

To Nicole Rabner - Please review & advise. HRC

UNITED STATES BANKRUPTCY COURT
FOR THE
EASTERN DISTRICT OF KENTUCKY
202 COMMUNITY TRUST BUILDING
100 EAST VINE STREET
P.O. BOX 1111
LEXINGTON, KENTUCKY 40588-1111

JM

CHAMBERS OF
JOE LEE, JUDGE

TEL: 606-233-2814
FAX: 606-233-2878

FAX MESSAGE TRANSMISSION

DATE: 7-20-99

FROM: HONORABLE JOE LEE
LEXINGTON, KY

TO: Mrs. Hillary Rodham Clinton

FAX NO. 202-456-6244

The White House

Washington, D.C.

ATTN: MILANNE VERVEER, CHIEF OF STAFF

DOCUMENT

DESCRIPTION: Letter re: The Bankruptcy Reform Act of 1999

TOTAL NUMBER OF PAGES INCLUDING THIS ONE: 17

MESSAGE: This letter is sent at the urging of Professor

Elizabeth Warren

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**CHAMBERS OF
JOE LEE, JUDGE**

July 20, 1999

**TEL: 606-233-2814
FAX: 606-233-2676**

**Mrs. Hillary Rodham Clinton
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500**

**Re: The Bankruptcy Reform Act
of 1999**

Dear Mrs. Clinton:

This letter is prompted by Ms. Seelye's article in the Sunday, June 27, 1999 *New York Times* indicating you may stand alone in your opposition to "bankruptcy reform"¹ legislation which has been passed by the House and is pending in the Senate. The Congress, the Administration, and the public are being snookered about the necessity for this perverse legislation. I hope you will hang tough.

The purpose of this letter is to make you and staff assisting you in evaluating this legislation aware that there are actually fewer individual bankruptcy filings now in relation to consumer credit outstanding than there were in 1946, immediately after World War II.

Ridiculous, you and they say. Let's do the math.

According to Federal Reserve Bulletin G 19, readily available on the internet, consumer credit outstanding on December 31, 1998 was \$1,299,200,000,000 (\$1.3 trillion). And, according to statistics published by the Administrative Office of the United States Courts, non-business, consumer bankruptcy cases filed in 1998 totaled 1,398,182 (1.4 million). The latter figure, $1,398,182 \div \$1,299,200,000,000 = 1.076$ consumer bankruptcy cases filed for each one million dollars of consumer credit outstanding.

¹ The House and Senate bills, which are more callous toward debtors than the bankruptcy acts of 1841, 1867, and 1898, hardly qualify as "reform" legislation.

Mrs. Hillary Rodham Clinton

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Now, let's do the math for 1946, 53 years ago. Consumer credit outstanding at the end of 1946 was \$7,677,000,000 (\$7.7 billion). Non-business bankruptcy cases filed in 1946 totaled 8,566. The latter figure $8,566 \div \$7,677,000,000 = 1.116$ consumer bankruptcy cases filed for each one million dollars of consumer credit outstanding.

Using the same methodology, according to my calculations, there were more than 1.076 consumer bankruptcy cases filed in relation to consumer credit outstanding during 23 of the 32 years between 1946 and 1978.

Remarkably, there has been less than one consumer bankruptcy case filed for each one million dollars of consumer credit outstanding during 16 of the 20 years since 1978, indicating rather clearly that the much maligned Bankruptcy Reform Act of 1978 reduced rather than increased individual bankruptcies in relation to consumer credit outstanding, and further suggesting that, generally speaking, debtors are at least as responsible today as were debtors 53 years ago.

When members of Congress are told by lobbyists for the consumer credit industry that there were 1.4 million consumer bankruptcy cases filed in 1998 compared to only 287,594 such cases filed in 1980, at first blush this comparison seems astounding. What the lobbyists omit to tell is that at the close of 1980 consumer credit outstanding stood at only \$350,130 billion as compared to \$1.3 trillion at the close of 1998, an increase of 371% or nearly \$1 trillion, which when divided by \$1 million readily explains why approximately one million more individual bankruptcies were filed in 1998 than in 1980.

While it is true that during the 18-year period between 1980 and 1998 individual bankruptcy filings increased by 486%, it is also true that during this 18-year period consumer credit outstanding increased by leaps and bounds as well, and consumer bankruptcy filings increased in tandem with the growth of consumer credit outstanding.

Moreover, since about 1988 Federal Reserve Board bulletin G19 has tended to understate consumer credit outstanding because the published calculation does not include automobile lease debt or home equity loan debt.

Consumer automobile lease debt, which is reported separately in Federal Reserve Bulletin G20, stands at approximately \$108 billion.

Home equity loan debt at the end of 1998 stood at \$460,036 billion. Economists for the Federal Reserve Board have indicated a conservative estimate would be that 50% of home equity debt should be counted as consumer credit outstanding. I have made the latter adjustment in some of the charts I am submitting herewith.

Mrs. Hillary Rodham Clinton

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I have not included automobile lease debt in the charts because the Federal Reserve Board, for reasons that are not entirely clear, has not yet indicated a disposition to include automobile lease debt in the category of consumer credit outstanding.

In any event, it is obvious that presently there is considerable "leakage" of consumer credit outstanding into automobile lease debt and home equity loan debt. For example, Julie L. Williams, Acting Comptroller of the Currency, in a September 27, 1998 speech to the American Bankers Association stated:

According to a recent study, over the past 24 months, 4.2 million American households have converted \$26 billion of credit card debt into home equity mortgage debt. For many consumers, this makes sense. The advantages of home equity-financed debt consolidation, with its lower interest rates and potential tax deductibility, can be substantial – provided that borrowers are serious about bringing their spending under control. But the same study also shows that only a third of the 4.2 million households that had consolidated their unsecured debt were still credit card debt-free at the end of the study period. To varying degrees, the others had "reloaded" their credit cards with new purchases, leaving them worse off than before in terms of their total debt burden. Worse still, they placed their homes in jeopardy.

When we make only the adjustment of including 50% of home equity loan debt in the category of consumer credit outstanding, we find that between 1980 and 1998, consumer credit outstanding increased by at least 439%. If we make a further adjustment for automobile lease debt we find that during the 18-year period between 1980 and 1998 consumer credit increased by 476% or approximately the same rate as consumer bankruptcy cases.

The point to be made here is that the reason for the increase in consumer bankruptcy cases is not due to lenient bankruptcy laws, but rather is due to leniency of laws governing extensions of consumer credit. Thus, the present legislative effort to restrict access to relief under the Bankruptcy Code is hopelessly misguided. The weak Senate amendments with respect to disclosures credit card issuers should make or governing reaffirmation of debts do not add balance to legislation that is grounded on the false premise that the bankruptcy laws are responsible for the increase in individual bankruptcy case filings.

This is tantamount to blaming hospitals for the array of illnesses that befall our citizens and proffering legislation restricting access to hospitals as a way of preventing illness. That, of course, is absurd, but no more absurd than blaming the bankruptcy laws for the increase in consumer bankruptcy cases, when obviously the rate of default

Mrs. Hillary Rodham Clinton

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July 20, 1999

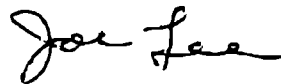
in payment of debts by individual debtors, determined by reference to consumer credit outstanding, is no greater today than it was 53 years ago.

I am sending herewith a series of charts which depict how consumer bankruptcy filings have increased over time in tandem with the growth of consumer credit outstanding.

I am a great admirer of Professor Elizabeth Warren. However, having taught a bankruptcy course at the University of Kentucky College of Law for 20 years, I know full well she cannot possibly explain to you in 30 minutes the perverseness of this consumer finance industry drafted legislation.

This is the first of a series of letters I plan to write to you in an effort to help you understand that this legislation in all probability will undermine rather than strengthen our credit oriented economy. It will encourage more predatory and improvident lending practices, which in turn, will cause a greater number of debtors to seek relief under the Bankruptcy Code.

Yours truly,

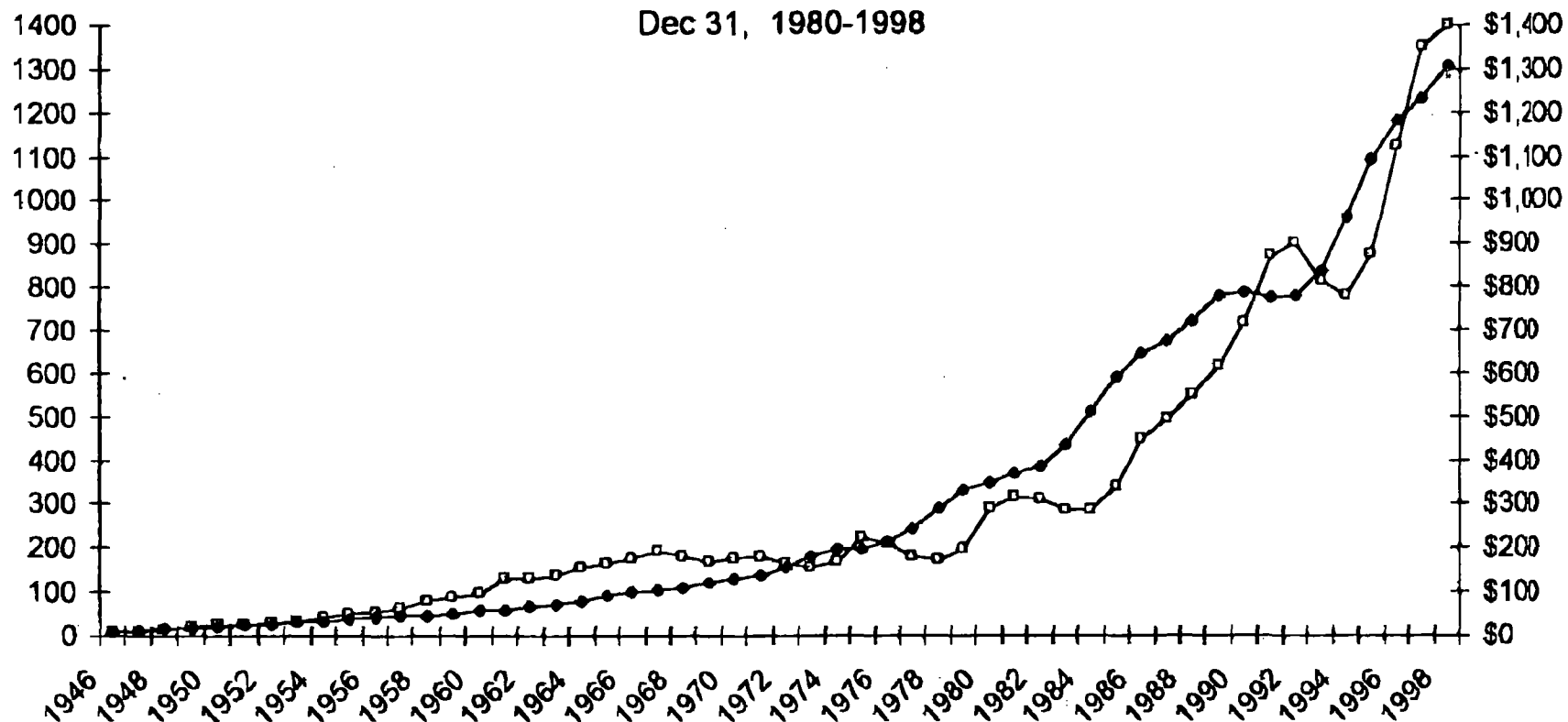


Joe Lee
U.S. Bankruptcy Judge

JL:df

Consumer Bankruptcy Cases (in Thousands) to Consumer Credit Outstanding (in \$ Billions) 1946-1998

