Mark.McClellan@do.treas.gov
06/16/99 12:10:07 PM

Record Type: Record

To: Lucy.Huffman@do.treas.gov, Frank.Toohey@do.treas.gov, Kenneth.L.Chernof@usdoj.gov, Nicole R. Rabner/WHO/EOP

cc: See the distribution list at the bottom of this message
Subject: meeting with Grassley/Sessions staff

Date: 06/16/1999 11:55 am (Wednesday)
From: Mark McClellan
To: Dom13.DOPO7(HUFFMANL), DOM3.DOPO5(TooheyF), ex.mail("Nicole_R._Rabner@who.eop.gov", "Kenneth.L.Chernof@usdoj.gov")
CC: ex.mail("frank.toohey", "Joel_K._Wiginton@who.eop.gov", "karen.l.wilson@intmail.usdoj.gov", "lucy.huffman", "mark.mcclellan", "martha.davis@intmail.usdoj.gov", "Sarah_Rosen_Wartell@opd.eop.gov"),
Subject: meeting with Grassley/Sessions staff

Christie (Sessions) and John (Grassley) agreed to eliminating the so-called "safe harbor" for pro se debtors. Regardless of the amt of the unsecured or minimally-secured reaff, pro se debtors will be subject to the disclosure requirement and the means test.

Christie had no problems with our draft leg language in principle but thought it was "too complicated" (seems like Ive heard that before...). They are going to get their Leg Counsel to draft an alternative version, intended to meet a set of objectives that we seem to have complete agreement about. Our drafting approach was to make specific changes in the current bill. Their approach, which may end up being simpler, is to strike the relevant subsection of the code that covers these reaffirmations, and replace with what we have agreed to do. Even though I think we are in agreement, we will obviously need to take a close look to make sure that current-law protections for reaffs not covered by the amendment are not lost.

John wants our SAP to mention our concerns about reaffs, and say that the proposed amendment addresses them. They also asked for us to block floor amendments on reaffs from Dems; Joel made clear we can't do that even if we dont support such amendments. Joel also noted our need for a member-level commitment for the amendment not to be stripped in conference. John mentioned that they need to talk to Makan (Hatch) but dont think it will be a big problem, and that they wanted a reciprocal commitment from us with respect to trying to keep Dems in line Joel may want to comment on this further.

They should send us leg language by tomorrow. Christie is meeting with

Sessions Thurs afternoon to get his signoff. We are meeting again early Friday morning to finalize.

Message Copied To:

frank.toohey@do.treas.gov
Joel K. Wiginton/WHO/EOP
karen.l.wilson@intmail.usdoj.gov
lucy.huffman@do.treas.gov
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"Davis, Martha" <Martha.Davis@usdoj.gov>
06/16/99 01:44:41 PM

Record Type: Record

To: Chernof Kenneth L <Kenneth.L.Chernof@intmail.usdoj.gov>, Nicole R. Rabner/WHO/EOP

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

Subject: RE: memo on reaff amendment -Reply

Nicole --

Ken asked me to respond but I was out of pocket much of yesterday and did not have an opportunity to review everything.

After our meeting this morning with Grassley & Sessions staff, I feel comfortable that we're developing an acceptable approach. Altho no one is particularly happy with giving up on the hearings for pro se debtors, we're getting the disclosures and the sufficient income criteria. These are positive steps which will help curb (discourage) inappropriate agreements - plus, we think the articulation of an undue hardship standard provides clearer guidance which will enable courts to more evalute these agreements more effectively and for debtors' counsel to be more mindful of the advice they give and what they sign.

Here's where we seem to stand now --

To reaffirm an unsecured debt or a minimally secured debt (purchase price of less than $500), a pro se debtor will have to complete and file a disclosure form which covers all the financial terms of the reaff & income/expense analysis along the lines of 707(b) means-test. (As Mark indicated in his comments, virtually all of the financial info will have to be supplied by the creditor & most of the income/expense data for the debtor should be readily available from the debtor's initial filing papers.) This is new & is not required under existing law.

However, unlike existing law which requires the court to hold a hearing in every pro se reaff case, under this proposal, court would not be required to hold a hearing (involving unsecured & min. secured debt) if the debtor's income (as revealed on the form) is sufficient to support the reaffirmation payments. If the income is not sufficient, the court will have to hold a hearing and the debtor will have to explain.

Moreover, the court would still be required to hold a hearing if the pro se debtor wanted to reaffirm a secured debt greater than $500 at the point of purchase.

This proposal will also include an affirmative statement which clarifies the court's ability to hold a hearing in any case and sets forth a presumption of undue hardship that if the debtor has insufficient income to pay the reaffirmed debt.

Thus, in order for a pro se debtor to reaffirm $3,000 in unsecured debt and avoid a mandatory court hearing, the form would have to be filed and there would have to be sufficient income to pay the debt. This would not preclude a court from holding a hearing if it wanted to, however. If the income is insufficient, a hearing would be required and there would be a presumption of undue hardship.

In sum, while it's not perfect, this proposal moves us in the right direction. We get codification of a standard that ensures a more informed debtor who, in addition, is able to pay. The clarification of the undue hardship standard will also be especially helpful.

Martie

-----Original Message-----
From: Nicole_R._Rabner@who.eop.gov@inetgw2
Sent: Tuesday, June 15, 1999 3:41 PM
To: Chernof Kenneth L
Cc: Wilson Karen L; Davis, Martha; 'mark.mcclellan@do.treas.gov@inetgw2'; 'lucy.huffman@do.treas.gov@inetgw2'; Joel_K._Wiginton@who.eop.gov@inetgw2; 'frank.toohey@do.treas.gov@inetgw2'; 'lucy.huffman@do.treas.gov@inetgw2'; Sarah_Rosen_Wartell@opd.eop.gov@inetgw2
Subject: RE: memo on reaff amendment -Reply

Ken, we tried to reach you as the conference call was in progress for your advice on a threshold question that Joel posed, which is, assuming the reaff deal does not get any better, will it be a net improvement to judicial review and crack down on unwise reaffs, i.e. will judges in practice be more likely to scrutinze reaffs under these new conditions (and therefore is the deal worth what we would be giving up (required judicial review of all reaffs of pro se debtors))?

Message Copied To:

Wilson Karen L <Karen.L.Wilson@intmail.usdoj.gov>
"'mark.mcclellan@do.treas.gov@inetgw2'" <mark.mcclellan@do.treas.gov>
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Sarah Rosen Wartell/OPD/EOP

[redacted]

Record Type: Record

To: Mark.McClellan@do.treas.gov
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: memo on reaff amendment

Here are a couple questions/comments:

(1) The memo notes that Grassley and Sessions ask only that we "stop raising reaffirmations as an Administration concern" in return for offering this amendment. Does that mean that we cannot work with Dems (e.g., Durbin) to offer amendments or second degree amendments to improve it on the floor (e.g., an amendment extending the protection to all pro se debtors)? We could do it quietly, but the Dems may need our assistance to know exactly where the amendment might need fixing.

