107TH CONGRESS
1ST SESSION

H. R. 333

[Report No. 107–]

To amend title 11, United States Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2001

Mr. GEKAS (for himself, Mr. SENSENBRENNER, Mr. BOUCHER, Mr. MORAN of Virginia, Mr. ARMEY, Mr. CHABOT, Mr. GRAHAM, Mr. BARR of Georgia, Mr. ANDREWS, Mr. BARTON of Texas, Mr. BENTSEN, Mr. BEREUTER, Ms. BERKLEY, Mr. BURTON of Indiana, Mr. BUYER, Mr. CAMP, Mr. CASTLE, Mr. COOKSEY, Mr. CRAMER, Mr. CUNNINGHAM, Mrs. DAVIS of California, Mr. DOOLEY of California, Mr. DREIER, Mr. EHRLICH, Mr. ENGLISH, Mr. FOLEY, Mr. FROST, Mr. GOODE, Mr. GOODLATTE, Mr. HILLEARY, Mr. HOLDEN, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. KELLY, Mr. KLECZKA, Mr. LINDER, Mr. LUCAS of Kentucky, Mr. MALONEY of Connecticut, Mr. MENENDEZ, Mrs. MYRICK, Mr. NETHERCUTT, Mrs. NORTHUP, Mr. OXLEY, Ms. PRYCE of Ohio, Mr. ROTHMAN, Mr. ROYCE, Mr. SIMPSON, Mr. SISISKY, Mr. SMITH of Michigan, Mr. SMITH of Washington, Mr. STUMP, Mr. SUNUNU, Mr. SWEENEY, Mrs. TAUSCHER, Mr. TERRY, Mr. UPTON, Mr. WELDON of Florida, and Mr. WELLER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

FEBRUARY , 2001

Reported from the Committee on the Judiciary with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 11, United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; references; table of contents.

TITLE I—NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion.
Sec. 102. Dismissal or conversion.
Sec. 103. Sense of Congress and study.
Sec. 104. Notice of alternatives.
Sec. 105. Debtor financial management training test program.
Sec. 106. Credit counseling.
Sec. 107. Schedules of reasonable and necessary expenses.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

Sec. 201. Promotion of alternative dispute resolution.
Sec. 202. Effect of discharge.
Sec. 203. Discouraging abuse of reaffirmation practices.

Subtitle B—Priority Child Support

Sec. 211. Definition of domestic support obligation.
Sec. 212. Priorities for claims for domestic support obligations.

Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
Sec. 214. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 216. Continued liability of property.
Sec. 217. Protection of domestic support claims against preferential transfer motions.
Sec. 218. Disposable income defined.
Sec. 219. Collection of child support.
Sec. 220. Nondischargeability of certain educational benefits and loans.

Subtitle C—Other Consumer Protections

Sec. 221. Amendments to discourage abusive bankruptcy filings.
Sec. 222. Sense of Congress.
Sec. 223. Additional amendments to title 11, United States Code.
Sec. 224. Protection of retirement savings in bankruptcy.
Sec. 225. Protection of education savings in bankruptcy.
Sec. 226. Definitions.
Sec. 227. Restrictions on debt relief agencies.
Sec. 228. Disclosures.
Sec. 229. Requirements for debt relief agencies.
Sec. 230. GAO study.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

Sec. 301. Reinforcement of the fresh start.
Sec. 302. Discouraging bad faith repeat filings.
Sec. 303. Curbing abusive filings.
Sec. 304. Debtor retention of personal property security.
Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 306. Giving secured creditors fair treatment in chapter 13.
Sec. 307. Domiciliary requirements for exemptions.
Sec. 308. Residency requirement for homestead exemption.
Sec. 309. Protecting secured creditors in chapter 13 cases.
Sec. 310. Limitation on luxury goods.
Sec. 311. Automatic stay.
Sec. 312. Extension of period between bankruptcy discharges.
Sec. 313. Definition of household goods and antiques.
Sec. 314. Debt incurred to pay nondischargeable debts.
Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.
Sec. 316. Dismissal for failure to timely file schedules or provide required information.
Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.
Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.
Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
Sec. 320. Prompt relief from stay in individual cases.
Sec. 321. Chapter 11 cases filed by individuals.
Sec. 322. Limitation.
Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.
Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.

Sec. 325. United States trustee program filing fee increase.
Sec. 326. Sharing of compensation.
Sec. 327. Fair valuation of collateral.
Sec. 328. Defaults based on nonmonetary obligations.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

Sec. 401. Adequate protection for investors.
Sec. 402. Meetings of creditors and equity security holders.
Sec. 403. Protection of refinance of security interest.
Sec. 404. Executory contracts and unexpired leases.
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Sec. 406. Amendment to section 546 of title 11, United States Code.
Sec. 407. Amendments to section 330(a) of title 11, United States Code.
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Sec. 412. Fees arising from certain ownership interests.
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Subtitle B—Small Business Bankruptcy Provisions

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TITLE VI—BANKRUPTCY DATA

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Sec. 902. Authority of the corporation with respect to failed and failing institutions.
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Sec. 907. Bankruptcy Code amendments.
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TITLE X—PROTECTION OF FAMILY FARMERS

Sec. 1001. Permanent reenactment of chapter 12.
Sec. 1002. Debt limit increase.
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TITLE XIII—CONSUMER CREDIT DISCLOSURE

Sec. 1301. Enhanced disclosures under an open end credit plan.
Sec. 1302. Enhanced disclosure for credit extensions secured by a dwelling.
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TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Sec. 1401. Effective date; application of amendments.

TITLE I—NEEDS-BASED BANKRUPTCY

SEC. 101. CONVERSION.

Section 706(c) of title 11, United States Code, is amended by inserting ''or consents to'' after ''requests''.

SEC. 102. DISMISSAL OR CONVERSION.

(a) IN GENERAL.—Section 707 of title 11, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 707. Dismissal of a case or conversion to a case under chapter 11 or 13'';

and

(2) in subsection (b)—

(A) by inserting ''(1)'' after ''(b)'';

(B) in paragraph (1), as redesignated by subparagraph (A) of this paragraph—

(i) in the first sentence—

(I) by striking ''but not at the request or suggestion of'' and inserting

"trustee, bankruptcy administrator, or";

(II) by inserting ", or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title," after "consumer debts"; and

(III) by striking "a substantial abuse" and inserting "an abuse"; and

(ii) by striking the next to last sentence; and

(C) by adding at the end the following:

"(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

"(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

"(II) $10,000.

"(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and

1 the debtor's actual monthly expenses for the categories
2 specified as Other Necessary Expenses issued by the In-
3 ternal Revenue Service for the area in which the debtor
4 resides, as in effect on the date of the entry of the order
5 for relief, for the debtor, the dependents of the debtor,
6 and the spouse of the debtor in a joint case, if the spouse
7 is not otherwise a dependent. Notwithstanding any other
8 provision of this clause, the monthly expenses of the debt-
9 or shall not include any payments for debts. In addition,
10 the debtor's monthly expenses shall include the debtor's
11 reasonably necessary expenses incurred to maintain the
12 safety of the debtor and the family of the debtor from fam-
13 ily violence as identified under section 309 of the Family
14 Violence Prevention and Services Act (42 U.S.C. 10408),
15 or other applicable Federal law. The expenses included in
16 the debtor's monthly expenses described in the preceding
17 sentence shall be kept confidential by the court. In addi-
18 tion, if it is demonstrated that it is reasonable and nec-
19 essary, the debtor's monthly expenses may also include an
20 additional allowance for food and clothing of up to 5 per-
21 cent of the food and clothing categories as specified by
22 the National Standards issued by the Internal Revenue
23 Service.

24 ''(II) In addition, the debtor's monthly expenses may
25 include, if applicable, the continuation of actual expenses

1 paid by the debtor that are reasonable and necessary for
2 care and support of an elderly, chronically ill, or disabled
3 household member or member of the debtor's immediate
4 family (including parents, grandparents, and siblings of
5 the debtor, the dependents of the debtor, and the spouse
6 of the debtor in a joint case) who is not a dependent and
7 who is unable to pay for such reasonable and necessary
8 expenses.

9 ''(III) In addition, for a debtor eligible for chapter
10 13, the debtor's monthly expenses may include the actual
11 administrative expenses of administering a chapter 13
12 plan for the district in which the debtor resides, up to an
13 amount of 10 percent of the projected plan payments, as
14 determined under schedules issued by the Executive Office
15 for United States Trustees.

16 ''(IV) In addition, the debtor's monthly expenses may
17 include the actual expenses for each dependent child under
18 the age of 18 years up to $1,500 per year per child to
19 attend a private elementary or secondary school, if the
20 debtor provides documentation of such expenses and a de-
21 tailed explanation of why such expenses are reasonable
22 and necessary.

23 ''(iii) The debtor's average monthly payments on ac-
24 count of secured debts shall be calculated as—

25 ''(I) the sum of—

"(aa) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

"(bb) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts; divided by

"(II) 60.

"(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as—

"(I) the total amount of debts entitled to priority; divided by

"(II) 60.

"(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

"(ii) In order to establish special circumstances, the debtor shall be required to—

"(I) itemize each additional expense or adjustment of income; and

"(II) provide—

"(aa) documentation for such expense or adjustment to income; and

"(bb) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

"(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

"(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—

"(I) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

"(II) $10,000.

"(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly in-

come, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that shows how each such amount is calculated.

"(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not apply or has been rebutted, the court shall consider—

"(A) whether the debtor filed the petition in bad faith; or

"(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

"(4)(A) The court shall order the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion brought under section 707(b), including reasonable attorneys' fees, if—

"(i) a trustee appointed under section 586(a)(1) of title 28 or from a panel of private trustees maintained by the bankruptcy administrator brings a motion for dismissal or conversion under this subsection; and

"(ii) the court—

"(I) grants that motion; and

"(II) finds that the action of the counsel for the debtor in filing under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

"(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, at a minimum, the court shall order—

"(i) the assessment of an appropriate civil penalty against the counsel for the debtor; and

"(ii) the payment of the civil penalty to the trustee, the United States trustee, or the bankruptcy administrator.

"(C) In the case of a petition, pleading, or written motion, the signature of an attorney shall constitute a certification that the attorney has—

"(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

"(ii) determined that the petition, pleading, or written motion—

"(I) is well grounded in fact; and

"(II) is warranted by existing law or a good faith argument for the extension, modi-

fication, or reversal of existing law and does not constitute an abuse under paragraph (1).

''(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

''(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion brought by a party in interest (other than a trustee, United States trustee, or bankruptcy administrator) under this subsection if—

''(i) the court does not grant the motion; and

''(ii) the court finds that—

''(I) the position of the party that brought the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

''(II) the party brought the motion solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

''(B) A small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

''(C) For purposes of this paragraph—

"(i) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

"(I) has less than 25 full-time employees as determined on the date the motion is filed; and

"(II) is engaged in commercial or business activity; and

"(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

"(I) a parent corporation; and

"(II) any other subsidiary corporation of the parent corporation.

"(6) Only the judge, United States trustee, or bankruptcy administrator may bring a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4.

"(7) No judge, United States trustee, panel trustee, bankruptcy administrator or other party in interest may bring a motion under paragraph (2), if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same

number or fewer individuals last reported by the Bureau of the Census; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4.".

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (10) the following:

"(10A) 'current monthly income'—

"(A) means the average monthly income from all sources which the debtor, or in a joint case, the debtor and the debtor's spouse, receive without regard to whether the income is taxable income, derived during the 6-month period preceding the date of determination; and

"(B) includes any amount paid by any entity other than the debtor (or, in a joint case, the debtor and the debtor's spouse), on a regular basis to the household expenses of the debtor or the debtor's dependents (and, in a joint case, the debtor's spouse if not otherwise a dependent), but excludes benefits received

under the Social Security Act and payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;''.

(c) UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR DUTIES.—Section 704 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The trustee shall—''; and

(2) by adding at the end the following:

''(b)(1) With respect to an individual debtor under this chapter—

''(A) the United States trustee or bankruptcy administrator shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

''(B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

''(2) The United States trustee or bankruptcy administrator shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a state-

ment setting forth the reasons the United States trustee or bankruptcy administrator does not believe that such a motion would be appropriate, if the United States trustee or bankruptcy administrator determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census; or

"(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census.

