Betsy
UNIFEM
914-833-7093
Selmin Caecek
212 906-6453

CQ Sumana Chatterjee
224-0241

Position on bankruptcy bill —

212-
415 - fax
4053

Carol Beach

Ann O'Leary - 6-6275

What is going to happen -
attach bankruptcy to digital
"Electronics Signatures Bill"

Bill is getting worse + worse
Schumer has an amendment to it
"clinic violence amendment" to
make sure they can't use
bankruptcy excuse for damages
to abortion clinic -
This may provide an out to veto the
bill

POTUS has said he's not happy w/ it

- Involvement of Bankruptcy bill
- last yr and what it is currently
- Told she was heavily involved weighing in on certain provisions relating to women + children -
- written letters to members of Congress? } yes
- had conversations ?
notes w/ column
- wrote a column + sent it to members

2 columns
we need reform but not on the ~~backs~~ of those on the lowest rung of the ladder - child ~~support~~

They're trying to reconcile in conference
Hse bill is totally unacceptable
Hoping it can be improved in Hse-Senate Conf -

Her position is clear:

contained in the Platform for Action. They are using the Platform for Action to strengthen and reinvigorate their efforts to advance the well-being and empowerment of women.

The women's community in the United States has also responded to the Platform for Action. In 1996, the President's Interagency Council on Women sponsored a national conference via satellite to obtain recommendations for US national action to implement the Platform for Action. As a result of this conference and the subsequent input of NGOs, the US Women's National Action Agenda was created during 1996 and 1997. The Agenda takes the broad categories of the Platform for Action and makes them specific to the situation in the United States.

However, there has not been coordinated and visible NGO follow-up to the US Women's National Action Agenda in a way that capitalizes on the opportunities to advance women in light of the upcoming "Beijing +5" activities. Unlike many countries in the world, the US has no national women's network with local and grassroots "arms" to promote and monitor women's rights, advancement and agendas in government policies and programs. While the President's Interagency Council on Women is important, the Council exists at the discretion of the President and the mandate of the Executive Order offers no guarantee that it will continue in subsequent administrations. And as a part of the executive level of government, the Interagency Council cannot be considered an independent actor. Thus, there is a need for a politically independent mechanism able to hold government at all levels responsible for consistently addressing the concerns of women.

The lack of intensive follow-up to the US Women's National Action Agenda is unfortunate because this is a critical moment in the US women's movement and in the global movement for women. Indeed, local efforts in the US can be enhanced by the global agenda through the empowering effect of identifying with women in other countries, the sharing and cross fertilization of strategies, and the potential for building and expanding alliances.

As a result, over the past three years, leaders of national and local women's NGOs have come together to strategize on how to intensify and link follow-up actions. These efforts have focused on how to advance implementation of the Platform for Action in this country, which are outlined in the US Women's National Action Agenda, and on building the foundation for a national network to strengthen efforts for government accountability.

### Creation of *US Women Connect*

The outcome of this three-year effort was the creation of *US Women Connect*. *US Women Connect* was created to serve as the lead NGO catalyst to move action forward on the Beijing Platform for Action and the US Women's National Action Agenda during the "Beijing +5" process. *US Women Connect's* role, however, extends beyond "Beijing +5" since the Women's National Action Agenda will take decades to achieve, and is an on-going need for a facilitating and organizing body like *US Women Connect*.

**Join the US Women Connect E-mail List** - keep up-to-date!

**Contact US Women Connect | Girls Resources--a resource for girls**
Join US Internet Working Groups | About US Women Connect | US Women's Organizations
Upcoming Events | Action Center | US Women's Action Agenda | Message Boards
The President's Interagency Council on Women | WomenAction 2000: Africa - Asia - Europe
Beijing Declaration & Platform for Action | UN Women Watch | Mapping the World of Women's Information Services

# GUIDANCE ON BANKRUPTCY
**May 17, 2000**

## Talking Points on General Bankruptcy Provisions

- We understand that the discussions are still continuing and that some especially contentious and important issues remain open – including whether they will:
  - ensure fairness by capping the homestead exemption that wealthy debtors use to shield assets from creditors;
  - provide a safe harbor for low income families;
  - allow creditors to trick the unsuspecting into waiving bankruptcy protection for their pensions;
  - allow those who commit violence outside family planning clinics to use the bankruptcy courts to shield them from liability for their violent acts; and
  - include a last minute, "dark of night," anti-consumer provision allowing creditors to harass and defraud people who bounce checks.
- We are monitoring closely, but it is premature to have a final assessment of the bill.
- As we noted in the Lew letter to Conferees last week, the President's senior advisors would recommend that he veto the House bill if it were presented to him. The Senate bill generally was closer to meeting the President's principles, but we continued to have serious concerns even about that.
- The President ultimately will evaluate the final bill and whether he gives it his signature depends on whether it meets a test of balance -- fairness to creditors and debtors alike. As the members continue to compromise between the House and Senate provisions, the balance continues to slip.

**If asked: Are you saying the President is going to veto the bill?**

- That remains a real possibility. We'll have to see where the balance lies in the end.

## Talking Points on the Fair Debt Collection Practices Act

- The Fair Debt Collection Practices Act ("the FDCPA") provides essential protections for consumers from abusive practices by check collectors including: invasions of privacy, harassment, false or deceptive representations, and unconscionable collection methods. For example, it precludes late night and repetitive phone calls, leaving a message with your employer that you are a deadbeat [delinquent on your debts], and false threats of legal action.
- There was nothing about the FDCPA in either the House or Senate bill and yet, Senator Hatch now seems determined to add a special interest provision that would exclude the collection of bounced checks from some or all of the protections of the FDCPA.

**THE WHITE HOUSE**
**WASHINGTON, DC 20500**

**FAX COVER SHEET**

**DATE:** June 5, 2000 **TIME:**

**TO:** Melanne Verveer,
Chief of Staff to the First Lady

**PHONE:** **FAX #:** 212-415-~~[illegible]~~ 4303

**FROM:** Ann O'Leary

**PHONE:** (202) 456-

**PAGES AFTER COVER:** ~~[illegible]~~ 5

**COMMENTS:**

# TALKING IT OVER

## HILLARY RODHAM CLINTON

May 6, 1998

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Over the past weeks, I've learned about proposed bankruptcy-reform legislation in the House of Representatives that could undermine the ability of some parents to collect child support. I have no quarrel with responsible bankruptcy reform, but I do quarrel with aspects of the bill that would force single parents to compete for their child support payments with big banks trying to collect credit card debt. The welfare of our children must come first.

Let me tell you about a hypothetical family: Jan and Simon have three children, ages 1, 3 and 5. Simon is the manager of a small shoe store with an annual salary of $33,000. Jan is a full-time homemaker.

Sadly, they divorce, and Simon agrees to pay child support. Unfortunately, within a year, he's involved in a serious car accident and loses his job. Jan, struggling to raise their three children, stops receiving child support checks. Unable to find work, and behind on his bills, Simon files for bankruptcy protection. Jan is just one of his creditors.

Under current bankruptcy law, Simon is obligated to pay his taxes, his student loans and his child support and alimony. But under the legislation being considered by the House, certain of his credit card debts would also be mandatory. In Simon's case, as parties vie in the fierce competition for limited funds, child support payments and credit card obligations would be pitted against each other.

Unfortunately, Jan and Simon's story is all too common. This year alone, 1.4 million families will file for protection from unmanageable consumer debt under our bankruptcy laws. This represents an increase of about 400 percent since 1980. While some reform is in order, any accompanying threat to child support and alimony payments is not.

This administration has worked too long and too hard to improve child support collection to see it now threatened. The President has cracked down on non-paying parents and strengthened enforcement. Since 1992, collections are up 68 percent.

Today, families that file under Chapter 7 are relieved of certain debts, but as in Simon's case, they must still repay others, including taxes, educational loans and family and child support obligations. Many also try to continue making home mortgage and car payments. They leave court relieved of some debt but certainly not debt-free.

The aspects of the House bill that concern me would elevate certain types of credit card debt to the same high priority as taxes, school loans and family support. The challenge for Congress is to pass a law that is balanced and fair to both the creditor and the debtor -- protecting families and children while reducing abuse of the bankruptcy laws.

The challenge for our economy is to preserve access to credit while making sure that eligible consumers are educated, responsible and protected from unscrupulous practices. It wasn't too long ago that large segments of our society were denied credit. At the time, it was important to provide people with this valuable economic tool, but now, as we all know, credit is readily available.

How many times in the past few months has your phone rung during dinner? You excuse yourself, leave the table and pick up the receiver, only to be greeted by a cheery voice on the other end of the line happily offering you a "pre-approved credit card." Or how many times have you seen or heard advertisements encouraging people with bad credit to borrow more?

For many people in financial straits -- for whatever reason -- such offers may sound too good to be true. Unfortunately, down the line, too many people find they didn't comprehend how much they would owe and don't have the means to repay the additional debt.

The average bankruptcy filer in this country earns less than $18,000 a year after taxes. And, now, credit card companies even target college and high school students.

Most people use their credit cards responsibly and pay their bills reliably. But, for many Americans -- like Jan and Simon -- the difference between fiscal security and financial ruin is just one calamity away. A divorce, a lost job, an accident or a child's illness can rob a family of its financial security and eventually lead to bankruptcy court.

As members of Congress grapple with bankruptcy reform, they must deal with the problems that face both creditors and debtors. But one issue is clear. Any effort to reform the bankruptcy system must protect the obligations of parents to support their children.



Talking it Over

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# TALKING IT OVER

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May 6, 1998

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As members of Congress grapple with bankruptcy reform, they must deal with the problems that face both creditors and debtors. But one issue is clear. Any effort to reform the bankruptcy system must protect the obligations of parents to support their children.



Talking it Over

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TALKING IT OVER
BY HILLARY RODHAM CLINTON
RELEASE: WEDNESDAY, SEPTEMBER 30, 1998, AND THEREAFTER

The vast majority of the 1.4 million Americans who will find themselves in bankruptcy court this year are not criminals or shady characters. They are nurses and secretaries, carpenters and teachers, bank tellers and grocery-store clerks. On average, they make less than $18,000 a year after taxes.

In other words, they are ordinary, hard-working Americans who want to pay their bills but who find themselves unable to manage, for reasons including the sudden illness of a child, a lost job and simply living too close to the financial edge.

Last May, I wrote about the flaws of bankruptcy reform legislation then under consideration by the House of Representatives -- legislation that could unfairly pit child support payments against credit card debt and fail to protect the poor, elderly and unwary from unscrupulous credit practices.

Unfortunately, despite some good faith efforts at improvement, the House proceeded to pass an unacceptable bill.

Bankruptcy reform is not easy. The challenge is to preserve access to credit, which is good for the economy, while curbing abuse and encouraging practices that help consumers live within their means.

The President supports reform that is both balanced and responsible. Debtors who have the genuine capacity to repay some of their debt should be required to do so, but abuses by creditors need to be stopped as well.

Thanks to the hard work of many legislators and advocates, the Senate has passed legislation, by a margin of 97 to 1, that goes a long way toward achieving the proper balance. Members of the Senate should be commended for taking the time and effort to reach a bipartisan resolution of some very tough issues. This week, when members of both houses sit down to reconcile the differences between the House and Senate versions, it is critical that this spirit of moderation prevail.

First, American consumers must not become the scapegoats of bankruptcy reform. Any reform must be even-handed, addressing the abuses of creditors as well as debtors.

One area demanding attention is called "reaffirmation," which occurs when a creditor, too often using threats or misinformation, convinces a debtor to agree to pay bills that could legally have been discharged in bankruptcy. One bankruptcy judge told me that when she reviewed her cases, she was astonished by the number of debtors who had agreed to reaffirm their unsecured debts even when it seemed to be against their best interests.

