833 as passed by the House. The Administration, however, continues to have serious reservations about S. 625 and strongly opposes some of its key provisions. The Administration's objections to this bill are explained in detail in the Attachment.

Many of the Administration's major concerns would be addressed by amendments that the Administration understands will be offered on the Senate floor. The Administration's views on the anticipated amendments are also contained in the Attachment. The Administration remains hopeful that bipartisan cooperation will result in responsible bankruptcy legislation that the President can enthusiastically sign.

* * * * * * *

Attachment

**Detailed Administration Views on S. 625 and Anticipated Floor Amendments**

Access to Chapter 7. Any means test used in bankruptcy proceedings should deny access to Chapter 7 bankruptcy procedures only to those debtors who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. S. 625 in its current form would limit access to Chapter 7 to those debtors who meet a relatively inflexible and arbitrary means test. The Administration strongly opposes this provision. Debtors who may be denied a discharge of their debts must be given a meaningful and realistic opportunity to have their specific circumstances considered by bankruptcy courts with appropriate, limited discretion to determine whether they genuinely have the capacity to repay a portion of their debts.

As reported, S. 625 would apply rough guidelines, developed by the Internal Revenue Service (IRS) for tax repayment plans, as standards for determining debtors' ability to repay, with exceptions only for expenses that are "reasonable and necessary." While some expense standards should be used to guide the determination of ability to repay, they should be tailored for bankruptcy. The same set of standards simply cannot be used ***[why not? not clear]*** in both bankruptcy and tax collection, which involve very different purposes and systems of judicial review. The Administration believes that the IRS expense formulas can be used as a starting point for developing appropriate bankruptcy guidelines, but that each system would be best served by its own appropriate standards.

As House Judiciary Committee Chairman Henry Hyde has said, the use of IRS guidelines without flexibility "depriv[es] debtors and their families of the means to pay for their basic needs." **[Confirm quote from NYTs – accurate in context.]** As Chairman Hyde noted on the House floor, "The cost of food in Omaha, Nebraska, or Boise, Idaho, is different than in downtown Manhattan. So what is realistic about an inflexible standard?"

[Another example illustrates the arbitrary impact of these formulas, treating similarly situated debtors differently. According to the 1990 Census, the median gross monthly rent in the Census Tract in North Woodhaven, Queens, was $640, 15 percent greater than the median rent for the county. Applying the housing standards inflexibly could force debtors of this community to move far from their jobs, or forego other necessary expenses. Yet this is not a particularly wealthy community -- its median income was less than the median income of the county as a whole ($34,200). By comparison, the median gross rent in the Census Tract just north of Howard Beach is less than the county median, so far fewer filers from this community have to move. Yet their resources are in fact greater--their median income is $2,000 above the county median income. What is fair or rational about forcing lower income debtors to move from Woodhaven, but not higher income debtors from Howard Beach?]***[Is this a compelling argument?]***

Finally, all parties should be able to agree that any means test should be implemented efficiently. Burdensome filing and hearing requirements that lead to little or no additional debt repayment are not in the interest of debtors, creditors, or taxpayers.

The Administration understands that a series of amendments will be offered to improve the fairness of the means test. The Administration supports these amendments, including: [list subject to change]

- An amendment by Senator ____ to incorporate improvements in the means test that were adopted by the House;

- Amendments by Senators _______ and ___ to clarify the treatment under the means test of expenses for victims of domestic abuse, adopting a child, displaced or unemployed workers retraining or moving for employment, and caring for a non-dependent parent or relative;

- An amendment by Senator Durbin to reduce unnecessary costs and inefficiency in the reformed bankruptcy system by streamlining application of the means test and reducing costly paperwork collections without affecting debt repayment under the system;

- An amendment by Senators Schumer and Durbin [?] to create an effective safe harbor from application of the means test for debtors with incomes below the national median;

- An amendment by Senator Durbin [?] to authorize the Treasury Department, in consultation with the Executive Office of the United States Trustees, to develop customized guidelines for use in the means test based on the IRS guidelines;

- An amendment by Senator Schumer to improve the accuracy of the means test calculation by counting all required expenses (administrative costs, reasonable attorneys fees, and arrearages on other debt) in calculating capacity to repay under the means test.

- An amendment by Senator ____ to adopt policies, which are used by the IRS in applying the IRS guidelines for tax collection, for use in the bankruptcy means test, so as to increase collections and enhance fairness;

- Amendments by Senators ___ to clarify that small variations are permitted from the means test for housing, food, and transportation expense allowances where reasonably necessary [where reasonable and necessary?] to ensure fairness; and

- An amendment by Senator _____ to confirm the U.S. Trustees' discretion to consider expected changes in income or expenses in evaluating a debtor's challenge to the presumption that the debtor has the capacity to repay as calculated under the means test.

Consumer Information and Protection. The Administration continues to believe that reform must address the factor that is most strongly correlated with the rise in personal bankruptcy: rising levels of consumer debt. Americans now receive more than 3.5 billion credit card solicitations per year, many of which are marketed to encourage consumers to carry high balances and incur large interest charges. The most effective way to reduce the number of bankruptcies in this new financial era is to give consumers the information they need to manage their credit card debts effectively, recognizing the creditors' superior information and bargaining ability. Consumers must be given clear information on the terms of their credit and the financial implications of not paying off their credit card balances.

The amendment to be offered by Senators Grassley and Torricelli addresses some abusive credit practices, such as failure to disclose "teaser" rates clearly. While this is an improvement over H.R. 833, much more should be done. Under the Grassley-Torricelli amendment, creditors must provide *[specified?]* information to debtors who call the toll-free number on the statement. The amendment creates a system that is unnecessarily burdensome for consumers who may be reluctant to call their credit card company if they are worried about their finances or are pressed for time. The Administration supports the ____amendment, which would require that the information be provided in a manner that would be easier and more reliable for consumers to use by including it automatically on credit card statements. Providing the information in this manner ***[would/could/would likely]*** also be less costly to creditors than the requirement to make this information available to consumers who call a toll-free number. ***[can we say this?]*** [The Administration also supports other amendments that are designed to addresses abuses in credit card solicitation.]**[Note: We should specify the amendments or drop this reference.] [Treasury reviewing the new Dodd kiddie-credit amendment. ]**

Abusive Creditor Practices. Much evidence shows that debtors often reaffirm unsecured debt and low-value secured debt on unfavorable terms even though they do not have the means to meet their own necessary expenses and make more important debt payments, placing such priority debts as child support and alimony obligations at risk. Such reaffirmations frequently are the result of insufficient or misleading information or threats from creditors. S. 625 as reported does little to address these abuses. If we are to provide substantial new opportunities for creditors to challenge debtors' use of the bankruptcy system under Chapter 7 of the Bankruptcy Code, we must limit abusive creditor practices such as coercive reaffirmations and violations of the automatic stay against collection actions. Hence, the Administration supports the amendment of Senators Sessions and Reed, which protects debtors by giving them adequate information for decisions about significant reaffirmations of unsecured and low-value secured debt.

Cramdowns. S. 625 also changes the lien stripping or "cramdown" provisions in current law governing a Chapter 13 bankruptcy, under which a secured debt becomes nondischargeable only up to the value of the security interest at the time of bankruptcy. The Administration agrees that lien stripping should be limited to automobile loans incurred in the period preceding bankruptcy to prevent abuses, but believes that the provisions in the Senate bill are excessive. While the Administration strongly prefers the Senate provisions to the extreme prohibitions in H.R. 833, the five-year prohibition on lien stripping on automobile debts in the current bill will do little more to deter bankruptcy abuses than a more reasonable time limit. Instead, the prohibition will significantly reduce repayment of priority, unsecured debts like child support and taxes. The Administration understands that Senator ______ [Kohl? Sessions?] will offer an amendment that would provide appropriate cramdown relief. The Administration supports this amendment.

Nondischargeable Debts. 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. The Administration strongly prefers the provisions in S. 625, which offer some protection for child support and alimony, to those in H.R. 833. But the Administration remains concerned that additional credit card and other nonpriority debts made nondischargeable by these provisions will compete after bankruptcy with child support, alimony, and other societal priorities like educational loans and taxes. The amendment to be offered by Sen.____________, which the Administration supports, would address this concern by __________.

Loopholes for the Wealthy. The Administration supports changes that would close loopholes in bankruptcy law, such as unlimited homestead exemptions [and the exemptions from repayment requirements for individuals who are able to file for bankruptcy under Chapter 11 – **do we need to mention this issue – isn't it in manager's amendment? Some bankruptcy professionals disagree?**], that allow many wealthy debtors to avoid their responsibility to repay a significant portion of their debt. Bankruptcy reform should not place a greater responsibility for debt repayment on moderate- and low-income debtors than it does on high-income debtors. The Administration supports the __________ amendment to place a reasonable limit on homestead exemptions.