"(3) In any case in which a motion to dismiss or convert, or a statement is required to be filed by this subsection, the United States trustee or bankruptcy administrator may decline to file a motion to dismiss or convert pursuant to section 704(b)(2) if the product of the debtor's current monthly income multiplied by 12 exceeds 100 percent, but does not exceed 150 percent of—

"(A)(i) in the case of a debtor in a household of 1 person, the median family income of the appli-

cable State for 1 earner last reported by the Bureau of the Census; or

"(ii) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; and

"(B) the product of the debtor's current monthly income, reduced by the amounts determined under section 707(b)(2)(A)(ii) (except for the amount calculated under the other necessary expenses standard issued by the Internal Revenue Service) and clauses (iii) and (iv) of section 707(b)(2)(A), multiplied by 60 is less than the lesser of—

"(i) 25 percent of the debtor's nonpriority unsecured claims in the case or $6,000, whichever is greater; or

"(ii) $10,000.".

(d) NOTICE.—Section 342 of title 11, United States Code, is amended by adding at the end the following:

"(d) In an individual case under chapter 7 in which the presumption of abuse is triggered under section 707(b), the clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the

petition that the presumption of abuse has been triggered.''.

(e) NONLIMITATION OF INFORMATION.—Nothing in this title shall limit the ability of a creditor to provide information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee, bankruptcy administrator or trustee.

(f) DISMISSAL FOR CERTAIN CRIMES.—Section 707 of title 11, United States Code, as amended by this section, is amended by adding at the end the following:

''(c)(1) In this subsection—

''(A) the term 'crime of violence' has the meaning given that term in section 16 of title 18; and

''(B) the term 'drug trafficking crime' has the meaning given that term in section 924(c)(2) of title 18.

''(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victims dismiss a voluntary case filed by an individual debtor under this chapter if that individual was convicted of that crime.

''(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of

the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.''.

(g) CONFIRMATION OF PLAN.—Section 1325(a) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(7) the action of the debtor in filing the petition was in good faith;''.

(h) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, is amended—

(1) in paragraph (1)(B), by inserting ''to unsecured creditors'' after ''to make payments''; and

(2) by striking paragraph (2) and inserting the following:

''(2) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably

necessary to be expended for such child) less amounts reasonably necessary to be expended—

"(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date the petition is filed and for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

"(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

"(3) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the

applicable State for 1 earner last reported by the Bureau of the Census;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4.".

(i) CLERICAL AMENDMENT.—The table of sections for chapter 7 of title 11, United States Code, is amended by striking the item relating to section 707 and inserting the following:

"707. Dismissal of a case or conversion to a case under chapter 11 or 13.".

SEC. 103. SENSE OF CONGRESS AND STUDY.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service standards established to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of title 11, United States Code.

(b) STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the findings of the Director regarding the utilization of Internal Revenue Service standards for determining—

(A) the current monthly expenses of a debtor under section 707(b) of title 11, United States Code; and

(B) the impact that the application of such standards has had on debtors and on the bankruptcy courts.

(2) RECOMMENDATION.—The report under paragraph (1) may include recommendations for amendments to title 11, United States Code, that are consistent with the findings of the Director under paragraph (1).

SEC. 104. NOTICE OF ALTERNATIVES.

Section 342(b) of title 11, United States Code, is amended to read as follows:

''(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer

debts, the clerk shall give to such individual written notice containing—

"(1) a brief description of—

"(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and

"(B) the types of services available from credit counseling agencies; and

"(2) statements specifying that—

"(A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both; and

"(B) all information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General.".

SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

(a) DEVELOPMENT OF FINANCIAL MANAGEMENT AND TRAINING CURRICULUM AND MATERIALS.—The Director of the Executive Office for United States Trustees (in this section referred to as the "Director") shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who are ap-

pointed under chapter 13 of title 11, United States Code, and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate individual debtors on how to better manage their finances.

(b) TEST.—

(1) SELECTION OF DISTRICTS.—The Director shall select 6 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

(2) USE.—For an 18-month period beginning not later than 270 days after the date of enactment of this Act, such curriculum and materials shall be, for the 6 judicial districts selected under paragraph (1), used as the instructional course concerning personal financial management for purposes of section 111 of title 11, United States Code.

(c) EVALUATION.—

(1) IN GENERAL.—During the 18-month period referred to in subsection (b), the Director shall evaluate the effectiveness of—

(A) the financial management training curriculum and materials developed under subsection (a); and

(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11, United States Code, and by consumer counseling groups.

(2) REPORT.—Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs and their costs.

SEC. 106. CREDIT COUNSELING.

(a) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended by adding at the end the following:

1 ''(h)(1) Subject to paragraphs (2) and (3), and not-
2 withstanding any other provision of this section, an indi-
3 vidual may not be a debtor under this title unless that
4 individual has, during the 180-day period preceding the
5 date of filing of the petition of that individual, received
6 from an approved nonprofit budget and credit counseling
7 agency described in section 111(a) an individual or group
8 briefing (including a briefing conducted by telephone or
9 on the Internet) that outlined the opportunities for avail-
10 able credit counseling and assisted that individual in per-
11 forming a related budget analysis.

12 ''(2)(A) Paragraph (1) shall not apply with respect
13 to a debtor who resides in a district for which the United
14 States trustee or bankruptcy administrator of the bank-
15 ruptcy court of that district determines that the approved
16 nonprofit budget and credit counseling agencies for that
17 district are not reasonably able to provide adequate serv-
18 ices to the additional individuals who would otherwise seek
19 credit counseling from that agency by reason of the re-
20 quirements of paragraph (1).

21 ''(B) Each United States trustee or bankruptcy ad-
22 ministrator that makes a determination described in sub-
23 paragraph (A) shall review that determination not later
24 than 1 year after the date of that determination, and not
25 less frequently than every year thereafter. Notwith-

1 standing the preceding sentence, a nonprofit budget and
2 credit counseling service may be disapproved by the
3 United States trustee or bankruptcy administrator at any
4 time.

5 ''(3)(A) Subject to subparagraph (B), the require-
6 ments of paragraph (1) shall not apply with respect to
7 a debtor who submits to the court a certification that—

8 ''(i) describes exigent circumstances that merit
9 a waiver of the requirements of paragraph (1);

10 ''(ii) states that the debtor requested credit
11 counseling services from an approved nonprofit
12 budget and credit counseling agency, but was unable
13 to obtain the services referred to in paragraph (1)
14 during the 5-day period beginning on the date on
15 which the debtor made that request; and

16 ''(iii) is satisfactory to the court.

17 ''(B) With respect to a debtor, an exemption under
18 subparagraph (A) shall cease to apply to that debtor on
19 the date on which the debtor meets the requirements of
20 paragraph (1), but in no case may the exemption apply
21 to that debtor after the date that is 30 days after the debt-
22 or files a petition, except that the court, for cause, may
23 order an additional 15 days.''.

24 (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title
25 11, United States Code, is amended—

(1) in paragraph (9), by striking ''or'' at the end;

(2) in paragraph (10), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111.

''(12)(A) Paragraph (11) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of that district determines that the approved instructional courses are not adequate to service the additional individuals required to complete such instructional courses under this section.

''(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.''.

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

"(g) The court shall not grant a discharge under this section to a debtor, unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

"(h) Subsection (g) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to service the additional individuals who would be required to complete the instructional course by reason of the requirements of this section.

"(i) Each United States trustee or bankruptcy administrator that makes a determination described in subsection (h) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.".

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "The debtor shall—"; and

(2) by adding at the end the following:

"(b) In addition to the requirements under subsection (a), an individual debtor shall file with the court—

"(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and

"(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1).".

(e) GENERAL PROVISIONS.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

"§ 111. Credit counseling services; financial management instructional courses

"(a) The clerk of each district shall maintain a publicly available list of—

"(1) credit counseling agencies that provide 1 or more programs described in section 109(h) currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable; and

"(2) instructional courses concerning personal financial management currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable.

"(b) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency or instructional course concerning personal financial management as follows:

"(1) The United States trustee or bankruptcy administrator shall have thoroughly reviewed the qualifications of the credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the programs or instructional courses which will be offered by such agency or provider, and may require an agency or provider of an instructional course which has sought approval to provide information with respect to such review.

"(2) The United States trustee or bankruptcy administrator shall have determined that the credit counseling agency or course of instruction fully satisfies the applicable standards set forth in this section.

"(3) When an agency or course of instruction is initially approved, such approval shall be for a probationary period not to exceed 6 months. An agency or course of instruction is initially approved if it did not appear on the approved list for the dis-

trict under subsection (a) immediately prior to approval.

"(4) At the conclusion of the probationary period under paragraph (3), the United States trustee or bankruptcy administrator may only approve for an additional 1-year period, and for successive 1-year periods thereafter, any agency or course of instruction which has demonstrated during the probationary or subsequent period that such agency or course of instruction—

"(A) has met the standards set forth under this section during such period; and

"(B) can satisfy such standards in the future.

"(5) Not later than 30 days after any final decision under paragraph (4), that occurs either after the expiration of the initial probationary period, or after any 2-year period thereafter, an interested person may seek judicial review of such decision in the appropriate United States District Court.

"(c)(1) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect

to client credit problems, and deal responsibly and effectively with other matters as relate to the quality, effectiveness, and financial security of such programs.

''(2) To be approved by the United States trustee or bankruptcy administrator, a credit counseling agency shall, at a minimum—

''(A) be a nonprofit budget and credit counseling agency, the majority of the board of directors of which—

''(i) are not employed by the agency; and

''(ii) will not directly or indirectly benefit financially from the outcome of a credit counseling session;

''(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

''(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

''(D) provide full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by the debtor and how such costs will be paid;

"(E) provide adequate counseling with respect to client credit problems that includes an analysis of their current situation, what brought them to that financial status, and how they can develop a plan to handle the problem without incurring negative amortization of their debts;

"(F) provide trained counselors who receive no commissions or bonuses based on the counseling session outcome, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

"(G) demonstrate adequate experience and background in providing credit counseling; and

"(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

"(d) The United States trustee or bankruptcy administrator shall only approve an instructional course concerning personal financial management—

"(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

"(A) trained personnel with adequate experience and training in providing effective instruction and services;

"(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such course of instruction;

"(C) adequate facilities situated in reasonably convenient locations at which such course of instruction is offered, except that such facilities may include the provision of such course of instruction or program by telephone or through the Internet, if the course of instruction or program is effective; and

"(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such course of instruction or program, including any evaluation of satisfaction of course of instruction or program requirements for each debtor attending such course of instruction or program, which shall be available for inspection and evaluation

by the Executive Office for United States Trustees, the United States trustee, bankruptcy administrator, or chief bankruptcy judge for the district in which such course of instruction or program is offered; and

''(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

''(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

''(B) is otherwise likely to increase substantially debtor understanding of personal financial management.

''(e) The District Court may, at any time, investigate the qualifications of a credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such credit counseling agencies. The District Court may, at any time, remove from the approved list under subsection (a) a credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

''(f) The United States trustee or bankruptcy administrator shall notify the clerk that a credit counseling agency or an instructional course is no longer approved,

in which case the clerk shall remove it from the list maintained under subsection (a).

''(g)(1) No credit counseling service may provide to a credit reporting agency information concerning whether an individual debtor has received or sought instruction concerning personal financial management from the credit counseling service.

''(2) A credit counseling service that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

''(A) any actual damages sustained by the debtor as a result of the violation; and

''(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''111. Credit counseling services; financial management instructional courses.''.

(f) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

''(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case

commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

''(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.''.

SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY EXPENSES.

For purposes of section 707(b) of title 11, United States Code, as amended by this Act, the Director of the Executive Office for United States Trustees shall, not later than 180 days after the date of enactment of this Act, issue schedules of reasonable and necessary administrative expenses of administering a chapter 13 plan for each judicial district of the United States.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended by adding at the end the following:

''(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this sec-

tion based in whole on unsecured consumer debts by not more than 20 percent of the claim, if—

"(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency described in section 111 acting on behalf of the debtor;

"(B) the offer of the debtor under subparagraph (A)—

"(i) was made at least 60 days before the filing of the petition; and

"(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

"(C) no part of the debt under the alternative repayment schedule is nondischargeable.

"(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

"(A) the creditor unreasonably refused to consider the debtor's proposal; and

"(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).".

(b) LIMITATION ON AVOIDABILITY.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

''(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment plan between the debtor and any creditor of the debtor created by an approved credit counseling agency.''.