(2) As you know, Kennedy, Durbin, et. al. may go ballistic on us for doing this (in particular, Kennedy regarding the pro se issue and the "safe harbors"). I'm not so worried about the consumer groups (who haven't really carried their weight on this issue), but I think we at least need to run this by Kennedy and Durbin before we sign off. This, of course, isn't always the case, but we've called upon these Members to champion our concerns. In addition, they're already a little pissed, because they feel that by putting our means test and reaffs proposal on the table *before* they had a chance to offer those provisions from S. 1301 on the floor, we undercut any chance of their success on these matters.

(3) I'm a bit confused on the logistics. Who exactly files the affidavit, and who conducts the reaff means test? Are we relying on the debtor -- and the pro se debtor -- to do this? How would the debtor get the necessary info to fill out the disclosure form? The only place would be from the creditor -- are we at all concerned that the creditors will just fill this form out and instruct debtors -- in particular, pro se debtors -- to sign by the "X?"

(4) On the bottom of the first page of the memo, the memo notes that "[t]he judge would be required to hold a hearing if the debtor was not represented by counsel **and** the means test suggests that the debtor cannot afford the reaffirmation." Does this mean that even if the means test suggests that the debtor cannot afford the reaff and s/he is represented by counsel, there would be no requirement that the judge hold a hearing? If so, this amendment would appear to reduce the number of hearings rather than increase them (recall that our starting point from last year was that all reaffs of unsecured debt and nominally secured debt should be reviewed). In contrast to current law, under this amendment not all pro se reaffs would be reviewed and their is not necessarily any reason to assume that more debtors with counsel will have a reaff hearing, because the means test requirement would only applies to pro se debtors.

(5) The same quote addressed in #4 suggests that the judge would not be required to hold a hearing if the affidavit did not contain a properly completed disclosure statement. Are we eliminating this as an automatic trigger for a hearing?

(6) I, of course, understand that we need to give something to Grassley and Sessions, but the "safe harbor" for small reaffs seems like an odd thing on which to compromise. I may be mistaken, but I thought that Marty was pretty adamant after the Hatch meeting that this would be unwise, because she felt that the real problem was with these low value reaffs -- not the more expensive reaffs. In particular, I thought we were concerned about low-value secured debt. I understand that the $750/multiple debt

threshold will pull in more low-value secured debt reaffs, but as the memo notes in the "Policy Analysis" section, "over 85% percent of reaffirmed debt would be subject to the new requirements." Again I may be mistaken, but as I read the memo the remaining 15% would most likely be those reaffs that we are most concerned about? And finally,

(7) Near the top of page 3 the memo notes that "less than 6% of below-median income debtors passes the means test." This stat is added to demonstrate that not so many reaffs of larger reaffs will be missed for pro se debtors, because most will fail the means test requirement. I just want to be sure that that 6% figure does not mean that 6% don't pass the means test at the threshold requirements to move into chapter 13, rather than 6% don't pass the means test at the zero requirement for a reaffirmation. This stat also assumes that the majority of pro se debtors are those who fall below the median income. While that may be generally intuitively true, I wonder if that is the case in bankruptcy as well. We are -- almost by definition -- dealing in bankruptcy with folks who don't have a whole lot of money. Maybe even those who are slightly more well off, cannot afford an attorney in this particular circumstance.

Mark.McClellan@do.treas.gov

Mark.McClellan@do.treas.gov
06/14/99 07:46:20 PM

Record Type: Record

To: Joel K. Wiginton/WHO/EOP, Kenneth.L.Chernof@usdoj.gov, mark.mcclellan@do.treas.gov, Sarah Rosen Wartell/OPD/EOP

cc: Lucy.Huffman@do.treas.gov
Subject: memo on reaff amendment

Date: 06/14/1999 07:41 pm (Monday)
From: Mark McClellan
To: ex.mail("Kenneth.L.Chernof@usdoj.gov",
"Joel_K._Wiginton@who.eop.gov", "mark.mcclellan",
"Sarah_Rosen_Wartell@opd.eop.gov")
CC: huffmanl
Subject: memo on reaff amendment

** High Priority **

This is 4 « pages because as usual the issues involved are technical. But if you just read the underlined and bold parts, you can get through it quickly. It reflects comments from Ken and Marti, but responsibility for the draft is mine.

John McM would like to meet again on Wed to discuss.

#1 get rid of safe harbor for pro se debtor → size down t

#2 at least - disclosure "

trade off from existing law
unrep: hearing, but no analysis
analysis, but no hearing required.

Reaffirmation Amendment

Sens. Sessions and Grassley have tentatively agreed to an amendment based on the Administration reaffirmation proposal. The amendment would be offered by Sessions, possibly cosponsored by a Democrat.

The amendment deals with the reaffirmation of debts that can be discharged in bankruptcy. Such reaffirmations are common. For unsecured debts and debts secured by personalty items with low resale value (e.g., socks or contact lenses), there is considerable evidence of unwise reaffirmations by debtors. Many experts have advocated bans on the reaffirmation of such debts. The current bill does little to prevent such practices, beyond stating new prohibitions on threats by creditors.

The amendment will include all of the key Administration proposals. Treasury and Justice believe that it will significantly reduce the number and size of unwise reaffirmations in bankruptcy. However, it would also reduce the current-law requirement of hearings for debtors not represented by counsel, and it would eliminate the language in the current House and Senate bills that disqualifies reaffirmations resulting from certain creditor threats.

Proposed Amendment

- Require an affidavit on all substantial reaffirmations of unsecured and low-value secured debts that presents (1) the financial terms of the agreement and (2) the debtor's ability to pay it: Unless they fell below a threshold dollar value, all reaffirmations of unsecured debt and of low-value secured debt (purchase price <$500) would be required to include:
  - *Clear disclosure of terms of reaffirmation and of debtor's rights*: The affidavit must include a form developed by the Rules Committee of the Judicial Conference, to provide full information on the terms of the reaffirmation (effective interest rate, all fees, value of property, notice that the debtor is not required to reaffirm the debt to get credit after bankruptcy, etc.)
  - *Means test of debtor's ability to pay the additional debt*: The monthly payment associated with the reaffirmation would be added to the Chapter 7 means test, documenting whether the means test suggests that the debtor can in fact afford to reaffirm and still pay his/her priority debts.

- Increase judicial reliance on affidavits, rather than hearings. The bankruptcy judge is required to approve all reaffirmations based on these filings, and may hold a hearing or request additional information on any proposed reaffirmation. The judge would be required to hold a hearing if the debtor was not represented by counsel and the means test suggests that the debtor cannot afford the reaffirmation (debtor's net income – income less means-test expenses, nondischargeable debt payments, and reaffirmation payments) is less than zero. In the hearing, the reaffirmation would be presumed not to be in the debtor's best interest.

⇒ Member commitment
⇒ push back

+A reg means test - below $500

if prox - NO

- Create "safe harbor" exemption for small reaffirmations: Reaffirmations with total payments of $500 or less are exempt from these affidavit requirements, provided that the *total* payments of all such reaffirmations are $750 or less. This exemption is intended to minimize the burden of court review for small reaffirmations. In such cases, the judge could hold a hearing and/or ask for the affidavit, based on the circumstances of the case (e.g., based on information on debtor's income and ability to pay that will be filed with the bankruptcy petition).

- Include legislative history and judicial education requirements to help judges use the new required information effectively: The legislative history would make clear that the judge should review each reaffirmation for clearly unfavorable terms, for patterns of questionable behavior by particular creditors, for whether the debtor really can afford to take on the additional payments, and other factors. The US Bankruptcy Trustees and the AO of the bankruptcy courts would also be required to conduct judicial education on how to use the new information in reviewing reaffirmations.