**Proposals for Modest Improvements to S. 625**
As of September 7, 1999

## Means Test

1. *Changes Already Made in the House Bill:* Include additional factors in the means test that determine repayment capacity and success in Chapter 13, *and that are already included in the House bill.*

   a. Allow administrative expenses and reasonable attorneys' fees of 10 percent of projected payments under a chapter 13 plan. Schumer

   b. Allow continuation of educational expenses and charitable contributions, and exclude benefits received under the Social Security Act. ? Kennedy

   c. Allow additional expenses up to 5% of additional food and clothing expenses as in the House bill, and expand this provision to *all* National and Local formulaic standards. This provision is derived from a more flexible IRS enforcement guideline that *automatically* allows deviations that are small in magnitude to the formulaic expense standards without requiring substantial justification. It prevents a strict standard of review from being applied to individuals whose estimated repayment capacity from the means test exceeds the repayment threshold by only a few dollars, when they need those dollars for their usual expenses. ?

2. *Allow Expenses for Victims of Domestic Violence, Retraining for Displaced Workers, Adoption, and Care of Nondependent Family Members:* Clarify that certain expenses should take priority over credit card debts and "reasonable and necessary" expenses under the means test:

   a. Allow continuation of reasonable expenses for **the support of nondependent family members.** For example, many households provide important support and care for elder parents, allowing them to keep living in the community, but do not provide enough support for the parent to be counted as a dependent. Feingold?

   b. Allow **displaced or unemployed workers seeking to return to work** reasonable expenses and adjustments in income for education, equipment, relocation, and other expenses related to moving from welfare, disability, or unemployment to work. Such expenses may substantially reduce government welfare costs and increase repayment capacity in the long run; disallowing them could prevent debtors from working their way out of debt. Kennedy

   c. Allow expenses associated with **adoption.** Dodd?

d. Allow additional expenses and income adjustments associated with protection of the debtor and family from **domestic violence**. Leahy?

3. ***Incorporate Rules Used In Applying the IRS Standards to Tax Collection to Increase Bankruptcy Collections and Fairness*:**

a. Allow expenses above formula amounts if the debtor can show that, if such expenses were not allowed, the debtor would in fact have higher necessary expenses and thus less disposable income for debt repayment. For example, if the debtor is paying rent above the allowable amount but penalties for termination of the lease and moving expenses would result in less overall disposable income, the additional rental expense should be allowed over the life of the lease. If the debtor is paying rent above the allowable amounts but has low child care expenses and can show that, if forced to move, higher child care expenses would more than offset savings from lower rent, then the additional rent should be allowed. Schumer

b. Allow low expenses in some formulaic expense categories to offset high expenses in others. For example, some debtors have above-formula housing expenses but below-formula transportation expenses, because they reside close to their job. Such expenses would be considered appropriate if the total actual expenses for both categories were less than the total formulaic expenses for both categories. Schumer?

4. ***Reduce unnecessary costs and inefficiency in the reformed bankruptcy system:*** Streamline application of the means test and reduce costly paperwork collections without impacting debt repayment under the new system.

a. Debtors with incomes of 100-150% of median should not be required to document all of their other necessary expenses unless a preliminary screen based on formulaic expenses and nondischargeable debts shows that they can repay. Durbin

b. Eliminate provisions requiring debtors to file unnecessarily three years of tax returns (and requiring expensive storage and retrieval systems), requiring filing only when requested by creditors. Leahy

5. ***Create a True Safe Harbor for Below-Median Income Debtors:*** The current bill, even as modified by the manager's amendment, would require low-income debtors to file extensive documentation of expenses that will not be used for any bankruptcy purpose. These additional filings create unnecessary paperwork and a barrier to bankruptcy for low-income filers with no likely capacity to repay. There is simply no justification for leaving these requirements in place.

Schumer/ Durbin

a. Only require below-median income debtors to document their income; do

Schumer/ Durbin

not require them to provide full means test documentation (since not subject to means test motions). Also – technical amendments to existing safe harbor language.

6. ***Clarify that small variations are permitted from the means test housing, food, and transportation expense allowances where reasonably necessary [where reasonable and necessary?] to ensure fairness:*** Many households have expenses that are somewhat higher than the median for reasons that are hardly extravagant. Small variations should be permitted where necessary for fairness.

Schumer ???

a. Allow **additional housing expenses of up to 10% for gross rent and for housing costs other than mortgage if reasonably necessary**. Without such a variance, some debtors could be arbitrarily forced to leave their homes, communities, school districts, when their housing expenses are slightly above the county median yet are not unreasonable or extravagant, while others less well off would not suffer the same fate. For example, according to the 1990 Census, the median gross monthly rent in the Census Tract in North Woodhaven, Queens, was $640, 15 percent larger than the median rent for the county. Applying the housing standards inflexibly could force debtors of this community to move far from their jobs, or forego other necessary expenses. Yet this is not a particularly wealthy community -- its median income was less than the median income of the county as a whole ($34,200). By comparison, the median gross rent in the Census Tract just north of Howard Beach is less than the county median, so far fewer filers from this community would have to move. Yet their resources are in fact greater--their median income is $2,000 above the county median income. What is fair or rational about forcing lower income debtors to move from Woodhaven, but not higher income debtors from Howard Beach?

Dodd??

b. Allow **additional adjustments to food expenses of up to 10 % if reasonably necessary**. Many households have above-average food expenses for perfectly ordinary reasons. For example, debtors who have children who are older than average also have food expenses that are 15 % more than the average. This variance would allow consideration of the ages of the children to be feed on the food allowance.

c. Allow **adjustment of 15% in transportation expenses other than ownership costs of vehicles if reasonably necessary**. Non-ownership transportation expenses (e.g., bus fare) increase enormously as the size of the debtor's family grows, nearly independently of the number of owned or leased cars. Indeed, households with fewer cars often have much higher non-ownership expenses. Such expenses are even larger when the additional family members also earn income for the family; and so not allowing them could substantially reduce a household's ability to repay debt. In addition, many debtors have work situations that require high transportation expenses. For example, the non-ownership expenses are about 15% higher for families of 4 people than for 2 people; public transportation expenses are nearly 30% higher for the same size difference.

6. ***Develop means test standards appropriate for bankrupty, based on the IRS guidelines, without increasing judicial discretion.***

   a. Treasury and Justice should be required to develop expense standards appropriate for bankruptcy based on the IRS guidelines. Chairman Hyde made a similar proposal, pointing out that the IRS standards were designed for tax collection in IRS processes with substantial administrative discretion, not debt repayment after bankruptcy in courts with more limited judicial discretion. In this context, more carefully tailored standards are required. The current bill, as amended by the managers' amendment, fails to authorize DoJ and Treasury to develop bankruptcy-specific expense standards. Schumer/ Durbin

7. ***Improve the Accuracy of the Means Test (as a test of capacity to repay).***

Schumer

   a. Amend Section 704 to allow U.S. Trustees to consider required payments of arrearages and other debt expenses and administrative costs and attorneys fees not included in the means test in determining capacity to repay. [Query: Does Schumer want to amend the means test or allow Trustees to consider this fact in making a motion?] Arrearages and administrative costs can be large and will be required to be repaid under a Chapter 13 repayment plan. A test that assesses capacity to succeed under a Chapter 13 plan that doesn't take into account these expenses arrearages will not accurately identify those truly able to succeed, and will instead increase the number of failed Chapter 13 plans.

9. Improve predictive capacity of means test by taking into account expected future changes.

   a. Allow the U.S. Trustees to consider expected changes in future income or expenses compared to the past 6 months (e.g., from expected job loss, training completion, or changing child care needs) in determining capacity to repay. This amendment would minimize the referral of cases to Chapter 13 that simply will not be able to confirm a successful plan. ??

**Credit Card Disclosures**

The most effective way to reduce the number of bankruptcies is to give consumers the information they need to manage their credit card debts effectively -- information that creditors can provide at low cost. An amendment expected to be offered would provide a general disclosure to all consumers and more specific information only if they call an 800 number. While we believe more tailored disclosure is appropriate for all consumers, intermediate measures to target those most in need or seeking more information would:

1. ***Provide Greater Disclosure for At-Risk Debtors:*** Provide automatic disclosures about the financial implications of making only a minimum payment, with the monthly credit card statement, at least to consumers who are most likely to benefit from this information -- i.e., those who made the minimum payment only in the previous month (or 2 months). If this information can be custom-generated for any consumer who calls an "800" number, which is costly to set up and staff, it could certainly be provided automatically to a limited number of easily-identifiable "high-risk" consumers. Dodd?

2. ***Provide Better Information to those Who Call the 800 Number:*** Borrowers who are interested in the impact of making minimum payments may better understand the issue if told the total dollar amount that they would be required to repay, if making only the minimum payment, in addition to the total number of payments that it would require. none

**Reaffirmations**

[If agreement can be reached on the proposed Sessions-Reed amendment without creating any loopholes to its important protections, and if Senate leadership will commit to protect the amendment in Conference, it should be strongly supported. ] Sessions-Reed?