SEC. 202. EFFECT OF DISCHARGE.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title (including a plan of reorganization confirmed under chapter 11 of this title), unless the plan is dismissed, in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

''(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

"(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

"(2) such act is in the ordinary course of business between the creditor and the debtor; and

"(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.".

SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION PRACTICES.

(a) IN GENERAL.—Section 524 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (c), by striking paragraph (2) and inserting the following:

"(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;";

(2) by adding at the end the following:

"(k)(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement, statement, declaration, motion and order described, respectively, in para-

1 graphs (4) through (8), and shall be the only disclosures
2 required in connection with the reaffirmation.
3 ''(2) Disclosures made under paragraph (1) shall be
4 made clearly and conspicuously and in writing. The terms
5 'Amount Reaffirmed' and 'Annual Percentage Rate' shall
6 be disclosed more conspicuously than other terms, data or
7 information provided in connection with this disclosure,
8 except that the phrases 'Before agreeing to reaffirm a
9 debt, review these important disclosures' and 'Summary
10 of Reaffirmation Agreement' may be equally conspicuous.
11 Disclosures may be made in a different order and may
12 use terminology different from that set forth in para-
13 graphs (2) through (8), except that the terms 'Amount
14 Reaffirmed' and 'Annual Percentage Rate' must be used
15 where indicated.
16 ''(3) The disclosure statement required under this
17 paragraph shall consist of the following:
18 ''(A) The statement: 'Part A: Before agreeing
19 to reaffirm a debt, review these important disclo-
20 sures:';
21 ''(B) Under the heading 'Summary of Reaffir-
22 mation Agreement', the statement: 'This Summary
23 is made pursuant to the requirements of the Bank-
24 ruptcy Code';

"(C) The 'Amount Reaffirmed', using that term, which shall be—

"(i) the total amount which the debtor agrees to reaffirm, and

"(ii) the total of any other fees or cost accrued as of the date of the disclosure statement.

"(D) In conjunction with the disclosure of the 'Amount Reaffirmed', the statements—

"(i) 'The amount of debt you have agreed to reaffirm'; and

"(ii) 'Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.'.

"(E) The 'Annual Percentage Rate', using that term, which shall be disclosed as—

"(i) if, at the time the petition is filed, the debt is open end credit as defined under the Truth in Lending Act (15 U.S.C. 1601 et seq.), then—

"(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)(5) and (6)), as applicable, as disclosed to the debtor in the

most recent periodic statement prior to the agreement or, if no such periodic statement has been provided the debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

''(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

''(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the simple interest rate under subclause (II);

''(ii) if, at the time the petition is filed, the debt is closed end credit as defined under the Truth in Lending Act (15 U.S.C. 1601 et seq.), then—

1 "(I) the annual percentage rate under
2 section 128(a)(4) of the Truth in Lending
3 Act (15 U.S.C. 1638(a)(4)), as disclosed to
4 the debtor in the most recent disclosure
5 statement given the debtor prior to the re-
6 affirmation agreement with respect to the
7 debt, or, if no such disclosure statement
8 was provided the debtor, the annual per-
9 centage rate as it would have been so dis-
10 closed at the time the disclosure statement
11 is given the debtor, or to the extent this
12 annual percentage rate is not readily avail-
13 able or not applicable, then
14 "(II) the simple interest rate applica-
15 ble to the amount reaffirmed as of the date
16 the disclosure statement is given the debt-
17 or, or if different simple interest rates
18 apply to different balances, the simple in-
19 terest rate applicable to each such balance,
20 identifying the amount of such balance in-
21 cluded in the amount reaffirmed, or
22 "(III) if the entity making the disclo-
23 sure elects, to disclose the annual percent-
24 age rate under (I) and the simple interest
25 rate under (II).

"(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act (15 U.S.C. 1601 et seq.), by stating 'The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.'.

"(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the obligations you are reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

"(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

"(i) by making the statement: 'Your first payment in the amount of $_____ is due on _____ but the future payment amount may be

different. Consult your reaffirmation or credit agreement, as applicable.', and stating the amount of the first payment and the due date of that payment in the places provided;

''(ii) by making the statement: 'Your payment schedule will be:', and describing the repayment schedule with the number, amount and due dates or period of payments scheduled to repay the obligations reaffirmed to the extent then known by the disclosing party; or

''(iii) by describing the debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

''(I) The following statement: 'Note: When this disclosure refers to what a creditor 'may' do, it does not use the word 'may' to give the creditor specific permission. The word 'may' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirmation or what the law requires, talk to the attorney who helped you negotiate this agreement. If you don't have an attorney helping you, the judge will explain the effect of your reaffirmation when the reaffirmation hearing is held.'.

''(J)(i) The following additional statements:

1 "'Reaffirming a debt is a serious financial decision.
2 The law requires you to take certain steps to make sure
3 the decision is in your best interest. If these steps are not
4 completed, the reaffirmation agreement is not effective,
5 even though you have signed it.

6 "'1. Read the disclosures in this Part A care-
7 fully. Consider the decision to reaffirm carefully.
8 Then, if you want to reaffirm, sign the reaffirmation
9 agreement in Part B (or you may use a separate
10 agreement you and your creditor agree on).

11 "'2. Complete and sign Part D and be sure you
12 can afford to make the payments you are agreeing
13 to make and have received a copy of the disclosure
14 statement and a completed and signed reaffirmation
15 agreement.

16 "'3. If you were represented by an attorney
17 during the negotiation of the reaffirmation agree-
18 ment, the attorney must have signed the certification
19 in Part C.

20 "'4. If you were not represented by an attorney
21 during the negotiation of the reaffirmation agree-
22 ment, you must have completed and signed Part E.

23 "'5. The original of this disclosure must be
24 filed with the court by you or your creditor. If a sep-

arate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

"'6. If you were represented by an attorney during the negotiation of the reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

"'7. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your agreement. The bankruptcy court must approve the agreement as consistent with your best interests, except that no court approval is required if the agreement is for a consumer debt secured by a mortgage, deed of trust, security deed or other lien on your real property, like your home.

"'Your right to rescind a reaffirmation. You may rescind (cancel) your reaffirmation at any time before the bankruptcy court enters a discharge order or within 60 days after the agreement is filed with the court, whichever

is longer. To rescind or cancel, you must notify the creditor that the agreement is canceled.

"'What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy. That means that if you default on your reaffirmed debt after your bankruptcy is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of the agreement in the future under certain conditions.

"'Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

"'What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A "lien" is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor

may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.'.

''(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

'' '6. If you were represented by an attorney during the negotiation of the reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.'.

''(4) The form of reaffirmation agreement required under this paragraph shall consist of the following:

'' 'Part B: Reaffirmation Agreement. I/we agree to reaffirm the obligations arising under the credit agreement described below.

'' 'Brief description of credit agreement:

'' 'Description of any changes to the credit agreement made as part of this reaffirmation agreement:

'' 'Signature: Date:

1 " 'Borrower:

2 " 'Co-borrower, if also reaffirming:

3 " 'Accepted by creditor:

4 " 'Date of creditor acceptance:'.

5 "(5)(A) The declaration shall consist of the following:

6 " 'Part C: Certification by Debtor's Attorney (If
7 Any).

8 " 'I hereby certify that (1) this agreement represents
9 a fully informed and voluntary agreement by the debtor(s);
10 (2) this agreement does not impose an undue hardship on
11 the debtor or any dependent of the debtor; and (3) I have
12 fully advised the debtor of the legal effect and con-
13 sequences of this agreement and any default under this
14 agreement.

15 " 'Signature of Debtor's Attorney: Date:'.

16 "(B) In the case of reaffirmations in which a pre-
17 sumption of undue hardship has been established, the cer-
18 tification shall state that in the opinion of the attorney,
19 the debtor is able to make the payment.

20 "(C) In the case of a reaffirmation agreement under
21 subsection (m)(2), subparagraph (B) is not applicable.

22 "(6)(A) The statement in support of reaffirmation
23 agreement, which the debtor shall sign and date prior to
24 filing with the court, shall consist of the following:

1 " 'Part D: Debtor's Statement in Support of Reaffir-
2 mation Agreement.
3 " '1. I believe this agreement will not impose an
4 undue hardship on my dependents or me. I can afford to
5 make the payments on the reaffirmed debt because my
6 monthly income (take home pay plus any other income re-
7 ceived) is $_____, and my actual current monthly ex-
8 penses including monthly payments on post-bankruptcy
9 debt and other reaffirmation agreements total $_____,
10 leaving $_____ to make the required payments on this
11 reaffirmed debt. I understand that if my income less my
12 monthly expenses does not leave enough to make the pay-
13 ments, this reaffirmation agreement is presumed to be an
14 undue hardship on me and must be reviewed by the court.
15 However, this presumption may be overcome if I explain
16 to the satisfaction of the court how I can afford to make
17 the payments here: _____.
18 " '2. I received a copy of the Reaffirmation Disclosure
19 Statement in Part A and a completed and signed reaffir-
20 mation agreement.'.
21 "(B) Where the debtor is represented by counsel and
22 is reaffirming a debt owed to a creditor defined in section
23 19(b)(1)(A)(iv) of the Federal Reserve Act (12 U.S.C.
24 461(b)(1)(A)(iv)), the statement of support of the reaffir-

1 mation agreement, which the debtor shall sign and date
2 prior to filing with the court, shall consist of the following:
3 " 'I believe this agreement is in my financial interest.
4 I can afford to make the payments on the reaffirmed debt.
5 I received a copy of the Reaffirmation Disclosure State-
6 ment in Part A and a completed and signed reaffirmation
7 agreement.'
8 "(7) The motion, which may be used if approval of
9 the agreement by the court is required in order for it to
10 be effective and shall be signed and dated by the moving
11 party, shall consist of the following:
12 " 'Part E: Motion for Court Approval (To be com-
13 pleted only where debtor is not represented by an attor-
14 ney.). I (we), the debtor, affirm the following to be true
15 and correct:
16 " 'I am not represented by an attorney in connection
17 with this reaffirmation agreement.
18 " 'I believe this agreement is in my best interest
19 based on the income and expenses I have disclosed in my
20 Statement in Support of this reaffirmation agreement
21 above, and because (provide any additional relevant rea-
22 sons the court should consider):
23 " 'Therefore, I ask the court for an order approving
24 this reaffirmation agreement.'.

"(8) The court order, which may be used to approve a reaffirmation, shall consist of the following:

" 'Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.'.

"(9) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

"(A) such creditor retains a security interest in real property that is the debtor's principal residence;

"(B) such act is in the ordinary course of business between the creditor and the debtor; and

"(C) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.

"(l) Notwithstanding any other provision of this title:

"(1) A creditor may accept payments from a debtor before and after the filing of a reaffirmation agreement with the court.

"(2) A creditor may accept payments from a debtor under a reaffirmation agreement which the creditor believes in good faith to be effective.

1 "(3) The requirements of subsections (c)(2) and
2 (k) shall be satisfied if disclosures required under
3 those subsections are given in good faith.
4 "(m)(1) Until 60 days after a reaffirmation agree-
5 ment is filed with the court (or such additional period as
6 the court, after notice and hearing and for cause, orders
7 before the expiration of such period), it shall be presumed
8 that the reaffirmation agreement is an undue hardship on
9 the debtor if the debtor's monthly income less the debtor's
10 monthly expenses as shown on the debtor's completed and
11 signed statement in support of the reaffirmation agree-
12 ment required under subsection (k)(6)(A) is less than the
13 scheduled payments on the reaffirmed debt. This pre-
14 sumption shall be reviewed by the court. The presumption
15 may be rebutted in writing by the debtor if the statement
16 includes an explanation which identifies additional sources
17 of funds to make the payments as agreed upon under the
18 terms of the reaffirmation agreement. If the presumption
19 is not rebutted to the satisfaction of the court, the court
20 may disapprove the agreement. No agreement shall be dis-
21 approved without notice and hearing to the debtor and
22 creditor and such hearing shall be concluded before the
23 entry of the debtor's discharge.
24 "(2) This subsection does not apply to reaffirmation
25 agreements where the creditor is a credit union, as defined

in section 19(b)(1)(A)(iv) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(iv)).".