We must ensure that, in the future, any reaffirmation of unsecured debt is actually in the debtor's best interest and not the result of coercive practices on the part of the creditor.

In addition, the law must require that creditors give consumers more and better information about their loans. Many consumers don't understand that when they pay only the minimum balance on their bills, it may take years to pay them off and may dramatically increase the cost of their purchases.

Think of it this way: If you charge a big-screen TV for $2,500 on your credit card, figuring you will pay the typical monthly minimum charge at an average interest rate of 15.6 percent, it could take seven years to pay off the loan, and at the end of that time, you could have paid $4,200, almost double the original cost of the television. For many, the costs are even greater.

Similarly, consumers may not understand that, when they are offered a "pre-approved" credit card, the company has not determined whether they can afford additional debt. This kind of information must be provided with the 3 billion unsolicited credit cards that are offered to Americans each year.

Another critical concern is how to decide who will obtain bankruptcy relief. The Senate, appropriately, would put these decisions in the hands of bankruptcy judges, who have an opportunity to look at each individual's situation. The House would remove most of the court's discretion under a misguided standard that fails to take into account the differing needs of families or local variations in living expenses.

It is important to note that no one leaves bankruptcy court entirely debt-free. Certain debts are "nondischargeable," meaning the court cannot forgive them. An additional problem with the House bill is that it would create new categories of nondischargeable debt that after bankruptcy could, in some cases, pit credit card debt against alimony, child support, taxes and student loans.

The bottom line is this: This Administration supports bankruptcy reform but only if it is fair and balanced. Americans who can repay a portion of their debts must do so. But at the same time, consumers must fully understand the costs of credit, and America's families must be protected from coercion and other predatory creditor practices. I hope the members of Congress will follow the Senate's lead and pass reform the President can sign into law.

To find out more about Hillary Rodham Clinton and read her past columns, visit the Creators Syndicate web page at www.creators.com.

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Use Page Up, Page Down, ↑, ↓, or press

04/24 6:44P (DJ) =DJ A Once-Vocal White House Now Quiet On Bankruptcy Reform
Story 6004 (I/BNK, I/FIS, G/CNG, G/EXE, N/DJN, N/DJWI, N/DJS, M/FIN...)
By Dawn Kopecki

WASHINGTON (Dow Jones)--Months have passed by. Federal legislators are knee-deep in negotiations. And laws for a new bankruptcy system seem inevitable this year.

But the White House, which had been quick to issue veto threats on bankruptcy reform in years past, has yet to weigh in on such legislation approved by the Senate in early February.

And now, Senate and House lawmakers are proceeding to combine the two bills. A White House letter outlining its likes and dislikes is commonplace at this juncture.

But one is yet to materialize.

What happened?

Where did they go?

"I don't know where they are either. If it weren't for [Sen.] Paul Wellstone, we would be nowhere," said Ed Mierzwinski, a consumer advocate with Ralph Nader's U.S. Public Interest Research Group. Sen. Wellstone, D-Minn., has denounced the bill as anti-consumer and managed to delay negotiations in the Senate for weeks.

The White House, once an integral player on negotiations on the bankruptcy bill, has fallen silent on the issue in recent months.

First Lady Hillary Rodham Clinton, the former point-person on the issue for the White House, had no comment for the New York Times when the Senate passed its bankruptcy bill in early February.

A May 1999 veto threat still dangles over the House bill. But there hasn't been so much as a peep to come out of the White House on the Senate-passed legislation this year.

Administration officials have yet to attend a single meeting with both parties on the subject this year, Senate and House aides said.

"We've been trying to solicit some sort of position letter from them since the day the Senate bill passed," said one Senate aide familiar with negotiations.

Treasury officials are said to be working on just such a letter and are expected to deliver it to lawmakers before the end of the month, said Senate aides familiar with the matter.

"Everybody is just sort of waiting to hear what the White House has to say, which has been any day now for the last month," an aide in the House said.

Theories abound.

"One thing we have noticed when we talk to members and the staff, the fire in their eyes has gone out," said Travis Plunkett, a lobbyist for the Consumer Federation of America, which opposes the legislation. "It's started to sink in that bankruptcies are dropping and they're dropping rapidly and it's hard to approach this bill with the same kind of urgency as they did a year ago."

Several Republicans and industry lobbyists said they think that the veto-proof majority that both chambers passed the legislation with has scared off White House involvement.

"Even if they don't like something, they don't want to move themselves in a position that the president will be overridden on a veto," said one Senate staffer familiar with the legislation.

Some say that Mrs. Clinton, who spearheaded the White House opinion on bankruptcy in 1998, is "otherwise occupied with her Senate campaign," a lobbyist said.

A spokeswoman from her campaign headquarters in New York had no comment on the issue.

Others believe that the Senate, through Sen. Robert Torricelli, has acted as a conduit for the White House. The New Jersey Democrat co-sponsored the bill. His endorsement - lawmakers, staff and lobbyists said - is key to garnering White House support for any final bankruptcy package.

"I think the White House made it very clear what their concerns were and I believe Mr. Torricelli handled those. The White House has looked to the Senate to make its points known," said Mallory Duncan, a lobbyist for the National Retail Federation, which is pushing for the bill.

As far as the White House is concerned, "we believe the legislation is finally moving in the right direction," said Lissa Muscatine, White House spokeswoman for the First Lady.

Mrs. Clinton initially criticized the bill in 1998 because she thought it would make single parents unfairly compete against creditors to collect on child support or alimony. But those problems are said to be fixed now.

Muscatine challenged the notion that the administration isn't active on this issue, saying that White House officials have been working with the Senate and House committees to address other outstanding issues.

However, Samuel Gerdano, executive director of the American Bankruptcy Institute in Alexandria, Va., summed it up rather neatly: "There seems to be some issue fatigue."

-By Dawn Kopecki; Dow Jones Newswires; (202) 862-6637;
dawn.kopecki@dowjones.com

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**BANKRUPTCY**
**March 7, 2000**

**The Wall Street Journal reports today that bankruptcy petitions fell last year by 8.5% to 1.3 million after reaching an all-time high of 1.44 million in 1998. Senator Kennedy and consumer advocates argue the drop shows that the market is working and legislation like that passed by both the House and Senate is not necessary? Is that the President's view?**

Obviously, we are encouraged by the drop in bankruptcy filings. We think it reflects the fact that creditors have made some adjustments to their credit granting practices and debtors are better managing their personal finances.

Does that mean we do not need new legislation? **It means that we should not rush to enact the wrong legislation because of the perception of a crisis.** The President **still** supports responsible bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly. The House bill fails that test. The Senate bill contains a number of improvements but we have reservations about some of its provisions. We hope that the conferees will work toward a balanced bill.

**The Senate recently passed a bankruptcy reform bill by an overwhelming margin that will soon be taken up in Conference. What are your views on the Senate-passed bill?**

First let me say that the Republicans loaded up the underlying bankruptcy bill w/non-relevant amendments– including an unacceptable minimum wage/tax package. We have been clear in our position:

- First, we must establish a proper framework for paying down the debt by 2013, strengthening Social Security and Medicare, and investing in key priorities before we consider **any major new tax cuts**.
- Second, the President supports an increase in the minimum wage of $1 over the next two years. The President would veto any legislation that includes a provision to delay the increase.
- Third, the attached tax and pension package repeals overtime protections for workers, thwarts efforts to enforce pension law, and directs tax benefits away from working families.

- If Congress sends the President a bill delaying the minimum wage increase, repealing protections for certain workers, adding costly and unnecessary tax cuts that threaten fiscal discipline, directing benefits away from working families, and thwarting efforts to enforce pension law, he **will veto it.**

- As to the bankruptcy provisions, we support responsible bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly.

- The Senate has adopted a bankruptcy bill that moves closer toward meeting these goals, although there remain some important areas of concern. **While we have reservations about**

**some of its provisions,** the Senate bill is better than the flawed and unbalanced House bill. I think the Senate has indicated that it wants to achieve a balanced outcome. I hope that the conference will take that signal seriously, working to improve upon the Senate bill.

**The House also passed its bill by a veto-proof margin, despite your veto threat. Given the overwhelming margins by which the bill passed both chambers, it seems like you will have no choice but to accept whatever comes out of conference?**

- There are many moving parts here and we haven't seen a bill yet.

- We hope to work with Congress during conference to achieve balanced and responsible legislation. But we will have to evaluate what the conference produces.

**BACKGROUND**

- Key improvements that represent some progress (but not enough) in the Senate bill include:
  - The Senate bill would cap the **homestead exemption** – to ensure that the wealthy don't benefit from a large loophole to avoid their creditors while we ask middle income families to repay the debts that they can.
  - The Senate bill has some new important **credit card disclosure**s for consumers sought by Senator Torrecelli (although we believe that these could be improved and expanded).
  - The Senate bill has made some important improvements to the **means test** that should better identify those with a capacity to repay their debts and ensure that caring for long-term expenses of an elderly parent or protecting your family from domestic abuse must come first (although the means test too could be significantly improved).
  - The Senate bill has a new provision that would protect debtors from some of the **coercive practices of creditor**s who threaten debtors to repay their debts (although it needs important technical changes).
  - The Senate bill includes Senator Schumer's important amendment to ensure that violent protesters cannot use the bankruptcy system to avoid criminal or civil penalties for violating a woman's rights **under the Freedom of Access to Clinic Entrances Act** (the FACE Act).

ANN O'LEARY/ Piece Mrs. C. has been involved w/
going in wrong direction

NYT wrote piece after it passed the Senate –
Toby sed "no comment" – by accident
We have some serious probs w/ bill (esp Hse)
Not taking into acct child support – but
(been fixed in both versions)

Hse version:
– still has homestead exemption (wealthy pple
can keep homes)

We've worked v hard on aspects of bankruptcy legislat –
such as child support -- but

HRC wkd v hard
finally moved in right direction on child support
piece
But there continue to be issues of concern

We've been wkg w/ the committees to get a bill
that addresses ~~some of our concerns~~ remaining issues + fixes
fixes some of the outstanding
problems –

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BNA, INC.