**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. The Administration remains concerned that additional credit card and other nonpriority debts that are made nondischargeable by S. 625 will compete after bankruptcy with these societal priorities. There is no evidence of widespread abuse of credit cards on the eve of bankruptcy, particularly for low-income filers.

1. ***Change provision for dischargeability of cash advances from $750 to $1000 within 70 days.*** Cash advances are generally used for necessary not luxury expenses. This is still a tightening of dischargeability from current law. Dodd

2. ***Retain current law provisions on nondischargeability for below-median income debtors***. Risk of abusive bankruptcy planning by these debtors is low, while the need for cash or juggling debts on the eve of bankruptcy is likely to be greater. none

Good idea

**Loopholes for Wealthy**

Fair bankruptcy reform should close loopholes that allow many wealthy debtors to avoid their responsibility to repay a significant portion of their debt. Bankruptcy reform should not impose very strict requirements of debt repayment on moderate- and low-income debtors, while allowing wealthier debtors to shelter many hundreds of thousands of dollars in assets.

1. ***Include a reasonable cap on homestead exemptions.*** Any limit, even a very high one, would be an important step toward increasing debt repayment by those who really can afford to do so. Kohl

2. ***Include a "bright line" time limit on assets transferred to the homestead on the eve of bankruptcy, for example within 365 days.*** The current Senate bill reduces the value of the homestead exemption on purchases within 730 days, provided that intent to defraud is demonstrated. But "eve of bankruptcy" provisions that do not require proof of intent are imposed by the bill on low-income debtors. There shouldn't be a double standard. none

[redacted]

Record Type: Record

To: sarah rosen wartell/opd/eop@eop

cc: Brooke B. Livingston/WHO/EOP@EOP
Subject: Updated Bankruptcy Amendment List

**Substitute**

Durbin -- Although it much less likely than before, Durbin is still considering offering -- or more likely just floating -- last year's Senate bill, S. 1301, as a substitute. ?

**Means Testing**

Schumer/Durbin -- The safe-harbor amendment -- protection for debtors who earn below the median income from creditor motions of all kinds, trustee 707(b) motions, and from the paperwork requirements of the means-test.

probably less likely slim

Durbin -- The efficiency amendment -- for debtors who earn between 100-150 percent of the median income do a cursory evaluation of their ability to pay prior to running the full means-test on these debtors.

less likely

Schumer -- Giving Treasury the express authority to promulgate bankruptcy specific standards.

Schumer -- An amendment expressly noting that the flexibility employed with the IRS standards should be used in the bankruptcy context as it is in the tax collection context. slim

Schumer -- The accuracy Amendment -- expressly allowing the U.S. Trustee to consider arrearages, administrative expenses, attorneys fees, etc. in determining the debtor's ability to repay. possible

Feingold -- Part of the sympathetic debtor amendment -- nondependent family members (perhaps combined with an express protection for long-term care expenses). ?

Kennedy -- Part of the sympathetic debtor amendment -- displaced workers. ?

Dodd -- Part of the sympathetic debtor amendment -- adoption expenses. ?

Leahy -- Part of the sympathetic debtor amendment -- domestic abuse expenses. ?

Durbin -- Durbin is still tossing around the idea of offering the Hyde amendment or parts of the Hyde amendment. As noted above, they are working with Schumer and us on other means test amendments, but they still appear to believe that the Hyde amendment might win due to the rhetorical advantage of invoking Hyde's name and his speech on the House floor.

Dodd -- An amendment that would protect any money that is supposed to be earmarked for kids as the debtor goes through the system.

**Reaffirmations**

Reed/Sessions -- If the deal holds up, they will likely offer the compromise Treasury was able to secure.

likely if offered

Kennedy -- Kennedy's office has softly implied that if they are not happy with the Reed/Sessions amendment that they may offer the reaffs language from last year's Senate bill.

**Credit Card Disclosures**

Torricelli-Grassley -- They will offer the credit card disclosure amendment that Torricelli negotiated with the credit card companies. will pass

Sarbanes/Durbin -- They are contemplating everything from offering the disclosure provisions from last year's Senate bill to a series of improvements to the Torricelli-Grassley amendment.

Dodd -- They are considering doing a stronger credit card disclosure amendment (in particular targeting at risk debtors with more specific and automatic disclosures).

Schumer -- Teaser-rate disclosures (if not content with this provision in the Torricelli-Grassley amendment).

Reed -- Disclosure that debt greater than the security interest in a home is not deductible (if not in the Torricelli-Grassley amendment).

Reed -- No penalty or cancellation if pay credit card balance off on time (if not in the Torricelli-Grassley amendment).

Durbin -- Predatory lending; if violate TILA, lose rights in bankruptcy.

**Homestead**

Kohl/Sessions -- 100,000 dollar cap. will pass Senate; drop in house

**Cram Downs**

Kohl -- 6 months on all goods with a purchase money security interest.

**Nondischargeable Debt**

Dodd -- will likely tackle both the cash advance and dischargeable debt used to obtain nondischargeable debt issues with adjustments to the time and money amounts.

**Consumer Credit Counseling**

Durbin -- A two part amendment: (1) allowing the debtor to satisfy the credit counseling requirement over the phone; and (2) requiring court approval before a filing can be dismissed for failure to satisfy the credit counseling requirement. part or all will be accepted

Feingold -- They may do an amendment expanding the definition of exigent circumstances (in particular if Durbin is unsuccessful in getting his amendment accepted).

Hatch -- An amendment limiting what information a credit counselor can share with a credit reporting agency. (privacy) will pass

**Women and Children**

Dodd -- As noted above, Dodd is likely to do some nondischareable debt amendments.

Dodd -- As noted above, Dodd is likely to do a carve-out for money owed for women and children in the *means*-test.

Dodd -- An amendment expanding the definition of household goods and requiring a hearing to rebut a presumption in favor of the debtor on this issue.

Dodd -- An amendment that would protect the refund obtained by a debtor via the Earned Income Tax Credit from being included as income in the means-test.

**Miscellaneous**

Kennedy -- Minimum Wage ?

Kennedy/Schumer -- An amendment protecting social security benefits (the same amendment that Sheila Jackson Lee got accepted on the House floor). will pass

Kennedy -- The solicitation of minors amendment -- if younger than 21 and a dependent as defined by the IRS, then would have to show independent income or have parent's signature to obtain a credit card. In addition, a disclosure of the common law principal that most contracts made with a minor are unenforceable. ?

Kennedy -- Chapter 11/labor amendment(s) -- an amendment or series of amendments to address some of the business bankruptcy provisions with which labor is concerned.

Durbin -- The nondischargeability of damage awards levied against gun manufacturers. ?

Feingold -- No mandatory, binding arbitration of disputes between a debtor and a credit card company.

Feingold -- IFP will pass

Feingold -- Reinstatement of the apartment tenant automatic stay.

Feingold -- Family farm amendments -- Four small amendments increasing the dollar maximum and definitions of "family farm" to expand the number of small farmers who are eligible for Chapter 12. will pass

Feingold -- The nondischargeability of FEC fines. ?

Cleland -- Disclosure of mandatory, binding arbitration clause contained in most credit card agreements.

Leahy -- Tax returns -- an amendment that would provide that a debtor would have to provide proof of income, but that s/he would only have to provide *three years* of tax returns if a party in interest makes such a request (as opposed to an automatic requirement).

Leahy -- An amendment clarifying a debtor's right to judicial review (as suggested by the Judicial Conference). could pass ?

Schumer -- The FACE amendment.

Dodd -- Protection of educational savings accounts. could pass ?

Kohl -- The back-pay amendment -- insuring that more of the wages of employees (who are creditors of the estate) of a business that files for Chapter 11 are paid out to the employees at a higher priority. could pass ?

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employee benefit accounts when the employer files for Chapter 11.

Dorgan -- Possible substantive Ag amendments.

Feinstein/Biden -- An amendment increasing filing fees to pay for the increase cost to the bankruptcy system created by this bill. some thing will happen

Wellstone -- The payday loan amendment -- if make a "payday" or some other very high interest loan, lose rights in bankruptcy as to that loan.

Wellstone -- An amendment requiring banks with over $200 million in assets to provide free checking accounts to low income persons.

Hatch/Biden -- An amendment capping the amount of a debtor's retirement savings that can be protected during bankruptcy (likely at $500,000). could pass ?