(b) LAW ENFORCEMENT.—

(1) IN GENERAL.—Chapter 9 of title 18, United States Code, is amended by adding at the end the following:

"§ 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

"(a) IN GENERAL.—The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

"(b) UNITED STATES DISTRICT ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION—The individuals referred to in subsection (a) are—

"(1) a United States attorney for each judicial district of the United States; and

"(2) an agent of the Federal Bureau of Investigation (within the meaning of section 3107) for each field office of the Federal Bureau of Investigation.

"(c) BANKRUPTCY INVESTIGATIONS.—Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

"(d) BANKRUPTCY PROCEDURES.—The bankruptcy courts shall establish procedures for referring any case which may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.".

(2) CLERICAL AMENDMENT.—The analysis for chapter 9 of title 18, United States Code, is amended by adding at the end the following:

"158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules.".

Subtitle B—Priority Child Support

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

''(14A) 'domestic support obligation' means a debt that accrues before or after the entry of an order for relief under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

''(A) owed to or recoverable by—

''(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

''(ii) a governmental unit;

''(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

''(C) established or subject to establishment before or after entry of an order for relief under this title, by reason of applicable provisions of—

"(i) a separation agreement, divorce decree, or property settlement agreement;

"(ii) an order of a court of record; or

"(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

"(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt;".

SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

Section 507(a) of title 11, United States Code, is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as redesignated, by striking "First" and inserting "Second";

(4) in paragraph (3), as redesignated, by striking "Second" and inserting "Third";

(5) in paragraph (4), as redesignated—

(A) by striking ''Third'' and inserting ''Fourth''; and

(B) by striking the semicolon at the end and inserting a period;

(6) in paragraph (5), as redesignated, by striking ''Fourth'' and inserting ''Fifth'';

(7) in paragraph (6), as redesignated, by striking ''Fifth'' and inserting ''Sixth'';

(8) in paragraph (7), as redesignated, by striking ''Sixth'' and inserting ''Seventh''; and

(9) by inserting before paragraph (2), as redesignated, the following:

''(1) First:

''(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of that person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of filing of the pe-

tition shall be applied and distributed in accordance with applicable nonbankruptcy law.

"(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date the petition was filed are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a government unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.".

SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

(1) in section 1129(a), by adding at the end the following:

''(14) If the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that first become payable after the date on which the petition is filed.'';

(2) in section 1208(c)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.'';

(3) in section 1222(a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) notwithstanding any other provision of this section, a plan may provide for less than full pay-

ment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period, beginning on the date that the first payment is due under the plan, will be applied to make payments under the plan.'';

(4) in section 1222(b)—

(A) by redesignating paragraph (11) as paragraph (12); and

(B) by inserting after paragraph (10) the following:

''(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims;'';

(5) in section 1225(a)—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

"(7) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order for such obligation that first become payable after the date on which the petition is filed.";

(6) in section 1228(a), in the matter preceding paragraph (1), by inserting ", and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for in the plan) have been paid" after "completion by the debtor of all payments under the plan";

(7) in section 1307(c)—

(A) in paragraph (9), by striking "or" at the end;

(B) in paragraph (10), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.";

(8) in section 1322(a)—

(A) in paragraph (2), by striking "and" at the end;

(B) in paragraph (3), by striking the period at the end and inserting "; and"; and

(C) by adding in the end the following:

"(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.";

(9) in section 1322(b)—

(A) in paragraph (9), by striking "; and" and inserting a semicolon;

(B) by redesignating paragraph (10) as paragraph (11); and

(C) inserting after paragraph (9) the following:

"(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and";

(10) in section 1325(a) (as amended by this Act), by adding at the end the following:

"(8) the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that first becomes payable after the date on which the petition is filed; and";

(11) in section 1328(a), in the matter preceding paragraph (1), by inserting ", and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for in the plan) have been paid" after

"completion by the debtor of all payments under the plan".

SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

"(2) under subsection (a)—

"(A) of the commencement or continuation of a civil action or proceeding—

"(i) for the establishment of paternity;

"(ii) for the establishment or modification of an order for domestic support obligations;

"(iii) concerning child custody or visitation;

"(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

"(v) regarding domestic violence;

"(B) the collection of a domestic support obligation from property that is not property of the estate;

"(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order;

"(D) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses under State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C. 666(a)(16));

"(E) the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7));

"(F) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)) or under an analogous State law; or

"(G) the enforcement of medical obligations as specified under title IV of the Social Security Act (42 U.S.C. 601 et seq.);".

SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (5) and inserting the following:

''(5) for a domestic support obligation;'';

(B) in paragraph (15)—

(i) by inserting ''to a spouse, former spouse, or child of the debtor and'' before ''not of the kind'';

(ii) by inserting ''or'' after ''court of record,''; and

(iii) by striking ''unless—'' and all that follows through the end of the paragraph and inserting a semicolon; and

(C) by striking paragraph (18); and

(2) in subsection (c), by striking ''(6), or (15)'' each place it appears and inserting ''or (6)''.

SEC. 216. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

"(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5));";

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting "of a kind that is specified in section 523(a)(5); or"; and

(3) in subsection (g)(2), by striking "subsection (f)(2)" and inserting "subsection (f)(1)(B)".

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

"(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;".

SEC. 218. DISPOSABLE INCOME DEFINED.

(a) CONFIRMATION OF PLAN UNDER CHAPTER 12.—Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting "or for a domestic support obligation that first becomes payable after the date on which the petition is filed" after "dependent of the debtor".

(b) CONFIRMATION OF PLAN UNDER CHAPTER 13.—Section 1325(b)(2)(A) of title 11, United States Code, is amended by inserting ''or for a domestic support obligation that first becomes payable after the date on which the petition is filed'' after ''dependent of the debtor''.

SEC. 219. COLLECTION OF CHILD SUPPORT.

(a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Section 704 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (a)—

(A) in paragraph (8), by striking ''and'' at the end;

(B) in paragraph (9), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(10) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c); and''; and

(2) by adding at the end the following:

''(c)(1) In any case described in subsection (a)(10), the trustee shall—

''(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established

under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides for assistance in collecting child support during and after the bankruptcy procedures;

''(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

''(iii) include in the notice an explanation of the rights of the holder of the claim to payment of the claim under this chapter; and

''(B)(i) notify in writing the State child support agency of the State in which the holder of the claim resides of the claim;

''(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

''(iii) at such time as the debtor is granted a discharge under section 727, notify the holder of that claim and the State child support agency of the State in which that holder resides of—

''(I) the granting of the discharge;

''(II) the last recent known address of the debtor;

''(III) the last recent known name and address of the debtor's employer; and

"(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

"(aa) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

"(bb) was reaffirmed by the debtor under section 524(c).

"(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.".

(b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—Section 1106 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking "and" at the end;

(B) in paragraph (7), by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(8) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c)."; and

(2) by adding at the end the following:

"(c)(1) In any case described in subsection (a)(7), the trustee shall—

"(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides; and

"(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

"(B)(i) notify, in writing, the State child support agency (of the State in which the holder of the claim resides) of the claim;

"(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

"(iii) at such time as the debtor is granted a discharge under section 1141, notify the holder of

the claim and the State child support agency of the State in which that holder resides of—

"(I) the granting of the discharge;

"(II) the last recent known address of the debtor;

"(III) the last recent known name and address of the debtor's employer; and

"(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

"(aa) is not discharged under paragraph (2), (3), or (14) of section 523(a); or

"(bb) was reaffirmed by the debtor under section 524(c).

"(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.".

(c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—Section 1202 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(6) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In any case described in subsection (b)(6), the trustee shall—

''(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides; and

''(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

''(B)(i) notify, in writing, the State child support agency (of the State in which the holder of the claim resides) of the claim;

"(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

"(iii) at such time as the debtor is granted a discharge under section 1228, notify the holder of the claim and the State child support agency of the State in which that holder resides of—

"(I) the granting of the discharge;

"(II) the last recent known address of the debtor;

"(III) the last recent known name and address of the debtor's employer; and

"(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

"(aa) is not discharged under paragraph (2), (4), or (14) of section 523(a); or

"(bb) was reaffirmed by the debtor under section 524(c).

"(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under sub-

paragraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.''.

(d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—Section 1302 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(6) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In any case described in subsection (b)(6), the trustee shall—

''(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides; and

"(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

"(B)(i) notify in writing the State child support agency of the State in which the holder of the claim resides of the claim;

"(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

"(iii) at such time as the debtor is granted a discharge under section 1328, notify the holder of the claim and the State child support agency of the State in which that holder resides of—

"(I) the granting of the discharge;

"(II) the last recent known address of the debtor;

"(III) the last recent known name and address of the debtor's employer; and

"(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

"(aa) is not discharged under paragraph (2), (4), or (14) of section 523(a); or

"(bb) was reaffirmed by the debtor under section 524(c).

"(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.".

SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.

Section 523(a) of title 11, United States Code, is amended by striking paragraph (8) and inserting the following:

"(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

"(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

"(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

"(B) any other educational loan that is a qualified education loan, as that term is defined in section 221(e)(1) of the Internal Revenue Code of 1986, incurred by an individual debtor;".

Subtitle C—Other Consumer Protections

SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANKRUPTCY FILINGS.

Section 110 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by striking "a person, other than an attorney or an employee of an attorney" and inserting "the attorney for the debtor or an employee of such attorney under the direct supervision of such attorney";

(2) in subsection (b)—

(A) in paragraph (1), by adding at the end the following: "If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer shall be required to—

"(A) sign the document for filing; and

"(B) print on the document the name and address of that officer, principal, responsible person or partner."; and

(B) by striking paragraph (2) and inserting the following:

"(2)(A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice to debtors concerning bankruptcy petition preparers, which shall be on an official form issued by the Judicial Conference of the United States.

"(B) The notice under subparagraph (A)—

"(i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

"(ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

"(iii) shall—

"(I) be signed by—

"(aa) the debtor; and

"(bb) the bankruptcy petition preparer, under penalty of perjury; and

"(II) be filed with any document for filing.";

(3) in subsection (c)—

(A) in paragraph (2)—

(i) by striking "(2) For purposes" and inserting "(2)(A) Subject to subparagraph (B), for purposes"; and

(ii) by adding at the end the following:

"(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the preparer."; and

(B) by striking paragraph (3);

(4) in subsection (d)—

(A) by striking "(d)(1)" and inserting "(d)"; and

(B) by striking paragraph (2);

(5) in subsection (e)—

(A) by striking paragraph (2); and

(B) by adding at the end the following:

"(2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

1 ''(B) The legal advice referred to in subparagraph
2 (A) includes advising the debtor—
3 ''(i) whether—
4 ''(I) to file a petition under this title; or
5 ''(II) commencing a case under chapter 7,
6 11, 12, or 13 is appropriate;
7 ''(ii) whether the debtor's debts will be elimi-
8 nated or discharged in a case under this title;
9 ''(iii) whether the debtor will be able to retain
10 the debtor's home, car, or other property after com-
11 mencing a case under this title;
12 ''(iv) concerning—
13 ''(I) the tax consequences of a case
14 brought under this title; or
15 ''(II) the dischargeability of tax claims;
16 ''(v) whether the debtor may or should promise
17 to repay debts to a creditor or enter into a reaffir-
18 mation agreement with a creditor to reaffirm a debt;
19 ''(vi) concerning how to characterize the nature
20 of the debtor's interests in property or the debtor's
21 debts; or
22 ''(vii) concerning bankruptcy procedures and
23 rights.'';
24 (6) in subsection (f)—

(A) by striking ''(f)(1)'' and inserting ''(f)''; and

(B) by striking paragraph (2);

(7) in subsection (g)—

(A) by striking ''(g)(1)'' and inserting ''(g)''; and

(B) by striking paragraph (2);

(8) in subsection (h)—

(A) by redesignating paragraphs (1) through (4) as paragraphs (2) through (5), respectively;

(B) by inserting before paragraph (2), as redesignated, the following:

''(1) The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor.'';

(C) in paragraph (2), as redesignated—

(i) by striking ''Within 10 days after the date of filing a petition, a bankruptcy

petition preparer shall file a'' and inserting ''A'';

(ii) by inserting ''by the bankruptcy petition preparer shall be filed together with the petition,'' after ''perjury''; and

(iii) by adding at the end the following: ''If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).'';

(D) by striking paragraph (3), as redesignated, and inserting the following:

''(3)(A) The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2) found to be in excess of the value of any services—

''(i) rendered by the preparer during the 12-month period immediately preceding the date of filing of the petition; or

"(ii) found to be in violation of any rule or guideline promulgated or prescribed under paragraph (1).