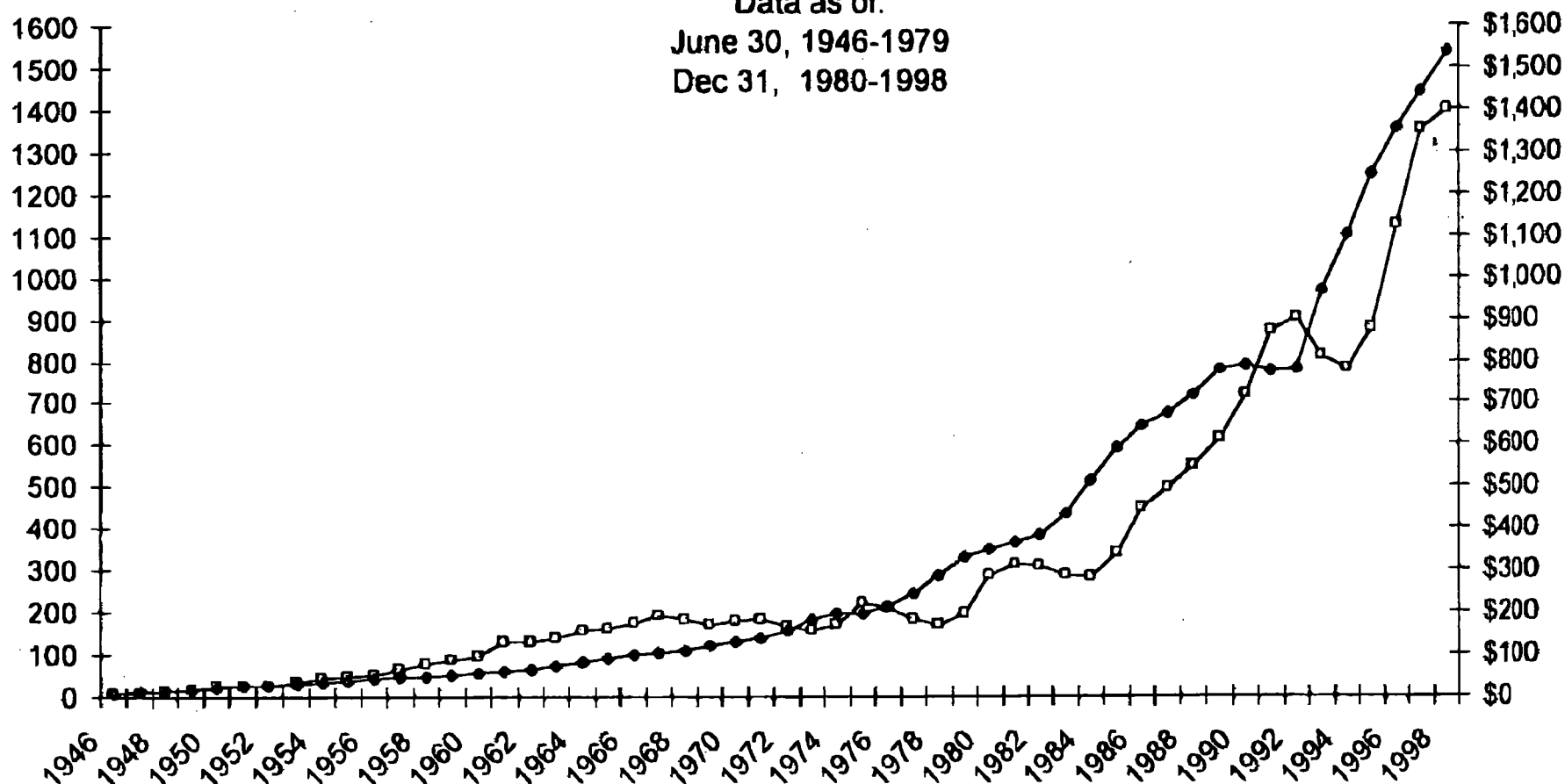
Data as of:
June 30, 1946-1979
Dec 31, 1980-1998



- #consumer bankruptcy cases (AOUSC)
- ◆— \$consumer credit outstanding (Fed. Reserve)

Consumer Bankruptcy Cases (In Thousands) To Consumer Credit Outstanding As Adjusted To Include Substitution Of Home Equity Debt (In \$ Billions) 1946-1998

Data as of:
June 30, 1946-1979
Dec 31, 1980-1998



—□— #consumer bankruptcy cases (AOUSC)
—●— \$consumer credit outstanding (Fed. Reserve) adjusted

Adjustment: + 50% Home Equity
Loans Outstanding per 4/98
Federal Reserve Bulletin

Contrary to popular belief, this chart reveals that during 1980, the first calendar year after the October 1979 effective date of the Bankruptcy Reform Act of 1978, and thereafter, bankruptcies have declined in relation to consumer credit outstanding.

The decline is greater than shown on the chart. Since about 1988 the figures published by the Federal Reserve Board understate the amount of consumer credit outstanding. The figures do not take into account obligations of debtors on automobile leases or on so-called 125% home equity loans.

The Tax Reform Act of 1986 phased out the allowable deduction for federal income tax purposes of interest on automobile and revolving credit and other types of debt, except home mortgage debt.

Because interest on loans for the purchase of automobiles is no longer deductible for income tax purposes, many individuals now lease rather than purchase automobiles. Now as many as 50% of automobiles are moving off of car lots under lease rather than purchase agreements. Yet it is only the indebtedness represented by the purchase agreements that shows up in Federal Reserve figures on consumer credit outstanding. The indebtedness on leases should be included. A debtor who defaults on an automobile lease is liable for the balance due on the lease. In our local state courts a number of actions are filed monthly seeking a judgment against debtors who have defaulted on automobile leases, and many of these debtors ultimately seek relief from such judgments in the bankruptcy court.

Also, to preserve or recapture the interest deductions many debtors now obtain home equity loans to buy automobiles or pay off credit card debt. When a debtor obtains a home equity loan and pays off automobile or credit card debt, the indebtedness shifts from consumer credit outstanding to home mortgage debt, which is not included in consumer credit outstanding. Nevertheless, when a debtor makes a payment on a home equity loan, often the debtor is in effect paying off old automobile or credit card debt.

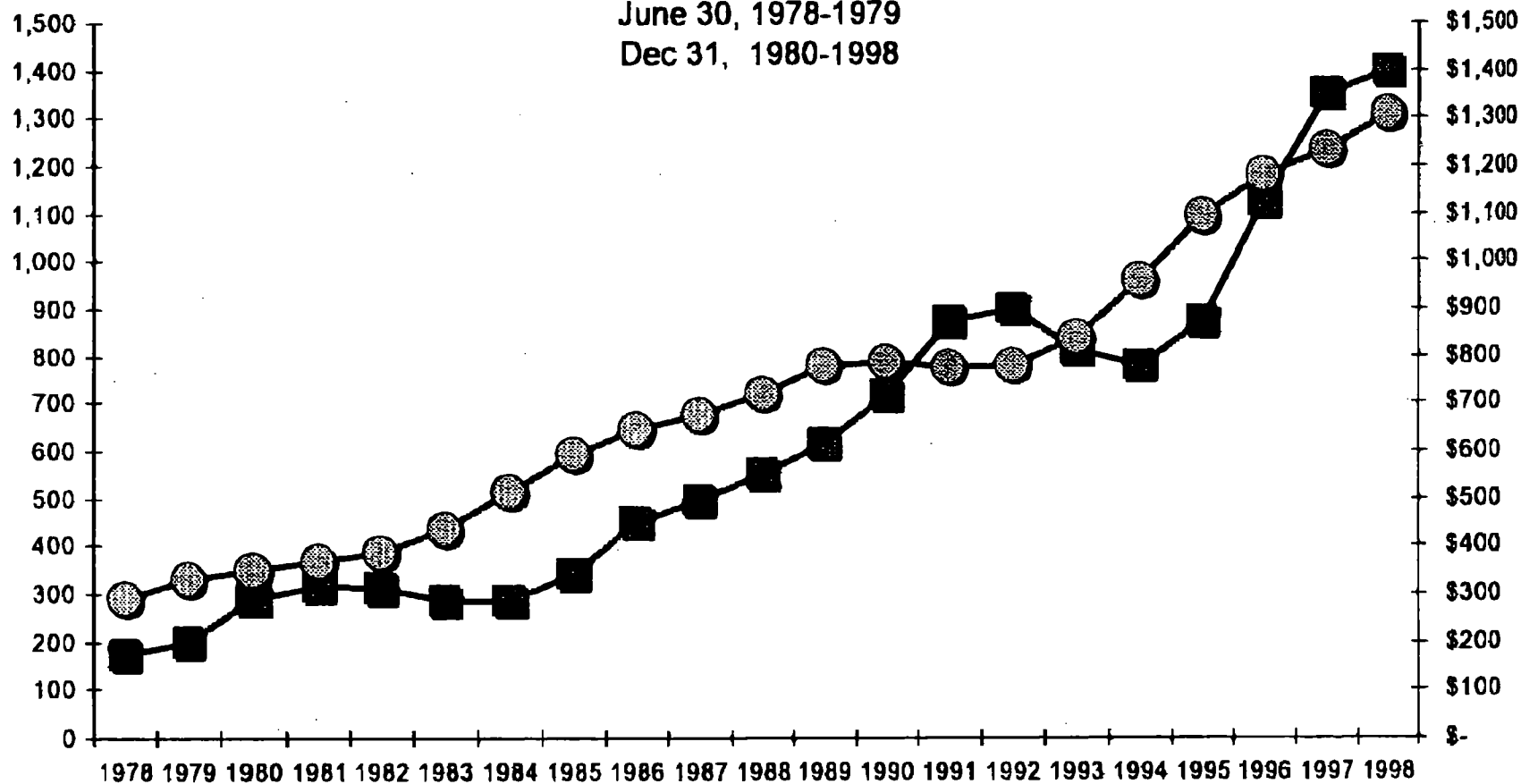
Francesca Eugeni, an economist with the Federal Reserve Bank of Chicago, in an article published in *Economic Perspectives*, a publication of the Federal Reserve Bank of Chicago, explains that the slight declines in consumer credit that occurred during 1991 and the slowing down of growth of consumer credit during the early months of 1992 is largely illusory. Ms. Eugeni suggests that this apparent decline of consumer credit outstanding was probably due to "leakage" of consumer credit into home equity loans and automobile leases. A copy of Ms. Eugeni's article is attached. It is this "leakage" anomaly that explains why there appears to have been more than one consumer bankruptcy per one million dollars of consumer credit outstanding during the period 1991-1993, and why that may have been so in 1997. Certainly, automobile lease debt and at least 25% of a 125% home equity loan should be recognized as consumer credit outstanding.