[redacted]

Record Type: Record

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

cc:

Subject: Updated Bankruptcy Amendment List

---------------------- Forwarded by Joel K. Wiginton/WHO/EOP on 09/09/99 09:49 AM ---------------------------

[redacted]

Record Type: Record

To: sarah rosen wartell/opd/eop@eop

cc: Brooke B. Livingston/WHO/EOP@EOP

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**Administration Proposals for Modest Improvements to S. 625**

## Means Test

1. Include additional factors in the means test that determine repayment capacity and success in Chapter 13, *and that are already included in the House bill.*

   a. Include minimum threshold of $6,000 repayment ability ($100/month).

   b. Allow administrative expenses and reasonable attorneys' fees of 10 percent of projected payments under a chapter 13 plan.

   c. Allow continuation of educational expenses and charitable contributions, and exclude benefits received under the Social Security Act.

   d. Allow additional expenses up to 5% of additional food and clothing expenses as in the House bill, and expand this provision to *all* formulaicNational and Local formulaic standards. This provision is derived from a more flexible IRS enforcement guideline that *automatically* allows deviations that are small in magnitude to the formulaic expense standards without requiring substantial justification. It prevents a strict standard of review from being applied to individuals whose estimated repayment capacity from the means test exceeds the repayment threshold by only a few dollars, when they need those dollars for their usual expenses.

2. Include additional expenses in the means test that should take priority over credit card debts.

   a. Allow continuation of reasonable expenses for the support of nondependent family members. For example, many households provide important support and care for elder parents, allowing them to keep living in the community, but do not provide enough support for the parent to be counted as a dependent.

   b. Allow reasonable expenses and allow adjustments in income for education, equipment, relocation, and other expenses related to moving from welfare, disability, or unemployment to work. Such expenses may substantially reduce government welfare costs and increase repayment capacity in the long run; disallowing them could prevent debtors from working their way out of debt.

   c. Allow expenses associated with adoption.

   d. Allow additional expenses and income adjustments associated with protection of the debtor and family from domestic violence.

3. Include provisions generally used by IRS in the application of their standards for determining a repayment plan, to improve the workability of the standards.

a. Allow low expenses in some formulaic expense categories to offset high expenses in others. For example, some debtors have above-formula housing expenses but below-formula transportation expenses, because they reside close to their job. Such expenses would be considered appropriate if the total actual expenses for both categories were less than the total formulaic expenses for both categories.

b. Allow expenses above formula amounts if the debtor can show that, if such expenses were not allowed, the debtor would in fact have higher necessary expenses and thus less disposable income for debt repayment. For example, if the debtor is paying rent above the allowable amount but penalties for termination of the lease and moving expenses would result in less overall disposable income, the additional rental expense should be allowed over the life of the lease. If the debtor is paying rent above the allowable amounts but has low child care expenses and can show that, if forced to move, higher child care expenses would more than offset savings from lower rent, then the additional rent should be allowed.

4. Include provisions generally used by IRS in developing a workable repayment plan when applying the means test.

a. "Three-year rule": if debtor can repay in full with existing expenses over 3 years, the repayment plan need not require modification of expenses; it need only achieve full repayment over 3 years. In other words, the means test formula doesn't have to be followed exactly in order to complete repayment sooner.

b. "One-year rule": allow the debtor 1 year in which to adjust from making monthly payments according to his or her own expenses to payments according to allowed expenses under the means test and extend lifetime of plan accordingly.

5. Include provisions to make the means test work more efficiently, without reducing debt repayment. (Note: We expect the Senate bill to adopt a provision like the House, under which no motions based on the means test are allowed by any parties against debtors with below-median incomes. Even with this provision, however, the application of the means test could still be made considerably less burdensome and costly without changing debt repayment.)

a. Debtors with below-median income are only required to document that, and not to provide the full documentation for the means test. Although he Senate bill is likely to provide a "safe harbor" for such debtors, they still face the burden of providing time-consuming documentation and analysis.

b. Debtors with incomes of 100-150% of median are required to document all of their other necessary expenses only if a preliminary screen based on formulaic expenses and nondischargeable debts shows that they can repay.

6. Include provisions for somewhat greater flexibility in allowing modest additional expenses beyond those prescribed in the means test formula. Because many households have expenses that are somewhat higher than the median for reasons that are hardly extravagant, it is unreasonable to apply a very stringent standard to expenses that are only slightly above the formulaic amounts.

   a. Allow additional housing expenses of up to 10% for gross rent and for housing costs other than mortgage if reasonably necessary. This adjustment reflects the public interest that debtors not be forced to leave their homes, communities, school districts, when their housing expenses are above the county median yet are not unreasonable and do not reflect wealthy lifestyles. Many modest-income neighborhoods have homes with above-median expenses. For example, in Queens, 75% of the households paid rents or housing costs (other than mortgage) of up to 125% of the county median. The individuals who paid these above-median rents were not necessarily wealthy: in fact, in several neighborhoods within the county, rents were higher than the median yet incomes were actually <u>lower</u> than median. A strict application of the median standard for a county means making many moderate income debtors move out of their home communities, while not affecting other debtors with similar or higher incomes.

   b. Allow additional adjustments to food expenses of up to 10 % if reasonably necessary. Many households have above-average food expenses for perfectly ordinary reasons. For example, food expenses are 15 % larger than the overall average for debtors who have children who are older than average.

   c. Allow adjustment of 15% in transportation expenses other than ownership costs of vehicles if reasonably necessary. Non-ownership transportation expenses (e.g., bus fares) increase enormously as the size of the debtor's family grows, nearly independently of the number of owned or leased cars. Indeed, households with fewer cars often have much higher non-ownership expenses. Such expenses are even larger when the additional family members also earn income for the family; and so not allowing them could substantially reduce a household's ability to repay debt. In addition, many debtors have work situations that require high transportation expenses. For example, the non-ownership expenses are about 15% higher for families of 4 people than for 2 people; public transportation expenses are nearly 30% higher for the same size difference.

7. Modify the means test, *without increasing judicial discretion*, to make it work more effectively for bankruptcy and debt repayment.

   a. Require the development of expense standards appropriate for bankruptcy by Treasury and Justice. Rep. Hyde made a similar proposal, pointing out that the IRS standards were designed for tax collection in IRS processes with substantial administrative discretion, not debt repayment after bankruptcy in courts with more limited judicial discretion. In response to their inquiry, Secretary Rubin and Attorney General Reno sent Sens. Grassley and Torricelli a letter in May saying that the Departments could work together to develop appropriate expense standards for bankruptcy, starting from the IRS standards.

b. Amend Section 704 to give U.S. Trustees *strictly limited* discretion to consider a few *specific* additional factors that may determine whether a debtor can confirm a Chapter 13 repayment plan, but which are not included in the means test, in determining whether to file a motion of abuse. The specific factors include: required payments of arrearages and other debt expenses not included in the means test (such arrearages can be large), and expected changes in future income or expenses compared to the past 6 months (e.g., from job loss or getting a new job). This amendment would minimize the referral of cases to Chapter 13 that simply will not be able to confirm a successful plan. Creditor motions would not be affected by this change.

**Credit Card Disclosures**

The most effective way to reduce the number of bankruptcies is to give consumers the information they need to manage their credit card debts effectively -- information that creditors can provide at low cost.

1. Provide automatic disclosures about the financial implications of making only a minimum payment, with the monthly credit card statement, at least to consumers who are most likely to benefit from this information -- i.e., those who made the minimum payment only in the previous month (or 2 months), or those against whom a creditor is initiating collection actions (though this may be too late). If this information can be custom-generated for any consumer who calls an "800" number, which is costly to set up and staff, it could certainly be provided automatically to a limited number of easily-identifiable "high-risk" consumers.

2. Require additional disclosures on the Grassley-Torricelli "800" number, such as the total dollar amount that would be required to pay off the debt if the consumer makes only the minimum payment.

**Reaffirmations**

[If finalized: The proposed Sessions-Reed amendment should be adopted.]

**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. The Administration remains concerned that additional credit card and other nonpriority debts that are made nondischargeable by S. 625 will compete after bankruptcy with these societal priorities. There is no evidence of widespread abuse of credit cards on the eve of bankruptcy, particularly for low-income filers.

1. Change provision for dischargeability of cash advances from $750 to $1000 within 70 days. Cash advances are generally used for necessary not luxury expenses. This is still a tightening of dischargeability from current law.

2. At least retain provisions on nondischargeability that are closer to current law for debtors with less than median income. These debtors are least likely to be planning for bankruptcy and are most likely to need the cash.

**Loopholes for Wealthy**

Fair bankruptcy reform should close loopholes that allow many wealthy debtors to avoid their responsibility to repay a significant portion of their debt. Bankruptcy reform should not impose very strict requirements of debt repayment on moderate- and low-income debtors, while allowing wealthier debtors to shelter many hundreds of thousands of dollars in assets.

1. Include some kind of cap on homestead exemptions. Any limit, even a very high one, would be an important step toward increasing debt repayment by those who really can afford to do so.