"(B) All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

"(C) An individual may exempt any funds recovered under this paragraph under section 522(b)."; and

(E) in paragraph (4), as redesignated, by striking "or the United States trustee" and inserting "the United States trustee, the bankruptcy administrator, or the court, on the initiative of the court,";

(9) in subsection (i)(1), by striking the matter preceding subparagraph (A) and inserting the following:

"(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on motion of the debtor, trustee, United States trustee, or bankruptcy administrator, and after the court holds a hearing with respect

to that violation or act, the court shall order the bankruptcy petition preparer to pay to the debtor—";

(10) in subsection (j)—

(A) in paragraph (2)—

(i) in subparagraph (A)(i)(I), by striking "a violation of which subjects a person to criminal penalty";

(ii) in subparagraph (B)—

(I) by striking "or has not paid a penalty" and inserting "has not paid a penalty"; and

(II) by inserting "or failed to disgorge all fees ordered by the court" after "a penalty imposed under this section,";

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

"(3) The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued upon motion of the court, the trustee, the United States trustee, or the bankruptcy administrator."; and

(11) by adding at the end the following:

''(l)(1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than $500 for each such failure.

''(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer—

''(A) advised the debtor to exclude assets or income that should have been included on applicable schedules;

''(B) advised the debtor to use a false Social Security account number;

''(C) failed to inform the debtor that the debtor was filing for relief under this title; or

''(D) prepared a document for filing in a manner that failed to disclose the identity of the preparer.

''(3) The debtor, the trustee, a creditor, the United States trustee, or the bankruptcy administrator may file a motion for an order imposing a fine on the bankruptcy petition preparer for each violation of this section.

''(4)(A) Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustee, who shall deposit an amount

equal to such fines in a special account of the United States Trustee System Fund referred to in section 586(e)(2) of title 28. Amounts deposited under this subparagraph shall be available to fund the enforcement of this section on a national basis.

''(B) Fines imposed under this subsection in judicial districts served by bankruptcy administrators shall be deposited as offsetting receipts to the fund established under section 1931 of title 28, and shall remain available until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the operation and maintenance of the courts of the United States.''.

SEC. 222. SENSE OF CONGRESS.

It is the sense of Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.

Section 507(a) of title 11, United States Code, is amended by inserting after paragraph (9) the following:

''(10) Tenth, allowed claims for death or personal injuries resulting from the operation of a motor vehicle or vessel if such operation was unlaw-

ful because the debtor was intoxicated from using alcohol, a drug, or another substance.''.

SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking ''and'' at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting ''; and'';

(iii) by adding at the end the following:

''(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''; and

(iv) by striking ''(2)(A) any property'' and inserting:

''(3) Property listed in this paragraph is—

''(A) any property'';

(B) by striking paragraph (1) and inserting:

''(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.'';

(C) by striking ''(b) Notwithstanding'' and inserting ''(b)(1) Notwithstanding'';

(D) by striking ''paragraph (2)'' each place it appears and inserting ''paragraph (3)'';

(E) by striking ''paragraph (1)'' each place it appears and inserting ''paragraph (2)'';

(F) by striking ''Such property is—''; and

(G) by adding at the end the following:

''(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

''(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the commencement of the case under section 301, 302, or 303 of this title, those funds shall be presumed to be exempt from the estate.

''(B) If the retirement funds are in a retirement fund that has not received a favorable determination

under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

"(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

"(ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

"(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

"(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of that direct transfer.

"(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to

qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of that distribution.

''(ii) A distribution described in this clause is an amount that—

''(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

''(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of that amount.''; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking ''subsection (b)(1)'' and inserting ''subsection (b)(2)''; and

(B) by adding at the end the following:

''(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period and inserting a semicolon;

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

''(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan that satisfies the requirements of section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

''(B) in the case of a loan from a thrift savings plan described in subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;''; and

(4) by adding at the end of the flush material at the end of the subsection, the following: ''Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

''(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

''(B) a loan from the thrift savings plan described in subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title.

Nothing in paragraph (18) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under

section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

''(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute 'disposable income' under section 1325.''.

(e) ASSET LIMITATION.—Section 522 of title 11, United States Code, is amended by adding at the end the following:

''(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of that Code or a simple retirement account under section 408(p) of that Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,000,000 (which amount shall be adjusted as provided in section 104 of this title) in a case filed by an individual debtor, except

that such amount may be increased if the interests of justice so require.''.

SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANKRUPTCY.

(a) EXCLUSIONS.—Section 541 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''or'' at the end;

(B) by redesignating paragraph (5) as paragraph (10); and

(C) by inserting after paragraph (4) the following:

''(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of filing of the petition, but—

''(A) only if the designated beneficiary of such account was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were placed in such account;

''(B) only to the extent that such funds—

"(i) are not pledged or promised to any entity in connection with any extension of credit; and

"(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

"(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

"(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of filing of the petition, but—

"(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were paid or contributed;

"(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(7) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

"(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;"; and

(2) by adding at the end the following:

"(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child

of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).''.

SEC. 226. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (2) the following:

''(3) 'assisted person' means any person whose debts consist primarily of consumer debts and whose non-exempt assets are less than $150,000;'';

(2) by inserting after paragraph (4) the following:

"(4A) 'bankruptcy assistance' means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title;"; and

(3) by inserting after paragraph (12) the following:

"(12A) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

"(A) any person that is an officer, director, employee or agent of that person;

"(B) a nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

"(C) a creditor of the person, to the extent that the creditor is assisting the person to restructure any debt owed by the person to the creditor;

"(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such a depository institution or credit union; or

"(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.".

(b) CONFORMING AMENDMENT.—Section 104(b)(1) of title 11, United States Code, is amended by inserting "101(3)," after "sections".

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

"§ 526. Restrictions on debt relief agencies

"(a) A debt relief agency shall not—

"(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

"(2) make any statement, or counsel or advise any assisted person or prospective assisted person to

make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

''(i) the services that such agency will provide to such person; or

''(ii) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

''(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

''(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court

or any other person, but may be enforced against a debt relief agency.

''(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

''(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and hearing, to have—

''(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

''(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

"(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

"(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State—

"(A) may bring an action to enjoin such violation;

"(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

"(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

"(4) The United States District Court for any district located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

"(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under

Federal or State law, if the court, on its own motion or on motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

"(A) enjoin the violation of such section; or

"(B) impose an appropriate civil penalty against such person.".

"(d) No provision of this section, section 527, or section 528 shall—

"(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

"(2) be deemed to limit or curtail the authority or ability—

"(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

"(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting before the item relating to section 527, the following:

"526. Debt relief enforcement.".

SEC. 228. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"§ 527. Disclosures

"(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

"(1) the written notice required under section 342(b)(1) of this title; and

"(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

"(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

"(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value;

"(C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

"(D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the proceeding under this title or other sanction including, in some instances, criminal sanctions.

"(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single

1 document separate from other documents or notices pro-
2 vided to the assisted person:
3 "'IMPORTANT INFORMATION ABOUT BANK-
4 RUPTCY ASSISTANCE SERVICES FROM AN AT-
5 TORNEY OR BANKRUPTCY PETITION PRE-
6 PARER.
7 "'If you decide to seek bankruptcy relief, you can
8 represent yourself, you can hire an attorney to represent
9 you, or you can get help in some localities from a bank-
10 ruptcy petition preparer who is not an attorney. THE
11 LAW REQUIRES AN ATTORNEY OR BANKRUPTCY
12 PETITION PREPARER TO GIVE YOU A WRITTEN
13 CONTRACT SPECIFYING WHAT THE ATTORNEY
14 OR BANKRUPTCY PETITION PREPARER WILL DO
15 FOR YOU AND HOW MUCH IT WILL COST. Ask to
16 see the contract before you hire anyone.
17 "'The following information helps you understand
18 what must be done in a routine bankruptcy case to help
19 you evaluate how much service you need. Although bank-
20 ruptcy can be complex, many cases are routine.
21 "'Before filing a bankruptcy case, either you or your
22 attorney should analyze your eligibility for different forms
23 of debt relief made available by the Bankruptcy Code and
24 which form of relief is most likely to be beneficial for you.
25 Be sure you understand the relief you can obtain and its

1 limitations. To file a bankruptcy case, documents called
2 a Petition, Schedules and Statement of Financial Affairs,
3 as well as in some cases a Statement of Intention need
4 to be prepared correctly and filed with the bankruptcy
5 court. You will have to pay a filing fee to the bankruptcy
6 court. Once your case starts, you will have to attend the
7 required first meeting of creditors where you may be ques-
8 tioned by a court official called a 'trustee' and by credi-
9 tors.

10 " 'If you choose to file a chapter 7 case, you may
11 be asked by a creditor to reaffirm a debt. You may want
12 help deciding whether to do so and a creditor is not per-
13 mitted to coerce you into reaffirming your debts.

14 " 'If you choose to file a chapter 13 case in which
15 you repay your creditors what you can afford over 3 to
16 5 years, you may also want help with preparing your chap-
17 ter 13 plan and with the confirmation hearing on your
18 plan which will be before a bankruptcy judge.

19 " 'If you select another type of relief under the Bank-
20 ruptcy Code other than chapter 7 or chapter 13, you will
21 want to find out what needs to be done from someone fa-
22 miliar with that type of relief.

23 " 'Your bankruptcy case may also involve litigation.
24 You are generally permitted to represent yourself in litiga-

1 tion in bankruptcy court, but only attorneys, not bank-
2 ruptcy petition preparers, can give you legal advice.'.
3 ''(c) Except to the extent the debt relief agency pro-
4 vides the required information itself after reasonably dili-
5 gent inquiry of the assisted person or others so as to ob-
6 tain such information reasonably accurately for inclusion
7 on the petition, schedules or statement of financial affairs,
8 a debt relief agency providing bankruptcy assistance to an
9 assisted person, to the extent permitted by nonbankruptcy
10 law, shall provide each assisted person at the time re-
11 quired for the notice required under subsection (a)(1) rea-
12 sonably sufficient information (which shall be provided in
13 a clear and conspicuous writing) to the assisted person
14 on how to provide all the information the assisted person
15 is required to provide under this title pursuant to section
16 521, including—
17 ''(1) how to value assets at replacement value,
18 determine current monthly income, the amounts
19 specified in section 707(b)(2)) and, in a chapter 13
20 case, how to determine disposable income in accord-
21 ance with section 707(b)(2) and related calculations;
22 ''(2) how to complete the list of creditors, in-
23 cluding how to determine what amount is owed and
24 what address for the creditor should be shown; and

"(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506 of this title.

"(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by this Act, is amended by inserting after the item relating to section 526 the following:

"527. Disclosures.".

SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"§ 528. Requirements for debt relief agencies

"(a) A debt relief agency shall—

"(1) not later than 5 business days after the first date such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously—

"(A) the services such agency will provide to such assisted person; and

"(B) the fees or charges for such services, and the terms of payment;

"(2) provide the assisted person with a copy of the fully executed and completed contract;

"(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

"(4) clearly and conspicuously using the following statement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.' or a substantially similar statement.

"(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public includes—

"(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement; and

"(B) statements such as 'federally supervised repayment plan' or 'Federal debt restructuring help'

or other similar statements that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title.

''(2) An advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt shall—

''(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

''(B) include the following statement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code,' or a substantially similar statement.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by this Act, is amended by inserting after the item relating to section 527, the following:

''528. Debtor's bill of rights.''.

SEC. 230. GAO STUDY.

(a) STUDY.—Not later than 270 days after the date of enactment of this Act, the Comptroller General of the

United States shall conduct a study of the feasibility, effectiveness, and cost of requiring trustees appointed under title 11, United States Code, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of cases by individual debtors under such title, the names and social security numbers of such debtors for the purposes of allowing such Office to determine whether such debtors have outstanding obligations for child support (as determined on the basis of information in the Federal Case Registry or other national database).

(b) REPORT.—Not later than 300 days after the date of enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report containing the results of the study required by subsection (a).

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

SEC. 301. REINFORCEMENT OF THE FRESH START.

Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking ''by a court'' and inserting ''on a prisoner by any court'',

(2) by striking ''section 1915(b) or (f)'' and inserting ''subsection (b) or (f)(2) of section 1915'', and

(3) by inserting ''(or a similar non-Federal law)'' after ''title 28'' each place it appears.

SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.