- Remove language in current bill that prohibits reaffirmations resulting from a creditor threats to take action that the creditor "did not intend to take": The House and Senate bills include language from the Conference Report that is intended to prohibit reaffirmations based on creditor threats. The amendment would strike the part of this prohibition that involves threats to take legal action that are not in the creditor's financial interest, e.g., a threat to repossess items as clothes or a swingset whose resale value is low. Sen. Sessions apparently did not realize this language was included in the report, and strongly opposes it. New prohibitions and sanctions on creditor threats of illegal actions would remain in the bill.

Policy Analysis

Most reaffirmations of unsecured and low-value secured debt would be included in the new information requirements.

- Around 75% of reaffirmations of unsecured debt and 50% of reaffirmations of low-value secured debt involve amounts above the safe-harbor trigger of $500 for a single reaffirmation.

- These reaffirmations account for about 80% of the total debts reaffirmed.

- Because many debtors reaffirm multiple debts, over one-fourth of the reaffirmations below the $500 cap would exceed the overall safe-harbor threshold of $750.

- Thus, over 85% of reaffirmed debt would be subject to the new requirements.

Arguments Against Amendment

- "Safe harbor" could harm some debtors not represented by counsel. While the amendment could help prevent unwise reaffirmations, especially those involving large debts, the elimination of the hearing requirement for reaffirmations below the threshold creates new opportunities for abusive practices.

- Elimination of hearing requirement for certain large reaffirmations could harm some debtors not represented by counsel. Even though the court would retain its current discretion to hold a hearing, a hearing would no longer be required for larger reaffirmations that exceed the safe harbor limit if the debtor passes the means test. This group of debtors is small (less than 6% of below-median debtors "pass" the means test), and few such reaffirmations are denied in hearings today. But despite the new disclosure requirement, the amendment could make it easier for creditors to get unrepresented debtors who can afford it to reaffirm more debt.

- The bill would be weakened by eliminating the prohibition against threats of actions that creditors did not intend to take. There are reports of creditors using such threats to coerce reaffirmations. The current bill could be used to support new class action lawsuits to protect debtors who reaffirm based on misleading threats without a court hearing.

Arguments For Amendment

- Required filings on terms of reaffirmations and debtor's ability to pay would give judges the information they need. Judges would have, readily available, all relevant information on the terms of the agreement and the debtor's ability to pay. Under current law, the judge must muddle through a hearing in order to get this information, or must simply take the word of the debtor's attorney that the debtor understands what he is doing. With the discretion to reject reaffirmations or hold a hearing, along with clear legislative guidance that they should use the required filings to screen out questionable reaffirmations, judges will be able to screen out bad reaffirmations more effectively and at lower cost – regardless of whether an actual hearing is required.

- Stronger, not weaker, protections for the low-income debtors who need it the most. The vast majority of filers with below-median income have negative ability to pay according to the means test, yet propose to reaffirm amounts above the "safe harbor". Not only would a hearing be required for these debtors, but also (unlike current law) the hearing would be based on a presumption against the reaffirmation. This should effectively block substantial reaffirmations by almost all low-income debtors. And those that do occur would generally be ones that the low-income debtors can afford.

- Clear "paper trail" for class action lawsuits and for identifying and publicizing abusive practices by creditors. The required disclosures would provide clear documentation of patterns of creditor actions, giving judges, advocates, and class action attorneys a low-cost way of identifying creditors who are consistently or repeatedly engaging in questionable reaffirmation practices.

- Less need for language restricting threats that the creditor did not intend to take. With clear evidence on financial terms and debtors' ability to repay, the judge can block reaffirmations that are unfavorable or that the debtor cannot afford. Thus, the most worrisome consequences of creditor "coercion" of all types, not just coercion related to this particular variety, would be reduced.

- The bulk of reaffirmations would be subject to the new disclosures, providing significant new protections. While it is true that individual reaffirmations under $500 and total reaffirmations under $750 would not be subject to the required affidavits, these smaller reaffirmations account for only a small share --about 20%-- of total reaffirmations Further, it is the large reaffirmations can do disproportionate harm to debtors' circumstances. In addition, the new requirements impose administrative costs (legal fees, time costs, etc.) for preparing and reviewing reaffirmations. Judges would have the discretion to ask for more information or a hearing in suspicious low-value cases, but it is unlikely to be worth the administrative cost to review all of them.

Political Pros and Cons

Pros

- Desirable new protections and disclosures that the Administration can point to as evidence of improving a bill where we have had little bargaining power. Includes all elements of Administration proposal (we previously agreed in principle to "safe harbor" exemptions).

- Strong endorsement by Administration is not required; all that Grassley and Sessions have asked is that we stop raising reaffirmations as an Administration concern if the amendment is included. This concern so far has done little to mobilize Democrats.

- Good foundation for future reforms. "Nose under the tent" for getting low-value secured debt treated like unsecured debt. Will provide extensive new evidence on creditor practices.

- Because a hardliner like Sessions is proposing it, his support can highlight the unfairness and backtracking of the final bill if these protections are removed in Conference.

Cons

- Liberals may criticize us for giving up protections in current law and in the bill (or at least criticize us for acquiescing not opposing these changes).

- Conference Report may strip the new protections while keeping the removal of language restricting creditor threats, leaving us worse off in the end.

- Debtor attorneys are unlikely to support changes that reduce hearing requirements and that give up a potential new lever for class action lawsuits.

Treasury and DoJ Views

Treasury and the Department of Justice (including the Executive Office of the U.S. Trustees) believe that we should work to improve the amendment, but that as is, it represents a substantial improvement over the current bill.

- The agencies agree that we should try to lower the "safe harbor" limit, and/or impose the disclosure requirement on all reaffirmations by *pro se* debtors.

- Even if we do not get these changes, the agencies believe the concerns are outweighed by the benefits of the amendment -- including what amounts to a near-prohibition of large reaffirmations by unrepresented low-income debtors, and many benefits from good information on the terms of reaffirmations and on debtors' ability to pay.

Mark.McClellan@do.treas.gov
06/11/99 07:34:01 PM

Record Type: Record

To: mark.mcclellan@do.treas.gov, Nicole R. Rabner/WHO/EOP

cc: Lucy.Huffman@do.treas.gov
Subject: Bankruptcy Op-Ed -Reply

Date: 06/11/1999 07:25 pm (Friday)
From: Mark McClellan
To: ex.mail("Nicole_R._Rabner@who.eop.gov", "mark.mcclellan")
CC: huffmanl
Subject: Bankruptcy Op-Ed -Reply

Nicole-
This still looks very good. A few comments:

-- It's already implicit, but you might want to make explicit that job loss is one of the most common events that push Americans into bankruptcy. Two-thirds of bankruptcy filers had a significant decline in income in the year before they filed, most often because of job loss or a reduction in work hours.

--I don't think you need to say "relatively ordinary" expenses when you say that courts may not have the flexibility to take the expenses described in your examples into account. And I don't like that phrase. It's enough to say (and I think more clear) that "bankruptcy courts may not have the flexibility to take very important expenses such as these into account..."