2. Include a "bright line" time limit on assets transferred to the homestead on the eve of bankruptcy, for example within 365 days. The current Senate bill reduces the value of the homestead exemption on purchases within 730 days, provided that intent to defraud is demonstrated. But "eve of bankruptcy" provisions that do not require proof of intent are imposed by the bill on low-income debtors. There shouldn't be a double standard.

ck "oppose" "supp" amendment

S. 625 - Bankruptcy Reform Act of 1999
(Grassley (R) Iowa and eight cosponsors)

**Short version (under 2 pages) omits material in double brackets [[ ]].**

The President supports bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly. He is disappointed that the House failed to produce legislation that he could support. The Administration remains hopeful that bipartisan consultation and compromise will result in legislation the President can sign. The Senate bill, S. 625, has some improvements over H.R. 833 {*is a constructive step in this direction?*}. But the Administration continues to have serious reservations about the bill, and strongly opposes some of its key provisions.

Access to Chapter 7. Any means test used in bankruptcy proceedings should deny access to Chapter 7 only to those debtors who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. S. 625 in its current form would limit access to Chapter 7 to those debtors who meet a relatively inflexible and arbitrary means test. The Administration strongly opposes this provision. Debtors who may be denied a discharge of their debts must be given a meaningful realistic opportunity to have their specific circumstances considered by bankruptcy courts with appropriate, limited discretion to determine whether they genuinely have the capacity to repay a portion of their debts. [[ As Rep. Hyde has stated in the *New York Times*, the use of IRS guidelines without flexibility "depriv[es] debtors and their families of the means to pay for their basic needs"; and, as an example he noted on the House floor, "The cost of food in Omaha, Nebraska, or Boise, Idaho, is different than in downtown Manhattan. So what is realistic about an inflexible standard?" {*Alternative that involves much larger dollars*: As an example, according to the 1990 Census, the median gross monthly rent in the Census Tract that incudes Richmond Hill, Queens, was $640, 15 percent larger than the median rent for the county. Applying the housing standards inflexibly could force debtors of this community to move far from their jobs, or forego other necessary expenses. Yet this is not a particularly wealthy community -- its median income was less than the median income of the county as a whole ($34,200). By comparison, the median gross rent in the Census Tract including Ozone Park is less than the county median, so far fewer filers from this community have to move. Yet their resources are in fact greater--their median income is $2,000 above the county median income. What is fair or rational about forcing debtors to move from Richmond Hill, but not Ozone Park?}]]

As reported, S.625 would apply rough guidelines, developed by the Internal Revenue Service (IRS) for tax repayment plans, as standards for determining debtors' ability to repay, with exceptions only for expenses that are "reasonable and necessary." While some expense standards should be used to guide the determination of ability to repay, they should be tailored for bankruptcy. The same set of standards simply cannot be used in both bankruptcy and tax collection, which involve very different purposes and systems of judicial review. [[The Administration believes that the IRS expense formulas can be used as a starting point for developing appropriate bankruptcy guidelines, but that each system would be best served by their own appropriate standards. ]]

The Administration understands that Sen. ________ and _______ intend to propose amendments to S. 625 that addresses these concerns. {Hyde-like amendment; possible Schumer " new standards" amendment} The Administration strongly supports these amendments.

Finally, all parties should be able to agree that any means test should be implemented efficiently. Burdensome filing and hearing requirements that lead to little or no additional debt repayment are not in the interest of debtors, creditors, or taxpayers. The Administration understands that Sen. ____ intends to propose an amendment that would help streamline the means-testing process, without affecting debt collection. The Administration supports this amendment.

Consumer Information and Protection: The Administration continues to believe that reform must address the factor that is most strongly correlated with the rise in personal bankruptcy: rising levels of consumer debt. [[ Americans now receive over 3.5 billion credit card solicitations per year, many of which are marketed to encourage consumers to carry high balances and incur large interest charges. The most effective way to reduce the number of bankruptcies in this new financial era is to give consumers the information they need to manage their credit card debts effectively, recognizing the creditors' superior information and bargaining ability. ]] Consumers must be given clear information on the terms of their credit, and the financial implications of not paying off their credit card balances. The amendment to be offered by Sens. Grassley and Torricelli addresses some abusive credit practices, such as failure to disclose "teaser" rates clearly. While this is an improvement over H.R. 833, it is clear that much more could be done. [[Creditors can provide the needed information, and will do so through the " 800" number under the provisions of the Grassley-Torricelli amendment. But it is costly to maintain such a number as well as unnecessarily burdensome for consumers, who may be reluctant to call their credit card company if they are worried about their finances or are pressed for time. Instead, companies could provide the information more cheaply, reliably, and in a manner that would be easier for consumers to use by including it automatically on credit card statements.]] Senators [Durbin?] ____ and ____ are expected to offer amendments that would do this. The Administration supports these amendments.

[NOTE. Following paragraph may have to be replaced or removed if Sessions follows through on proposed reaff amendment:]

Abusive Creditor Practices. Much evidence shows that debtors often reaffirm unsecured debt and low-value secured debts on unfavorable terms when they do not have the means to meet their own necessary expenses and make more important debt payments, placing such priority debts as child support and alimony obligations at risk. Such reaffirmations frequently are the result of insufficient or misleading information or threats from creditors. S.625 does little to address these abuses. If we are to provide substantial new opportunities for creditors to challenge debtors' use of the bankruptcy system under Chapter 7 of the Bankruptcy Code, we must limit abusive creditor practices such as coercive reaffirmations and violations of the automatic stay against collection actions. Hence the Administration supports the amendment of Senators Sessions and Reed, which protects debtors by giving them adequate information for decisions about significant reaffirmations of unsecured and low-value secured debt.

Cramdowns. S. 625 also changes the lien stripping or "cramdown" in current law governing a chapter 13 bankruptcy, under which a secured debt becomes nondischargeable only up to the value of the security interest at the time of bankruptcy. The Administration agrees that lien stripping should be limited for loans incurred in the period preceding bankruptcy for automobiles to prevent abuses, but believes that the provisions in the Senate bill are excessive. [[While the Administration strongly prefers the Senate provisions to the extreme prohibitions in H.R. 833, the five-year prohibition on lien stripping on automobile debts in the current bill will do little to deter bankruptcy abuses than a more reasonable time limit. Instead, the prohibition will significantly reduce repayment of priority, unsecured debts like child support and taxes.]] The Administration understands that Senator [Kohl? Sessions?] will offer an amendment that provides appropriate but not excessive cramdown relief. The Administration endorses this amendment.

Nondischargeable Debts. 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. The Administration [[strongly prefers the provisions in S. 625, which offer some protection for child support and alimony, to those in H.R. 833. But the Administration]] remains concerned that additional credit card and other nonpriority debts made nondischargeable by these provisions will compete after bankruptcy with child support, alimony, and other societal priorities like educational loans and taxes. The amendment to be offered by Sen.____________, which the Administration supports, would address this concern by __________ .

Loopholes for the Wealthy. Finally, the Administration supports changes that would close loopholes in bankruptcy law, such as unlimited homestead exemptions and the exemptions from repayment requirements for individuals who are able to file for bankruptcy under Chapter 11, that allow many wealthy debtors to avoid their responsibility to repay a significant portion of their debt. Bankruptcy reform should not place a greater responsibility for debt repayment on moderate- and low-income debtors than it does on high-income debtors. We understand Sen. _________ will offer an amendment to place a reasonable limit on homestead exemptions. The Administration supports that amendment.

**Tweaks to Senate Bill**

**Means Test Changes Without New Judicial Discretion**

* Amend section 704 to give US Trustees limited discretion in determining whether to file a motion of abuse to consider specific additional factors that will influence the Chapter 13 repayment plan. The specific factors include: required payments of arrearages and other debt expenses not included in the means test (such arrearages can be large), and expected changes in future income or expenses compared to the past 6 months (e.g., from job loss or getting a new job). This amendment would minimize the referral of cases to Chapter 13 that simply will not be able to confirm a successful plan in chapter 13. Creditor motions would not be affected by this change.