Section 362(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(3) if a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

''(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the

debtor on the 30th day after the filing of the later case;

"(B) upon motion by a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

"(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

"(i) as to all creditors, if—

"(I) more than 1 previous case under any of chapter 7, 11, or 13 in which the individual was a debtor was pending within the preceding 1-year period;

"(II) a previous case under any of chapter 7, 11, or 13 in which the individual was a debtor was dismissed

within such 1-year period, after the debtor failed to—

"(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

"(bb) provide adequate protection as ordered by the court; or

"(cc) perform the terms of a plan confirmed by the court; or

"(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

"(aa) if a case under chapter 7, with a discharge; or

"(bb) if a case under chapter 11 or 13, with a confirmed plan which will be fully performed; and

"(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

"(4)(A)(i) if a single or joint case is filed by or against an individual debtor under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

"(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

"(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any

or all creditors (subject to such conditions or limitations as the court may impose), after notice and hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

''(C) a stay imposed under subparagraph (B) shall be effective on the date of entry of the order allowing the stay to go into effect; and

''(D) for purposes of subparagraph (B), a case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(i) as to all creditors if—

''(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

''(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be sub-

stantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to pay adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

''(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

''(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to action of such creditor.''.

SEC. 303. CURBING ABUSIVE FILINGS.

(a) IN GENERAL.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real estate, if the court finds that the filing of the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors that involved either—

''(A) transfer of all or part ownership of, or other interest in, the real property without the consent of the secured creditor or court approval; or

''(B) multiple bankruptcy filings affecting the real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under this subsection shall be binding in any other case under this title purporting to affect the real property filed not later than 2 years after the date of entry of such order by the court, except that a debtor in a subse-

quent case may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (19), as added by this Act, the following:

''(20) under subsection (a), of any act to enforce any lien against or security interest in real property following the entry of an order under section 362(d)(4) as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order, except that the debtor, in a subsequent case, may move the court for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

''(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

''(A) if the debtor is ineligible under section 109(g) to be a debtor in a bankruptcy case; or

"(B) if the bankruptcy case was filed in violation of a bankruptcy court order in a prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case;".

SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521(a) (as so designated by this Act)—

(A) in paragraph (4), by striking ", and" at the end and inserting a semicolon;

(B) in paragraph (5), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(6) in an individual case under chapter 7 of this title, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

"(A) enters into an agreement with the creditor pursuant to section 524(c) of this title

with respect to the claim secured by such property; or

"(B) redeems such property from the security interest pursuant to section 722 of this title.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) of this title is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee brought before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee."; and

(2) in section 722, by inserting "in full at the time of redemption" before the period at the end.

SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

Title 11, United States Code, is amended—

(1) in section 362—

(A) in subsection (c), by striking ''(e), and (f)'' inserting ''(e), (f), and (h)'';

(B) by redesignating subsection (h) as subsection (k); and

(C) by inserting after subsection (g) the following:

''(h)(1) In an individual case under chapter 7, 11, or 13, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2) of this title—

''(A) to file timely any statement of intention required under section 521(a)(2) of this title with respect to that property or to indicate in that statement that the debtor will either surrender the property or retain it and, if retaining it, either redeem the property pursuant to section 722 of this title, re-

affirm the debt it secures pursuant to section 524(c) of this title, or assume the unexpired lease pursuant to section 365(p) of this title if the trustee does not do so, as applicable; and

''(B) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for taking action, unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms.

''(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the proceeding on the motion.''; and

(2) in section 521—

(A) in subsection (a)(2), as so designated by this Act, by striking ''consumer'';

(B) in subsection (a)(2)(B), as so designated by this Act—

(i) by striking ''forty-five days after the filing of a notice of intent under this section'' and inserting ''30 days after the first date set for the meeting of creditors under section 341(a) of this title''; and

(ii) by striking ''forty-five day'' and inserting ''30-day'';

(C) in subsection (a)(2)(C), as so designated by this Act, by inserting '', except as provided in section 362(h) of this title'' before the semicolon; and

(D) by adding at the end the following:

''(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549 of this title, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed

to justify limiting such a provision in any other circumstance.''.

SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

(a) IN GENERAL.—Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

''(i) the plan provides that—

''(I) the holder of such claim retain the lien securing such claim until the earlier of—

''(aa) the payment of the underlying debt determined under nonbankruptcy law; or

''(bb) discharge under section 1328; and

''(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and''.

(b) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, is amended by adding at the end the following flush sentence:

"For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 5-year period preceding the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.".

(c) DEFINITIONS.—Section 101 of title 11, United States Code, as amended by this Act, is amended—

(1) by inserting after paragraph (13) the following:

"(13A) 'debtor's principal residence'—

"(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

"(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer;"; and

(2) by inserting after paragraph (27), the following:

"(27A) 'incidental property' means, with respect to a debtor's principal residence—

"(A) property commonly conveyed with a principal residence in the area where the real estate is located;

"(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

"(C) all replacements or additions;".

SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.

Section 522(b)(3)(A) of title 11, United States Code, as so designated by this Act, is amended—

(1) by striking "180 days" and inserting "730 days"; and

(2) by striking ", or for a longer portion of such 180-day period than in any other place" and inserting "or if the debtor's domicile has not been located at a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place".

SEC. 308. RESIDENCY REQUIREMENT FOR HOMESTEAD EXEMPTION.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)(3)(A), as so designated by this Act, by inserting ''subject to subsections (o) and (p),'' before ''any property''; and

(2) by adding at the end the following:

''(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

''(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(3) a burial plot for the debtor or a dependent of the debtor;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 7-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.''.

SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER 13 CASES.

(a) STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.—Section 348(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B)—

(A) by striking ''in the converted case, with allowed secured claims'' and inserting ''only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12''; and

(B) by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(C) with respect to cases converted from chapter 13—

''(i) the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount

of an allowed secured claim made for the purposes of the chapter 13 proceeding; and

''(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.''.

(b) GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

''(2)(A) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

''(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under

the lease will be assumed by the debtor and not by the estate.

''(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

''(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.''.

(c) ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.—

(1) CONFIRMATION OF PLAN.—Section 1325(a)(5)(B) of title 11, United States Code, is amended—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking ''or'' at the end and inserting ''and''; and

(C) by adding at the end the following:

"(iii) if—

"(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

"(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or".

(2) PAYMENTS.—Section 1326(a) of title 11, United States Code, is amended to read as follows:

"(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

"(A) proposed by the plan to the trustee;

"(B) scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evi-

dence of such payment, including the amount and date of payment; and

''(C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

''(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

''(3) Subject to section 363, the court may, upon notice and a hearing, modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.

"(4) Not later than 60 days after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.".

SEC. 310. LIMITATION ON LUXURY GOODS.

Section 523(a)(2)(C) of title 11, United States Code, is amended to read as follows:

"(C)(i) for purposes of subparagraph (A)—

"(I) consumer debts owed to a single creditor and aggregating more than $250 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

"(II) cash advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

"(ii) for purposes of this subparagraph—

"(I) the term 'extension of credit under an open end credit plan' means an extension of credit under an open end credit plan, within the meaning of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.);

"(II) the term 'open end credit plan' has the meaning given that term under section 103 of Consumer Credit Protection Act (15 U.S.C. 1602); and

"(III) the term 'luxury goods or services' does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.".

SEC. 311. AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (21), as added by this Act, the following:

"(22) under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement;

"(23) under subsection (a)(3), of the commencement of any eviction, unlawful detainer action,

or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated under the lease agreement or applicable State law;

''(24) under subsection (a)(3), of eviction actions based on endangerment to property or person or the use of illegal drugs;

''(25) under subsection (a) of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;''.

SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

(1) in section 727(a)(8), by striking ''six'' and inserting ''8''; and

(2) in section 1328, by inserting after subsection (e) the following:

''(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502 if the debtor has received a discharge in any case filed under this title within 5 years before the order for relief under this chapter.''.

SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

(a) DEFINITION.—Section 522(f) of title 11, United States Code, is amended by adding at the end the following:

''(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term 'household goods' means—

''(i) clothing;

''(ii) furniture;

''(iii) appliances;

''(iv) 1 radio;

''(v) 1 television;

''(vi) 1 VCR;

''(vii) linens;

''(viii) china;

''(ix) crockery;

''(x) kitchenware;

''(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor, but only 1 personal computer only if used primarily for the education or entertainment of such minor children;

''(xii) medical equipment and supplies;

''(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor; and

"(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor.

"(B) The term 'household goods' does not include—

"(i) works of art (unless by or of the debtor or the dependents of the debtor);

"(ii) electronic entertainment equipment (except 1 television, 1 radio, and 1 VCR);

"(iii) items acquired as antiques;

"(iv) jewelry (except wedding rings); and

"(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.".

(b) STUDY.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing its findings regarding utilization of the definition of household goods, as defined in section 522(f)(4) of title 11, United States Code, as added by this section, with respect to the avoidance of nonpossessory,

nonpurchase money security interests in household goods under section 522(f)(1)(B) of title 11, United States Code, and the impact that section 522(f)(4) of that title, as added by this section, has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to section 522(f)(4) of title 11, United States Code, consistent with the Director's findings.

SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE DEBTS.

(a) IN GENERAL.—Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

"(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);".

(b) DISCHARGE UNDER CHAPTER 13.—Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

"(1) provided for under section 1322(b)(5);

"(2) of the kind specified in paragraph (2), (3), (4), (5), (8), or (9) of section 523(a);

"(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

"(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.".

SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7 AND 13 CASES.

(a) NOTICE.—Section 342 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (c)—

(A) by inserting "(1)" after "(c)";

(B) by striking ", but the failure of such notice to contain such information shall not invalidate the legal effect of such notice"; and

(C) by adding at the end the following:

"(2) If, within the 90 days prior to the date of the filing of a petition in a voluntary case, the creditor supplied the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which the creditor wishes to receive correspondence, then the debtor shall send any notice required under this title to the address provided by the creditor and such notice shall include the account number. In the event the creditor would be in violation of applicable nonbank-

ruptcy law by sending any such communication within such 90-day period and if the creditor supplied the debtor in the last 2 communications with the current account number of the debtor and the address at which the creditor wishes to receive correspondence, then the debtor shall send any notice required under this title to the address provided by the creditor and such notice shall include the account number.''; and

(2) by adding at the end the following:

''(e) At any time, a creditor, in a case of an individual debtor under chapter 7 or 13, may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. Five days after receipt of such notice, if the court or the debtor is required to give the creditor notice, such notice shall be given at that address.

''(f) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (e) with respect to a particular case.

''(g)(1) Notice given to a creditor other than as provided in this section shall not be effective notice until that

notice has been brought to the attention of the creditor. If the creditor designates a person or department to be responsible for receiving notices concerning bankruptcy cases and establishes reasonable procedures so that bankruptcy notices received by the creditor are to be delivered to such department or person, notice shall not be considered to have been brought to the attention of the creditor until received by such person or department.

''(2) No sanction under section 362(k) or any other sanction that a court may impose on account of violations of the stay under section 362(a) or failure to comply with section 542 or 543 may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (a), as so designated by this Act, by striking paragraph (1) and inserting the following:

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

"(i) a schedule of assets and liabilities;

"(ii) a schedule of current income and current expenditures;

"(iii) a statement of the debtor's financial affairs and, if applicable, a certificate—

"(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition under section 110(b)(1) indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b); or

"(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition, of the debtor that such notice was obtained and read by the debtor;

"(iv) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days before the filing of the petition;

"(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

"(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;"; and

(2) by adding at the end the following:

"(e)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case, and the court shall make those documents available to the creditor who requests those documents.

"(2)(A) The debtor shall provide either a tax return or transcript at the election of the debtor, for the latest taxable period prior to filing for which a tax return has been or should have been filed, to the trustee, not later than 7 days before the date first set for the first meeting of creditors, or the case shall be dismissed, unless the debtor demonstrates that the failure to file a return as required is due to circumstances beyond the control of the debtor.

"(B) If a creditor has requested a tax return or transcript referred to in subparagraph (A), the debtor shall

provide such tax return or transcript to the requesting creditor at the time the debtor provides the tax return or transcript to the trustee, or the case shall be dismissed, unless the debtor demonstrates that the debtor is unable to provide such information due to circumstances beyond the control of the debtor.

''(3)(A) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case.

''(B) The court shall make such plan available to the creditor who request such plan—

''(i) at a reasonable cost; and

''(ii) not later than 5 days after such request.