-- There is a chance (not a big one, but a chance) that we may be able to work out an amendment on reaffirmations. This would mean that you would need to modify the paragraph on intimidating debtors into paying off debts they could discharge, at least with regard to the Senate bill. Check back with Sarah or me before this goes to press.

-- The sentence you have on disclosures that we would like to see is not that clear. While I think you have mentioned the most important disclosures, Im not sure if it will be clear what we are asking for on a fast read. For example, a reader might not get what "information on the true cost of buying on credit" means to him. Some alternative disclosures that we support that are clearer: information on how long teaser rates last, and what the subsequent rate will be; information on fees (besides the interest rate) that are currently disclosed in the fine print or are hidden; and a requirement that the laws on disclosure that apply to mail solicitations also apply to internet solicitations. For what it's worth, these disclosures are supported by Sen Schumer, and he is likely to introduce amendments dealing with them.

--You could also say: Burt Reynolds, Bowie Kuhn, and other very wealthy individuals who file for bankruptcy would not be affected at all by the House bill. (They all file in Chapter 11; however the Senate bill may close these loopholes.)

>>> ex.mail."Nicole_R._Rabner@who.eop.gov" 06/11/99 02:07pm >>>
Attached is a draft of an op-ed by the First Lady on the bankruptcy bill. We'd love your thoughts on this draft (and are enormously grateful for previous comments and documents that helped to devise this). Sarah is also
reviewing now.

June 10, 1999

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: NICOLE RABNER

SUBJECT: MEETING ON BANKRUPTCY REFORM

Tomorrow, you are scheduled to have a brief meeting to discuss White House strategy on the bankruptcy reform bills before the Congress. The full Senate is scheduled to take up its bankruptcy reform bill prior to the July 4th recess. As you know, the House recently passed a bill that is fundamentally flawed; nonetheless, it passed by a vote of 313 - 108 (with fewer votes in opposition than last year's Conference Report). We anticipate that the Senate will pass an only slightly better bill by a similar veto-proof margin.

Given this prognosis, the President's advisors are working to devise a new strategy designed to achieve very modest improvements in the bill. The general plan will be to avoid making statements that would further limit the President's ability to sign the bill if it is presented to him with overwhelming support, but at the same time to demonstrate clearly to Democrats who oppose the bill, to undecided Democrats, and to the consumer groups that the Administration is dedicated to improving the legislation.

While there is not yet consensus within the White House on a specific plan of action, we are working on a strategy that would include convening shortly a White House meeting with participation from you, White House officials, leaders of various consumer groups, civil rights groups, women's groups, and the unions, and a group of targeted Democratic Senators. The purpose of this meeting would be to impress upon these Senators that their traditional Democratic constituency is very interested in this bill and believes that their support for improvements in the legislation is imperative. As you know, Senators Kennedy and Durbin have been pressing the Administration to hold this meeting, and have particularly urged your participation. They see this high level convening as necessary to combat an extraordinary campaign by the credit industry in support of the bill and the relative silence of these groups in opposition to the bill up until this point. Second, we would work to place an op-ed by you highlighting the sympathetic debtors who may be harmed by the overly rigid "means test" employed by the bill (*e.g.*, those who care for non-dependent elderly or children, those who are protecting themselves or their families from domestic violence, or those who are trying to move from welfare to work). (We are now working with Carol on this draft op-ed for potential placement in the *Washington Post* or for use as a column.)

Finally, we would (1) encourage Senator Daschle to work with Senator Torricelli, the lead Democratic sponsor of the bill, and Senator Durbin, the sponsor of a more balanced alternative bill (last year's Senate bill as passed by the Senate by a 97 - 1 vote), to reach a compromise that the majority of the caucus can support; and (2) continue to work with key Republicans and Democrats to gain compromises in the bill prior to and to develop an effective amendment strategy for the floor.

Hopefully, by tomorrow's meeting, there will be internal consensus on this plan of action, and the purpose of the meeting will be to brief you on it and solicit your views and recommendations.

BACKGROUND: Senator Torricelli continues to negotiate with Senators Grassley and Hatch, the key Republicans on this bill, on changes to be included in the manager's mark. To the best of our knowledge, Senator Torricelli has been able to make only minimal improvements to the bill through this process. The one issue on which he has made some notable gains, however, is on credit card disclosures. Senator Torricelli has reached a deal with the credit card companies and the Republicans that is not sufficient to gain the Administration's support but is a move in the right direction.

The White House has been able to gain commitments from Democratic Members to introduce our message and substantive amendments. For example, Senator Kennedy will introduce a message amendment that would – consistent with the theme of your op-ed – give the court discretion to consider the special circumstances of sympathetic debtors; Senators Durbin and Schumer will introduce the Administration's means test alternative; Senator Jack Reed will introduce the Administration's reaffirmations proposal; Senators Sarbanes and Durbin will introduce a credit card disclosure amendment we support; Senator Kohl will offer a "cram down" amendment we support; and Senator Dodd is working on a nondischargeable debt amendment that we are likely to support. Unfortunately, however, these amendments have little chance of passing.

White House staff has met with Senator Grassley's and Senator Hatch's staff. Although they have politely listened to our concerns, they have not yet capitulated on any of our key issues. Both Senators Grassley and Hatch, however, have expressed some interest in the "efficiency" portion of the Administration's means test proposal and Senator Grassley (along with Senator Sessions) has expressed some willingness to accept portions of the Administration's reaffirmations proposal. In the end, however, without some leverage from the left, we will be unlikely to achieve even these modest improvements.

MEETING PARTICIPANTS

The First Lady
Melanne Verveer
Nicole Rabner
Gene Sperling
Larry Stein
Sarah Rosen Wartell

FROM SENATOR DASCHLE FOLLOWING YOUR DISCUSSION ON BANKRUPTCY

Senators in strong support of bankruptcy reform

Most ardent:

Biden (cosponsor)
Johnson (cosponsor)

Other cosponsors of Grassley bill, S. 625:

Breaux
Robb
Kerrey

Cause for concern:

Lieberman
Reid
Landrieu
Graham

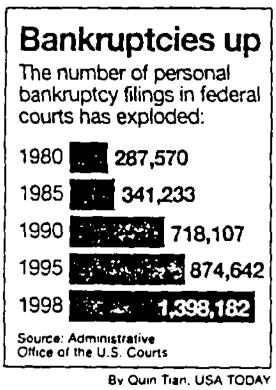
No easy answers to easy credit fallout

By Robert B. Reich

This week I got three letters from credit companies, all wanting me to sign up. One of them congratulated me on having been "selected" for a credit line of up to $5,000. Another commended me for being one of its most "valued" patrons and offered me a "low introductory" interest rate plus a free cell phone. The third assured me that my "financial needs would be taken care of." It also promised me extra frequent-flier miles if I signed up now.

I was flattered by all of the attention. Then I did some research. Last year, credit card companies sent out almost 4 billion solicitations — the equivalent of 16 letters to every man, woman and child in the United States. If you could breathe, you probably received one. If you could write your name, you got 12. I even found a dog that got one.

Credit card issuers aren't overly worried about whether the people they're soliciting are good credit risks. People who owe money on 10 different credit cards still get more mailed to them.



The fact is, credit card issuers want people to borrow beyond their means. That's how they make their money.