* Include additional factors in the means test that also determine repayment capacity and success in Chapter 13:

*General adjustments*

a. Include minimum threshold of $6,000 repayment ability ($100/month). This provision is in House bill. H

b. Allow administrative expenses and reasonable attorneys' fees of 10 percent of projected payments under a chapter 13 plan. This provision is in House bill. H

c. Allow additional expenses up to 5% of National and Local formulaic standards if reasonably necessary. This provision is modeled on the House bill, which allows for 5% additional food/clothing expenses if reasonable and necessary. It is derived from the more flexible IRS enforcement provision that automatically allows deviations that are small in magnitude to the formulaic expense standards without requiring any kind of justification. It prevents a strict standard of review that substantially exceeds the IRS standards from being applied to individuals whose estimated repayment capacity from the means test exceeds the repayment threshold by only a few dollars for necessary expenses. H

d. Allow continuation of educational expenses and charitable contributions, and exclude benefits received under the Social Security Act. These are all in the House bill. H

housing
food
transport

e. Allow additional housing expenses of up to 10% for gross rent and for housing costs other than mortgage if reasonably necessary. This adjustment reflects the public interest that debtors not be forced to leave their homes, communities, school districts, when their housing expenses, although above the median for the county, are not unreasonable in amount and do not reflect wealthy lifestyles. Many neighborhoods that are not wealthy are populated by households with most imp.

above-median expenses. For example, in Queens, 75% of the households paid rents or housing costs, other than mortgage, of up to 125% of the county median in the last Census. The individuals who paid these above-median rents were not necessarily wealthy: in fact, in several Census tracts within the county, rents were higher than the median, yet incomes were actually lower than median. Holding to the median county standard means making maybe 25% of moderate income debtors move out of their home communities while allowing other debtors with similar incomes to live where they want to.

f. Allow additional adjustments to food expenses of up to 10 % if reasonably necessary. For example, the food expenses are 15 % larger than the overall average for debtors with older children than average.

g. Allow adjustment of 15% in standard transportation expenses other than ownership costs of vehicles (which are limited to the lease or purchase of two cars) if reasonably necessary. Non-ownership transportation expenses (e.g., bus fares) increase enormously as the size of the debtor's family grows nearly independently of the number of owned or leased cars. The increases are even larger when the additional family members also earn income for the family; not allowing these expenses could put repayment of debts at risk. The particular work situation of the debtor or the debtor's family members may in additional require increased transportation expenses. Evidence indicates that the non-ownership expenses are about 15% higher than the average for families of 4 people than for 2 people; public transportation expenses are nearly 30% higher for the same size difference.

h. Allow continuation of reasonable expenses for the support of nondependent family members. For example, many households provide important support and care for elder parents, allowing them to keep living in the community, but do not provide enough support for the parent to be counted as a dependent.

i. Allow reasonable expenses and allow adjustments in income for education, equipment, relocation, and other expenses related to moving from welfare, disability, or unemployment to work. Such expenses may substantially reduce government welfare costs and increase repayment capacity in the long run; disallowing them could prevent debtors from working their way out of debt.

j. Allow expenses associated with adoption.

k. Allow additional expenses and income adjustments associated with protection of the debtor and family from domestic violence.

* Include provisions generally used by IRS in the application of their standards for determining a repayment plan. • off-setting

→ enhance collection

a. Allow low expenses in some formulaic expense categories to offset high expenses in others. For example, if a debtor has above-formula housing expenses but below-formula transportation expenses (because of residence close to a job), such expenses would be considered appropriate if the total actual expenses for both categories were less than the total formulaic expenses for both categories.

b. Allow expenses above allowable amounts if the debtor can show that the actions that would be taken if not allowed would in fact result in greater reasonably necessary expenses, hence less disposable income. For example, if the debtor is paying rent above the allowable amount but penalties for termination of the lease and moving expenses would result in less overall disposable income, the additional rental expense should be allowed over the life of the lease. If the debtor is paying rent above the allowable amounts but has low child care expenses and can show that, if forced to move, increases in reasonably necessary child care expenses would more than offset savings from lower rent, the additional rent should be allowed.

* Include provisions generally used by IRS in developing a repayment plan.

a. "Three-year rule": if debtor can repay in full with existing expenses over 3 years, repayment plan need not require modification of expenses, only achieve full repayment over 3 years. In other words, the means test formula doesn't have to be followed exactly in order to complete repayment sooner.

b. "One-year rule": allow the debtor 1 year in which to adjust from making monthly payments according to his or her own expenses to payments according to allowed expenses under the means test and extend lifetime of plan accordingly.

• Include provisions to make the means test work more efficiently, without reducing debt repayment.

a. We expect the Senate bill to adopt a provision like the House, under which no motions based on the means test are allowed by any parties. But we could ask for more than this on "efficiency" grounds...

b. Debtors with below-median income are only required to document that, and not to provide full documentation for the means test. The Senate bill will provide a "safe harbor" for such debtors, but they still face the burden of the test.

c. Debtors with incomes of 100-150% of median are required to document their other necessary expenses only if a preliminary screen based on formulaic expenses and nondischargeable debts shows that they can repay.

streamlining

- Require the development of guidelines appropriate for bankruptcy by the Depts. of Treasury and Justice. This is along the lines of the Hyde Amendment; we have developed legislative language at Schumer's request. In response to their inquiry, Secretary Rubin and Attorney General Reno sent Sens. Grassley and Torricelli a letter in May saying that the Departments could work together to do this.

**Credit Card Disclosures**

- Additional disclosures on the 800 number, e.g., the total dollar amount that would be paid if the consumer makes only the minimum payment.

- Additional disclosures to credit users who are most likely to benefit from them, e.g., those against whom companies are taking collection actions. This may seem like "too little, too late"; a broader approach would be to provide the disclosures to consumers who made the minimum payment only in the previous month (or 2 months).

**Reaffirmations**

Proposed Sessions-Reed amendment.

**Nondischargeable Debt**

Change current law as little as possible, as there is no evidence of significant abuse here (Senate bill already is much closer to current law than House)...

- Change provision for cash advances from $750 to $1000 within 70 days ← Sen.

  Current 7,000 in 90 days

- Change provision for debtors with less than median income - those who are least likely to be planning for bankruptcy and most likely to need the cash.

**Loopholes for Wealthy**

Ch 11 - fix - should be in conf report.

- Any kind of cap.

- Current Senate bill reduces the value of the homestead exemption on purchases within 730 days with intent to defraud. But why not have a "bright line" limit of say 365 days, where proof of intent is not required? Such "eve of bankruptcy" provisions are imposed by the bill on low-income debtors.

9/1 draft
McLellan

**Administration Proposals for Modest Improvements to S. 625**

## Means Test

1. Include additional factors in the means test that determine repayment capacity and success in Chapter 13, *and that are already included in the House bill.*

    a. Include minimum threshold of $6,000 repayment ability ($100/month).

    b. Allow administrative expenses and reasonable attorneys' fees of 10 percent of projected payments under a chapter 13 plan.

    c. Allow continuation of educational expenses and charitable contributions, and exclude benefits received under the Social Security Act.

    d. Allow additional expenses up to 5% of additional food and clothing expenses as in the House bill, and expand this provision to *all* formulaicNational and Local formulaic standards. This provision is derived from a more flexible IRS enforcement guideline that *automatically* allows deviations that are small in magnitude to the formulaic expense standards without requiring substantial justification. It prevents a strict standard of review from being applied to individuals whose estimated repayment capacity from the means test exceeds the repayment threshold by only a few dollars, when they need those dollars for their usual expenses.

2. Include additional expenses in the means test that should take priority over credit card debts.

    re-order

    a. Allow continuation of reasonable expenses for the support of nondependent family members. For example, many households provide important support and care for elder parents, allowing them to keep living in the community, but do not provide enough support for the parent to be counted as a dependent.

    b. Allow reasonable expenses and allow adjustments in income for education, equipment, relocation, and other expenses related to moving from welfare, disability, or unemployment to work. Such expenses may substantially reduce government welfare costs and increase repayment capacity in the long run; disallowing them could prevent debtors from working their way out of debt. displaced worker

    c. Allow expenses associated with adoption.

    d. Allow additional expenses and income adjustments associated with protection of the debtor and family from domestic violence.

3. Include provisions generally used by IRS in the application of their standards for determining a repayment plan, to improve the workability of the standards.

a. Allow low expenses in some formulaic expense categories to offset high expenses in others. For example, some debtors have above-formula housing expenses but below-formula transportation expenses, because they reside close to their job. Such expenses would be considered appropriate if the total actual expenses for both categories were less than the total formulaic expenses for both categories.

b. Allow expenses above formula amounts if the debtor can show that, if such expenses were not allowed, the debtor would in fact have higher necessary expenses and thus less disposable income for debt repayment. For example, if the debtor is paying rent above the allowable amount but penalties for termination of the lease and moving expenses would result in less overall disposable income, the additional rental expense should be allowed over the life of the lease. If the debtor is paying rent above the allowable amounts but has low child care expenses and can show that, if forced to move, higher child care expenses would more than offset savings from lower rent, then the additional rent should be allowed.

4. Include provisions generally used by IRS in developing a workable repayment plan when applying the means test.

a. "Three-year rule": if debtor can repay in full with existing expenses over 3 years, the repayment plan need not require modification of expenses; it need only achieve full repayment over 3 years. In other words, the means test formula doesn't have to be followed exactly in order to complete repayment sooner.

b. "One-year rule": allow the debtor 1 year in which to adjust from making monthly payments according to his or her own expenses to payments according to allowed expenses under the means test and extend lifetime of plan accordingly.

5. Include provisions to make the means test work more efficiently, without reducing debt repayment. (Note: We expect the Senate bill to adopt a provision like the House, under which no motions based on the means test are allowed by any parties against debtors with below-median incomes. Even with this provision, however, the application of the means test could still be made considerably less burdensome and costly without changing debt repayment.)

a. Debtors with below-median income are only required to document that, and not to provide the full documentation for the means test. Although he Senate bill is likely to provide a "safe harbor" for such debtors, they still face the burden of providing time-consuming documentation and analysis.

b. Debtors with incomes of 100-150% of median are required to document all of their other necessary expenses only if a preliminary screen based on formulaic expenses and nondischargeable debts shows that they can repay.