If consumer credit outstanding were adjusted to include automobile leases and some portion of 125% home equity loans, it would be crystal clear that the Bankruptcy Reform Act of 1978 is in no way responsible for the increase in individual bankruptcies.

The responsibility for the increase lies largely and squarely on the purveyors of consumer credit.

**Consumer Bankruptcy Cases (in Thousands)
to Consumer Credit Outstanding (in \$ Billions)
1978-1998**

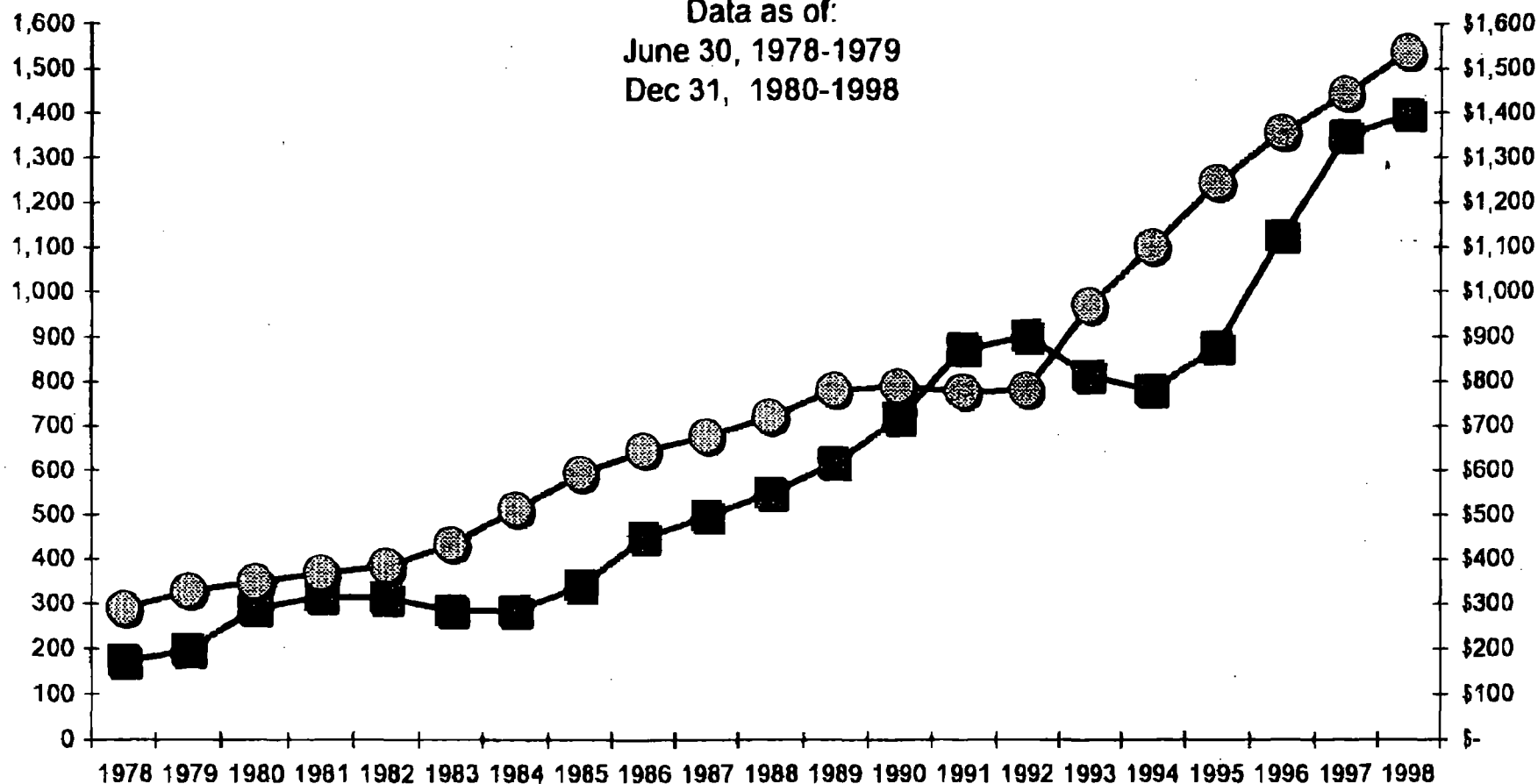
Data as of:
June 30, 1978-1979
Dec 31, 1980-1998



- # consumer bankruptcy cases (AOUSC)
- \$consumer credit outstanding (Fed. Reserve)

Consumer Bankruptcy Cases (In Thousands) To Consumer Credit Outstanding As Adjusted To Include Substitution Of Home Equity Debt (In \$ Billions) 1978-1998

Data as of:
June 30, 1978-1979
Dec 31, 1980-1998



■ # consumer bankruptcy cases (AOUSC)
● \$consumer credit outstanding (Fed. Reserve) adjusted

Adjustment: + 50% Home Equity
Loans Outstanding per 4/98
Federal Reserve Bulletin

COMPARISON OF CONSUMER BANKRUPTCY CASES TO
CONSUMER CREDIT OUTSTANDING
1980-1998

Calendar Year	Non-Business Bankruptcy Cases Filed (AOUSC)	Consumer Credit Outstanding (in \$ Millions) (Federal Reserve)	#Non-Business Bankruptcies per \$1 Million Consumer Credit Outstanding
1980	287,594	\$ 350,130	.821
1981	315,860	367,588	.859
1982	311,010	384,629	.809
1983	286,469	433,682	.661
1984	284,307	512,770	.554
1985	341,233	592,716	.576
1986	449,203	646,302	.695
1987	495,553	676,303	.733
1988	549,612	719,025	.764
1989	616,226	779,005	.791
1990	718,107	789,327	.910
1991	872,437	777,233	1.122
1992	900,874	779,947	1.155
1993	812,897	839,109	.969
1994	780,455	960,674	.812
1995	874,642	1,095,711	.798
1996	1,125,006	1,181,913	.952
1997	1,350,118	1,233,100	1.095
1998	1,398,182	1,308,400 *	1.070

* In a recent bulletin this figure was revised downward to \$1,299,200 (\$1.3 trillion). This revision does not affect significantly the calculations in my letter.

**COMPARISON OF CONSUMER BANKRUPTCY CASES TO
CONSUMER CREDIT OUTSTANDING
ADJUSTED TO INCLUDE
SUBSTITUTED HOME EQUITY DEBT
1993-1998**

Calendar Year	Non-Business Bankruptcy Cases Filed (AOUSC)	Consumer Credit Outstanding (in \$ Millions) (Federal Reserve)	Plus 50% Outstanding Home Equity Debt (Federal Reserve) ¹	#Non- Business Bankruptcies per \$1 Million Consumer Credit Outstanding
1980	287,594	\$ 350,130		.821
1981	315,860	367,588		.859
1982	311,010	384,629		.809
1983	286,469	433,682		.661
1984	284,307	512,770		.554
1985	341,233	592,716		.576
1986	449,203	646,302		.695
1987	495,553	676,303	*	.733
1988	549,612	719,025	*	.764
1989	616,226	779,005	*	.791
1990	718,107	789,327	*	.910
1991	872,437	777,233	*	1.122
1992	900,874	779,947	*	1.155
1993	812,897	839,109	969,109	.839
1994	780,455	960,674	1,101,674	.708
1995	874,642	1,095,711	1,246,711	.702
1996	1,125,006	1,181,913	1,357,913	.828
1997	1,350,118	1,233,100	1,443,100	.936
1998	1,398,182	1,308,400	1,538,400	.909

¹ Economists with the Federal Reserve Board of Governors have estimated aggregate home equity debt as follows:

1993: \$261 billion

1994: \$274 billion

1995: \$299 billion

1996: \$347 billion

1997: \$420 billion

Canner, Durkin, & Lockett, "Recent Developments in Home Equity Lending," 1998 Federal Reserve Bulletin 241, Table 9 at 248 (April 1998).

50% is a conservative estimate of the amount of home equity debt that has been substituted for various types of consumer credit as consumers use home equity loans to repay other debts; fund education expenses; buy cars, boats, or recreational vehicles; take vacations; pay for medical expenses, etc. Id., Table 8 at 248. See also Eugeni, "Consumer debt and Home Equity Borrowing," Economic Perspectives, Federal Reserve Bank of Chicago 2, 5-6 (March/April 1993). An unknown amount of home equity debt has also been substituted for consumer credit during the years between 1987 and 1992.

Federal Reserve Statistical Release



G.19

Consumer Credit

Release Date: May 7, 1999

G.19: Release | Release dates | Historical data

Beginning with the release in early July, the G.19 will no longer provide separate estimates for the automobile and "other" categories. Instead, these two categories will be combined into a single category called nonrevolving credit. This change is being made because we believe that the split between the two categories has become unreliable, owing to shifts in the composition of our monthly commercial bank panel and the lack of suitable benchmarks for the commercial bank automobile and "other" credit series.

G.19
1

CONSUMER CREDIT
March 1999

For release at 3 p.m. (Eastern Time)
May 7, 1999

Consumer credit growth slowed to a 1.4 percent annual rate in March, down from 8 percent in February. In March, automobile credit growth remained strong at a 10 percent rate, while the levels of both revolving and "other" credit turned down.