# DAILY REPORT FOR EXECUTIVES

NUMBER 52 THURSDAY, MARCH 16, 2000

## HIGHLIGHTS

**House Budget Committee Approves Spending Plan With GOP Tax Cuts**
The House Budget Committee beats back a variety of Democratic efforts to reduce GOP-proposed tax cuts and approves along near-party lines a Republican-crafted $1.82 trillion fiscal year 2001 budget resolution that Chairman Kasich says could result in congressional approval of nearly $250 billion in tax cuts this year. The vote is 23-18, with all committee Democrats who vote opposing the plan. The House is expected to debate the budget plan on the floor next week and Kasich predicts that he has the votes to adopt the party's proposal. "I believe that we will pass this," Kasich says. **GG-1**

**House GOP Leaders Voice Support for Repeal of 4.3 Cent Gas Tax**
While trying to shift the blame for the current increase in gasoline prices to the administration, House GOP leaders begin announcing their support for a repeal of the 4.3 cent gas tax adopted in 1993. For now, it does not appear that a straight repeal of the 4.3 cent tax has enough votes to pass in the House, although the situation could change if gas prices do not ease. Democrats and some Republicans note that the tax pays for highway infrastructure needs and say repeal would do little to ease gas prices. Responding to criticism from congressional Republicans that the Clinton administration does not have an energy policy in the face of $30-per-barrel oil and rising oil imports, Energy Secretary Bill Richardson lays out a six-point strategy at a House hearing. **G-4, A-18**

**FERC Approves AEP-CSW Merger With Transmission-Related Conditions**
The Federal Energy Regulatory Commission conditionally approves the proposed merger between American Electric Power Inc., and Central and South West Corporation. The merger would create the largest electric utility in the United States. Among the conditions for the merger is a requirement that the two companies transfer the operational control of their transmission facilities to a FERC-approved regional transmission organization. **A-21**

**House May Have to Allow Homestead Cap to Avoid Bankrupcty Bill Veto**
With the naming of conferees to a House-Senate conference on bankruptcy reform (H.R. 833) delayed at least until next week, staffers are continuing preliminary discussions of key issues in the two bills. But sources say they have yet to address one of the starkest differences between the House and Senate bills: whether to let states give debtors in bankruptcy an unlimited homestead exemption. The issue also raises one of the most convoluted political challenges to passage of a bill. Congressional staffers predict a bitter fight on the issue of whether to cap what the White House has dubbed a "loophole for the wealthy." The absence of a cap in the final conference report could tempt the White House to veto the entire bill. **A-1**

## ANALYSIS

**ELECTRONIC COMMERCE:** In a BNA special report, legal experts analyze the key concerns for lawyers as they consider setting out an online shingle. Among them: unwanted attorney-client relationships, providing competent representation within the confines of brief contact, engaging in unauthorized practice in other jurisdictions, violating legal marketing rules, breaching restrictions on partnering, and splitting fees with nonlawyers. **C-1**

## ECONOMIC NEWS

**IMPORT-EXPORT PRICES:** In February, the price of imported goods shot up at a rate faster than at any time since October 1990, the Labor Department reports. **E-15**

**INDUSTRIAL PRODUCTION:** The pace of the U.S. industrial sector cooled considerably in February, according to Federal Reserve figures. **E-1**

**TRADE BALANCE:** The U.S. current account deficit widened to a record $99.8 billion in the fourth quarter of 1999, the Commerce Department says. **E-17**

**INVENTORIES:** U.S. businesses added to their inventories in January for a total 0.5 percent gain as sales rose even more, by 0.8 percent, according to Commerce. **E-20**

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Regulation LAW & ECONOMICS

*Bankruptcy*

## House May Have to Allow Homestead Cap To Save Reform Bill From White House Veto

With the naming of conferees to a House-Senate conference on bankruptcy reform (H.R. 833) delayed at least until the week of March 20, staffers have continued their preliminary discussions of key issues in the two bills.

But sources said they have yet to address one of the starkest differences between the House and Senate bills: whether to let states give debtors in bankruptcy an unlimited homestead exemption. The issue also raises one of the most convoluted political challenges to passage of a bill.

Congressional staffers predict a bitter fight on the issue of whether to cap what the White House has dubbed a "loophole for the wealthy." The need for a cap has been on the administration's short list of key concerns and a $100,000 cap was included in the Senate bill on a 76-22 vote Nov. 10. The absence of a cap in the final conference report could tempt the White House to veto the entire bill.

Supporters of the unlimited exemption are adamant, however, and managed to retain it in the House bill by including an opt-out provision that would let states opt out of a $250,000 cap in the bill. The opt-out passed 18-15 in committee markup in April.

"If you want to know the politics on this issue, it's simple," one Senate GOP aide said March 14. "If there is no opt-out for the states, there will be no bill."

The reason the House preserved states' right to an unlimited exemption is the voting strength of the two large states that currently have an unlimited exemption, Texas and Florida, the aide pointed out, and the strong Texas influence in the GOP leadership. Majority Leader Dick Armey and Majority Whip Tom Delay are both Texans and, according to the aide, have vowed to preserve the exemption. Iowa, Kansas, and South Dakota also have unlimited exemptions. Other states' homestead exemptions range down to a few thousand dollars or no exemption.

Gov. George W. Bush of Texas, the presumptive Republican presidential nominee, is also expected to weigh in to support the homestead exemption, the Senate aide said. He said Bush would soon send a letter, currently in draft, strongly supporting states' right to set their own levels of exemption. Bush sent a similar letter to House Judiciary Chairman Henry Hyde (R-Ill.) in June 1998.

A senior GOP aide in the House also indicated that the House would not yield on the issue. "The safeguards we put in against abuse of the exemption took care of the legitimate concerns," the aide said.

**Veto Bait.** While no one says the issue would be enough by itself to draw a veto—indeed, the White House reportedly has said no single issue is that essential—one well-placed source indicated that a "bad outcome" on the issue might please administration players who already are thinking veto.

"We've had hints from the White House that they would like to veto the bill and that losing on the homestead issue would make that a lot more doable," the Democratic aide said March 14.

However, a second aide who has spoken with administration staff suggested it was unlikely the White House would yet have come to such a view. "There probably are some people over there [at the White House] who are thinking that way. But there are others in the administration who truly want a bill.." The aide cited Treasury and Justice Department officials whose primary interest is in improving tax collections in bankruptcy.

On the Republican side, not everyone is resigned to accepting the Texas position. "No one says there has to be an unlimited exemption or there will be no bill," a senior GOP aide said March 15. "There are problems with a flat cap. But you need some controls on abuses" by people moving into an unlimited state just to shield assets, or buying a big house just before filing in bankruptcy. "But there is also a states' rights issue."

Also, according to Bush's office in Austin, Texas, the governor is not preparing a new letter supporting the unlimited exemption. "There is no letter in the works," Bush's spokeswoman, Linda Edwards, told BNA March 14.

**Support for Cap.** The simple solution for the bill's proponents would seem to be simply to accept a cap, a move that would benefit the creditors who are the bill's strongest backers and remove a problem that Sen. Jeff Sessions (R-Ala.), a leading sponsor of the bill, called "maybe the greatest abuse in the whole bankruptcy system." Sessions is considered likely to be named a conferee.

Support for the unlimited exemption seems weak judging from the 76-22 vote in the Senate in favor of the $100,000 cap. Moreover, of the 22 senators who voted against the cap only four went on to oppose the bill as a whole with a cap in it (Sens. Sam Brownback (R-Kan.), Bob Graham (D-Fla.), Kay Bailey Hutchison (R-Texas) and Frank Lautenberg (D-N.J.)).

On the House side, supporters of the unlimited exemption barely managed to keep it in the bill.

In addition, the exemption has drawn terrible press. Although its defenders emphasize states' rights, the need to consider variations in home prices from state to state, and the importance of keeping a roof over the head of families and the elderly when they file for bankruptcy, critics have blasted the exemption.

Hutchison, who has led defenders in the Senate, said on the floor: "What I think we ought to do, when we are making policy that is this important, is say: How much damage are we going to do to people who are trying to restructure their lives in order to get a few people who may abuse the system? We have had GAO studies, we have had all kinds of studies, that have showed that maybe 1 percent of the people are not doing right by the system. But we have taken one important step to stop that abuse, which will apply in this bill if it is passed, and that is that you cannot declare a homestead exemption on a home that is bought within 2 years of declaring bankruptcy."

But Hutchison's opponents in the debate, led by Sen. Herb Kohl (D-Wis.) rolled out editorials from the *New York Times*, the *Austin Statesman*, and *Tampa Herald-Tribune*, among others supporting a cap.

**White House Options.** Few are predicting that a cap will be in the final bill. "We'll fight for it tooth and nail in conference," an aide to a probable conferee said. "But we know it's likely to come out at the end." The issue has yet to come up in pre-conference talks, the aide said.

"It will be hard to keep the cap," a former Democratic aide who worked extensively on the issue said March 14. He doubts that the White House will veto the bill, but said "the issue plays well in the press. I doubt they could sustain a veto, but the lack of a cap would play well into a veto effort."

"There's no doubt it's the best of both worlds for the White House, and a PR nightmare for the bill's supporters," the former aide said. For example, he explained, the issue could delay negotiations for a time, then the administration could insist on getting something from the Republicans in exchange for giving up on the cap, and finally, the absence of a cap would provide good ammunition for a possible veto effort.

**Conference Preparations.** With conference preparations taking longer than expected, some bickering has emerged. The two main outstanding obstacles to naming conferees are the need to spin off the minimum wage and tax-cut package in the Senate bill, and to deal with Senate Banking Committee Chairman Phil Gramm's (R-Texas) insistence that he be part of the conference because the bill contains provisions relating to his committee's areas of jurisdiction. Democrats have objected strongly to allowing Gramm on the committee.

The Senate reportedly was aiming to strip out the Republican-backed minimum wage/tax cut provision by unanimous consent March 23—a move that Democrats have insisted is necessary before the bankruptcy conference can convene. However, there were concerns that die-hard Democratic opponents of the bill would refuse to go along, thus forcing a cloture vote. Even with a successful vote, 30 hours of floor time would have to be set aside before the issue would be resolved.

Some question whether bad faith is playing a role in the delay. But a Democratic source complained about the Republicans. "Some Republicans want to make it look like the Democrats are killing the bill," the Senate aide said, citing an article that described various alleged Democratic "stall tactics" employed to delay the appointment of conferees. The article quoted Gramm as telling creditors Democrats do not really want a bankruptcy bill, but are seeking ways to leave "the baby to die on someone else's doorstep."

The aide faulted the report as coming only from Republicans and creditor lobbyists. "They didn't talk to Senate Democrats, I know that." However, GOP refusal to yield on the homestead exemption would be as dangerous as any Democratic sabotage, the aide suggested.

An intriguing fact to note is that Gramm himself signaled flexibility on the cap issue by voting for the Senate bill despite its inclusion of a cap. In contrast, Hutchison, who strongly argued for states' right to provide an unlimited exemption, voted against the bill because it included a cap. As intriguing as Gramm's willingness to forgo the unlimited homestead exemption was Sen. Robert Torricelli's (D-N.J.) vote against the cap. Torricelli is the chief Democratic sponsor of the Senate bankruptcy bill. Aides said they were baffled by his stance on the cap.

Overall, however, preparations for the conference were being pursued in earnest, aides said. A senior Republican aide expressed optimism that difficulties in convening the conference would be overcome, possibly next week. "I believe the Democrats who have been telling us all along that they want a bankruptcy bill. These problems will get resolved."

By Steve France

*Energy*

## U.S. Asks Japan to Urge Oil Producers To Increase Supplies to Stabilize Prices

TOKYO—The United States March 15 told Japan that global oil supply would become even tighter and urged Tokyo to prod producer nations to pump more oil to stabilize prices.

David Goldwyn, assistant secretary of energy for international affairs, however, stopped short of asking Japan to reactivate the aborted Japanese financial assistance for Saudi Arabia's multi-billion-dollar high-speed railway project or to dip into Japan's national crude oil stockpiles.

Goldwyn, who is on a tour of Asian nations as part of the fresh U.S. energy diplomacy, told reporters that the problem of tight global oil supply would not fix itself and that the global oil appetite would get stronger in the second and third quarters.

"The problem will not fix itself without production increases," he said. Current global oil production is approximately 70 million barrels per day while demand is about 73 million barrels, Goldwyn said.

Goldwyn met with Japanese government officials and politicians from the ruling Liberal Democratic Party during his visit to Tokyo March 14-15. "We agreed that market stability is important, and that we need to sustain world economic growth and avoid harming the economic recovery in Asia. We agreed. . .that an early and substantial increase in production will be needed to sustain world economic growth," he said.

The Organization of Petroleum Exporting Countries is scheduled to meet March 27-28 to discuss production quotas. Goldwyn said during his meeting with the Japanese officials, he was briefed about the Saudi railway project but he did not urge Japan to rethink its refusal to finance it.

The Saudis had demanded that Japan extend 200 billion yen (about $2 billion) in government loans for the project, or else said they would let the drilling rights for

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State regulators are concerned that control of market power may be one area where FERC will enlarge its jurisdiction at the expense of state public utility commissions.