If you haven't noticed — and if you haven't, you'd better start now — credit cards charge an interest rate on your unpaid balance that's much higher than the interest rate you pay on your home mortgage or your car loan. And credit card issuers don't tell you how long it will take you to pay off your outstanding balance if you make the minimum monthly payment. The idea is to keep you paying — and paying.

Two hundred years ago, people who couldn't pay their bills went to debtor's prison. Now, if you get into really deep trouble, you can declare personal bankruptcy under Chapter 7 of the bankruptcy law. That means you go to court and show why you can't pay your bills and still survive on your income. Personal bankruptcy lets you wipe the slate clean and start over.

But personal bankruptcy isn't a free ride. It also makes you a bad credit risk in the future. Don't expect a new car loan or second mortgage after you've declared personal bankruptcy (although you still may get a new credit card in the mail).

More Americans declare empty pockets

Still, a lot of people are choosing this way out. The rate of personal bankruptcies is skyrocketing. Last year, almost 1.4 million Americans filed for personal bankruptcy. That's more than triple the number a dozen years ago, and accounts for 97% of all bankruptcy filings. Statistics show that the overwhelming majority of these people simply got in over their heads. Credit card debt was a big part of their problem. Credit card debt is also the fastest-rising category of debt.

But if you're planning bankruptcy, you'd better move fast. The bankruptcy door is about to shut. The credit card industry — the same group that sent out those 4 billion letters urging people to sign up — has been pushing Congress to close it. Seems that all of the personal bankruptcies of late have started to hurt the credit card business.

A few weeks ago, the U.S. House passed by a veto-proof majority a bill that would make it much harder for people to declare personal bankruptcy. Under this bill, bankruptcy judges couldn't reduce your debt payments even if your income dropped to a point where you barely had enough on which to live. And your duty to repay would have the same priority under the law as child support payments.

Don't let either side off easily

Now, let's all agree that people need to take more responsibility for their finances and shouldn't be let off the hook too easily. There may be a legitimate argument for tightening bankruptcy law so people have more incentive to be careful about what they can afford.

But financial responsibility is a two-way street.

There's a good argument for giving credit card companies more incentive to be careful about whom and how they solicit. And they ought to be required to give people better information about the financial holes they are digging for themselves.

Other lenders have to tell you how long it will take you to repay your debt, if you pay the minimum amount due each month. At the least, credit card issuers should have to do the same.

This new bill, now on its way to the Senate, would impose excessive hardship on people who already are very hard up. It would turn the bankruptcy courts into collection agencies for credit card companies. And it would make the credit card industry even less responsible than it is now — which is almost not at all.

Former Labor secretary Robert B. Reich is a professor of social and economic policy at Brandeis University.

THE WALL STREET JOURNAL
WEDNESDAY, JUNE 9, 1999

Congress to Tighten Personal-Bankruptcy Rules

By DAWN KOPECKI
Dow Jones Newswires

WASHINGTON – Congress may give creditors access to something they never had before in challenging personal bankruptcies:

Proof.

"If we ask you if there are any other assets that you haven't revealed and you say, 'no,' we don't check on that and neither does the court," said John Garza, a longtime bankruptcy lawyer and secretary of the Maryland Bankruptcy Bar. "If you're just a brazen liar, you can get away with it. . . . They don't even pull a credit report to check."

Congress, however, is set to change that. The bankruptcy bill before the Senate, and the one that passed the House last month, includes a provision that would require debt-strapped consumers to submit three years of tax returns when filing for bankruptcy. Otherwise, the petition would be dismissed.

The full Senate is expected to take up its bankruptcy bill for a vote later this month.

The problem with personal bankruptcies, critics say, is that they rely on the word of the debtor.

"Everybody recognizes that some debtors tend to forget some of their assets," said one GOP Senate bankruptcy aide. "If debtors conveniently forget to list something, it would be there" on the tax returns.

Congress is attempting to overhaul the nation's bankruptcy system, trying to stem the tide of more than 1.4 million bankruptcies filed in 1998 by requiring debtors that have some ability to repay their bills to do so under a Chapter 13 bankruptcy filing.

The core of the bill relies on an income test to determine which destitute consumers will be allowed to file for Chapter 7—an elimination of most debt—and which have enough disposable income to pay back part of their bills under Chapter 13—a financial reorganization.

"To ascertain whether a debtor has a sufficient ability to repay their debts, the most straightforward way to do that is with tax returns," said William Binzel, a lobbyist for MasterCard International. "There is nothing currently built into the system to ensure the accuracy of petition data."

But bankruptcy courts, already overwhelmed in paperwork, are leery of the proposal. Consumer groups criticize the measure's potential privacy problems, saying the measure is "just another" example of a bad and biased bankruptcy bill. And creditors, although reluctant to admit it, are salivating over the prospect of being able to easily contest previously open-and-shut bankruptcy cases, many Capitol Hill aides contend.

"It's ripe for abuse," said Frank Torres, an attorney for Consumers Union, publisher of Consumer Reports magazine. "Creditors can hold this over debtors' heads. There's no guarantee that this information will remain confidential."

The legislation directs the Justice Department to install safeguards to keep private tax returns from public view, but it doesn't say how the department will accomplish that, said Samuel Gerdano, executive director of the American Bankruptcy Institute in Alexandria, Va.

The costs of the measure run nearly $35 million just to store and provide access to about 20 million tax returns over the next five years, according to a cost analysis of the bill released last month by the Congressional Budget Office.

The House bankruptcy bill also requires that every 250 consumer-bankruptcy filings be audited by a private certified financial accountant at an additional cost of an estimated $58 million from 2000-2004, the reports states.

"Many of the provisions set forth in this bill would impose substantial burdens on the United States Trustee program," states a letter sent to both House and Senate Judiciary committees from the Clinton administration.

The bankruptcy system, which is currently self-funded through its schedule of filing and other fees, would either have to raise those rates or rely on taxpayer money to account for the additional costs.

The audits and storing of tax returns with bankruptcy records would also require an entirely new filing system separate from the already overloaded bankruptcy courts.

Russ Feingold

Lobbyists' Rush for Bankruptcy Reform

Legislation poised to be rushed through the Senate offers literal proof of Washington's worst-kept secret: that the special interests are bankrupting our system of government.

The bankruptcy laws that are the subject of fierce lobbying in Congress today were once considered too complicated to be the focus of such a high-powered campaign. But credit card companies have spent tens of millions of dollars to push a bill that legal experts and judges say won't work. The experts are right, but it's hard to hear them above the din of lobbyists who insist that if Congress wants more "personal responsibility" and fewer bankruptcy filings, it must pass this bankruptcy bill in a hurry.

Credit card companies have placed a rush order for bankruptcy reform: The House recently hurried a bankruptcy bill through, and now the Senate is being pressed toward hasty passage of one. It's up to the Senate to put the brakes on this ill-considered and dangerous push for so-called reform.

Why such a rush? It's simple: Powerful economic interests see an opportunity to push through major structural changes to the bankruptcy system before the public becomes aware of the consequences of what they are doing and works to stop them. And one reason these interests can get Congress to act so quickly is that they have spent millions on lobbying and campaign contributions.