6. Include provisions for somewhat greater flexibility in allowing modest additional expenses beyond those prescribed in the means test formula. Because many households have expenses that are somewhat higher than the median for reasons that are hardly extravagant, it is unreasonable to apply a very stringent standard to expenses that are only slightly above the formulaic amounts.

   a. Allow additional housing expenses of up to 10% for gross rent and for housing costs other than mortgage if reasonably necessary. This adjustment reflects the public interest that debtors not be forced to leave their homes, communities, school districts, when their housing expenses are above the county median yet are not unreasonable and do not reflect wealthy lifestyles. Many modest-income neighborhoods have homes with above-median expenses. For example, in Queens, 75% of the households paid rents or housing costs (other than mortgage) of up to 125% of the county median. The individuals who paid these above-median rents were not necessarily wealthy: in fact, in several neighborhoods within the county, rents were higher than the median yet incomes were actually <u>lower</u> than median. A strict application of the median standard for a county means making many moderate income debtors move out of their home communities, while not affecting other debtors with similar or higher incomes.

   b. Allow additional adjustments to food expenses of up to 10 % if reasonably necessary. Many households have above-average food expenses for perfectly ordinary reasons. For example, food expenses are 15 % larger than the overall average for debtors who have children who are older than average.

   c. Allow adjustment of 15% in transportation expenses other than ownership costs of vehicles if reasonably necessary. Non-ownership transportation expenses (e.g., bus fares) increase enormously as the size of the debtor's family grows, nearly independently of the number of owned or leased cars. Indeed, households with fewer cars often have much higher non-ownership expenses. Such expenses are even larger when the additional family members also earn income for the family; and so not allowing them could substantially reduce a household's ability to repay debt. In addition, many debtors have work situations that require high transportation expenses. For example, the non-ownership expenses are about 15% higher for families of 4 people than for 2 people; public transportation expenses are nearly 30% higher for the same size difference.

7. Modify the means test, *without increasing judicial discretion*, to make it work more effectively for bankruptcy and debt repayment.

   a. Require the development of expense standards appropriate for bankruptcy by Treasury and Justice. Rep. Hyde made a similar proposal, pointing out that the IRS standards were designed for tax collection in IRS processes with substantial administrative discretion, not debt repayment after bankruptcy in courts with more limited judicial discretion. In response to their inquiry, Secretary Rubin and Attorney General Reno sent Sens. Grassley and Torricelli a letter in May saying that the Departments could work together to develop appropriate expense standards for bankruptcy, starting from the IRS standards.

b. Amend Section 704 to give U.S. Trustees *strictly limited* discretion to consider a few *specific* additional factors that may determine whether a debtor can confirm a Chapter 13 repayment plan, but which are not included in the means test, in determining whether to file a motion of abuse. The specific factors include: required payments of arrearages and other debt expenses not included in the means test (such arrearages can be large), and expected changes in future income or expenses compared to the past 6 months (e.g., from job loss or getting a new job). This amendment would minimize the referral of cases to Chapter 13 that simply will not be able to confirm a successful plan. Creditor motions would not be affected by this change.

**Credit Card Disclosures**

The most effective way to reduce the number of bankruptcies is to give consumers the information they need to manage their credit card debts effectively -- information that creditors can provide at low cost.

1. Provide automatic disclosures about the financial implications of making only a minimum payment, with the monthly credit card statement, at least to consumers who are most likely to benefit from this information -- i.e., those who made the minimum payment only in the previous month (or 2 months), or those against whom a creditor is initiating collection actions (though this may be too late). If this information can be custom-generated for any consumer who calls an "800" number, which is costly to set up and staff, it could certainly be provided automatically to a limited number of easily-identifiable "high-risk" consumers.

2. Require additional disclosures on the Grassley-Torricelli "800" number, such as the total dollar amount that would be required to pay off the debt if the consumer makes only the minimum payment.

**Reaffirmations**

[If finalized: The proposed Sessions-Reed amendment should be adopted.]

**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. The Administration remains concerned that additional credit card and other nonpriority debts that are made nondischargeable by S. 625 will compete after bankruptcy with these societal priorities. There is no evidence of widespread abuse of credit cards on the eve of bankruptcy, particularly for low-income filers.

1. Change provision for dischargeability of cash advances from $750 to $1000 within 70 days. Cash advances are generally used for necessary not luxury expenses. This is still a tightening of dischargeability from current law.

2. At least retain provisions on nondischargeability that are closer to current law for debtors with less than median income. These debtors are least likely to be planning for bankruptcy and are most likely to need the cash.

**Loopholes for Wealthy**

Fair bankruptcy reform should close loopholes that allow many wealthy debtors to avoid their responsibility to repay a significant portion of their debt. Bankruptcy reform should not impose very strict requirements of debt repayment on moderate- and low-income debtors, while allowing wealthier debtors to shelter many hundreds of thousands of dollars in assets.

1. Include some kind of cap on homestead exemptions. Any limit, even a very high one, would be an important step toward increasing debt repayment by those who really can afford to do so.

2. Include a "bright line" time limit on assets transferred to the homestead on the eve of bankruptcy, for example within 365 days. The current Senate bill reduces the value of the homestead exemption on purchases within 730 days, provided that intent to defraud is demonstrated. But "eve of bankruptcy" provisions that do not require proof of intent are imposed by the bill on low-income debtors. There shouldn't be a double standard.

Sarah Rosen Wartell
08/30/99 09:49:21 AM

Record Type: Record

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

cc:
Subject: bankruptcy stuff

Gay is calling around to see who is here today. I would like to have a short conference call today after 2:00 to discuss draft SAP (prepared by Treasury below) and "short list" of administration improvements (that we think they might consider).

---------------------- Forwarded by Sarah Rosen Wartell/OPD/EOP on 08/30/99 09:47 AM ---------------------------

**Mark.McClellan@do.treas.gov**
08/27/99 02:02:18 AM

Record Type: Record

To: Sarah Rosen Wartell/OPD/EOP

cc: Lucy.Huffman@do.treas.gov
Subject: bankruptcy stuff

---

Date: 08/27/1999 01:52 am (Friday)
From: Mark McClellan
To: rosen
CC: huffmanl
Subject: bankruptcy stuff

Sarah:
3 documents attached...

1) "Short" draft of SAP, reflecting new developments

2) "Long" draft, which could perhaps turn in to a supplemental letter. This has more details on what we dont like, especially about the means test and the credit card disclosures.

I am not sure if the language in the first paragraph is allowed in SAPese, but I think it is important to convey that there are a number of things we prefer/ strongly prefer in the Senate bill. So I am worried about a tone that comes across as too negative on issues besides means test and disclosures.

3) List of specific tweaks to the bill that are well short of our preferred

proposal but that would make it better.

I'd be glad to discuss further, especially if you can provide more context on the specific areas where movement may be possible.

- SAPS625S.WPD

- SAPS625L.WPD

- TWEAKS.WPD

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## The Administration's Concerns with S. 625

The President supports bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly. He is disappointed that the House failed to produce legislation that he could support. The Administration remains hopeful that bipartisan consultation and compromise will result in legislation the President can sign. The Senate bill, S. 625, has some improvements over H.R. 833. But the Administration continues to have serious reservations about the bill, and strongly opposes some of its key provisions as described below.

Access to Chapter 7. Any means test used in bankruptcy proceedings should deny access to Chapter 7 only to those debtors who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. As reported, S.625 would apply rough guidelines developed by the Internal Revenue Service (IRS) for tax repayment plans as standards for determining debtors' ability to repay, with exceptions only for expenses that are "reasonable and necessary." The Administration remains opposed to this provision, which, while less rigid than the House, is insufficiently flexible. The Administration supports Sen. ____'s amendment that would add a reasonable degree of discretion to the use of the standards, similar to the amendment proposed by Reps. Hyde and Conyers for H.R. 833. The supports the use of guidelines appropriate for bankruptcy, as proposed by Sens. ______. The Administration also supports Sen. ____'s amendment to implement means testing efficiently, by streamlining the means test for debtors who obviously can repay little or no debt.

Consumer Information and Protection: The Administration continues to believe that reform must address the factor that is most strongly correlated with the rise in personal bankruptcy: rising levels of consumer debt. The most effective way to reduce the number of bankruptcies in this new financial era is to give consumers the information they need to manage their credit card debts effectively, recognizing the creditors' superior information and bargaining ability. In particular consumers must be given clear information on the financial implications of not paying off their credit card balances. The Administration welcomes the effort of Senators Grassley and Torricelli but finds the partial package to be too little progress in this area to merit enthusiastic support.