BY KENNETH SKILLING

*Bankruptcy*

## Issue of Abortion Clinic Violence Could Roil Conference; White House Stance Still Unclear

The side-issue of abortion clinic violence and harassment—which dramatically took center stage at the conclusion of the Senate's prolonged consideration of bankruptcy reform (H.R. 833, formerly S. 625)—still threatens the viability of the legislation, congressional sources say.

The amendment's potential to cause trouble has generated great interest on the part of critics of the bill. The next big step in the bankruptcy reform process is the release by the White House of a statement staking out its priorities going into conference. Among the issues consumer advocates and women's groups are closely watching is how the administration positions itself on the need to legislate a specific bar on debtors in bankruptcy discharging debts arising from illegal activity at health care clinics.

"It will be very interesting to see what the White House says, if anything, on the issue," one consumer advocate said, suggesting that a strong statement in support of the amendment could indicate a tough overall stance by the White House. If Republicans in turn took a strong stance against the provision, the issue has such a powerful political charge that it could derail the entire bill, the lobbyist said.

Congressional and lobbyist sources said they did not know what the White House was planning and said the issue had not come up yet in pre-conference staff meetings on the Hill. The issue was not flagged in statements of policy on bankruptcy reform that the administration issued last year.

A White House spokesman declined to comment on how the administration would treat the issue in its forthcoming statement of policy, or when that statement is likely to emerge. However, he indicated that it was being considered "along with all the non-relevant amendments."

The "non-relevant" characterization did not set well with Democratic staffers or with abortion rights advocates. "If ever there was an improper reason to file for bankruptcy, it is these individuals and groups that openly brag about how they can avoid paying their debts just by declaring bankruptcy," Betsy Cavendish of the National Abortion Rights Action League said March 7. "Whoever [at the White House] said that is going to be taken to the woodshed, I would think."

**Top Issue for NARAL.** Cavendish said the issue has a very high priority with pro-choice groups. "It is critical to the success of FACE [a federal statute passed in 1994 to provide civil and criminal penalties against violence and harassment at abortion clinics]. We hope and expect the amendment will be included in the White House letter. This is a pro-choice administration," she said.

What will emerge from the House-Senate conference is another question, but Republican hopes of removing the provision may be hard to achieve if recent history is a guide. Defeated in late April on a 9-9 vote in committee, the amendment was added to the Senate bill nine months later, after overcoming extraordinary Republican opposition. GOP aversion to the measure was so great that Senate Majority Leader Trent Lott (R-Miss.) suspended consideration of S. 625 for several weeks in an attempt to keep Sen. Charles Schumer (D-N.Y.) from offering it.

When the bill came back to the floor Feb. 2, Schumer had been able to recruit a few Republican supporters, as well as pro-life Democrats, to give it a good chance of passage. When in a dramatic gesture Democrats called Vice President Gore to the Capitol to break a possible tie vote, a majority of Republicans dropped their opposition.

**Chilly Reception Planned in Conference.** Although the final vote on the amendment was 80-17 in favor, the bill's GOP managers made it clear they would target the amendment in conference. That remains their position, according to one key GOP aide. "We hope to fashion a clean bill in conference, taking out all the extraneous amendments," the aide said March 7. "The two bills are very similar on the main issues, but the Schumer amendment is only in the Senate bill." A similar amendment, sponsored by Rep. Jerrold Nadler (N.Y.), the ranking Democrat on the Subcommittee on Commercial and Administrative Law, was rejected 13-18 on a straight party-line vote in the House Judiciary Committee April 21.

Cavendish suggested that the forces that boosted the Schumer amendment in February would easily prevail again: "Once the light of the media shone on this issue, opponents toppled like nine pins."

If they are unable to kill the amendment, opponents hope at least to soften it and broaden it to other types of violent protests, such as union violence, another Republican staffer involved in preparations for the conference said. "The issue probably will be compromised in some way," the aide said. "The provision is badly drafted, it needs cleaning up. Even they [the sponsors] recognize that."

**Bill Sponsors Blast Provision.** Critics of the amendment—led by Senate Judiciary Chairman Orrin Hatch (R-Utah) and Sen. Charles Grassley (R-Iowa), chairman of the Subcommittee on Administrative Oversight and the Courts—charge that it goes far beyond its stated target of violence against abortion clinics. On the Senate floor Feb. 2, Hatch argued the amendment included "catastrophic language" that could interfere with legitimate protest protected by the First Amendment.

"It [the amendment] is very broad, very undefined," Hatch said. "No question it goes far beyond actual injury, far beyond malicious conduct, far beyond willful and malicious injury that the bankruptcy code already covers." (Section 523(a)(6) of the current code bars discharge of debts based on "willful and malicious" conduct.)

Citing the amendment's exemption from discharge of debts based on harassment, intimidation or interference with individuals who provide or receive health services, Hatch argued these words were too vague. "If

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somebody says 'boo,' are they intimidating and they could not be discharged in bankruptcy. . .where they haven't caused any harm or willful, malicious injury?"

Critics of the amendment also cite court decisions under current law denying discharge of such debts, adding that no court has ever held that such debts can be discharged. Speaking in the Senate, Grassley said, "People who generally do not want a bankruptcy reform bill have proposed some pretty politically sensitive amendments—and this is one of them—that are basically a distraction from the real issue of why we need bankruptcy reform."

Asked about the possibility that the White House will push hard on the issue, the GOP aide said, "I don't think they will push [the Schumer amendment] as is. Why not also target other violence, like union violence?" Asked whether the issue could be used as an indirect weapon against the underlying bill, which liberals have denounced, the aide said, "The White House has been telling us that they want bankruptcy reform, so I don't see that happening."

**Possible Compromise Faulted.** On the day the Schumer amendment passed, Hatch had been expected to offer an amendment to narrow the conduct covered by the amendment and to broaden the kinds of protest-related debts subject to nondischargeability. Although he declined to offer his proposal after Gore and the media took up the issue, the draft amendment could provide a basis for compromise, the GOP aide said.

However, Cavendish said the Hatch amendment would be "totally useless." Her position is shared by staffers in the House and Senate who work for Democrats supportive of the amendment and opposed to H.R. 833.

"Hatch's language just reiterated the 'willful and malicious' language already in the law," Cavendish said. "That does not reach the cases we are having problems with. It leaves out reckless violations of the law and contempt judgments, for example. It still forces us to relitigate in bankruptcy courts judgments and other legal debts incurred under the law protecting abortion rights." From a political point of view, "it fails to send a message that this kind of harassment must stop," she added.

Also rejecting a mere clarification of current law, a Democratic staffer charged that arguments against the Schumer amendment "simply repeat the same criticisms made in 1994, when the clinic violence law passed. We may have to fight the battle over again. This is not a symbolic issue. We have an actual, identifiable problem of people bragging openly that they can ignore the law by simply filing in bankruptcy."

Another Democratic aide predicted that Republicans, who have the votes to control the conference, will try to strip the Schumer amendment from the bill. "It will not be easy to draft an alternative that really addresses the abortion clinic problem without stirring up pro-life extremists."

It is too early to guess at whether the White House would veto the bill if it emerged from conference without the Schumer amendment, according to a third Democratic aide, whose boss supports bankruptcy reform. "There are too many other variables right now. If we got everything else we wanted, we'd have to support the bill. But removing the amendment would be a real weight in the scales against signing the bill." Nonetheless, the aide expects Republicans to try to knock the amendment out.

By Steve France

## *Hazardous Substances*

# Comment Period Extended on EPA Guidance On Report Exemption for Toxic Air Emissions

The Environmental Protection Agency is extending to April 10 the comment period on an interim guidance on superfund reporting exemptions for certain hazardous air pollutants.

EPA's announcement of the comment period extension is slated to be published in the *Federal Register* March 9. The guidance, published Dec. 21, 1999, is an attempt to provide definitions of air releases that are exempt from reporting requirements under Section 101(10)(H) of the Comprehensive Environmental Response, Compensation, and Liability Act (64 Fed. Reg. 71,614).

That section of CERCLA provides a reporting exemption for pollutants such as nitrogen oxides, formaldehyde, and benzene that are subject to permits or control rules issued under sections 111 or 112, or Title I, parts C or D, of the Clean Air Act, or under a CAA state implementation plan.

The comment period originally ended Feb. 22, but was extended to March 10.

On Feb. 24, EPA held a public meeting on the interim guidance, at which several industry groups said EPA should withdraw the document. Specifically, an industry attorney said EPA lacks legal authority to issue the guidance, and that even if the agency had such authority, it should use a formal rulemaking process to define federally permitted releases under Section 101(10)(H) of CERCLA.

At the Feb. 24 public meeting, an EPA official said the agency was considering the further extension of the comment period.

Comments should be submitted to EPA, CERCLA Federally Permitted Release Definition, Docket Number EC-G-1999-029, Mail Code 2201-A, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460; or faxed to (202) 501-1011; or sent by email to docket.oeca@epa.gov.

## *International Trade*

# Citing Economic Distortions, Experts Urge WTO to Cut Special Rules for Poor Countries

GENEVA—Trade experts from the International Monetary Fund and World Bank called on members of the World Trade Organization March 7 to reform and even eliminate provisions in WTO agreements granting special and differential treatment to the organization's poorer members.

With most developing countries having seen their share of global trade stagnate or decline in recent years, the experts said that the advantages from such provisions have proved mixed at best and could actually hamper future development if left in place.

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3. The BNA story on White House "botching" Senate process
4. Another BNA story - on the "cramdown" issue

Forgive the volume of material! Talk to you soon - Steve

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Steve France

# Shakespeare in Debt

One thing everyone in the debate over reforming the bankruptcy system seems to agree on is that the system is broken and needs fixing. They disagree only about who is more at fault—lenders or borrowers—for the huge rise in personal bankruptcies, which topped 1.4 million last year.

But looking around at the awesome, world-sustaining vigor of the U.S. consumer economy, one may be forgiven for wondering: If this is broken, who needs fixed?

Shakespeare may be hot these days, but the advice Polonius gave to Hamlet—"neither a borrower nor a lender be"—certainly is not. Polonius got it backward. In today's economy, the credo is closer to "both a borrower and a lender be."

Strangely, however, the question of how bankruptcy relates to the all-important consumer economy did not surface in a combined eight days that the House and Senate judiciary committees just spent working on their respective bankruptcy reform bills. And this month a bill that would make sweeping changes in the system cruised through the House by a 313-108 vote. The full Senate is aiming to take up its similar bill this week.

Lenders, who reportedly spent $40 million on lobbying and campaign contributions last year—and who have redoubled their efforts this year—want to crack down on debtors, establishing a "needs-based" system that would be less accessible for debtors and stingier in its benefits. Such legislation passed both bodies last year but ran out of time as the White House threatened a veto.

Consumer advocates, who have been catching up in their counter-lobbying—and who have strong ties to first lady Hillary Clinton—want to crack down on lenders, especially credit card lenders, by forcing extensive new disclosures, walling off certain vulnerable borrowers and perhaps making some reckless loans unrecoverable in a bankruptcy proceeding.

A likely outcome, if the Republicans and Democrats ever reach an agreement, would be for each side to get its version of reform.

The system would be toughened up for borrowers and lenders, creating a chillier environment for exuberant borrowers and saddling many debtors in the bankruptcy system with years of onerous repayment obligations, some of which would continue even after they come out of bankruptcy.

Mandated notices would discourage borrowers from running up high balances. College students, the elderly and those already in heavy debt would be put somewhat off-limits to credit card lenders. Lenders would find it harder to employ teaser rates, "inactivity fees," on-time payment penalties and other tricks they have devised to fleece the reckless and the unwary.