Like so many bills in Congress these days, bankruptcy reform has become special-interest legislation. Campaign money is a central component of the lobbying effort. In the last election cycle, according to the Center for Responsive Politics, the members of the National Consumer Bankruptcy Coalition, an industry lobbying group made up of credit card companies such as Visa and MasterCard and associations representing the nation's big banks and retailers, gave more than $4.5 million in contributions to parties and candidates. Significant sums came from the same groups in the form of soft-money contributions to both political parties.

Some of the industry's contributions seem timed for maximum effect. For example, on the very day that the House passed the bill last year and sent it to the Senate, where it fortunately died at the end of the Congress, MasterCard gave a $200,000 soft-money contribution to the Republican Senatorial Campaign Committee. Contributions from coalition members totaled $227,000 in March, the same month that the Judiciary committees of both the House and the Senate were considering the bill.

The credit card industry is pushing this bill at the same time that people across the country are becoming more critical of the industry's efforts to encourage consumers to take new credit cards. Many of us receive credit card offers almost daily. As one of my constituents wrote to the Milwaukee Journal Sentinel last year, "Isn't it ironic that the credit card issuers, after years of indiscriminate mass mailing of credit cards to unemployed college students and other non-credit-worthy persons, are now spending millions of dollars in political contributions and lobbying efforts to change the bankruptcy laws to prevent those same card holders from filing for bankruptcy."

I agree that it is ironic, and it is disturbing. Congress should resist efforts to hijack the legislative process for the self-interested purposes of a single industry.

In coming weeks, the burden will fall on me and my Senate colleagues to make sure this bill is a balanced and effective response to the bankruptcy problem. Bankruptcy judges, bankruptcy trustees, nonpartisan academic experts and consumer advocates all strongly oppose the bill, and even some creditors' organizations are lining up against it. The debate on this bill may well be about restoring "personal responsibility" to the bankruptcy system. I just hope that as we finish work on the bill, the Senate will fulfill its own responsibility—to serve the public interest—rather than its campaign contributors.

The writer is a Democratic senator from Wisconsin.

The Washington Post
MONDAY, JUNE 7, 1999

Credit Card Cos. Come Under Fire

Filed at 5:41 p.m. EDT, 6/8/99
By The Associated Press

WASHINGTON (AP) -- University of Central Oklahoma freshman Mitzi Pool, $2,500 in debt, hanged herself in her dorm room, her checkbook and credit card bills spread out on her bed.

Consumer groups are citing the 1997 death to underscore their criticism of credit card companies, accusing the companies of trying to get college students hooked on credit the way cigarette makers tried to get young people hooked on tobacco.

``Credit card companies are targeting America's children,'' Frank Torres, legislative counsel for Consumers Union, said Tuesday at a news conference organized by the Consumer Federation of America.

The CFA also released a study by Georgetown University sociologist Robert Manning indicating some students are forced to cut back on their courses or spend more time working to pay off their credit card debts.

About 70 percent of students at four-year colleges have at least one credit card, and revolving debt on these cards averages more than $2,000, Manning's study said. In the worst cases, students must drop out of school and work full time.

At the news conference, Tricia Johnson of Enid, Okla., recounted how her daughter Mitzi had phoned her on a December night in 1997, crying because she had lost her part-time job and didn't know what to do. She already had maxed out three credit cards after 3 1/2 months of college.

``I tried to assure her that ... we would sit down and go over her bills and work some plan out,'' Ms. Johnson said. ``This was my last conversation with my daughter.'' Later that night, the 18-year-old killed herself.

Credit card companies such as Visa USA Inc. and MasterCard International have defended their college marketing practices, maintaining that most students use credit responsibly and appreciate getting the cards as a way to establish a credit history.

Regarding the suicides of Ms. Pool and Sean Moyer, a University of Oklahoma junior who had $10,000 in credit card debt when he killed himself in 1988, Visa said: ``The loss of a young person is tragic under any circumstances, and it is very troubling to hear of the loss these families suffered.''

``Visa and its (member banks) feel a strong responsibility to educate college students about wisely managing their personal finances," the company said in a statement. ``We see financial education as an important tool to prevent problems before they occur."

The consumer groups also criticized colleges and universities for allowing what they said was aggressive marketing of credit cards on campuses and benefiting financially from it.

Credit card companies pay colleges and universities fees to be able to sponsor school programs and student activities, to rent tables on campus used to solicit students to apply for cards, and for marketing agreements such as ``affinity" cards linked to colleges, the groups said.

A study last fall by the U.S. Public Interest Research Group found credit card companies lure students with free T-shirts, Frisbees and other items if they apply for cards. It also found that students who obtain cards that way often end up with bigger unpaid balances and pay off their debts later than those who do not.

``The unrestricted marketing of credit cards on college campuses is so aggressive that it now poses a greater threat than alcohol or sexually transmitted diseases," said Manning. ``Typically, students slide into debt through the extension (by credit card companies) of unaffordable credit lines."

His study, partially funded by the CFA, was based on interviews with and questionnaires completed by students at Georgetown University, American University and the University of Maryland, all in the Washington area.

Officials at those schools did not immediately respond to requests for comment, and spokesmen for the American Council on Education, representing college and university administrators, had no immediate comment.

About a month ago, the House passed a bill sought by credit card companies that would make it tougher for people to erase their debts in bankruptcy court. It passed 313-108. Parallel legislation is pending in the Senate.

Stephen Brobeck, the CFA's executive director, urged Congress on Tuesday to adopt a measure requiring people under age 21 to get a parent's approval or demonstrate sufficient income before obtaining credit cards.

The Christian Science Monitor

May 20, 1999, Thursday

SECTION: EDITORIALS; THE MONITOR'S VIEW; Pg. 10

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BODY:

It's become just too easy for individuals to declare bankruptcy. About 182,000 Americans filed for bankruptcy in 1978, the year federal insolvency laws were last revised. By last year, that figure had mushroomed to 1.4 million.

When people don't pay their debts, it costs everyone. Lenders estimate that the average American household pays $ 400 a year in higher prices and interest rates as a result of the skyrocketing bankruptcy rate.

The problem: Too many people are allowed to file for bankruptcy under Chapter 7, which wipes out debt after the debtor's assets are sold off. Under the tighter provisions of Chapter 13, a debtor must work out an agreement with creditors to partially repay the amount due. This allows unsecured creditors those who loaned without collateral) to get back at least some of their money.

Congress tried last year to update bankruptcy law, but the measure bogged down in the Senate. Now the House has passed a new measure and the issue has moved back to the Senate.

The House bill, passed by a veto-proof margin last week, would steer more cases into Chapter 13 using a means test based on income and an IRS formula for living expenses.

Consumer groups and others blame the high insolvency rate on banks and credit-card companies that offer too much credit to people who can't afford it. They criticize the companies' endless solicitations and "teaser rates," in which a cardholder gets a low interest rate for a few months only to balloon later.

The Clinton administration threatens to veto the bill. It condemns the means test as "inflexible and arbitrary," demanding more discretion for bankruptcy judges.

It's true the credit industry lends promiscuously and should clean up its act. It sometimes sends out misleading solicitations. Its monthly minimum payments can be less than what is needed to pay down the debt, meaning a consumer can faithfully make the required payments and owe more at the end of a year instead of less.

Amendments added to the bill on the House floor deal with some of these issues. One offered by moderate Democrats would increase disclosure requirements regarding payments and teaser rates. The bill also makes child-support payments a top priority in bankruptcy claims and excludes Social Security payments from income calculations.