CONSUMER CREDIT OUTSTANDING 1
Seasonally adjusted

	1998										1999		
	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb. t	Mar. p
Percent change at annual rate 2													
Total	6.6	4.3	2.3	9.0	5.4	6.6	6.9	10.6	1.6	2.4	14.1	8.0	1.4
Automobile	8.8	4.1	4.0	8.2	8.0	12.1	8.1	6.1	12.6	12.4	19.0	13.2	9.9
Revolving	9.1	5.4	-1.4	9.2	-4.2	10.7	7.5	13.0	-2.4	8.6	13.2	5.1	-1.6
Other 3	-1.2	2.3	6.9	9.6	19.6	-8.9	4.2	12.7	-7.2	-24.1	8.2	5.6	-6.1
Amount: billions of dollars													
Total	1,247.3	1,251.8	1,254.2	1,263.5	1,269.2	1,276.2	1,283.6	1,294.9	1,296.6	1,299.2	1,314.5	1,323.2	1,324.8
Automobile	419.8	421.2	422.6	425.5	428.3	432.7	435.6	437.8	442.4	447.0	454.1	459.1	462.9
Revolving	539.4	541.8	541.2	545.3	543.4	548.3	551.7	557.6	556.5	560.5	566.7	569.1	568.3
Other 3	288.2	288.7	290.4	292.7	297.5	295.1	296.3	299.5	297.7	291.7	293.7	295.1	293.6

TERMS OF CREDIT AT COMMERCIAL BANKS AND FINANCE COMPANIES 4
Percent except as noted: not seasonally adjusted

Institution, terms, and type of loan

Commercial banks

Interest rates													
48-mo. new car	n.a.	n.a.	8.69	n.a.	n.a.	8.71	n.a.	n.a.	8.62	n.a.	n.a.	8.34	n.a.
24-mo. personal	n.a.	n.a.	13.76	n.a.	n.a.	13.45	n.a.	n.a.	13.75	n.a.	n.a.	13.41	n.a.
Credit card plan													
All accounts	n.a.	n.a.	15.67	n.a.	n.a.	15.83	n.a.	n.a.	15.69	n.a.	n.a.	15.41	n.a.
Accounts assessed interest	n.a.	n.a.	15.62	n.a.	n.a.	15.85	n.a.	n.a.	15.54	n.a.	n.a.	14.73	n.a.

New car loans at auto finance companies

Interest rates	6.47	6.20	6.07	6.02	6.23	6.00	5.92	6.33	6.79	6.43	6.22	6.43	6.31
Maturity (months)	51.5	50.7	50.8	50.9	51.7	53.0	53.1	53.1	52.8	52.2	52.1	53.4	53.0
Loan-to-value ratio	92	91	93	91	92	93	93	92	91	91	92	92	91
Amount financed (dollars)	18,932	18,922	18,793	18,878	19,084	19,068	19,028	19,199	19,590	19,734	19,628	19,304	19,339

This release is issued around the fifth business day of each month. The exact date and time may be obtained by calling (202) 452 - 3206. Footnotes appear on reverse.

1
CONSUMER CREDIT OUTSTANDING
(Billions of dollars)
Not seasonally adjusted

	1998										1999		
	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb. r	Mar. p
Total	1,236.0	1,241.1	1,243.1	1,256.8	1,262.4	1,276.4	1,286.6	1,297.6	1,304.5	1,331.7	1,323.3	1,316.4	1,312.6
Major holders													
Commercial banks	492.1	500.1	497.3	491.4	491.4	498.2	497.9	502.1	498.8	508.9	507.3	497.8	487.6
Finance companies	156.5	154.3	153.6	154.3	156.1	159.6	159.1	165.6	166.6	168.5	167.3	169.7	168.9
Credit unions	150.7	151.1	152.2	152.4	153.5	153.6	154.3	155.0	155.2	155.4	155.7	155.2	155.0
Savings institutions	47.1	47.5	47.9	48.3	49.0	49.6	50.3	51.0	51.6	51.6	52.0	52.5	52.9
Nonfinancial business	72.7	65.1	65.2	65.3	65.5	66.0	65.5	66.0	66.6	74.9	71.0	68.0	67.1
Pools of securitized assets 5	316.8	323.1	326.9	345.1	346.9	349.4	359.4	358.0	365.6	372.4	370.0	373.3	381.0
Major types of credit 6													
Automobile	415.5	416.0	418.2	425.2	429.9	435.4	439.6	443.1	446.6	451.0	452.2	454.0	458.1
Commercial banks	153.9	151.3	151.7	150.9	153.2	155.5	156.3	156.8	157.1	158.1	160.3	159.9	159.3
Finance companies	86.8	90.6	89.6	89.9	91.7	95.3	96.2	97.6	99.0	103.1	102.8	105.0	104.7
Pools of securitized assets 5	65.1	63.7	66.0	71.6	72.5	70.8	72.1	71.8	72.6	73.0	73.2	73.2	77.8
Revolving	534.1	535.6	535.6	539.6	537.2	545.1	549.0	556.0	559.2	586.5	575.7	569.1	562.8
Commercial banks	201.3	209.2	207.3	200.9	197.6	200.4	197.6	200.9	196.9	210.3	204.8	197.6	188.7
Finance companies	36.6	30.4	30.5	29.9	29.4	29.6	28.4	33.3	33.1	32.3	32.4	32.2	32.3
Nonfinancial business	41.2	33.5	33.4	33.5	33.8	34.0	33.7	33.8	33.8	39.2	36.4	34.3	33.7
Pools of securitized assets 5	226.2	233.7	235.1	245.6	246.6	251.2	259.3	258.1	265.3	272.3	269.9	272.4	275.4
Other	286.4	289.6	289.2	292.0	295.2	296.0	298.0	298.5	298.7	294.2	295.4	293.3	291.7
Commercial banks	136.9	139.7	138.3	139.6	140.6	142.2	144.0	144.4	144.8	140.5	142.2	140.2	139.6
Finance companies	33.0	33.4	33.5	34.4	35.0	34.7	34.6	34.6	34.6	33.1	32.1	32.5	32.0
Nonfinancial business	31.5	31.6	31.8	31.7	31.7	32.0	31.8	32.2	32.9	35.7	34.6	33.6	33.4
Pools of securitized assets 5	25.6	25.6	25.5	27.9	27.8	27.5	27.9	28.1	27.7	27.1	26.8	27.7	27.8

1. Covers most short- and intermediate-term credit extended to individuals, excluding loans secured by real estate.
 2. Percent changes calculated from unrounded data.
 3. Comprises mobile home loans and all other loans not included in automobile or revolving credit, such as loans for education, boats, trailers, or vacations. These loans may be secured or unsecured.
 4. Interest rates are annual percentage rates (APR) as specified by the Federal Reserve's Regulation Z. Interest rates for new-car loans and personal loans at commercial banks are simple unweighted averages of each bank's most common rate charged during the first calendar week of the middle month of each quarter. For credit card accounts, the rate for all accounts is the stated APR averaged across all credit card accounts at all reporting banks. The rate for accounts assessed interest is the annualized ratio of total finance charges at all reporting banks to the total average daily balances against which the finance charges were assessed (excludes accounts for which no finance charges were assessed). Finance company data are from the subsidiaries of the three major U.S. automobile manufacturers and are volume-weighted averages covering all loans of each type purchased during the month.
 5. Outstanding balances of pools upon which securities have been issued; these balances are no longer carried on the balance sheets of the loan originators.
 6. Includes estimates for holders that do not separately report consumer credit holding by type.
- r=revised. p=preliminary.

G.19: Release | [Release dates](#) | [Historical data](#)

[Home](#) | [Statistical releases](#)

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Last update: May 7, 1999, 3:00 PM

Federal Reserve Release



G.20

Finance Companies

Release Date: April 28, 1999

G.20: Release | Release dates | Historical data

G.20

FINANCE COMPANIES 1
February 1999For immediate release
April 1999

OWNED AND MANAGED RECEIVABLES 2

	1998											1999
	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan
												Feb
Seasonally Adjusted												
Growth Rates (percent at annual rate)												
Total	12.4	-1.9	9.3	11.2	-2.3	13.0	7.8	9.7	18.8	7.2	14.3	12.4
Consumer	3.6	3.5	0.7	4.7	8.5	14.1	7.7	15.8	25.9	5.9	1.3	-0.6
Real estate	17.8	-20.5	3.0	22.5	-31.7	42.2	27.7	7.2	32.0	18.2	9.2	39.2
Business	18.6	-0.4	19.0	13.1	-2.1	2.6	1.3	5.0	7.9	4.5	27.9	15.2
Outstandings (billions of dollars)												
Total	820.2	819.0	825.3	833.0	831.3	840.3	845.8	852.6	865.9	871.1	874.9	888.5
Consumer	327.7	328.7	328.9	330.2	332.5	336.4	338.5	343.0	350.4	352.1	352.5	356.8
Real estate	123.7	121.6	121.9	124.2	120.9	125.2	128.1	128.8	132.3	134.3	131.4	135.7
Business	368.8	368.7	374.5	378.6	377.9	378.7	379.2	380.7	383.2	384.7	391.0	396.0

AUTO LOANS: TERMS OF CREDIT 3

Percent except as noted; not seasonally adjusted

New car loans												
Interest rate	6.98	6.47	6.20	6.07	6.02	6.23	6.00	5.92	6.33	6.79	6.43	6.22
Maturity (months)	52.6	51.5	50.7	50.8	50.9	51.7	53.0	53.1	53.1	52.8	52.2	52.1
Loan-to-value ratio	92	92	91	93	91	92	93	93	92	91	91	92
Amount financed (dollars)	18,825	18,932	18,922	18,793	18,878	19,084	19,068	19,028	19,199	19,590	19,734	19,628
Used car loans												
Interest rate	12.87	12.79	12.76	12.73	12.63	12.51	12.68	12.65	12.58	12.41	12.31	11.81
Maturity (months)	52.5	52.6	52.9	52.9	54.0	54.1	54.1	54.2	54.2	54.3	54.2	56.0
Loan-to-value ratio	97	97	98	99	100	100	101	101	100	100	100	99
Amount financed (dollars)	12,356	12,431	12,716	12,607	12,698	12,733	12,407	12,731	12,914	13,112	13,201	13,497

1. Includes finance company subsidiaries of bank holding companies but not of retailers and banks.

2. Owned receivables are those carried on the balance sheet of the institution. Managed receivables are outstanding balances of pools upon which securities have been issued; these balances are no longer carried on the balance sheets of the loan originator. Data are shown before deductions for unearned income and losses. Components may not add to totals because of rounding.

3. Data are from the subsidiaries of the three major U.S. automobile manufacturers and are volume-weighted averages covering all loans of each type purchased during the month.