BY PAUL LACHINE

In essence, lenders would be strengthened in their creditor function, while borrowers would be treated more as debtors. Rather than turn their scheming minds to new ways to lend more money to new segments of the population, banks and other financial institutions would be given new tools to collect existing debts.

Might that have an adverse impact on the consumer economy? Not only does no one in Congress seem to have an answer, no one seems to be asking the question.

Instead, the debate in Congress has featured dueling moralisms. Republicans insist that the moral stigma of filing for bankruptcy has faded in the past few years, allowing an epidemic of cavalier "bankruptcies of convenience" to overwhelm the system at a cost of $40 billion a year. Most Democrats argue back that the problem stems from the greed of the credit card industry, which keeps extending its tentacles into new populations and new purchase areas—such as supermarkets and gas stations—while racking up record profits.

This debate overlooks the simple fact that the whole idea of bankruptcy is morally counterintuitive, but right in tune with the primal American philosophy of second chances and fresh starts. People should pay their debts, but our tradition of generous bankruptcy gets individuals who have crashed back on the track in record time and thinking positive. The other half of the system is made up of positive-thinking lenders who lend "actuarially," willing to throw some money away to get back more—and in the process successfully spreading economic loss.

Think of it this way, a rose is a rose by any other name, but a borrower is half-full, while a debtor is half-empty. Likewise for lenders, as opposed to creditors.

Easy credit and easy bankruptcy may lack moral beauty, but we don't usually look to economics for moral uplift. So, instead of legislating in a spirit of "a pox on both their houses," perhaps we should be gentle with the Golden Goose of American consumer spending.

*The writer is a Washington journalist covering bankruptcy reform.*

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# Topsy Turvy

When President Clinton declared the end of the era of big government in 1997, most people thought it would be up to the Republican Congress to hold him to his pledge. When it comes to bankruptcy reform, however, it will be up to Clinton to hold the line.

After the "spend decade" of the '90s (when personal bankruptcies more than doubled), the House and Senate have each passed bills to tighten bankruptcy rules to restore the moral obligation to pay back debts. The moral intention of the bills is fine, and Clinton has said reform is needed, but the bills would inject big government into the consumer economy with predictably dismal results.

For the first time in our history, the bankruptcy system would be "needs-based." Only certain approved debtors could choose to liquidate in chapter 7 bankruptcy. The rest could only embark on a chapter 13 repayment plan: five years of indentured servitude during which the government, via a trustee and for the benefit of government-approved creditors, micromanages every aspect of the debtor's economic activity.

With the confidence of Soviet commissars, the designers of this legislation are ready not only to go from a voluntary to a mandatory system, but have devised an elaborate "means testing" process to identify deserving debtors, who will be allowed to use chapter 7. Patterned on IRS rules for collecting delinquent taxes, the test says how much you should be able to pay back every month to your creditors for the next five years. In the House bill, if you can squeeze out $100 a month after paying for peanut butter and bus fare, you are in the abuser category and headed for the purgatory of chapter 13. Fifty dollars a month can tip the scales in the Senate bill's version of reform.

Senate sponsor Orrin Hatch (R-Utah) lamented to his colleagues in a recent floor speech that the moral stigma of filing for bankruptcy has faded in recent times and must be restored. He and the other reformers overlook that the stigma of bankruptcy has less to do with morality than with ego. The bottom line is that few people care to be seen as losers or freeloaders—even in these fallen times.

Which explains why it has been so hard to find the abusers. The consumer credit industry, the tireless champion of this moral crusade, initially estimated that one third of chapter 7 filers could pay back substantial amounts of unsecured debt. Under pressure from independent researchers, the estimate dropped to 25 percent, then 15 percent, then 10 percent. The leading independent estimate is about 3 percent.

Now, no one has a problem going after that 3 percent. The question is how that affects the other 97 percent of debtors, who really are flat broke. Whether they got there as a result of illness in the family, lack of retirement savings, job loss, divorce, failed entrepreneurism, or succumbing to the blandishments of easy credit, the expense, effort and uncertainty of the proposed system would impede their economic recovery.

Legions of consumers would shuffle through the marketplace dragging the leg irons of mandatory chapter 13. Some consumers would become zombie debtors, unable to qualify for either chapter 7 or chapter 13. Others would opt for that evil twin of big government: no government. Undeclared income, hidden assets, legal subterfuges and false identities would be their response to reform.

The reform would shrink the legal refuge of bankruptcy, which was written into the Constitution, leaving a meaner, harsher consumer economy. The winners among creditors would be those with the sharpest lawyers, investigators and collectors.

Ironically, just as the big legislative fix nears enactment, the old free-market system is showing its resilience. The reformers have been reluctant to acknowledge it, but the bankruptcy rate has been dropping in the last 18 months. With no help from Congress, consumer lenders have learned to reduce their exposure to risky borrowers—and have reaped record profits. Without any extra doses of blame or punishment, borrowers are learning to manage their credit balances.

When Clinton vetoes the bill he should remember to put it in GOP terms. His liberal advisers will urge eloquence on behalf of the small debtors and small creditors (such as child support claimants) left to the wolves of big credit. But the better argument is that the era of big government is over.

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NUMBER 33 THURSDAY, FEBRUARY 17, 2000

## HIGHLIGHTS

### House Approves Small Business Liability Bill on 221-193 Vote

Casting aside White House threats of a veto, the House passes a measure that would cap most punitive damages against small businesses in all civil cases. Also, in provisions applicable to all companies, the bill would apply uniform federal standards to supplant more onerous product liability rules in 41 states. By a margin of 221-193, the House approves the Small Business Liability Reform Act of 1999 (H.R. 2366), sending it to the Senate, where its prospects are uncertain. The House vote—well below the two-thirds necessary to override a threatened presidential veto—saw 23 Democrats join 197 Republicans in securing the final margin of passage. **A-9**

### Ways and Means Panel Votes to Repeal Social Security Earnings Limit

Individuals age 65 to 69 would be allowed to work without receiving reduced Social Security benefits under a bill (H.R. 5) approved by the Ways and Means Social Security Subcommittee. The full committee is tentatively scheduled to vote on the bill Feb. 29 and the full House could act as early as March 2. The measure would be retroactive to Jan. 1, 2000. President Clinton has indicated he will sign the bill if it is sent to him free of extraneous provisions. **G-6**

### Barshefsky Welcomes Proposals for Annual Vote on China

In an effort to make granting permanent normal trade relations with China more palatable to lawmakers, U.S. Trade Representative Barshefsky welcomes proposals for an annual review of China's human rights record and its compliance with market opening commitments. **A-43**

### EPA Proposes Temporary Halt to Land Disposal Restriction for PCBs

To ensure that waste managers are not discouraged from cleaning up polychlorinated biphenyls, the Environmental Protection Agency proposes to temporarily retract a land disposal standard for the chemicals. **A-26**

### Bill to Help Rural Satellite TV Users Passes House Committee

The House Agriculture Committee unanimously passes the Rural Local Broadcast Signal Act (H.R. 3615), legislation that would extend loan guarantees to companies willing to provide local broadcasting via satellites to rural areas and small markets. "Even more than urban areas, rural communities depend on local television," says Chairman Combest. **A-22**

### Merging Deposit Insurance Funds Popular; Little Accord on Further Reform

The House Banking Financial Institutions Subcommittee probes the probable merger of the two deposit insurance funds administered by the Federal Deposit Insurance Corporation—the Bank Insurance Fund and the Savings Association Insurance Fund—but receives scant specific advice on how much further reform should go from witnesses, including representatives from the FDIC, the Treasury Department, and the banking industry. **A-32**

## SPECIAL REPORT

**BANKRUPTCY:** The Clinton administration botched a high priority commitment to consumer groups to ensure that the Senate bankruptcy reform bill (S. 625) would curb abusive reaffirmations of unsecured and undersecured debts, consumer lawyers and congressional staffers say. The story of how a White House's top priority issue was derailed raises important questions about whether a successful bill can emerge from an upcoming House-Senate conference. **A-1**

## ECONOMIC NEWS

**HOUSING:** Construction of new homes and apartments rose 1.5 percent in January to its fastest pace since last winter, Commerce says. **E-1**

**IMPORT/EXPORT PRICES:** The cost of goods imported into the United States edged up a modest 0.1 percent in January, the Labor Department reports. **E-5**

**INTERNATIONAL ECONOMICS:** Mexico's gross domestic product grew 5.2 percent in the fourth quarter, the finance ministry says. **A-32**

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Regulation LAW & ECONOMICS

*Bankruptcy*

## Consumer Lawyers Fault White House Efforts On S. 625, Seek Veto Strategy in Conference

The Clinton administration botched a high priority commitment to consumer groups to ensure that the Senate's recently passed bankruptcy reform bill (S. 625) would curb abusive reaffirmations of unsecured and undersecured debts, consumer lawyers and congressional staffers say.

The story of how one of the White House's top priority issues was derailed is emblematic, consumer advocates say, of a bitterly disappointing Senate process and raises serious questions about whether an acceptable bill can emerge from an upcoming House-Senate conference.

Of most concern to consumer groups are indications that the White House will stick by the deal it made with retail interests."We think that any reasonable reading of the Senate bill would make it clear that reaffirmation agreements must be filed with the court," White House spokesman Jake Siewert told BNA Feb. 16. "We have a policy difference with those consumer advocates who say the bill does not provide new protections," he added.

But consumer advocates are adamant that the deal was a fiasco. "The administration was snookered by the creditors," one lawyer familiar with the hectic negotiations that produced section 203 of the bill told BNA Feb. 15. Now, he and other consumer representatives say they would prefer to have no reform of the reaffirmation rules rather than operate under the Senate changes. They view the Senate provisions as "a step back from current law" and "much worse than the House bill [H.R. 833]." That characterization also applies to several other Senate provisions, they say, even though the Senate bill is supposed to better represent consumer interests.

**Visions of Vetoes.** The failure to produce a satisfactory reaffirmation package in the Senate bill is one of several major disappointments in the bill for consumer groups and their allies in Congress. In this case, the problem was a lack of communication between administration officials who were at the table in the reaffirmation talks and consumer lawyers who understand how the nitty gritty process of reaffirmation of debts tends to work in the ordinary circumstances of personal bankruptcy, several lawyers and Senate staff explained.

Consumer lobbyists and staff of liberal legislators admit they are facing an uphill fight in conference where they will depend heavily on the White House to brandish its veto pen in the talks. An aggressive stance will be needed not just to prevail on points where one bill is preferable to the other, but also to revive Democratic amendments that narrowly failed to pass in the Senate.

"When you look at those issues, we think we could sustain a veto," a Democratic staffer with a member of the Judiciary Committee said Feb. 14.

Others disagree. "This bill passed with 84 votes, 89 if you count the three Republicans who merely objected to the homestead provision and the two who did not vote," Sam Gerdano, the executive director of the American Bankruptcy Institute, said Feb. 14. "The White House has already signaled it thinks the Senate bill fixed most of its problems. It is not going to be a white knight for consumers. I don't think it would veto the bill." Gerdano also said it would be very hard to discuss changing the bill in any ways that are not in one of the two versions.

**Sen. Reed Not Happy.** The official line on the reaffirmations provision is that "the White House is very comfortable with the new disclosure language, which consumer groups helped to draft," as one Senate staffer put it. However, a leading consumer group side-by-side analysis of the bills asserts that the House bill's approach on reaffirmations beats the Senate version. Section 108 of H.R. 833 provides a "minimal improvement over current law" and "unlike the Senate bill doesn't erode current protections," the analysis by Philadelphia attorney Henry Sommer and Boston lawyer Gary Klein says. The poison in the House bill, however, is a bar to class actions for violations of the reaffirmation rules.