The Senate bill is less specific, which could mean a floor fight and tough negotiations with the House. The issue of whether the IRS formula is fair will have to be addressed.

In the end, it's clear that few people are forced to accept a credit card or use it. On the other hand, financial crises brought on by illness, job loss, or divorce can lead to legitimate bankruptcies. As a general rule, however, people should be held responsible for their spending decisions and for the debts they incur.

The Senate should follow the House's lead, make needed adjustments, and the president should sign the final bill.

DRAFT #5

FIRST LADY HILLARY RODHAM CLINTON
OP-ED ON PENDING BANKRUPTCY REFORM LEGISLATION
JUNE 9, 1999

def opening

Last month on these pages, House Judiciary Committee Chairman, Henry Hyde, shared his concerns about bankruptcy reform legislation speeding its way through Congress. Although some might be surprised to find me on the same side of an issue as Mr. Hyde, when it comes to responsible bankruptcy reform, I am.

There is little dispute that our bankruptcy laws are in serious need of reform. Since 1980, bankruptcy filings have increased approximately 400 percent. Last year alone, more than 1.4 million American families filed for protection.

For over a year now, Congress has been considering the issue. But both the bill that was hurried through the House and the one that is moving rapidly to the Senate floor are seriously flawed, imposing unfair restrictions on middle- and low-income debtors while, at the same time, failing to close loopholes that protect the wealthy.

Consider for a moment the plight of workers who have lost their jobs lost jobs, etc. due to changes in the economy and who are trying to get back on their feet. Bankruptcy reform should not punish these hard-working Americans; but these bills would do just that.

Approximately 2.4 million workers lose their jobs each year because of plant closings and relocations or a declining demand for their skills. On top of lost income, they face additional expenses associated with retraining and looking for a new job.

Despite the fact that we should be encouraging workers – even those who file for bankruptcy protection – to update their skills and find new work, there is no provision in the proposed bills that would allow debtors to cover expenses for relocation or retraining before paying off other debts.

Americans who support elderly or disabled family members who are not dependents could also suffer under these bills. Consider an elderly widow who receives $9,000 a year in Social Security benefits, enabling her to pay rent and cover some household expenses. She may need another $5,000 from a son or daughter to help pay other household expenses or medical bills. But she would not qualify as a dependent, even though, without the added help, she might have to resort to Medicaid or move into an institution.

Under the proposals in Congress, debtors who help support aging or disabled relatives could be forced to pay credit card bills ahead of these very important expenses – an approach that is not only punitive, but also likely to lead to higher public assistance costs.

Victims of domestic abuse, many of whom incur unexpected expenses trying to protect themselves and their children from their abuser, would also not be protected by the House or Senate bills. In addition to everyday living expenses, they might find themselves having to pay to relocate, cover legal fees or install security measures in their homes.

Under the bills making their way through Congress, bankruptcy courts may not have the flexibility to take very important ~~and relatively ordinary expenses~~ such as these into account when determining what debtors can reasonably afford to pay their creditors. There is no question that debtors should repay whatever they reasonably can, but credit card companies should not come before elderly parents, women and children at risk of violence or unemployed workers trying to improve their financial circumstances.

While thousands of moderate- and low- income debtors stand to be harmed by the House and Senate bills, coercive creditors who threaten or otherwise intimidate debtors into paying off debts that they otherwise would be entitled to discharge in bankruptcy, would not be affected at all.

Under current law, individuals who file for bankruptcy under Chapter 7 of the Bankruptcy Code, must pay off obligations that include taxes, educational loans and family and child support. But it is not uncommon for unscrupulous creditors to use harassment and misinformation to coerce debtors to repay other obligations – such as credit card bills – first, leaving them without enough left over to pay their child support and alimony. The proposed bills would do nothing to restrict such behavior.

In addition, the bills would do nothing to limit the solicitation practices of credit card companies – practices that are clearly a factor in the explosion of bankruptcy filings. We have all been targets of unsolicited credit over the phone or in the mail. Last year credit card companies sent out more than 3.4 billion such offers. Even high school and college students, who've never worked a day in their lives, are targets. ~~find themselves invited to accept a VISA or Mastercard, "in order to establish a credit history."~~

POTUS / HRC mail get screened

can get into fin. trouble at a time when a neg cred rating can have imp impl.

People with poor credit are also bombarded by ads urging them to "consolidate their loans" or borrow more. For many people, especially those in financial straits, these offers sound too good to be true – and too often they

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are. Down the line, and often too late, debtors realize just how much they really owe and find themselves unable to handle the additional debt.

The credit card companies are not being asked even to provide meaningful disclosure to prospective customers – disclosure that might give them a realistic picture of what they're getting into and maybe make them think twice before digging themselves into a deeper financial hole. Information on the true cost of buying on credit, the meaning of "pre-approved credit" and a creditor's right to seize a debtor's purchases should be provided with every solicitation. ? see Treas.

Stories abound of high-income debtors who file for bankruptcy protection but manage to hang onto valuable assets such as luxury homes and racehorses. Yet, under these bills, wealthy debtors who can afford to take advantage of varying state bankruptcy standards would still be able to shelter assets in states with lenient laws.

Average bankruptcy filers earn less than $18,000 a year. Most are ordinary, hard-working Americans – nurses and secretaries, carpenters and teachers, bank tellers and grocery store clerks – who want to pay their bills but find themselves unable to manage. Bankruptcy legislation should not place a greater responsibility for debt repayment on these debtors than it

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does on the wealthy.

Bankruptcy reform is not easy, but it is both desirable and necessary. I ~~This administration~~ support~~s~~ reform that is balanced, asking both debtors and creditors act more responsibly. Our lawmakers should, too. I urge the Senate to take a long, hard look at these issues before it's too late.

[1040 words]

Sympathetic Debtors

Background

- The IRS standards do not explicitly account for many types of expenses that involve higher social priorities than repaying credit card debt.

- Allowing for these expenses is an integral part of the IRS guidelines and collection process. The IRS already has the authority to deviate from their guidelines if the taxpayer can show would improve the ability to repay tax debt. The Restructuring and Reform Act of 1998 requires the IRS to further account for the circumstances of a particular case in determining tax repayment. In response, the IRS is drafting regulations providing additional flexibility in applying their guidelines to determine tax liabilities, including considerations of equity, hardship, and public policy.

- Because the bankruptcy reform bills apply the IRS standards without the judicial discretion and flexibility used by the IRS, these debtors and those they support may be harmed by the bills.

- In most of these cases, allowing the debtor to incur the additional expenses as part of the means test will not only serve a social goal. The additional expenses will also improve the debtor's long-term ability to repay debt and to contribute to the economy. Requiring the debtor to go through an extensive, confrontational legal process to be granted the adjustment is wasteful. A short-sighted policy of debt repayment at all costs is reminiscent of debtors' prisons, an ineffective approach to repayment.

Unemployed and Underemployed Workers

- Studies by VISA show that two-thirds of bankruptcy filers had a significant decline in income in the year of filing -- as VISA noted, this is the most common characteristic of filers. The typical income decline was around 25% from the previous year.

- The Department of Labor reports that about 2.4 million workers are displaced from their jobs annually, because of plant closings or relocations, or a decline in the demand for their skills. With increasing global competition and changes in technology, the need for career changes and the development of new skills is rising, and with them the importance of workers being able to incur training and relocation expenses to improve their earnings.