''(f) An individual debtor in a case under chapter 7, 11, or 13 shall file with the court at the request of any party in interest—

''(1) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

''(2) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, that were not filed with the taxing authority when the schedules

under subsection (a)(1) were filed with respect to the period that is 3 years before the order of relief;

"(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

"(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's income and expenditures in the preceding tax year and monthly income, that shows how the amounts are calculated—

"(A) beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and

"(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.

"(g)(1) A statement referred to in subsection (f)(4) shall disclose—

"(A) the amount and sources of income of the debtor;

"(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

"(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

"(2) The tax returns, amendments, and statement of income and expenditures described in subsection (e)(2)(A) and subsection (f) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).

"(h)(1) Not later than 180 days after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

"(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

"(3) Not later than 1 year and 180 days after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, the Director of the Administrative Office of the United States Courts shall prepare and submit to Congress a report that—

"(A) assesses the effectiveness of the procedures under paragraph (1); and

"(B) if appropriate, includes proposed legislation to—

"(i) further protect the confidentiality of tax information; and

"(ii) provide penalties for the improper use by any person of the tax information required to be provided under this section.

"(i) If requested by the United States trustee or a trustee serving in the case, the debtor shall provide—

"(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; and

"(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.".

SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(j)(1) Notwithstanding section 707(a), and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after

the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

''(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

''(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.''.

SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, is amended—

(1) by striking ''After'' and inserting the following:

''(a) Except as provided in subsection (b) and after''; and

(2) by adding at the end the following:

''(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45

days after the date of the meeting of creditors under section 341(a).''.

SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

''(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 5 years.

''(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.'';

(2) in section 1325(b)(1)(B), by striking ''three-year period'' and inserting ''applicable commitment period''; and

(3) in section 1325(b), as amended by this Act, by adding at the end the following:

''(4) For purposes of this subsection, the 'applicable commitment period'—

''(A) subject to subparagraph (B), shall be—

''(i) 3 years; or

''(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

''(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(III) in the case of a debtor in a household exceeding 4 individuals, the

highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4; and

"(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period."; and

(4) in section 1329(c), by striking "three years" and inserting "the applicable commitment period under section 1325(b)(1)(B)".

SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such documents is—

(1) well grounded in fact; and

(2) warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

''(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

''(B) that 60-day period is extended—

''(i) by agreement of all parties in interest; or

''(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.''.

SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—

(1) IN GENERAL.—Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

"§ 1115. Property of the estate

''(a) In a case concerning an individual debtor, property of the estate includes, in addition to the property specified in section 541—

''(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

''(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.''.

''(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code,

is amended by adding at the end of the matter relating to subchapter I the following:

"1115. Property of the estate.".

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

(1) in paragraph (6), by striking "and" at the end;

(2) in paragraph (7), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(8) in a case concerning an individual, provide for the payment to creditors through the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.".

(c) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

"(15) In a case concerning an individual in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

"(A) the value of the property to be distributed under the plan on account of such

claim is, as of the effective date of the plan, not less than the amount of such claim; or

"(B) the value of the property to be distributed under the plan is not less than the debtor's projected disposable income (as that term is defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the term of the plan, whichever is longer.".

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11, United States Code, is amended by inserting before the period at the end the following: ", except that in a case concerning an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14)".

(d) EFFECT OF CONFIRMATION—Section 1141(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "The confirmation of a plan does not discharge an individual debtor" and inserting "A discharge under this chapter does not discharge a debtor"; and

(2) by adding at the end the following:

"(5) In a case concerning an individual—

"(A) except as otherwise ordered for cause shown, the discharge is not effective until completion of all payments under the plan; and

"(B) at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

"(i) for each allowed unsecured claim, the value, as of the effective date of the plan, of property actually distributed under the plan on account of that claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

"(ii) modification of the plan under 1127 of this title is not practicable.".

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

"(e) In a case concerning an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon

request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

"(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

"(2) extend or reduce the time period for such payments; or

"(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

"(f)(1) Sections 1121 through 1128 of this title and the requirements of section 1129 of this title apply to any modification under subsection (a).

"(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125, as the court may direct, notice and a hearing, and such modification is approved.".

SEC. 322. LIMITATION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548 of this title, as a result of electing under subsection (b)(3)(A) to exempt

property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 2-year period preceding the filing of the petition which exceeds in the aggregate $100,000 in value in—

"(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

"(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

"(C) a burial plot for the debtor or a dependent of the debtor.

"(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.

"(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of the 2-year period) into the debtor's current principal residence, where the debtor's previous and current residences are located in the same State.".

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''522(d),'' and inserting ''522(d), 522(n), 522(p),''; and

(2) in paragraph (3), by striking ''522(d),'' and inserting ''522(d), 522(n), 522(p),''.

SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.

(a) IN GENERAL.—Section 541(b) of title 11, United States Code, is amended by inserting after paragraph (6), as added by this Act, the following:

''(7) any amount—

''(A) withheld by an employer from the wages of employees for payment as contributions to—

''(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, except that

amount shall not constitute disposable income, as defined in section 1325(b)(2) of this title; or

''(ii) a health insurance plan regulated by State law whether or not subject to such title; or

''(B) received by the employer from employees for payment as contributions to—

''(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, except that amount shall not constitute disposable income, as defined in section 1325(b)(2) of this title; or

''(ii) a health insurance plan regulated by State law whether or not subject to such title;''.

(b) APPLICATION OF AMENDMENT.—The amendments made by this section shall not apply to cases commenced under title 11, United States Code, before the expiration of the 180-day period beginning on the date of enactment of this Act.

SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLVING BANKRUPTCY PROFESSIONALS.

(a) IN GENERAL.—Section 1334 of title 28, United States Code, is amended—

(1) in subsection (b), by striking ''Notwithstanding'' and inserting ''Except as provided in subsection (e)(2), and notwithstanding''; and

(2) by striking subsection (e) and inserting the following:

''(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

''(1) of all the property, wherever located, of the debtor as of the date of commencement of such case, and of property of the estate; and

''(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.''.

(b) APPLICABILITY.—This section shall only apply to cases filed after the date of enactment of this Act.

SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.

(a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11, UNITED STATES CODE.—Section 1930(a) of title 28, United States Code, is amended by striking paragraph (1) and inserting the following:

"(1) For a case commenced—

"(A) under chapter 7 of title 11, $160; or

"(B) under chapter 13 of title 11, $150.".

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 589a(b) of title 28, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

"(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

"(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;";

(2) in paragraph (2), by striking "one-half" and inserting "three-fourths"; and

(3) in paragraph (4), by striking "one-half" and inserting "100 percent".

(c) COLLECTION AND DEPOSIT OF MISCELLANEOUS BANKRUPTCY FEES.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking ''pursuant to 28 U.S.C. section 1930(b) and ~~30.76~~ *33.87* per centum of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) and 25 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(3) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931'' and inserting ''under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title''.

SEC. 326. SHARING OF COMPENSATION.

Section 504 of title 11, United States Code, is amended by adding at the end the following:

''(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.''.

SEC. 327. FAIR VALUATION OF COLLATERAL.

Section 506(a) of title 11, United States Code, is amended by—

(1) inserting ''(1)'' after ''(a)''; and

(2) by adding at the end the following:

''(2) In the case of an individual debtor under chapters 7 and 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of filing the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purpose, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.''.

SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking the semicolon at the end and inserting the following: ''other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty

provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of paragraph (b)(l);''; and

(B) in paragraph (2)(D), by striking ''penalty rate or provision'' and inserting ''penalty rate or penalty provision'';

(2) in subsection (c)—

(A) in paragraph (2), by inserting ''or'' at the end;

(B) in paragraph (3), by striking ''; or'' at the end and inserting a period; and

(C) by striking paragraph (4);

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9); and

(B) by redesignating paragraph (10) as paragraph (5); and

(4) in subsection (f)(1) by striking "; except that" and all that follows through the end of the paragraph and inserting a period.

(b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by inserting "or of a kind that section 365(b)(2) of this title expressly does not require to be cured" before the semicolon at the end;

(2) in subparagraph (C), by striking "and" at the end;

(3) by redesignating subparagraph (D) as subparagraph (E); and

(4) by inserting after subparagraph (C) the following:

"(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A), com-

pensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and''.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.

(a) DEFINITION.—Section 101 of title 11, United States Code, as amended by this Act, is amended by inserting after paragraph (48) the following:

''(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (25), as added by this Act, the following:

''(26) under subsection (a), of—

"(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

"(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or

"(C) any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;".

SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following:

"(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.".

SEC. 403. PROTECTION OF REFINANCE OF SECURITY INTEREST.

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are each amended by striking ''10'' each place it appears and inserting ''30''.

SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

(a) IN GENERAL.—Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

''(4)(A) Subject to subparagraph (B), in any case under any chapter of this title, an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

''(i) the date that is 120 days after the date of the order for relief; or

''(ii) the date of the entry of an order confirming a plan.

''(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days upon motion of the trustee or lessor for cause.

"(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.".

(b) EXCEPTION.—Section 365(f)(1) of title 11, United States Code, is amended by striking "subsection" the first place it appears and inserting "subsections (b) and".

SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

(a) APPOINTMENT.—Section 1102(a) of title 11, United States Code, is amended by adding at the end the following:

"(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders. The court may order the United States trustee to increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act (15 U.S.C. 632(a)(1))), if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount

of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.''.

(b) INFORMATION.—Section 1102(b) of title 11, United States Code, is amended by adding at the end the following:

''(3) A committee appointed under subsection (a) shall—

''(A) provide access to information for creditors who—

''(i) hold claims of the kind represented by that committee; and

''(ii) are not appointed to the committee;

''(B) solicit and receive comments from the creditors described in subparagraph (A); and

''(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).''.

SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended—

(1) by redesignating the second subsection designated as subsection (g) (as added by section 222(a) of Public Law 103–394) as subsection (i); and

(2) by adding at the end the following:

''(j)(1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

''(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any applicable State statute that is similar to section 7–209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, or any successor thereto.''.

SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.

Section 330(a) of title 11, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking ''(A) In'' and inserting ''In''; and

(B) by inserting ''to an examiner, trustee under chapter 11, or professional person'' after ''awarded''; and

(2) by adding at the end the following:

''(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court

shall treat such compensation as a commission, based on section 326 of this title.''.

SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.''.

SEC. 409. PREFERENCES.

Section 547(c) of title 11, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

''(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

''(B) made according to ordinary business terms;'';

(2) in paragraph (8), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,000.".

SEC. 410. VENUE OF CERTAIN PROCEEDINGS.

Section 1409(b) of title 28, United States Code, is amended by inserting ", or a nonconsumer debt against a noninsider of less than $10,000," after "$5,000".

SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking "On" and inserting "(1) Subject to paragraph (2), on"; and

(2) by adding at the end the following:

"(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

"(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.".

SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking ''dwelling'' the first place it appears;

(2) by striking ''ownership or'' and inserting ''ownership,'';

(3) by striking ''housing'' the first place it appears; and

(4) by striking ''but only'' and all that follows through ''such period'' and inserting ''or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,''.

SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting at the end the following: ''Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity

or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.''.

SEC. 414. DEFINITION OF DISINTERESTED PERSON.

Section 101(14) of title 11, United States Code, is amended to read as follows:

''(14) 'disinterested person' means a person that—

''(A) is not a creditor, an equity security holder, or an insider;

''(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

''(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;''.

SEC. 415. FACTORS FOR COMPENSATION OF PROFESSIONAL PERSONS.

Section 330(a)(3) of title 11, United States Code, as amended by this Act, is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

''(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and''.

SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election.

''(B) Upon the filing of a report under subparagraph (A)—

"(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

"(ii) the service of any trustee appointed under subsection (d) shall terminate.

"(C) In the case of any dispute arising out of an election described in subparagraph (A), the court shall resolve the dispute.".

SEC. 417. UTILITY SERVICE.

Section 366 of title 11, United States Code, is amended—

(1) in subsection (a), by striking "subsection (b)" and inserting "subsections (b) and (c)"; and

(2) by adding at the end the following:

"(c)(1)(A) For purposes of this subsection, the term 'assurance of payment' means—

"(i) a cash deposit;

"(ii) a letter of credit;

"(iii) a certificate of deposit;

"(iv) a surety bond;

"(v) a prepayment of utility consumption; or

"(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

1 ''(B) For purposes of this subsection an administra-
2 tive expense priority shall not constitute an assurance of
3 payment.