Debtor representatives are particularly disappointed because they were counting on strong bargaining by the White House and Senate Democrats to improve on the House approach. Most disturbing, they say, are indications that White House officials still do not understand the extent of their failure.

The same cannot be said of their would-be champion in the Senate, Sen. Jack Reed (D-R.I.). Despite obtaining approval of a deal on reaffirmations that he hammered out in talks with Sen. Jeff Sessions (R-Ala.) over a period of months last year, Reed was one of only 11 Democrats to vote against the bankruptcy bill Feb. 2.

"One of the reasons for that vote was that he was not that happy with what we got on reaffirmation," a Democratic staffer for the Banking Committee said. "He wanted to make a statement." Reed is a member of the Banking Committee.

**Top Administration Priority.** Coercive reaffirmation refers to improper conduct by creditors to encourage or pressure debtors in bankruptcy to reaffirm unsecured or nominally secured debts that they could otherwise largely or entirely write off.

The White House, has always given the issue a prominent place on its short list of key concerns about bankruptcy reform. In a statement last year, the administration said "the large number of reaffirmations undertaken by debtors that are not in their best financial interest" was a problem "of great significance."

In a statement of administration policy Nov. 8, the White House said "debtors often reaffirm unsecured and low-value secured debt on unfavorable terms even though they do not have the means to meet their own necessary expenses and make more important debt payments, placing such priority debts as child support and alimony obligations at risk. Such reaffirmations are frequently the result of insufficient or misleading information or threats from creditors." The statement said the Senate bill as reported failed to provide "all the information that bankruptcy judges deem necessary and which many are already requiring be provided in their courts."

But the amendment that White House and Treasury Department officials agreed to on reaffirmation fell far short of meeting that standard, Harvard Law School bankruptcy expert Elizabeth Warren said.

"This reaffirmation proposal is another example of the credit industry getting exactly what it wants, and then labelling it 'consumer protection.' The courts have become increasingly active in monitoring the disclosure obligations of the retailers, and this amendment is an attempt to cut off court scrutiny and halt any development in case law that might begin to level the playing field between consumers in trouble and retailers pressing for reaffirmations."

Creditors, led by credit union associations and retailers, strongly oppose attempts to give every debtor who intends to reaffirm a debt a right to a fairness hearing, although debtors with an attorney could waive the hearing. The credit unions have made protection of their ability to seek reaffirmation of debts owed by their members a make-or-break issue. The House bill's reaffirmation provisions simply exempt credit unions.

The leading example of the problem is still a sweeping nationwide case that found Sears Co. liable for systematically procuring abusive reaffirmations, sometimes without filing any record of the agreement. The key to preventing such problems is ensuring judicial oversight, reformers say.

**Drafting Problems.** According to Sommer, who was part of the consulting group of consumer advocates, Reed essentially carried out the administration's wishes in the reaffirmation talks with Sessions and creditor representatives, which dragged on through the summer and into the fall. Sommer's account of the process was generally confirmed by two Senate staffers. Siewert declined to revisit questions about the amendment process.

In early November, as the bill was being amended on the Senate floor, the administration, with a Treasury Department lawyer doing the bulk of the analysis, signed off on a proposal advanced by retail interests, which provided for a uniform form to be used by all courts in overseeing reaffirmations.

"We were called on the eve of the amendment being offered and shown the new proposal," Sommer said. We told them there was a lot wrong with it, that Sears-type abuses might be permitted under that language and that courts would be barred from requiring disclosures that some now require. Also, the reaffirmed agreement could incorporate the interest rate under the original agreement, which is not usually the case now. Creditors are protected unless a debtor proves 'bad faith.' The disclosures are confusing and not complete.

"The White House was not happy to hear that. They thought they had accomplished something. But the deal was already cut. Sessions took it to the floor the next day [Nov. 10] and it passed on a voice vote."

"There may be some hard feelings partly because the consumers feel they were shut out of the process," a Democratic staffer said. "That resulted from a misunderstanding on our part and with the White House. It was a mistake. We believed the consumer advocates were aware indirectly as part of the consultant's group. But they weren't.

"We tried to address their concerns, but it was late in the process. The retailers got what they wanted. We were not operating from a position of strength trying to change things," the staffer said.

**Truthful Disclosure at Issue.** The heart of the problem with the Senate approach is that a debtor's lawyer who is ready to accept a reaffirmation may improperly arrange to have the disclosures show the debtor in a stronger financial position than is really the case, Sommer said. The alternative is to go through a hearing process. The White House approach looks better on paper than it really is in practice, he said.

By the same token, some creditors worry that the Senate approach could cause problems. "We don't like the form," a creditor lobbyist said. "It encourages situations where the debtor will file for bankruptcy and show how little resources he has. But then on the reaffirmation disclosure he will show he has the resources. That could bother the court."

The Senate staffer agreed with the general description of the problem. "Not to be a cynic, but the creditors would rather not have the judges look closely at these things. We and the administration think we've established some new parameters that get at that problem. Our form, if answered honestly, will show if there is presumption of undue hardship or not. If there is, it's a red flag for judges. The problem is there are bad lawyers out there who don't want to go to a hearing."

**Filing Deadline Sought.** The one substantive area where Democrats hope to improve the reaffirmation package is to set a time certain for filing reaffirmations with the court, the Senate staffer said. "Right now it's a little ambiguous. It could be any time from the first meeting with creditors to the discharge, 60-100 days, I'm told. When the bill came back up in January, Treasury and Justice suggested 50 days. The retailers were strongly opposed. They did not want any kind of date certain. They argue that they could be on the list of debtors, but not get notice until after the cutoff and not be able to reaffirm.

"We had no luck trying to get that change, but Sessions' people agreed to address that issue, but only that issue, in conference. They will not open up the whole pandora's box."

Siewert also highlighted the issue, saying that Sessions had agreed to work out a filing deadline that would nail down the key point that the disclosures must be filed with the court.

**Warning to Consumer Reps.** A Democratic staffer favorable to the bill said consumers are in danger of overreaching.

"They like to praise S. 1301 [the 1998 Senate bankruptcy bill] now, but they criticized it back then. It's disingenuous.

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"Their problems with reaffirmations reminds me of the safe harbor issue. We put in protection for low income debtors against creditor challenges on means-test grounds. That's what the White House wanted. We listen to the White House, which isn't always easy. There are so many voices. Then after we get the protection, we hear the consumers saying they want protection from all creditor motions. That doesn't work."

**Conference Slow to Organize.** Work to organize the House-Senate conference has advanced slowly, as the Senate took off the week of Feb. 14 without naming conferees. The common expectation among observers is that it may be March before the conference committee is established.

Leaders are still deciding how to handle extraneous amendments in the Senate bill dealing with raising the minimum wage and extending a package of offsetting tax cuts to business. The other thorny issue is how to accommodate Sen. Phil Gramm (R-Texas), who as chair of the Banking Committee is insisting on a place in the conference on issues he sees as within his panel's jurisdiction, such as credit card consumer disclosures.

However, staffers for the five presumed Senate conferees have begun gearing up for the conference. The five are Judiciary Committee Chairman Orrin Hatch (R-Utah), Charles Grassley (R-Iowa) chair of the subcommittee on Administrative Oversight and the Courts, Sen. Sessions, ranking Judiciary member Patrick Leahy (D-Vt.), and Robert Torricelli (D-N.J.), ranking minority member of the subcommittee. Staffers for the presumed House and Senate conferees have had one joint session where they laid out their priorities and those areas they consider definitively settled.

The White House is known to be preparing a letter for release before the conference is appointed that will similarly lay out its positions on key issues.

BY STEVE FRANCE

*International Economics*

## German Wholesale Prices Keep Climbing in January, Federal Office Says

FRANKFURT—German wholesale prices continued to rise in January, possibly signalling a trend toward building price pressures after the gains seen in November and December, according to a report by the Federal Statistics Office in Wiesbaden Feb. 16.

Prices at the wholesale level rose 0.6 percent on a non-seasonally adjusted basis in January compared to their level in December, while climbing 4.0 percent compared to January 1999 levels. In December, wholesale prices rose 0.9 percent on the month and were up 3.7 percent on the year, according to the statistics office.

While the WPI data series is seen as volatile and considered unreliable by many analysts, the January data makes the third strong monthly rise in a row, showing that price pressures are picking up. Once again, the annual rate of increase in January was the highest since April, 1995, the stats office noted.

Petroleum was again chiefly responsible for the WPI gain seen in January, with prices jumping 44.7 percent year-on-year. In addition, diesel gasoline rose 45.5 percent and heating oil 76.4 percent against January, 1999.

The overall index excluding combustibles and motor fuels rose 0.4 percent on the month and 1.1 percent on the year. Combustibles (crude oil, gas and coal) and motor fuels alone were up 1.0 percent on the month and 41.8 percent on the year.

Meanwhile, prices for raw non-ferrous metals rose 35.8 percent with aluminum prices up 45.7 percent and copper up 34.9 percent. Prices for live hogs for slaughter rose 16.9 percent and pork prices 10.0 percent. Annual price declines were reported for refrigerated chicken (-8.0 percent) and raw coffee and tea (-5.1 percent). Monthly price increases were led by non-ferrous metals, up 5.5 percent.

However, the prices for live hogs for slaughter were down 10.5 percent, coffee prices fell 7.8 percent and pork prices 6.9 percent, the stats office said.

The overall wholesale price index excluding seasonal foods was up 0.2 percent on the month while rising 4.3 percent on the year. But wholesale prices for consumer products, excluding food, motor fuels and heating oil, were up 0.4 percent on the month and up 8.3 percent on the year.

Once again, capital goods prices were bucking the inflation trend, with wholesale prices in this category unchanged in January against December and 1.3 percent below their year-ago level.

Semi-finished goods prices also showed strong rises in January, with the overall category up 1.2 percent on the month and 13.4 percent against January 1998. The sub-category of coal and other hard fuels and petroleum products rose 1.0 percent on the month and 38.3 percent on the year.

*Pesticides*

## Official Expects New FQPA Advisory Group, Says Representation of All Views Necessary

The Environmental Protection Agency expects to announce soon what type of an advisory committee will replace a "stakeholder" group that has advised the agency in its implementation of a 1996 food safety law, an EPA official told an industry gathering Feb. 15.

"Our intent is to have another advisory committee," according to Stephen Johnson, associate deputy assistant administrator of prevention, pesticides, and toxic substances at EPA.

The group would replace the EPA-U.S. Department of Agriculture Tolerance Reassessment Advisory Committee (TRAC). The White House in 1998 directed EPA and the U.S. Department of Agriculture to involve interested parties in implementation of the Food Quality Protection Act of 1996. Creation of TRAC resulted from that directive.

FQPA requires the agency to conduct additional risk assessments, consider the susceptibilities of infants and children to pesticides, and reassess existing residue limits—known as tolerances—provided in its regulations.

Johnson spoke before an audience of about 35 members of the Chemical Producers and Distributors Association, a pesticide industry group. CPDA held its Mid-

In its Feb. 17 statement of principles, the medical device coalition said HCFA "has no authority to deny coverage for a treatment because of issues related to cost-effectiveness, and as a policy matter, it should not do so." The agency should rely on market pricing data in setting reimbursement levels, the group said.

The group said the coverage process should incorporate a wide variety of stakeholders and HCFA should not revisit coverage questions already addressed by the Food and Drug Administration.

HCFA should apply flexible evidentiary standards to ensure appropriate evidence is examined during the process, and should recognize the importance of the availability of multiple treatments, products, and procedures, it added.