OWNED AND MANAGED RECEIVABLES 2

	1998											1999	
	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Not Seasonally Adjusted													
Outstandings (billions of dollars)													
Total	819.6	819.7	825.1	832.2	836.0	834.9	842.0	849.0	864.2	872.8	884.0	888.7	889.4
Consumer	324.8	325.4	326.7	329.4	335.4	338.2	339.9	344.0	350.0	352.2	356.1	356.1	359.1
Motor vehicle loans	84.7	86.8	90.6	89.6	89.9	91.7	95.3	96.2	97.6	99.0	103.1	102.8	105.0
→ Motor vehicle leases	94.7	95.2	95.9	95.9	97.0	97.3	96.9	94.9	94.6	94.4	93.3	93.9	94.5
Revolving 4	36.9	36.6	30.4	30.5	29.9	29.4	29.6	28.4	33.3	33.1	32.3	32.4	32.2
Other 5	34.1	33.0	33.4	33.5	34.4	35.0	34.7	34.6	34.6	34.6	33.1	32.1	32.5
Securitized Assets 6													
Motor vehicle loans	45.3	45.0	42.8	45.7	49.3	50.2	49.2	51.8	51.6	53.4	54.8	56.0	54.9
→ Motor vehicle leases	10.6	10.5	10.4	10.8	10.9	10.8	10.7	14.2	14.4	14.2	12.7	12.5	12.3
Revolving	0.0	0.0	5.3	5.3	5.3	5.3	5.3	5.3	5.3	5.3	8.7	8.6	8.7
Other	18.5	18.2	18.1	18.1	18.6	18.5	18.2	18.8	18.6	18.4	18.1	17.9	18.1
Real estate	123.7	121.6	121.9	124.2	120.9	125.2	128.1	128.8	132.3	134.3	131.4	135.7	135.7
One- to four-family	62.2	61.5	62.4	65.2	62.3	65.9	68.6	68.4	72.2	74.1	75.7	80.1	80.3
Other	29.0	28.1	28.1	28.1	27.5	28.5	28.7	30.1	30.2	30.7	26.6	26.9	27.1
Securitized real estate assets 6													
One- to four-family	32.1	31.8	31.2	30.7	30.9	30.6	30.7	30.2	29.8	29.4	29.0	28.6	28.3
Other	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Business	371.1	372.7	376.7	378.6	379.7	371.5	374.0	376.2	382.0	386.3	396.5	396.9	404.6
Motor vehicles	64.8	67.8	68.2	69.1	68.4	61.1	62.5	65.5	68.5	70.9	79.6	79.1	82.1
Retail loans	26.4	27.3	28.3	29.3	29.2	29.2	29.6	30.0	30.4	29.4	28.1	28.4	28.9
Wholesale loans 7	28.2	30.2	29.5	29.5	28.2	21.0	22.0	24.2	27.0	30.3	32.8	31.9	34.3
Leases	10.2	10.2	10.4	10.4	11.0	10.9	10.9	11.3	11.1	11.2	18.7	18.9	18.9
Equipment	204.7	206.5	207.8	209.3	212.8	212.8	212.0	210.8	211.5	212.0	198.0	197.6	200.7
Loans	49.9	50.8	51.2	51.3	52.7	51.6	51.8	47.9	47.2	47.8	50.4	49.7	51.0
Leases	154.8	155.7	156.7	158.0	160.2	161.2	160.2	162.9	164.3	164.2	147.6	147.8	149.8
Other business receivables 8	55.6	51.6	54.0	54.3	53.7	54.5	57.0	58.9	59.6	60.4	69.9	72.5	73.3
Securitized assets 6													
Motor vehicles	31.2	32.1	31.6	31.0	29.1	26.3	25.9	24.5	25.0	25.8	29.2	28.2	28.8
Retail loans	2.2	2.0	1.9	1.9	2.3	2.2	2.1	2.0	1.9	2.4	2.6	2.5	2.4
Wholesale loans	29.0	30.0	29.6	29.2	26.7	24.1	23.8	22.5	23.2	23.4	24.7	23.8	24.6
Leases	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.9	1.9	1.9
Equipment	10.8	10.5	10.3	10.2	10.5	11.5	11.4	11.3	12.0	11.8	13.0	12.7	12.9
Loans	4.3	4.2	4.1	4.0	4.1	5.1	4.9	4.9	5.6	5.4	6.6	6.3	6.2
Leases	6.5	6.3	6.2	6.2	6.4	6.4	6.4	6.4	6.4	6.4	6.4	6.4	6.7
Other business receivables 8	4.0	4.2	4.7	4.7	5.3	5.4	5.2	5.3	5.2	5.3	6.8	6.8	6.8

4. Excludes revolving credit reported as held by depository institutions that are subsidiaries of finance companies.
5. Includes personal cash loans, mobile home loans, and loans to purchase other types of consumer goods such as appliances, apparel, boats, and recreation vehicles.
6. Outstanding balances of pools upon which securities have been issued; these balances are no longer carried on the balance sheets of the loan originator.
7. Credit arising from transactions between manufacturers and dealers, that is, floor plan financing.
8. Includes loans on commercial accounts receivable, factored commercial accounts, and receivable dealer capital; small loans used primarily for business or farm purposes; and wholesale and lease paper for mobile homes, recreation vehicles, and travel trailers.

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Preliminary

Explaining the Increase in Bankruptcy and Delinquency: Stigma versus Risk-Composition

Summary *

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August 28, 1998

* This is a summary of a more detailed, academic working paper that is available from the authors upon request.

Between 1994 and 1997 the number of personal bankruptcy filings in the U.S. rose by 73%. The 1.35 million filings in 1997 represent well over 1% of U.S. households. Delinquency rates on credit cards have risen almost as sharply. These trends in default, both in bankruptcy and delinquency, are particularly surprising in light of the strong economy over the period. The resulting losses to lenders represent a sizeable fraction of the interest payments they collect, potentially raising the average cost of credit.

There are two leading explanations for these trends. First, the risk-composition of borrowers might have worsened. Under the "risk effect," less creditworthy borrowers obtained additional credit in recent years, and it is these borrowers who accounted for most of the subsequent rise in default. In particular, many analysts cite growth in the number of credit card offers and in the sizes of credit card lines as the most important factors behind the rise in default.¹

A second explanation for these trends is a decline in the social stigma associated with default or an increase in knowledge about default. Under the "stigma effect," people have become more willing to default over time, even controlling for their risk characteristics and other economic fundamentals. Even a relatively small decline in stigma can potentially have large effects. For example, one study has estimated that between 15-31% of U.S. households could benefit, in terms of their current net worth, by filing for bankruptcy. If the decline in stigma caused even a small fraction of these households to file, default rates would substantially increase.

It is important to determine the relative significance of these alternative explanations. For example, some policy makers have advocated restricting credit supply in order to improve the risk composition of the borrowing population. Others have advocated making the terms of bankruptcy less attractive in order to increase the perceived costs of default. However, it has been difficult to separate the risk and stigma effects empirically. Controlling for risk-composition requires measures of credit risk for a large sample of borrowers, including a large number of borrowers who have defaulted. None of the traditional governmental surveys of households provides such information.

¹ See for example "The Sky is Becoming the Only Limit for Credit Card Users," *The New York Times*, Aug 9, 1998.

This paper uses a unique new data set containing a panel of several hundred thousand individual credit card accounts from several different credit card issuers.² The data set is of unusually high quality. It includes essentially everything that the issuers know about their accounts, including information from individuals' credit applications, monthly statements, and credit bureau reports.

We use this data to estimate the size of stigma effect, for both bankruptcy and credit card delinquency. We begin with a representative sample of all credit card accounts in mid-1995, and follow these accounts for eight quarters or until they default. Since the data includes the information that the card issuers themselves use to measure account risk, we are able to control for all aspects of risk-composition that are observable by the issuers. The available risk measures are quite comprehensive. They include direct observations of the usage of each card, like debt levels, purchase and payment histories, and credit lines, as well as the credit risk scores, the issuers' own summary of the riskiness of each account. Our analysis also controls for economic conditions such as the local unemployment rate. Any changes in the propensity to default that are not accounted for by changes in risk-composition or economic fundamentals are due to changes in stigma.

The main finding is that even after controlling for risk-composition and other economic fundamentals, the propensity to default significantly increased between 1995 and 1997. Since credit card holders with the same risk characteristics became increasingly likely to default over time, the risk effect does not explain the increase in default rates in the sample. Instead, the stigma of default appears to have fallen.

Figures 1 and 2 show the estimated effects of changes in stigma on the propensity to declare bankruptcy and to go delinquent between 1995:Q3 and 1997:Q2. For bankruptcy, the stigma effect increased the annual probability of filing by about 1 percentage point over the sample period. In other words, a given cardholder at the end of 1997 was 1 percentage point more likely to declare bankruptcy than a cardholder with identical risk characteristics in 1995. For delinquency, in Figure 2, a credit card account in 1996 and 1997 was about 4 percentage points more likely to go delinquent than an account with identical risk characteristics in 1995. These magnitudes are substantial. They are approximately as large as if the entire universe of

² In a companion paper, "How Do Individuals Use Credit Cards?" the authors use the same panel data set to examine how people normally use their credit cards, when they do not default.

Figure 1: Bankruptcy

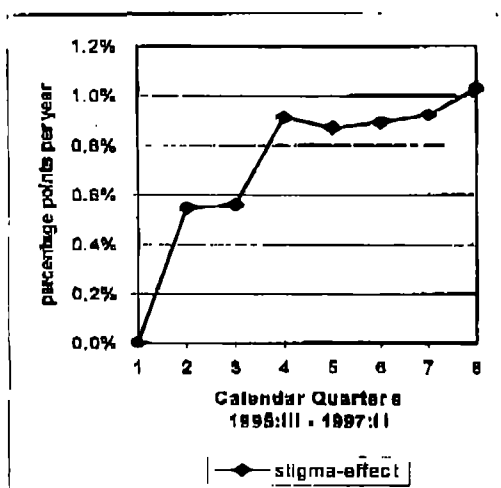
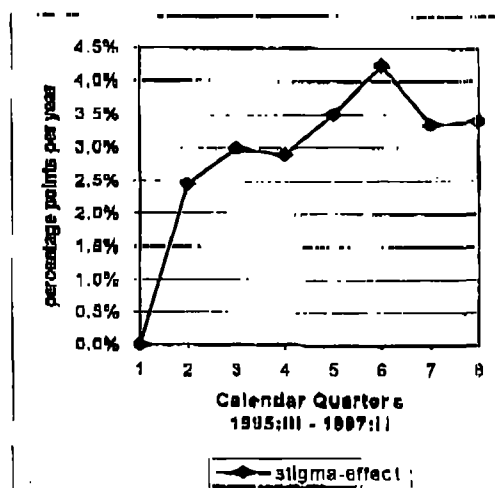


Figure 2: Delinquency



credit card holders had become one standard deviation riskier between 1995 and 1997, as measured by credit risk scores.

The estimated magnitudes for the stigma effect account for almost all of the changes in default rates in the sample. In contrast, changes in risk-composition have little net effect. Falling unemployment rates and seasoning of card portfolios offset any other worsening in risk-composition. In particular, increases in credit lines during the sample period did not raise default rates, because issuers concentrated their credit line increases on less risky cardholders.

The results in this paper are consistent with the stigma effect. Given the large number of people who could potentially benefit from filing for bankruptcy, even relatively small drops in stigma can generate the observed effects on default. Note that this analysis does not identify what caused the estimated change in stigma. Indeed, the stigma and risk effects can be interrelated. It is possible that a change in risk-composition or economic fundamentals caused a critical mass of people to declare bankruptcy, leading to the reduction in stigma that we estimate. Furthermore, our analysis does not provide a forecast about the future path of stigma. Nevertheless, if the drop in stigma is due to a reduction in social opprobrium or to an increase in information, it would most likely be difficult to reverse. And if stigma does in turn decrease with the number of people that have defaulted, future recessions could ratchet up default rates. These possibilities might argue for legal changes that increase the perceived costs of default.