Abusive Creditor Practices. Much evidence shows that debtors often reaffirm unsecured debt and low-value secured debts on unfavorable terms when they do not have the means to meet their own necessary expenses and make more important debt payments, placing such priority debts as child support and alimony obligations at risk. Such reaffirmations frequently are the result of insufficient or misleading information or threats from creditors. It is essential to the bankruptcy process to protect debtors from abusive creditor practices such as these reaffirmations and violations of the automatic stay against collection actions. Hence the Administration supports the amendment of Senators Sessions and Reed, which protects debtors by giving them adequate information for decisions about significant reaffirmations of unsecured and low-value secured debt. The Administration also supports the Senate bill's retention of the ability to bring affects consumer protection

class actions in the case of violations of stay. The absence of this provision in H.R. 833 is one of its unacceptable features.

Cramdowns. S. 625 also changes the lien stripping or "cramdown" in current law governing a chapter 13 bankruptcy, under which a secured debt becomes nondischargeable only up to the value of the security interest at the time of bankruptcy. The Administration agrees that lien stripping should be limited for loans incurred in the period preceding bankruptcy for automobiles, to prevent abuses. While the Administration strongly prefers the provisions in the Senate bill to the excessive prohibitions in H.R. 833, the five-year prohibition on lien stripping on automobile debts in the current bill will do little more to deter bankruptcy abuses. Instead, the prohibition will significantly reduce repayment of priority, unsecured debts like child support and taxes.

Nondischargeable Debts. 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. Both the Senate and House bills reduce the current law limits that determine whether debts incurred on the eve of bankruptcy or to pay nondischargeable debts are deemed nondischargeable, without providing any evidence of abuses of current law. While we prefer the provisions in S. 625 to those in H.R. 833, we remain concerned that the additional credit card and other nonpriority debts that may have been incurred on the eve of bankruptcy will compete after bankruptcy with child support, alimony, and other societal priorities like educational loans and taxes.

Loopholes for the Wealthy. Finally, the Administration is concerned about the loopholes in bankruptcy law, such as unlimited homestead exemptions and the exemptions from repayment requirements for individuals who are able to file for bankruptcy under Chapter 11, that allow many wealthy debtors to avoid their responsibility to repay a significant portion of their debt. Bankruptcy reform should not place a greater responsibility for debt repayment on moderate- and low-income debtors than it does on high-income debtors. [We welcome the action of the Senate on the amendment of -----, which closes the "Chapter 11 loophole"]

<u>**S. 625 - Bankruptcy Reform Act of 1999**</u>

(Grassley (R) Iowa and eight cosponsors)

The President supports bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly. He is disappointed that the House failed to produce legislation that he could support. The Administration remains hopeful that bipartisan consultation and compromise will result in legislation the President can sign. The Senate bill, S. 625, has some improvements over H.R. 833. But the Administration continues to have serious reservations about the bill, and strongly opposes some of its key provisions as described below.

<u>Access to Chapter 7</u>. Any means test used in bankruptcy proceedings should deny access to Chapter 7 only to those debtors who genuinely have the capacity to repay a portion of their debts successfully under a Chapter 13 repayment plan. As reported, S.625 would apply rough guidelines developed by the Internal Revenue Service (IRS) for tax repayment plans as standards for determining debtors' ability to repay, with exceptions only for expenses that are "reasonable and necessary." The Administration believes that the IRS expense formulas can be used as a starting point for developing appropriate bankruptcy guidelines. However, debtors who may be denied a discharge of their debts must be given a meaningful opportunity to have their specific circumstances considered by bankruptcy courts with appropriate, limited discretion to determine whether they genuinely have the capacity to repay a portion of their debts.

As Rep. Hyde has stated in the *New York Times*, the use of IRS guidelines without flexibility "depriv[es] debtors and their families of the means to pay for their basic needs"; and, as an example he noted on the House floor, "The cost of food in Omaha, Nebraska, or Boise, Idaho, is different than in downtown Manhattan. So what is realistic about an inflexible standard?" [*Alternative that involves much larger dollars*: As an example, the cost of a two-bedroom apartment near central Baltimore is over ($300) per month higher than that of comparable apartments in outlying parts of the same metropolitan area. But the IRS housing allowance is the same for debtors living in both counties, so that applying the housing standards inflexibly could force debtors to move more far from their jobs and families, or forego other necessary expenses.] The Administration understands that Sen. ________ intends to propose and amendment to S. 625 that addresses these concerns. [Hyde-like amendment; possible Schumer " new standards" amendment; Administration "efficiency" amendments.] The Administration strongly supports these amendments.

The Administration also believes that any means test should be implemented efficiently: burdensome filing and hearing requirements that lead to little or no additional debt repayment are not in the interest of debtors, creditors, or taxpayers. The Administration understands that Sen. ____ intends to propose an amendment that would help streamline the means-testing process.

The Administration supports this amendment.

Consumer Information and Protection: The Administration continues to believe that reform must address the factor that is most strongly correlated with the rise in personal bankruptcy: rising levels of consumer debt. Americans now receive over 3.5 billion credit card solicitations per year, many of which are marketed to encourage consumers to carry high balances and incur large interest charges. The amendment to be offered by Sens. Grassley and Torricelli addresses some abusive credit practices, such as failure to disclose "teaser" rates clearly. This is an improvement over H.R. 833. However, the most effective way to reduce the number of bankruptcies in this new financial era is to give consumers the information they need to manage their credit card debts effectively, recognizing the creditors' superior information and bargaining ability. Consumers must be given clear information on the terms of their credit, and the financial implications of not paying off their credit card balances. Creditors can provide this information, and will do so through the "800" number under the provisions of the Grassley-Torricelli amendment. But it is costly to maintain such a number as well as unnecessarily burdensome for consumers, who may be reluctant to call their credit card company if they are worried about their finances or are pressed for time. Instead, companies could provide the information more cheaply, reliably, and in a manner that would be easier for consumers to use by including it automatically on credit card statements. Senators [Durbin?] ____ and ____ are expected to offer amendments that would do this. The Administration supports these amendments.

[Following paragraph will have to be replaced or removedif Sessions follows through on proposed reaff amendment:

Abusive Creditor Practices. Much evidence shows that debtors often reaffirm unsecured debt and low-value secured debts on unfavorable terms when they do not have the means to meet their own necessary expenses and make more important debt payments, placing such priority debts as child support and alimony obligations at risk. Such reaffirmations frequently are the result of insufficient or misleading information or threats from creditors. S.625 does little to address these abuses. If we are to provide substantial new opportunities for creditors to challenge debtors' use of the bankruptcy system under Chapter 7 of the Bankruptcy Code, we must limit abusive creditor practices such as coercive reaffirmations and violations of the automatic stay against collection actions. Hence the Administration supports the amendment of Senators Sessions and Reed, which protects debtors by giving them adequate information for decisions about significant reaffirmations of unsecured and low-value secured debt. The Administration also supports the Senate bill's retention of the ability to bring class actions in the case of violations of stay. The absence of this provision in H.R. 833 is one of its unacceptable features. weak?

Cramdowns. S. 625 also changes the lien stripping or "cramdown" in current law governing a chapter 13 bankruptcy, under which a secured debt becomes nondischargeable only up to the value of the security interest at the time of bankruptcy. The Administration agrees that lien stripping should be limited for loans incurred in the period preceding bankruptcy for automobiles, to prevent abuses. While the Administration strongly prefers the provisions in the Senate bill to the excessive prohibitions in H.R. 833, the five-year prohibition on lien stripping on automobile debts in the current bill will do little more to deter bankruptcy abuses than a more reasonable time limit. Instead, the prohibition will significantly reduce repayment of priority, unsecured debts like child support and taxes. The Administration understands that Senator [Kohl? Sessions?] will offer an amendment that provides appropriate but not excessive cramdown relief. The Administration endorses this amendment.

Nondischargeable Debts. 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. The Administration strongly prefers the provisions in S. 625 to those in H.R. 833, but remains concerned that additional credit card and other nonpriority debts will compete after bankruptcy with child support, alimony, and other societal priorities like educational loans and taxes. The amendment to be offered by Sen.____________, which the Administration supports, would address this concern by _________ . [NOTE: Senate does have intent in their nondischargeability provisions, unlike House, which is much broader. The biggest problem with the Senate nondischargeability provisions -- and relative to the other problems with the bill, it is not a big problem -- is the dollar amounts in the days preceding bankruptcy, especially for cash advances ($750 over 70 days compared to current law limits of $1,000 over 60 days).]

Loopholes for the Wealthy. Finally, the Administration supports changes that would close loopholes in bankruptcy law, such as unlimited homestead exemptions and the exemptions from repayment requirements for individuals who are able to file for bankruptcy under Chapter 11, that allow many wealthy debtors to avoid their responsibility to repay a significant portion of their debt. Bankruptcy reform should not place a greater responsibility for debt repayment on moderate- and low-income debtors than it does on high-income debtors. We understand Sen. _________ will offer an amendment to place a reasonable limit on homestead exemptions. The Administration would support that amendment.