The coalition also said HCFA should make coverage decisions in a timely manner and revisit annually decisions not to cover a product or service if requested by a stakeholder. Medicare beneficiaries should not be denied access to appropriate medical care solely due to the investigational status of a new technology, the coalition said.

*Bankruptcy*

## Democrats Try to Revive Cramdown Rule Weakened in House, Senate Reform Bills

In what promises to be a major controversy, congressional Democrats and the White House are expected to push hard in an upcoming House-Senate conference to fight provisions in bankruptcy reform bills (H.R. 833, S. 625) that weaken debtors' rights to write down their secured debts to the value of the collateral.

Consumer advocates say that it is essential to keep the cramdown right under current law, which limits the extent of a secured claim in Chapter 13 to the value of the collateral that secures the claim. The current rule, Section 506 of the bankruptcy code, allows debtors to reduce the amount that they must pay to keep automobiles and other big ticket property while carrying out a Chapter 13 repayment plan. They also can pay the liens off over time. Under Chapter 7, by contrast, debtors must either give up the collateral or work out with the creditor a way to redeem the collateral.

"There's not much of a policy rationale for giving the auto industry a big windfall and undermining chapter 13," an aide to a Democratic senator told BNA Feb. 22. "This will be an issue for Leahy and the other conferees." Conferees have yet to be announced formally in either the House or the Senate, but Sen. Patrick Leahy (D-Vt.), the ranking minority member of the Judiciary Committee, is expected to be the senior Senate Democrat on the conference committee.

Advocates for automobile lenders, led by Sen. Spencer Abraham (R-Mich.), say they are prejudiced by the Chapter 13 rules, and must be protected against reform legislation that could double the number of Chapter 13 filings. Abraham will not go along with any attempt to weaken the provisions in both bills.

"Consumers, including marginal qualifiers for credit, receive very favorable loans to buy cars," an aide to Abraham told BNA Feb. 22. "The loans have very low down payments and very low interest rates compared to other consumer loans." Without protection, those terms would have to be worsened, he said, excluding some consumers who are currently able to buy cars. Proponents of the reform provisions also argue that they curb abuses by debtors who buy expensive cars with the intention of declaring bankruptcy and dramatically reducing the amount that they must pay for the car.

**Creditor Lobby United.** Consumer advocates point out that unsecured creditors are prejudiced by allowing the auto lenders to demand payment of the full loan amount, rather than just the actual value of the collateral. However, financial firms with a greater interest in unsecured debt have so far accepted the anti-cramdown provisions as a tactical necessity in order to obtain other reforms.

S. 625 would not allow the cramdown rule to apply to secured debts incurred within five years before filing for bankruptcy if the collateral for the debt consisted of a motor vehicle. Nor would it apply to any other secured debts incurred within 180 days before filing. H.R. 833 bars the stripping of purchase-money liens for personal property acquired by the debtor within five years of filing bankruptcy.

Critics charge that weakening the cramdown would devastate Chapter 13 by increasing the amount of secured debt that a debtor would have to repay to confirm a repayment plan to the point where a plan would no longer be confirmable. Such a result, they argue, would run counter to the bill's main objective of forcing debtors to repay some of their debts out of income, rather than erase their debts in Chapter 7.

**Kohl Amendment Not Offered.** Sen. Herb Kohl (D-Wis.) took the lead on the issue during the several months that the Senate was considering possible amendments to S. 625 after it was reported out of committee in April. He had planned to offer an amendment that would eliminate the cramdown power on purchase money secured debts incurred within six months of filing bankruptcy.

Despite an administration statement of "strong support" for his attempt to trim the car lenders' protections from five years to six months, Kohl never got his amendment to the floor. According to a former staffer involved in the process, Kohl planned to offer the bill after he had finished pushing an amendment to cap the homestead exemption. The cap passed Nov. 10, but the bill was pulled the next week before Kohl was able to move on the cramdown.

"Everyone expected the amendment would be offered, if the bill came back up," the former aide said. However, when Republican and Democratic leaders broke a deadlock on taking up the bill in January, there was pressure to limit the time and controversy that final consideration would entail. Kohl decided not to advance his amendment, leaving both bills with a five-year shelter for auto loans.

**White House Position.** Consumer advocates are not too discouraged by the lapse, believing that the White House will take up the issue. White House spokesman Jim Kennedy told BNA Feb. 22 that he could not comment on exactly how the administration would approach the issue in conference. But he added that there had been no change in position since a statement of policy was issued on the subject Nov. 8.

In the statement, the White House said that "lien stripping"—another term for cramdown—should be

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**Reform Represents Major Shift**

The reform bills' limitations on cramdown "contradict a basic policy of the Bankruptcy Code," Judge Eugene Wedoff of the U.S. Bankruptcy Court for the Northern District of Illinois stated in a detailed analysis that he prepared of section 122 of H.R. 833 for the American Bankruptcy Institute.

The basic policy is that a secured claim should only be paid ahead of other claims to the extent that it is supported by collateral value, Wedoff explained. Thus, if a claim for $10,000 is supported by collateral that is only worth $1,000, the claim is treated as secured in the amount of $1,000, with the balance of the claim, not supported by collateral value, treated as unsecured. In this way, the creditor is paid based on the value of its collateral, rather than on the basis of the leverage that it can exert on the debtor by taking the collateral.

The reform bills reverse this policy, requiring a debtor either to surrender the property securing a claim, or else to pay to the creditor the full amount of the debt secured by that property, even though the property is worth much less than that amount. For example, a 4-year-old microwave oven—purchased at a cost of $400—may have only nominal value as used property. Nevertheless, if the debtor wished to keep the oven, the debtor would have to pay the entire amount secured by the oven, which could, with revolving charges, be substantially more than the purchase price.

In this way, the claims of secured creditors in Chapter 13 would be paid, not on the basis of the value of the collateral secured by their claims, but on the basis of the difficulty that the debtor would have in replacing the item. If the debtor could obtain a replacement fairly easily, it can be expected that the debtor would surrender the collateral to avoid paying more than its value. If the debtor could not obtain a ready replacement, the debtor would be required to pay the full amount of the creditor's claim—even if substantially more than the value of the collateral—in order to retain that collateral.

The rule against bifurcation of an undersecured debt may make it impossible for debtors with priority claims—such as child support and alimony—to employ Chapter 13. The future income available to Chapter 13 debtors is generally limited. From that income, they must pay not only secured claims, but also all priority claims in full. To the extent that secured claims are increased by eliminating bifurcation, debtors will have fewer funds available to them to pay priority claims (and other unsecured claims). If priority claims cannot be paid in full, a plan will not be able to be confirmed, or, if confirmed, will fail.

limited for auto loans made in the period before bankruptcy to prevent abuses, but it also said that the Senate provisions were excessive. A five-year prohibition on lien stripping on automobile debts would do "little more to deter bankruptcy abuses than a more reasonable time limit," the White House argued. "Instead, the prohibition will significantly reduce repayment of priority, unsecured debts like child support and taxes."

Consumer advocates expect strong resistance from Abraham, whose efforts on behalf of the Michigan auto industry have been supported by the GOP leadership. "The Republicans can't easily take the five-years [rule] out," a Democratic staffer said. "He's in the middle of a tough re-election campaign and the industry isn't getting anything else out of this bill."

By Steve France

*The complete text of Judge Wedoff's section-by-section analysis of H.R. 833 may be found on the World Wide Web site of the American Bankruptcy Institute at : http://www.abiworld.org/legis/bills/106anal/wedoff833ana820.htm*

*International Economics*

## Canadian Retail Sales Increase 5.8 Percent During 1999, Agency Says

OTTAWA—Widespread sales growth generated a 5.8 percent increase in Canadian retail sales during 1999, although a significant portion of the increase was caused by higher prices for goods, Statistics Canada reported Feb. 23.

Preliminary figures for 1999 showed a total of C$260 billion ($177 billion) for retail sales, the increase from the C$246 billion ($167 billion) in 1998 significantly larger than the 3.6 percent increase in 1998 and representing the third best year of the decade for Canadian retailers, the federal statistics agency said. The only better years in the 1990s were 1997, with a 7.6 percent increase, and 1994, 7.0 percent.

"Retail sales rose in all sectors, with furniture stores, stores in the automotive sector, general merchandise stores and stores classified as 'other retail' reporting above average increases," Statistics Canada said. "Consumer credit continued to be a major stimulant for retail sales in 1999. For the first 11 months of the year (the most recent period for which data are available), consumer credit (+7.2 percent) advanced at nearly twice the rate of total personal income (+3.8 percent)."

The agency noted, however, that a significant portion of the 1999 retail sales growth was caused by higher prices for the goods being sold, compared to 1998 when prices had remained essentially unchanged. Excluding the effect of prices, retail sales grew by only 4.0 percent in 1999, while sales increased by 3.6 percent in 1998 even with the effect of prices removed, it said.

Big-ticket items remained in high demand during 1999, with furniture stores posting the largest increase among retail sectors, 9.1 percent. Meanwhile, after a scant 1.5 percent increase in 1998, automotive sector retailers reported a 7.5 percent increase in sales in 1999, led by strong consumer demand for motor vehicles and price-induced sales increases by gasoline service stations.

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HEADLINE: First Lady in a Messy Fight On the Eve of Her Campaign

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DATELINE: WASHINGTON

BODY:

Since the collapse of her health care project in 1994, Hillary Rodham Clinton has seemed to retreat from the gladiator pit of high-profile policy issues, devoting herself instead to less visible topics like foster care and adoption.

But for more than a year, Mrs. Clinton has been engaged behind the scenes on a legislative issue -- consumer bankruptcy -- that could prove politically tricky for other Democrats and for her own political ambitions.

The high-powered banking and credit card industries, concentrated in New York, are concerned that too many people with money are filing for bankruptcy as a financial planning tool, and the industries are aggressively pushing legislation to make it harder for consumers to use bankruptcy to walk away from their debts.

But Mrs. Clinton has made it clear that she thinks the legislation, which the credit industry essentially wrote, is unfair to women and children, and she has been just as aggressively pushing to amend it. The banking and credit card industries are generous campaign contributors and could favor her competitors in a run for the Senate in New York.

What is more, this is one of the few causes Mrs. Clinton has taken up that her own party is divided over. Democratic support for the legislation is strong enough that the House has already passed it by a veto-proof margin, last month. And the Senate is poised to do the same when the matter comes up later this summer. As one Administration official said, "For many Democrats, this is a free, pro-business vote."

Mrs. Clinton was drawn to the issue through her decades-long interest in matters affecting women and children. Though she supports an overhaul of the bankruptcy system and says that those who can repay their debts should, she says the credit industry should be held equally accountable for making credit too easily available to people who cannot pay their bills.

She also views the legislation as making it harder for women to receive alimony and child support if their former husbands file for bankruptcy, say members of Congress, advisers to Mrs. Clinton and policy experts who have followed the issue. While current law forces debtors to make a priority of claims for alimony and child support, critics of the proposed legislation say it would give equal status to credit card companies and other lenders seeking to recoup money from a limited pool. This could put a single mother in competition with, say, a professional collection agency working for a big bank or credit card company to retrieve money from a bankrupt former husband.

Single women now constitute the largest group of people who file for bankruptcy, making up 39 percent of the nation's annual 1.4 million filings, according to a recent Harvard study. Single men make up 28 percent and married couples 33 percent.

"There is a big stake in this for women and children," said Joan Entmacher, vice president of the National Women's Law Center in Washington. "It was a really critical role that Mrs. Clinton played in having the White House insist that the final bill had to protect those populations."

Some Democrats who support the legislation, however, have played down the effect on women and dismiss it as not significant enough to derail the legislation.