Women Filing for Bankruptcy More

By MARCY GORDON AP Business Writer

WASHINGTON (AP) -- Women are resorting to personal bankruptcy more frequently than men and married couples, according to new data released by a Harvard law professor who specializes in bankruptcy.

As Congress debates legislation to make it harder for people to erase debts in bankruptcy, the new study being written by Elizabeth Warren, a widely-quoted expert, will likely become fresh ammunition for opponents of the proposed restrictions.

But another bankruptcy expert voiced skepticism Monday about the study, saying it doesn't appear to conclusively demonstrate a link between gender and bankruptcy.

"There's not much there," said Sam Gerdano, executive director of the American Bankruptcy Institute, a group of 6,400 attorneys, judges, bankers, and professors that does not take positions on bankruptcy issues.

However, Gerdano acknowledged that divorce is a major factor in bankruptcy for men and women and that divorced women are more likely to have financial problems than other women.

Ms. Warren was traveling Monday and not available for an interview. Her data, first reported in Monday's editions of USA Today and confirmed by a Harvard colleague, show that 39 percent of bankruptcy court filings in the 12 months ended March 31 were made by women. That compares with 28 percent for men and 33 percent for married couples, according to the study of filings in eight of the 94 federal bankruptcy districts.

The House, seeking to stop the nationwide increase in personal bankruptcies, last month passed a bill sought by credit card companies that would make it tougher for people to erase their debts in bankruptcy court.

The Clinton administration has opposed the bill, which cleared the House by a veto-proof 313-108 margin -- getting solid support from Republicans but splitting the Democrats.

"We have concerns about the hardships that this bill will impose on many responsible lower- and middle-income debtors who are trying to get a fresh start," White House spokesman Jake Siewert said Monday. "And the fact that this hardship falls disproportionately on single women is further cause for concern."

Parallel legislation, which is somewhat less stringent toward debtors, is pending in the Senate. Its chief author, Sen. Charles Grassley, R-Iowa, has been trying to work out compromises with Democratic opponents such as Sen. Edward Kennedy of Massachusetts.

Ellen Nissenbaum, legislative director for the liberal Center on Budget and Policy Priorities, said the legislation "seems to move the bankruptcy system in a much less balanced and equitable" direction.

She said some changes are needed in the bankruptcy laws to curb abuses, but the legislation now before Congress goes too far.

Grassley and sponsors of the House measure, led by Reps. George Gekas, R-Pa., and Jim Moran, D-Va., say the legislation does help women whose husbands or former husbands have filed for bankruptcy, by giving child support and alimony payments a higher priority than credit card debt and other obligations. Under the current law, debts such as bankruptcy lawyers' fees, student loans and other obligations must be paid before child support or alimony.

"Women would be treated a lot better than they are now," said Carey Dearnley, a spokeswoman for Gekas.

But opponents maintain that the legislation, by barring certain credit card debts from being erased in bankruptcy, would force single mothers and children owed support by bankrupt fathers to compete with credit card companies in collecting debts.

The legislation "will exacerbate the problems faced by the growing number of women in the bankruptcy system," Kennedy said. "The bill's supporters claim they are protecting women and children, but the protections are a sham. The (legislation) is an unfair sweetheart deal for the credit card companies at the expense of hard-pressed women and children."

_AP-NY-06-21-99 1749EDT<

Bankruptcy 3/12/99

Graessley - drop early next wk
mark up following week (Thurs) - full committee

work check of reffering - improve

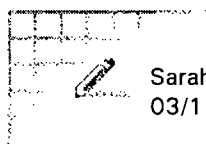
Graessley / Foricelli : mtg on Monday

Savhanes, Durbin, Dodd - to drop in a few days - consumer issues.
Durbin - prob. before next wk.

Shannon - creating jurisdiction

making public understand

① evidence of Medtronic - 3.5 hrs. schedule / Sears - criminal investigation
② campaign (took to ESCC 1 day, post inf. opt.)



Sarah Rosen
03/11/99 08:27:06 PM

Record Type: Record

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

cc:

Subject: HR 10 reported out of committee

See last amendment re financial privacy.

----- Forwarded by Sarah Rosen/OPD/EOP on 03/11/99 08:30 PM -----



Derek A. Chapin
03/11/99 08:26:11 PM



Record Type: Record

To: Michael Deich/OMB/EOP, Joseph J. Minarik/OMB/EOP, Sarah Rosen/OPD/EOP

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

Subject: HR 10 reported out of committee

The House Banking and Financial Services Committee this evening **reported HR 10 to the floor** by a vote of 51-8. The following amendments passed:

#2 Toomey (w/Bentsen amend) -- Allows equity swaps to be negotiated, executed, and booked in a bank; products can only be sold to qualified investor as defined in Securities Act of 1934.

#3 Cook -- Eliminates study of ATM fees.

#54 Hill, Gonzalez, Bentsen, Watt -- Prohibits national banks and their subsidiaries from engaging in title insurance sales unless they are lawfully and actively engaged in such activity as of the date of enactment; does permit sales in affiliates.

#57 Bentsen -- Grandfathers all existing unitary thrift holding companies as of Feb 28, 1999, and permits the sale of such entities, but closes door to new applications. (Amendment #39, which would have extended the unitary thrift charter, failed 29-30.)

Vento, Sweeney, Ryan (unfiled) -- again modifies amendment regarding Fed meeting on bank mergers to state that:

"In each case involving 1 or more insured depository institutions each of which has total assets of \$1 billion or more, the Board shall, as necessary and on a timely basis, conduct public meetings in one or more areas where the Board believes there will be a substantial public impact."

Inslée (as amended by Leach substitute) -- Financial privacy. **Leach substitute** provides for:

- fair and conspicuous disclosure of privacy policy by financial institution;
- privacy of health/medical records at insurance company when acquired by a financial

- holding company;
 - the prohibition of false means or practices to obtain financial information (adopts last year's Financial Information Privacy Act, which amends the Consumer Credit Protection Act.);
 - a banking-agency study of the adequacy of current privacy safeguards.
- Leach substitute passed 34-22.

###

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Joseph J. Minarik/OMB/EOP
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Sarah Rosen
03/10/99 09:00:05 PM

Record Type: Record

To: Melissa G. Green/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject: BIDEN

At Gene's request, I returned a call to Gene from Biden's AA -- Alan Huffman. He wanted to know who had the lead on Bankruptcy for the WH; he wanted someone who was familiar with substance for Biden to call. I said that both Gene and I were familiar with substance, but if it was the Senator that it would be most appropriate for him to call Gene. He said that Biden would call him very shortly.

I report below on my conversation with Huffman and provide some talking points for Gene if Biden does call.

As we know, Biden strongly supports bankruptcy reform. Bruce Hammonds will be testifying Thursday at the Joint House-Senate hearing. (I think he is the CEO from the credit card company in Delaware -- I forget if it is VISA or Mastercard.) Biden has been working with Grassley and Torrecelli in an effort to craft a bipartisan bill. While he doesn't think Biden or Torrecelli will be an initial co-sponsor (because Grassley wants to drop his bill in the next day or so) he thinks they will soon come to an agreement and be on the bill. (Note: Torrecelli staff have indicated that Grassley's staff have made some significant concessions to them, although not yet enough to gain their support at this time. We are trying to find out what those are and will likely be briefed on Friday if not before.)

Huffman says that Biden wants to be helpful to the Administration and use his leverage now to help us get changes we need to be supportive. I suggested that there is no secret about what changes we need -- that our views from last year haven't changed -- we liked the Senate bill and we find the notion that the starting point is the conference report to be troubling -- not a sign that our concerns are likely to be addressed. Moreover, it wasn't helpful to us to divide the caucus so early and using the conference report suggested that they didn't want broad democratic support, just a few that they could bite off. That made things difficult for us -- wasn't helpful. He said that the caucus will be divided on this and there is nothing we can do about it.

I briefly outlined for him four key areas of concern from last year that Gene can refer to in his discussions. (I have also faxed him the Administration letter to the conferees and the final press guidance on the conference report.)

- **Means testing:** We reject a formulaic approach that fails to give the courts some degree of discretion. The idea that the Administration offered last year to make guidelines be presumptive should help lower creditor concerns about costs of filing 707(b) abuse motions -- and more could be done to lower transaction costs and make the system self-enforcing -- but we insist on preserving some judicial discretion and reject use of IRS guidelines for expenses. The standard used in the conference report ("extraordinary circumstances") to rebut the presumption is too limiting. In addition, we believe those subject to the presumption should be those most likely to succeed under a chapter 13 plan. We worry that the thresholds set in the

conference report (especially the 5-7 year timeperiod) will move some that are unable to succeed.

- **Nondischargeable debts:** The conference report left in place two categories of nondischargeable debts (those incurred on the "eve" of bankruptcy and those incurred to pay nondischargeable debts) that we believe do not merit being added to the list of social priorities that we make nondischargeable. We did agree to very narrow definitions of these categories, but the conference report broadened them. Our policy concern about new nondischargeable debts is exacerbated by our belief that the protections in the bill still leave the possibility that these new debts would compete with child support and alimony.
- **Coercive Reaffirmations and Violations of the Automatic Stay:** The record shows that many debtors reaffirm unsecured debt when there are few if any circumstances in which that is an economically rational choice for a debtor in bankruptcy, suggesting that coercion or misinformation is too often in play. We proposed a scheme that would protect debtors from coercion, but the conference report relies too heavily on a largely ineffective disclosure requirement -- not significantly different from the status quo. Especially if we are to allow creditors to bring motions to move debtors out of Chapter 7, we must put in place adequate protections against coercion. Conference report language that barred class actions for violations of the automatic stay that are a retreat from existing law protections for consumers and are absolutely unacceptable in this context.
- **Balance -- Requiring Responsibility of Creditors as well as Debtors:** We understand that this year's bill strips from the legislation any new responsibilities for creditors. We felt especially strongly -- last year -- that adequate disclosure be made of the impact of making minimum payments on credit cards. We understand that inclusion of these provisions at this time would give the banking committee jurisdiction over the bill, however, our support for any bankruptcy legislation will require that it be balanced -- requiring responsibility from both debtors and creditors.

Message Copied To: _____

MEMORANDUM

TO: Larry Stein
CC: Tracey Thornton
FROM: Joel Wiginton
DATE: March 9, 1999
RE: **Bankruptcy Review**

This memo is response to your request made to me yesterday in the Staff Meeting to outline the issues involved with the bankruptcy debate.