- Examples of workers who have been particularly affected include steelworkers, electronics workers, and textile and apparel workers dislocated by new imports; financial services, health care, or food processing employees displaced in the course of large mergers and consolidations in response to changing economic conditions; the aircraft workers dislocated by the Asian financial crisis; and farmers hurt by declining global prices.

- The resulting lost wages can be substantial: one-fourth to one-third of workers displaced in the 1990s suffered earnings losses of 20 percent or more. In addition, such workers generally incur unusual expenses in training for and finding a new job, possibly in a different industry or location, that would allow him or her to regain the ability to repay debts. In addition, debtors may incur other expenses associated with seeking new economic opportunities, such as additional transportation or housing expenses, or relocation expenses.

Bankruptcy reform must not punish debtors who have lost income as a result of changes in the economy, and who are trying to improve their prospects for the future.

- Looking at income in the months before bankruptcy does not provide a good guide to future income and thus to capacity to repay for many debtors. Yet the bankruptcy reform bills provide little discretion for courts to consider expected changes in future income compared to the past.

- There are no provisions in the bills that explicitly allow debtors to incur expenses for relocation, retraining, or other steps that could significantly <u>improve</u> income and thus the ability to pay off debts. Allowing such expenses makes good economic sense.

Providers for Non-Dependent Family Members

- Many Americans provide support for elderly or disabled family members, to enable them to continue to live in the community and meet their medical and other necessary expenses, and to avoid institutionalization and dependence on public programs such as Medicaid.

- In most cases where the family member does not live with the provider, the family member does not receive enough support from the provider to qualify as a dependent. For example, an elderly widow may receive $9,000 per year in Social Security benefits, which enables her to pay rent and some household expenses. But she may need another $5,000 in aid from a son or daughter for other necessary household expenses, and for home care or medical bills. She would not qualify as a dependent, even though she would have to go on Medicaid or into an institution in the absence of the assistance from her child.

- There are no provisions in the bills to protect the non-dependent family members of debtors. Putting credit card repayment ahead of these expenses is not only a punitive measure against many vulnerable family members; it is also likely to lead to higher public assistance costs that offset any additional debt repayment.

Victims of Domestic Violence

- Victims of domestic violence generally incur many unusual expenses in trying to protect themselves and their children. These can include relocation expenses to move the victim and the victim's children out of harm's way, additional transportation expenses to get to work from the new residence or to go to a new job, legal costs associated with getting and enforcing court protective orders, security costs for protecting the home, and income gaps associated with unavoidable absences from work due to the danger of being threatened or assaulted at the workplace.

- There are no provisions in the bills to allow debtors to incur such expenses, without having to go through yet another extensive, confrontational legal process.

Unfairness in Strict Application of IRS Standards

Food Expenses

The IRS expense formulas use a national standard for food. But as Chairman Hyde has already noted, there is considerable variation in food expenses by location, much of which is the result of higher food prices. National statistics suggest that the 5% additional adjustment for such differences is not adequate, so that debtors who happen to live in areas where food is costly are penalized.

- Food expenses for families living in Houston are over 25% higher than the national average.

- Food expenses for families living in New York, Minneapolis, and Washington, DC, are 10 to 20% higher than the national average.

Transportation Expenses

The Transportation Standards include allowances for ownership costs and for operating costs, including the cost of public transportation. The monthly ownership costs (loan or lease payments) are based on national standards and provide for up to two automobiles. The additional operating costs are specific by Census Region, or, if applicable, by Metropolitan Statistical Area. Data from the Consumer Expenditure Survey reveals that this formula for operating expenses penalizes larger households, households with more workers, and commuters.

- Operating expenses are nearly independent of the number of owned or leased cars, and are much more related to the size of the household. This is because the number of miles traveled depends much more on the number of people in a household than on the number of cars.

- Nationwide, the operating expenses for vehicles (gas, maintenance, etc.) are about 15% higher than the average for families of 4 people than for 2 people.

- Public transportation expenses are nearly 30% higher for families of 4 compared to families of 2. The differences are even larger for families with additional members who are earning income.

- In addition, the particular work situation of the debtor or the debtor's family members often require higher transportation expenses. For example, even though there is no special exception in the IRS standards, the IRS manual suggests that real estate agents should receive special consideration because doing their job effectively may require them to drive a nicer car.

- Debtors living in Howard County, Maryland, and in the city of Baltimore are allowed the same monthly operating expenses per car, since both counties are located in the same PMSA. Yet the 1990 Census reveals that the costs of commuting to work for these two groups are very different. Nearly half the Baltimore families are single worker families, and most work in the same city; two-thirds of them work near where they live. By contrast, most Howard County families have two or more workers, both of whom work outside of Howard County. Many work outside the state of Maryland, and almost all have to drive alone to work.

Housing Expenses

Housing expenses, the largest living expense, are also the most variable. To try to reflect this variation, the IRS standards are based on the median housing costs in a county. But housing costs vary enormously within counties, even counties with relatively modest incomes. Consequently, many individuals pay more than the median housing cost for relatively modest housing. The examples that follow, all based on data from the most recent Census in 1990, illustrate the consequences of these differences.

* Many renters who pay above-median costs are not wealthy or living in luxurious housing.

    * For example, in 12 of out a sample of 67 Census tracts in Queens, New York, rents were 10-25% higher than the median for the county, yet incomes were actually equal to or lower than the county median, and below the national median. Thus, rents in many relatively modest neighborhoods in Queens would be viewed as excessive according to a strict interpretation of the standards.

* Applying the IRS formula strictly means that a large share of debtors in some neighborhoods and towns would have to move out of their homes, even though they are of moderate income and have relatively modest rents. But debtors with larger incomes and more luxurious housing who lived in similar towns would be unaffected.

    * For example, Springfield, Ohio, the county seat of Clark County, is a small city of 27,000 households. The median income in Springfield was a modest $21,400, well below the county median of $27,700. Yet even in this relatively low-income town, over 40% of households paid rents higher than the county median, and nearly 40% of homeowners without mortgages incurred housing costs greater than the county median. Most of them did so because they also worked in the town; living there enabled them to be close to their jobs.

    * In contrast, the 14,700 households of Ellicott City, Maryland, located in Howard County, are much wealthier than the residents of Springfield. The town's median income of $58,500 was nearly three times that of Springfield in the last Census.

Because the median rent in Howard County was $680 while the median rent in Ellicott City was only $591, only about 21% of the Ellicott City households paid more than the median rent for the county. Thus, strict application of the IRS standards would displace few of the Ellicott City households, even though their housing is far more generous than in Springfield, Ohio.

- The bills also impose much more onerous requirements on renters than owners. All mortgage expenses are generally allowed, regardless of amount. In contrast, renters are subject to completely formulaic housing expense standards. Because rental payments are typically much lower than mortgage payments, renters in most areas would be subject to much stricter repayment requirements than owners.

  * For example, in Howard County, the allowed median rental expense was $680, but the median home ownership cost, including mortgage, was $1186 – over $500 higher per month . In moderate-income Baltimore county, the allowed median housing expense based on rental costs was $529. But the median home ownership cost was $839 – over $300 higher per month.