Mrs. Clinton immersed herself in the topic last year, before she considered running for the seat of Senator Daniel Patrick Moynihan, even before Senator Moynihan announced that he was retiring. (She is expected to begin her campaign shortly after July 4 with a 10-day announcement tour across upstate New York.) Her involvement was remarkable for any first lady but particularly for one who had been so seared by the public when she ventured into the policy-making arena on health care.

"She has essentially been functioning as a senior adviser to the President," said Carl Sferrazza Anthony, author of several books on first ladies. He said such a role could be tricky during her Senate campaign because her involvement in various issues will bolster her credibility as someone who cares about public policy and legislation, and yet she needs to steer clear of implications that she has been operating as an unelected co-President.

In the spring of 1998, Mrs. Clinton sought a private tutorial in bankruptcy law from a Harvard law professor, Elizabeth Warren, who has strongly opposed the legislation. Ms. Warren said she met with Mrs. Clinton alone for more than half an hour, with Mrs. Clinton "cross-examining" her about how bankruptcy works and the effects of the bill.

Mrs. Clinton directed her staff to delve into the details and held numerous policy discussions. She devoted two of her weekly newspaper columns to the issue. She wrote dozens of personal notes to lawmakers last year as the bills made their tortuous way through the Congressional process. And she, along with Senator Edward M. Kennedy, Democrat of Massachusetts, played what the bill's opponents say was a decisive role in helping to kill the legislation last year.

Representative Jerrold Nadler, a New York Democrat and strong critic of the legislation, said that he called the White House last October to alert Mrs. Clinton that Senator Trent Lott, the Republican leader, was trying to slip the bankruptcy legislation into the final omnibus spending bill, a move that would have made it virtually impossible for President Clinton to veto.

"We heard that Lott asked the White House for minimally acceptable language, and we heard that some in the White House were trying to work out such language," Mr. Nadler said. "I called Mrs. Clinton to say, 'Stick to your guns.' That's where she was instrumental. She weighed in, and suddenly we were hearing a changed tune." The bill died.

This year, as the legislation re-emerged, Mrs. Clinton has kept her vigil. She spoke out last month at the White House on what she called abusive and predatory practices by credit card companies, which make four billion unsolicited offers of credit cards every year that critics say are aimed at those least likely to pay their bills on time -- elderly women, unemployed college students, people without health insurance and those already in debt. And she received a briefing on the bankruptcy bill before she left earlier this month with President Clinton for Europe.

"She has been the principal at the White House who cared most about the fate of the details of the bill," said one Administration official.

Mrs. Clinton's involvement in the bankruptcy issue has been unusual in part because her own party is split over what to do about it. The House passed its version with a veto-proof majority even as advisers to the President recommended he veto it.

The Senate version is also expected to win some support from Democrats, who are negotiating with Republicans over aspects such as means testing and requirements for credit card companies to disclose to consumers how much they will owe if they do not pay their bills in full. The White House is waiting to see what the final Senate bill looks like.

Administration officials say that so far the Senate has not adequately addressed the concerns of Mrs. Clinton, who wants both the priority for women and children, and greater accountability by creditors, but they are circumspect about how far the White House will go in pressing for changes, especially if many Democratic senators are satisfied.

"She's very practical," said an official close to Mrs. Clinton. "She wants to improve the bill. She doesn't want to be obstructionist."

Another complicating factor is this: some of the Democrats sympathetic to the Republican proposals that Mrs. Clinton opposes are also major fund-raisers for their party, and the banking and credit interests are prime sources of big campaign contributions.

In the last election cycle, the credit industry, including credit card companies, banks and retailers, gave more than $4.5 million in campaign contributions, according to the Center for Responsive Politics.

"It was a combination of aggressive industry lobbying, by retailers as well as creditors, and they spent a great deal of money," said Stephen Brobeck, executive director of the Consumer Federation of America.

He added: "Some Democrats in the House thought this was a free vote because they didn't think the Senate would approve such a draconian piece of legislation or it would be vetoed by the Administration."

William P. Binzel, a spokesman for Mastercard International, said that Mrs. Clinton had worked hard and made her opposition well known but that she had not been able to overcome the industry's basic argument for the legislation.

"It's not a hard sell to say there's a fundamental flaw in the current law when debtors are allowed to walk away from their debts when they have the ability to pay," Mr. Binzel said. "It's fair to say there is strong bipartisan support for bankruptcy reform."

http://www.nytimes.com

GRAPHIC: Photo: Hillary Rodham Clinton fears a bill's effect on women and children. (Associated Press)(pg. 19)

LANGUAGE: ENGLISH

LOAD-DATE: June 27, 1999

**January 28, 2000**

**MEMORANDUM FOR HILLARY RODHAM CLINTON**

**FORM:** **NICOLE RABNER**

**SUBJECT:** **UPDATE ON BANKRUPTCY REFORM LEGISLATION**

This week, the Senate returned to the pending bankruptcy reform legislation as its first piece of business, as Senator Lott had filed a cloture petition just prior to recess. A unanimous consent agreement to limit debate and the number of amendments was reached among the leadership, and floor debate will continue through Tuesday, February 1st, when final votes are expected. As you know, the Republican version of the minimum wage increase and tax package is attached to the bill and the Administration has threatened to veto if those pieces are included in the final conference report. Still, the Senate bill is poised to pass with overwhelming support – only five to eight Senators are expected to vote against it. Senator Daschle, however, is organizing Senate Democrats to release statements promising that if the Republican tax package and insufficient minimum wage increase are included in the conference report, they will vote "no." Staff predict a speedy conference, with a final bill reaching the President as early as March.

The Administration is working with Senate Democrats to improve the underlying bankruptcy bill principally through three floor amendments. One is the Torrifcelli credit card disclosure amendment (requiring that credit card companies provide guidance on how long it would take to pay the balance if only minimum payments are made). This provision, even in its watered down state, has recently garnered resistance from the credit card industry. The second would establish a meaningful "safe harbor" provision, exempting from creditor motions and/or means tests debtors below a certain income level. And, the third would curb coercive reaffirmation agreements through increased disclosure and judicial review. This provision, arguably the most important in terms of restoring balance to the bill, is in most jeopardy. In addition to the these amendments, votes are expected on some version of the Schumer amendment to make nondischargeable debt incurred from damages stemming from a health clinic violence suit, and the Levin amendment to make nondischargeable debt incurred from any lawsuit involving guns. These latter two amendments should garner significant debate (the Administration supports the Schumer amendment, but has reservations about the scope of the Levin provision).

Attached please find yesterday's Washington Post editorial on bankruptcy reform, Congress Daily's assessment on bill's expected movement, and the Administration's Statement of Administration Position on the bill, which we released when it first reached the floor in November, 1999.

**If you are asked about the bill in the coming days, you might consider saying that you continue to support fair and balanced bankruptcy reform, that Senate bill reflects some improvements over the House-passed bill (amendments expected to be offered would improve it further), and that you hope that the conference report will improve it further –**

**to reduce abuses of the bankruptcy system and require debtors and creditors alike to act responsibly.**

Excerpt from Lockhart Briefing, 2/02/2000

Q Do you have any reaction to the bankruptcy bill, minimum wage increase that was passed today?

MR. LOCKHART: Well, we oppose the provisions in the minimum wage bill. We don't think the actual rise in the minimum wage goes up quickly enough, and we find that the tax cuts that are put in there are not paid for and are skewed to those who don't necessarily need tax cuts at this time.

I think what is important here is, if you look at the evidence, the last time we raised the minimum wage, various academic institutions looked at this, studied the issue and found that there was no negative effect on economic growth and there was no drag on the economy by the minimum wage. So I think the minimum wage, as 45 Democratic senators wrote to the leaders today, needs to be raised, needs to be raised quickly over a two-year period, and does not need a bevy of unpaid-for tax cuts for the special interests as the Republicans have tried to push through today.

Q So is that a veto threat?

MR. LOCKHART: I think we have made very clear and we made very clear last year and we reiterate today that that is not the kind of legislation the President can sign with the minimum wage provision in it.

We think on the merits of the bankruptcy bill, per se, the Senate has made a lot of progress. The House bill is unacceptable, we have made that very clear over the last several years. The Senate bill has made a lot of progress. We want to make sure that the protections for consumers that are embodied in the Senate bill get protected in conference overall what comes out -- when that bill comes out of conference, we'll have to make a decision on it. But the minimum wage provision at this point is unacceptable.

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**BANKRUPTCY**
**February 2, 2000**

The President supports responsible bankruptcy reform that is balanced, would reduce abuses of the bankruptcy system, and would require debtors and creditors alike to act responsibly.

It appears that the Senate will shortly complete its consideration of the bill and send the bill to a conference with the House.

During Senate floor consideration, some important improvements were made so that the Senate bill is now somewhat better than the flawed and unbalanced House bill. While we still have some serious reservations, the Senate is sending a signal that balance is important. We hope that that signal will be respected in conference and that we get – from the conference – a product that reflects the key improvements in the Senate bill. For example:

  - The Senate bill would cap the homestead exemption – to ensure that the wealthy don't benefit from a large loophole to avoid their creditos while we ask middle income families to repay the debts that they can.
  - We understand that the Senate bill will include a provision sought by Senator Schumer that would protect low-income debtors from motions brought by creditors that too often might be used to threaten or coerce debtors to forego their rights (so-called "motions safe harbor").
  - Similarly, the Senate bill has some (albeit too limited we think) new important credit card disclosures for consumers sought by Senator Torrecelli.
  - Finally, the Senate bill has a new "reaffirmation" provision that require courts to look closely for coercion when a debtor says they want to reaffirm a debt (that they are entitled to discharge) but it is clear they do not have the income to repay. (However, here there is an important technical improvement on filing deadlines that Senator Sessions and Reed have agreed to work together to fix during conference.)
- Note also that there are some aspects of the House bill that are better too, and we will work to preserve those improvements in final bill.

**Given that President has a veto threat on the House bill, will the president veto the bill that returns from conference?**

I won't answer a hypothetical. We strongly hope that we won't be presented with the need for that. We want balanced bankruptcy reform. The Senate has taken some important steps here to achieve balance. Not all our concerns have been resolved but it is getting better. We strongly hope that the Conference will produce a bill that maintains that balance and that the President could sign. (Of course, also we hope that the bill contains no extraneous and controversial other amendments – like the minimum wage/tax package now attached).

**Press Guidance**
**Wednesday, February 2, 2000**

**Domestic/Economic**
1. Bankruptcy Bill
2. CDC
3. Digital Divide
4. FBI
5. FDA
6. Financial Privacy
7. Gene Therapy
8. Marriage Penalty
9. Medical Privacy
10. Oil (see lockhart briefing comments)
11. Repose Legislation
12. Schools for Homeless

**Foreign**
1. Austria/Freedom Party (updated)
2. Biosafety Protocol
3. China/Permanent NTR (new)
4. Computer Export Control Review (updated)
5. Cuban Boy (updated)
6. Don't Ask/Don't Tell
7. Indonesia
8. Iraq/NYT Piece (DRAFT – updated)
9. Northern Ireland (new)
10. Russia/Chechnya (updated)
11. Russia/Politics (updated)
12. South Asia Trip Announcement
13. Sudan
14. Taiwan/Reported High-Level Meeting
15. Taiwan Security Enhancement Act (new)
16. Vieques Resolution

Bankruptcy - 3 outstdg areas of disagreement

Clinic violence -

Fair Debt Collection Practice Act FDCPA
- anti consumer provision by Sen. Hatch -
(you could be harassed for bouncing check)

Homestead Exemption - not good enough / still has loophole for wealthy debtors
- Texas & Fla those filing for bankruptcy are exempt from e

Moving → anti consumer

PoNS will prob issue letter tomorrow -