The Current Political Situation

As you know, two weeks ago Rep. Gekas, along with a number of Democratic cosponsors, introduced a bill which is for all practical purposes last year's Conference Report.¹ Sen. Grassley is planning on dropping his bill as early as this week. Sen. Grassley is also using the Conference Report as a starting point but has given his new Ranking Member, Sen. Torricelli, the opportunity to suggest modifications to the Conference Report which would be necessary for Sen. Torricelli to sign on as a cosponsor. Sen. Torricelli gave Sen. Grassley what Sen. Torricelli's staff described as a "wish list that we know we won't get" last Friday. Sens. Grassley and Torricelli are expected to reach a resolution (*i.e.*, will Torricelli cosponsor or not) by close of business Wednesday. This timing makes sense, because there is a joint Senate/House Subcommittee hearing on bankruptcy scheduled for Thursday afternoon at 2:00.

On a staff level, the Senate Dems who were the key players in the bankruptcy debate last year (*e.g.*, Sens. Torricelli, Durbin, Kennedy, Dodd, Daschle, Leahy, Feingold, etc.) have asked that the Administration to weigh in on the issue as soon as possible. These Members have a very legitimate fear that either: (1) Torricelli will sign on to a bill that too closely resembles the Conference Report; or (2) Grassley will simply drop the Conference Report with Democrats such as Biden, Harry Reid, or Johnson who have reportedly already agreed to cosponsor such a bill.

On the House side, Reps. Conyers and Nadler sent a letter to the President on March 4th thanking him for his and the First Lady's "leadership role" and "personal involvement" in the bankruptcy debate last year. In addition, the Congressmen noted that there are Members in the House and Senate who are questioning whether the Administration "will continue to insist that

¹ Recall that the Administration issued a veto threat on the Conference Report last year.

legislation be balanced, fair, and workable” even though the sponsors of this year’s House bill were “arrogant and reckless” enough to reintroduce last year’s Conference Report which drew a “strong and credible veto threat.”

The Administration’s Position

As noted in a previous email, Sperling has not yet given direction to his staff on where the Administration should be on the bankruptcy issue this year. Sperling was supposed to meet with Podesta on Friday to discuss this issue, but apparently that meeting has not yet taken place.

It is obviously quite important that the Administration establish at least a general position on this issue (not necessarily one we formally present to the public) so we can effectively participate in the debate.

Key Substantive Issues within the Bankruptcy Debate

Although there are numerous issues within the bankruptcy debate that need to be resolved, there are four key substantive matters that the Administration (at least last year) and many of the Senate Dems feel must be resolved in our favor:

(1) Limiting Access to Chapter 7

As you know, the basic premise of the entire bankruptcy reform effort is to limit debtors’ access to Chapter 7 and to redirect them into Chapter 13.² Everyone agrees that those debtors who can repay a portion of their debts should be forced to do so. The conflict arises with: (1) how the system determines which debtors are able to pay; and (2) how much the debtor should be able to repay before it is worth the administrative costs of establishing and monitoring a Chapter 13 plan.

The House bill and the Conference Report use a ridged grid system based upon the IRS personal expenses standards; a so called “means test.” More specifically, if the debtor can repay 25 percent of his or her debts *or* \$5,000 over five years after paying his or her necessary expenses as defined by the IRS code, she or he would automatically be forced into Chapter 13 . We and the Senate Dems opposed this system last year, because it would not allow the court the necessary discretion to consider the individual circumstances of the debtor (*e.g.*, sometimes child support, extensive commuting costs, etc.). Moreover, two-thirds of Chapter 13's already fail. The failure rate is even higher for those debtors who cannot pay at least 30 percent of their debts. Finally, most bankruptcy experts believe that the administrative expenses incurred with maintaining a Chapter 13 plan for five years would exceed \$5,000.

² Recall that in Chapter 7 the debtor is allowed to discharge the majority of his or her debts. In Chapter 13 the debtor must submit to a plan established by the court for the repayment of the majority of his or her debts.

The Senate bill, which the Administration supported last year, employed what Sens. Grassley and Durbin called “needs based bankruptcy.” Under current law, a trustee can bring a “707(b) motion” when he or she believes the debtor is “substantially abusing the system” (*i.e.*, when the debtor should file in Chapter 13 as opposed to Chapter 7 or when he or she should not be filing for bankruptcy at all). Last year’s Senate bill: (1) reduced the standard for a successful 707(b) motion from “substantial abuse” to “abuse;” (2) allowed creditors for the first time to bring a 707(b) motion; and (3) created significant incentives for trustees to bring such motions.

Last year this issue was very important to the First Lady and to many bankruptcy judges and academics.

(2) Reaffirmations

Even if a debtor files for bankruptcy, he or she can “reaffirm” a debt that would otherwise be discharged. That is, he or she can form another agreement with a particular creditor to continue to pay off a particular debt. Reaffirmations are rarely in the best interest of the debtor (*i.e.*, they are just putting themselves back in the hole) and are also not good for the bankruptcy system as a whole (*i.e.*, why should one creditor be able to grab a significant amount of the debtor’s funds for the repayment of its debt; there is by definition a limited pot of money that is insufficient to go around). In addition, there are numerous accounts of unscrupulous creditors coercing a debtor into reaffirming a debt -- in particular an unsecured debt -- which it knows will detrimentally affect the debtor and its fellow creditors.

The Senate Dems and the Administration, therefore, have called for safeguards to be established to prevent creditor abuse in the reaffirmation of *unsecured* debt. Under current law, the court can approve a reaffirmation based solely upon an affidavit of the debtor’s attorney which claims that the reaffirmation is in the debtor’s best interest. In reality, however, debtors often have conflicts of interest with particular creditors or submit these affidavits as a matter of course. The Administration, thus, has suggested a system under which the court itself would be required to find that there is a compelling reason for the debtor to reaffirm an unsecured debt without reliance on counsel affidavits.³

(3) Increased Categories of Nondischargeable Debt

The Conference Report expands significantly the type of debt that is nondischargeable. In particular, the bill would make many types of credit card debt nondischargeable without any evidence that the debtor attempted to “game” the system. In general, however, the Bankruptcy code makes debts nondischargeable only where there is an overriding public purpose to do so (*e.g.*, child support, alimony, educational loans, tax obligations, debts incurred by fraud, etc.).

³ FYI -- Even the Administration’s proposal last year was seen by many as a compromise position. The National Bankruptcy Commission, for example, suggested that reaffirmations of unsecured debt not be allowed at all.

This issue garnered a great deal of attention last year by the First Lady and the women's groups, because it would place a substantial amount of credit card debt on par with child support and alimony. In addition, the Administration had a basic public policy problem with placing this type of credit card debt in the same category as the other types of nondischargeable debts listed above.

(4) Consumer Protections

The Administration and the Senate Dems were successful in getting a number of consumer protections included within the Senate bill last year. These safeguards are not included in the Conference Report.

The most significant of these consumer protections was designed to give the debtor the necessary information to know if and when he or she would be able to repay his or her credit card debt. Most debtors believe that by making the minimum payment on their credit card they are slowly working off their debt. Depending on the interest rate, however, they may be falling further and further behind. Indeed, creditors are increasingly offering minimum payment plans that amortize debt over decades, if at all.

Sen. Grassley, however, has strongly resisted including these consumer provisions in his bill this year, because doing so may give the Banking Committee and new Chairman Gramm joint jurisdiction over the bill. Sen. Grassley argues that the Administration should not attempt to attach these provisions to the bankruptcy bill, but rather should attempt to bring them up on the banking reform bill.



Record Type: Record

To: Nicole R. Rabner/WHO/EOP

cc:

Subject: memo attached

Nicole -- I'm not sure if you've seen this or not. The attachment sent by Jennifer is the original paper she sent to McMickle outlining Torricelli's demands.

What follows is my notes on what Grassley gave Torricelli (as of Tuesday evening). I may be up on the hill and Jennifer is crashing in prep for the 2:00 hearing, so I don't have an up to the minute update. *I did, however, just speak to her for a second, and she said what she told me on Tuesday is largely where they are now.* Based upon that, here's what I know (I follow the paper she gave us (by title and number)):

Means-Testing

1. will do state median income and will apply which ever is higher
2. will not go to Senate test, but will direct the Admin (Justice?) to promulgate new standards that would be bankruptcy specific
3. won't change percent but will go up to 15,000
4. accepted
5. accepted
6. accepted
7. NO WAY!
8. gave language on tuesday -- seemed amenable but wanted to protect small businesses

Cramdown

- 1 & 2. best torricelli could get was 6 months on non-autos and 2 yrs on autos

Nondischargeability Provisions

1. up to 750
2. drop to 70 days
3. torricelli now thinks this is okay -- biden is somehow involved
4. just gave grassley language as of tuesday
5. OUR ADDED -- DEBTS INCURRED TO GET NONDISCHARGEABLE DEBT -- just gave grassley language as of tuesday

Audit Provisions

1. torricelli thought that the current language would make ALL low income debtors get audited -- grassley apparently fixed the language

Eviction Stay

1. NO WAY! -- protection sessions

Notice Provisions

1. grassley okay with principle, but no language agreement yet

Homestead Exemption

1. won't place in bill due to gramm -- will do amendment on flow and grassley will support -- kohl okay with this because believes a recorded vote gives them more power in conference

In Forma Pauperis

1. will give in chapter 13 -- obviously trying to not create an incentive to file in 7, but under their bill the chapter 13's are the folks less needed of the fee waiver

Executory Contracts

1. a business bankruptcy provision i don't quite understand -- apparently grassley agreed to strike, however

Disclosure Provisions

1. will not do in the bill -- will TRY and get an amendment allowed on the floor and will support SOME of this

Reaffs

1. agreed to drop class actions
2. LOTS of Resistance
3. LOTS of Resistance
4. already in
5. i mentioned not allowing the debtor to have to pay the creditor's atty's fees -- she said she'd bring it to grassley w/o our name on it

----- Forwarded by Joel K. Wiginton/WHO/EOP on 03/11/99 01:37 PM -----



Jennifer_Leach @ torricelli.senate.gov (Jennifer Leach)

03/05/99 02:32:41 PM

Record Type: Record

To: Joel K. Wiginton/WHO/EOP

cc:

Subject: memo attached

Forward Header

Subject:

Author: Jennifer Leach at torricelli-dc

Date: 3/5/99 1:24 PM

This is a list that I sent to John McMickle of the changes that we would need to see before Torricelli would cosponsor a bankruptcy bill. It was developed in conjunction with the consumer groups, although the final version is mine. I don't yet want it to be public, but wanted to keep you apprised of our negotiations.



- billim~1.wpd

MEANS-TESTING

- 1) safe harbor should apply to regional median income, not national median income
- 2) alternative to IRS standards
- 3) raising levels in ability to repay formula from \$5000 to \$15,000 and from 25% to 30%
- 4) changing "extraordinary circumstances" to "special circumstances"
- 5) drop the word "only" before requirement to demonstrate circumstances
- 6) replace the word "require" with "justify"
- 7) debtors' attorneys should not be personally liable unless they pursue a case in violation of Rule 11 standards
- 8) creditor penalties for abusive motions even if their claims are under \$1000

CRAMDOWN

- 1) strike the cramdown on non-autos
- 2) limit the cramdown on autos to 6 months - 1 year

NONDISCHARGEABILITY PROVISIONS

- 1) raise limit on cash advances to \$1000
- 2) drop time period to 45 days
- 3) tighten the definition of "luxury goods"
- 4) in superdischarge narrow presumption of fraud for credit card use

AUDIT PROVISIONS

- 1) needs to be cleaned up so that audits for low-income debtors are not mandated

EVICTON STAY

- 1) current provision is overly broad - language is below that provides expedited relief for the landlord if the debtor is not paying post-petition

Sec. 139. Automatic stay.

Section 362 of title 11, United States Code is amended by adding at the end thereof—

(j) If a lessor of residential real property makes a request for relief under subsection (d) of this section and the debtor has not paid rent that first became due after the commencement of the case, the stay provided by subsection (a)(3) of this section is terminated with respect to the lessor 20 days after request is filed, unless the debtor files and serves upon such lessor a written objection to the request.

NOTICE PROVISIONS

- 1) require creditors to simply file information about where they want information sent with the court

HOMESTEAD EXEMPTION

- 1) \$100,000 cap should be included

CREDIT COUNSELING

- 1) allow debtors to prefile in order to gain benefit of the automatic stay, they are then required to undergo counseling, if it is successful, simply nullify the filing
- 2) provide an exception for geographical hardship or exigent circumstances

IN FORMA PAUPERIS

- 1) waive filing fees for indigent debtors - last year's Feingold floor amendment

EXECUTORY CONTRACTS

- 1) strike section 415(a)(1)(A)(ii)

DISCLOSURE PROVISIONS

- 1) reinsert the TILA provisions from last year's Senate bill

REAFFIRMATIONS

- 1) drop the bar on class actions
- 2) provide for some judicial review by requiring creditors to file the information that forms the basis of the reaffirmation - language below
- 3) add provision requiring treble damages for violation of the reaffirmations provisions and the discharge injunction (section 203 of last year's Senate bill)
- 4) add provision clarifying that it violates the automatic stay to threaten the debtor with 707(b) motions or 523(a) motions if the debtor is doing it to coerce the debtor
(section 210 of last year's Senate bill)

REAFFIRMATION REVIEW

(a) Section 524(c) of title 11 of the United States Code is amended to read:

"(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, if and only if—

"(1) the agreement was made and filed with the court before the granting of the discharge under section 727, 1141, 1228, or 1328 of this title;

"(2) the agreement contains a clear and conspicuous statement that advises the debtor of the amount of principal, interest, late fees, attorney's fees, expenses, or other costs relating to the collection of the debt included within the amount that the debtor agrees to pay under the agreement, interest rate, date on which payments will commence if a date has been established, whether payments were in default as of the date of the filing of the petition under this title, and ways in which terms differ from original agreement;

"(3) if the debt is secured, as evidenced by an instrument creating the debt and any security interest or lien along with any documents necessary to show perfection of the interest, the agreement contains a clear and conspicuous statement that advises the debtor of the amount of monthly payment, total number of payments if paid according to schedule, total amount of payments if made according to schedule, the value of the collateral, the date on which the lien will be released if payments are made according to schedule;

"(4) the agreement contains a clear and conspicuous statement that the agreement may be rescinded at any time before the later of discharge or sixty days after the agreement is filed with the court, by giving written notice of rescission to the holder of the claim;

"(5) the agreement does not impose an undue hardship on the debtor or a dependent of the debtor or on the ability of the debtor to satisfy a domestic support obligation;

"(6) the agreement represents a fully informed and voluntary agreement by the debtor and was not the product of coercive threats or actions by the creditor in the creditor's course of dealings with the debtor;

"(7) (A) if the consideration for the agreement is based in whole or in part on an unsecured consumer debt or is based on a debt for an item of personal property the cost of which at point of purchase was \$1000 or less, the court approves the agreement; or

(B) if the consideration for the agreement is based only on a debt for an item of personal property for which the cost at point of purchase was more than \$1000, an attorney files with the court with the agreement a verified statement that the attorney represented the debtor during the course of negotiating the agreement and fully advised the debtor of the legal effect and consequences of the agreement and of any default under such an agreement and that the agreement satisfies paragraphs (1) through (6) of this subsection, or no such verified statement is filed, the court approves the agreement; and

"(6) the debtor has not rescinded the agreement at any time before the later of discharge or sixty days after the agreement is filed with the court, by giving written notice of rescission to the holder of the claim.".

[The following are proposed informational requirements for a motion to obtain approval of an agreement to reaffirm a debt under 11 U.S.C. § 524(c). They have been derived from a variety local bankruptcy court rules around the country. An official form with this information would be promulgated by the Bankruptcy Rules Committee and approved through the Supreme Court's rulemaking authority]

A motion for approval of a reaffirmation agreement shall include the following information:

Name of the parties.

Summary terms of new agreement, including the principal amount, the interest rate (APR), the amount of monthly payment, the date on which payments will commence, the total number of payments, the total amount of payments (interest and principal) if paid according to schedule and the date on which the lien will be released, whether payments were in default as of bankruptcy filing, and ways in which terms differ from original agreement.

Description of security, including manufacturer, year, and model if applicable, value of security and the basis for the parties' determination of that value, and current and anticipated use of collateral.

The effect of the proposed reaffirmation on the debtor, including information on the debtor's monthly income and expenses, whether the agreement will impose an undue hardship on the debtor, the reasons for the debtor entering into this agreement, whether the agreement is in the debtor's best interest, and whether the debtor considered the option of redemption under section 722.

Whether the agreement is part of a settlement of litigation on the dischargeability of this debt under section 523 of the Bankruptcy Code.

Whether the debtor was represented by an attorney during the course of the negotiations on the agreement.

A statement of the parties' understanding that the agreement is entirely voluntary and is not required, that the debtor may rescind the agreement at any time prior to discharge or within 60 days after agreement is filed, whichever is later, and that the agreement will be fully enforceable under state law.

Certification of the parties that they have attached the instrument creating the debt and any security interest or lien along with any documents necessary to show perfection of the interest.

Brady C. Williamson

Thursday / Feb. 25

UV:

Thanks for taking the time to visit last week. It was great to see you and to catch up on the D.C. / Wis. news.

Here's the Nadler bankruptcy material we discussed. He has a wonderful combination of energy and conviction. Let me know if we can help on the

remarks for his event.

Sen. Torricelli has replaced Sen. Durbin, as you know, on the relevant subcommittee. His staff is relatively inexperienced on this issue (and there's no evidence (at least yet) that he is engaged on the issue. It would be very helpful if your office could contact him -- either at the principal or the staff level to note your interest/concern about the issue.

See you soon. N. Africa? (Ben)

Congress of the United States

Washington, DC 20515

February 3, 1999

ALL THESE ORGANIZATIONS AGREE BANKRUPTCY OVERHAUL NEEDS A SECOND LOOK

**National Conference of Bankruptcy Judges
American College of Bankruptcy
National Bankruptcy Conference
National Association of Consumer Bankruptcy Attorneys
National Association of Bankruptcy Trustees
National Association of Chapter 13 Trustees
110 United States Bankruptcy Judges
59 Professors of Bankruptcy Law
Mothers Against Drunk Driving (MADD)
National Organization for Victim Assistance (NOVA)
National Victim Center
National Organization for Women (NOW)
Association for Children of Enforcement Support (ACES)
Governing Council, Family Law Section, American Bar Association
Leadership Conference on Civil Rights
AFL-CIO
UAW
UNITE
AFSCME
Consumer Federation of America
Consumers Union
Public Citizen
California Women's Law Center
Alliance for Justice
Department of Justice
Small Business Administration**

Dear Colleague:

All of the organizations and agencies listed above opposed, or raised serious concerns about, the bankruptcy legislation passed by the House in the 105th Congress.

You may have been contacted about proposals to reform the Bankruptcy Code. As you may recall, when bankruptcy legislation was considered in the last Congress, numerous provisions which purported to protect the integrity of the system actually would have raised costs to the taxpayers, opened the door to forms of debtor coercion which have already been the subject of multi-million dollar legal settlements, undermined the ability of single parents to collect child support, and favored certain business creditors over others.

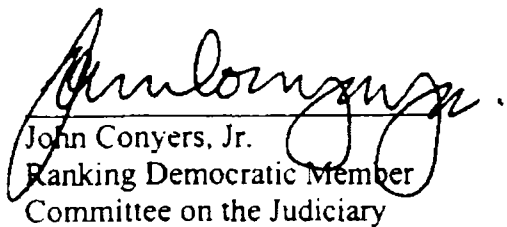
Bankruptcy is a complicated area of the law. Because it must mediate among the competing claims of multiple creditors on a debtor lacking the resources to pay all debts in full, any change necessarily affects the rights of many, if not all, parties. As we found in the last Congress, careless changes to the Code can be costly to the taxpayer, undermine the rights of debtors and creditors alike, cost jobs, and interfere with the enforcement of child support obligations and payments to drunk driving and crime victims.

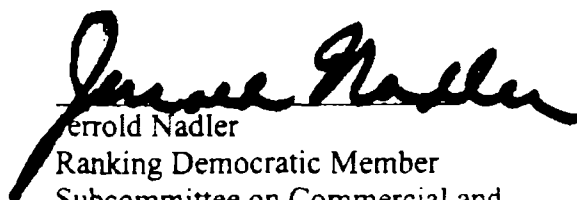
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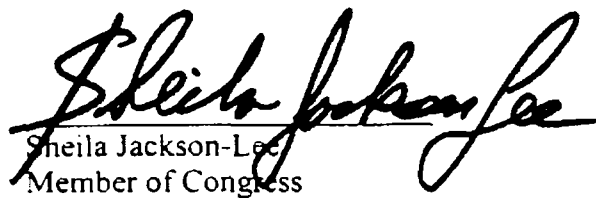
Bankruptcy reform has historically been written and adopted on a bipartisan consensus basis. In order to reach such a result, however, it was necessary to reject extreme proposals favoring one interest over another, work toward compromise and balance, and to stay constantly focused on how proposed changes would actually work in practice. That historical approach will serve us well in the 106th Congress. We hope that, before you commit to support any proposal, you will take the time to hear from the nation's bankruptcy experts and assess the potential impact of the proposed changes.

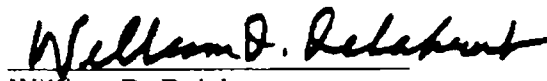
• Please feel free to contact us if you have any questions.

Sincerely,


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


Errol Nadler
Ranking Democratic Member
Subcommittee on Commercial and
Administrative Law


Sheila Jackson-Lee
Member of Congress


William D. Delahunt
Member of Congress


Howard L. Berman
Member of Congress


Zoe Lofgren
Member of Congress