4 ''(2) Subject to paragraphs (3) through (5), with re-
5 spect to a case filed under chapter 11, a utility referred
6 to in subsection (a) may alter, refuse, or discontinue util-
7 ity service, if during the 30-day period beginning on the
8 date of filing of the petition, the utility does not receive
9 from the debtor or the trustee adequate assurance of pay-
10 ment for utility service that is satisfactory to the utility.

11 ''(3)(A) On request of a party in interest and after
12 notice and a hearing, the court may order modification
13 of the amount of an assurance of payment under para-
14 graph (2).

15 ''(B) In making a determination under this para-
16 graph whether an assurance of payment is adequate, the
17 court may not consider—

18 ''(i) the absence of security before the date of
19 filing of the petition;

20 ''(ii) the payment by the debtor of charges for
21 utility service in a timely manner before the date of
22 filing of the petition; or

23 ''(iii) the availability of an administrative ex-
24 pense priority.

"(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of filing of the petition without notice or order of the court.".

SEC. 418. BANKRUPTCY FEES.

Section 1930 of title 28, United States Code, is amended—

(1) in subsection (a), by striking "Notwithstanding section 1915 of this title, the" and inserting "The"; and

(2) by adding at the end the following:

"(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such debtor has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term "filing fee" means the filing required by subsection (a), or any other fee prescribed by the Judicial Conference under sub-

sections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

''(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

''(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.''.

SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.

(a) IN GENERAL.—

(1) DISCLOSURE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing debtors under chapter 11 of title 11, United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) INFORMATION.—The information referred to in paragraph (1) is the value, operations, and

profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) PURPOSE.—The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

Subtitle B—Small Business Bankruptcy Provisions

SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

Section 1125 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by inserting before the semicolon ''and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information''; and

(2) by striking subsection (f), and inserting the following:

''(f) Notwithstanding subsection (b), in a small business case—

"(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

"(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28; and

"(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

"(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than 20 days before the date of the hearing on confirmation of the plan; and

"(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.".

SEC. 432. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, as amended by this Act, is amended by striking paragraph (51C) and inserting the following:

1 ''(51C) 'small business case' means a case filed
2 under chapter 11 of this title in which the debtor is
3 a small business debtor;
4 ''(51D) 'small business debtor'—
5 ''(A) subject to subparagraph (B), means a
6 person engaged in commercial or business ac-
7 tivities (including any affiliate of such person
8 that is also a debtor under this title and exclud-
9 ing a person whose primary activity is the busi-
10 ness of owning or operating real property or ac-
11 tivities incidental thereto) that has aggregate
12 noncontingent, liquidated secured and unse-
13 cured debts as of the date of the petition or the
14 order for relief in an amount not more than
15 $3,000,000 (excluding debts owed to 1 or more
16 affiliates or insiders) for a case in which the
17 United States trustee has not appointed under
18 section 1102(a)(1) a committee of unsecured
19 creditors or where the court has determined
20 that the committee of unsecured creditors is not
21 sufficiently active and representative to provide
22 effective oversight of the debtor; and
23 ''(B) does not include any member of a
24 group of affiliated debtors that has aggregate
25 noncontingent liquidated secured and unsecured

debts in an amount greater than $3,000,000 (excluding debt owed to 1 or more affiliates or insiders);''.

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting ''debtor'' after ''small business''.

SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

Within a reasonable period of time after the date of enactment of this Act, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—

(1) IN GENERAL.—Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following:

"§ 308. Debtor reporting requirements

''(a) For purposes of this section, the term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

''(b) A small business debtor shall file periodic financial and other reports containing information including—

''(1) the debtor's profitability;

''(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

''(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

''(4)(A) whether the debtor is—

''(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

''(ii) timely filing tax returns and other required government filings and paying taxes and other administrative claims when due;

"(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

"(C) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

"308. Debtor reporting requirements.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Advisory Committee on Bankruptcy Rules of the Judicial Con-

ference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

(2) the debtor's cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative claims when due.

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among—

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) the small business debtor's interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's financial condition and plan the small business debtor's future.

SEC. 436. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Subchapter I of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"§ 1116. Duties of trustee or debtor in possession in small business cases

''In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

''(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—

''(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

''(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

''(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court waives that requirement after notice and

hearing, upon a finding of extraordinary and compelling circumstances;

''(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

''(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

''(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

''(6)(A) timely file tax returns and other required government filings; and

''(B) subject to section 363(c)(2), timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

''(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, is amended by adding at the end of the matter relating to subchapter I the following:

"1116. Duties of trustee or debtor in possession in small business cases.".

SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121 of title 11, United States Code, is amended by striking subsection (e) and inserting the following:

"(e) In a small business case—

"(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

"(A) extended as provided by this subsection, after notice and hearing; or

"(B) the court, for cause, orders otherwise;

"(2) the plan, and any necessary disclosure statement, shall be filed not later than 300 days after the date of the order for relief; and

"(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e), within which the plan shall be confirmed, may be extended only if—

"(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of

the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

''(B) a new deadline is imposed at the time the extension is granted; and

''(C) the order extending time is signed before the existing deadline has expired.''.

SEC. 438. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a small business case, the plan shall be confirmed not later than 175 days after the date of the order for relief, unless such 175-day period is extended as provided in section 1121(e)(3).''.

SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.

Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G), by striking ''and'' at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

"(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and";

(2) in paragraph (5), by striking "and" at the end;

(3) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(7) in each of such small business cases—

"(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—

"(i) begin to investigate the debtor's viability;

"(ii) inquire about the debtor's business plan;

"(iii) explain the debtor's obligations to file monthly operating reports and other required reports;

"(iv) attempt to develop an agreed scheduling order; and

"(v) inform the debtor of other obligations;

"(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns; and

"(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

"(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.".

SEC. 440. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ", may"; and

(2) by striking paragraph (1) and inserting the following:

"(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and".

SEC. 441. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by this Act is amended—

(1) in subsection (k), as redesignated by this Act—

(A) by striking "An" and inserting "(1) Except as provided in paragraph (2), an"; and

(B) by adding at the end the following:

"(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages."; and

(2) by adding at the end the following:

"(l)(1) Except as provided in paragraph (2) of this subsection, the provisions of subsection (a) do not apply in a case in which the debtor—

"(A) is a debtor in a small business case pending at the time the petition is filed;

"(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date

of the order for relief entered with respect to the petition;

''(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(D) is an entity that has succeeded to substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C).

''(2) This subsection does not apply—

''(A) to an involuntary case involving no collusion by the debtor with creditors; or

''(B) to the filing of a petition if—

''(i) the debtor proves by a preponderance of the evidence that the filing of that petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

''(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.''.

SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

''(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, if the movant establishes cause.

''(2) The relief provided in paragraph (1) shall not be granted if the debtor or another party in interest objects and establishes by a preponderance of the evidence that—

''(A) a plan with a reasonable possibility of being confirmed will be filed within a reasonable period of time; and

''(B) the grounds include an act or omission of the debtor—

''(i) for which there exists a reasonable justification for the act or omission; and

''(ii) that will be cured within a reasonable period of time fixed by the court.

1 ''(3) The court shall commence the hearing on any
2 motion under this subsection not later than 30 days after
3 filing of the motion, and shall decide the motion not later
4 than 15 days after commencement of the hearing, unless
5 the movant expressly consents to a continuance for a spe-
6 cific period of time or compelling circumstances prevent
7 the court from meeting the time limits established by this
8 paragraph.

9 ''(4) For purposes of this subsection, the term 'cause'
10 includes—

11 ''(A) substantial or continuing loss to or dimi-
12 nution of the estate;

13 ''(B) gross mismanagement of the estate;

14 ''(C) failure to maintain appropriate insurance
15 that poses a risk to the estate or to the public;

16 ''(D) unauthorized use of cash collateral harm-
17 ful to 1 or more creditors;

18 ''(E) failure to comply with an order of the
19 court;

20 ''(F) repeated failure timely to satisfy any filing
21 or reporting requirement established by this title or
22 by any rule applicable to a case under this chapter;

23 ''(G) failure to attend the meeting of creditors
24 convened under section 341(a) or an examination or-

dered under rule 2004 of the Federal Rules of Bankruptcy Procedure;

''(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee or the bankruptcy administrator;

''(I) failure timely to pay taxes due after the date of the order for relief or to file tax returns due after the order for relief;

''(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

''(K) failure to pay any fees or charges required under chapter 123 of title 28;

''(L) revocation of an order of confirmation under section 1144;

''(M) inability to effectuate substantial consummation of a confirmed plan;

''(N) material default by the debtor with respect to a confirmed plan;

''(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

''(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.

"(5) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.".

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 1104(a) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking "or" at the end;

(2) in paragraph (2), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.".

SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED STATES CODE, WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of enactment of this Act, the Administrator of the Small Business Ad-

ministration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11, United States Code, and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.

SEC. 444. PAYMENT OF INTEREST.

Section 362(d)(3) of title 11, United States Code, is amended—

(1) by inserting ''or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later'' after ''90-day period)''; and

(2) by striking subparagraph (B) and inserting the following:

"(B) the debtor has commenced monthly payments that—

"(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before or after the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

"(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or".

SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or penalty provisions, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);".

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting "notwithstanding section 301(b)" before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "A voluntary"; and

(2) by striking the last sentence and inserting the following:

''(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.''.

SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting ''555, 556,'' after ''553,''; and

(2) by inserting ''559, 560, 561, 562'' after ''557,''.

TITLE VI—BANKRUPTCY DATA

SEC. 601. IMPROVED BANKRUPTCY STATISTICS.

(a) IN GENERAL.—Chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''§ 159. Bankruptcy statistics

''(a) The clerk of each district shall collect statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be on a standardized form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Director').

"(b) The Director shall—

"(1) compile the statistics referred to in subsection (a);

"(2) make the statistics available to the public; and

"(3) not later than October 31, 2002, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

"(c) The compilation required under subsection (b) shall—

"(1) be itemized, by chapter, with respect to title 11;

"(2) be presented in the aggregate and for each district; and

"(3) include information concerning—

"(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

"(B) the current monthly income, average income, and average expenses of those debtors

as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

''(C) the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

''(D) the average period of time between the filing of the petition and the closing of the case;

''(E) for the reporting period—

''(i) the number of cases in which a reaffirmation was filed; and

''(ii)(I) the total number of reaffirmations filed;

''(II) of those cases in which a reaffirmation was filed, the number of cases in which the debtor was not represented by an attorney; and

''(III) of those cases in which a reaffirmation was filed, the number of cases in

which the reaffirmation was approved by the court;

''(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

''(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

''(II) the number of final orders determining the value of property securing a claim issued;

''(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

''(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;

"(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

"(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's counsel or damages awarded under such Rule.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 6 of title 28, United States Code, is amended by adding at the end the following:

"159. Bankruptcy statistics.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Chapter 39 of title 28, United States Code, is amended by adding at the end the following:

"§ 589b. Bankruptcy data

"(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

"(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

"(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

"(b) REPORTS.—Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

"(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

"(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system;

"(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports; and

"(3) appropriate privacy concerns and safeguards.

"(d) FINAL REPORTS.—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

"(1) information about the length of time the case was pending;

"(2) assets abandoned;

"(3) assets exempted;

"(4) receipts and disbursements of the estate;

"(5) expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 13 of title 11;

"(6) claims asserted;

"(7) claims allowed; and

"(8) distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of

the plan, each modification thereto, and defaults by the debtor in performance under the plan.

"(e) PERIODIC REPORTS.—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

"(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

"(2) length of time the case has been pending;

"(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

"(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

"(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

"(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (sepa-

rately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

"(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 39 of title 28, United States Code, is amended by adding at the end the following:

"589b. Bankruptcy data.".

SEC. 603. AUDIT PROCEDURES.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROCEDURES.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title. Such audits

shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(2) PROCEDURES.—Those procedures required by paragraph (1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform those audits;

(B) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;

(C) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed if those variances occur by reason of higher income or higher expenses than the statistical norm of the district in which the schedules were filed; and

(D) establish procedures for providing, not less frequently than annually, public informa-

tion concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

(b) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and inserting the following:

''(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001; and''; and

(2) by adding at the end the following:

''(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001.

''(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person per-

forming the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

''(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

''(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

''(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11.''.

(c) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as so designated by this Act, is amended in each of paragraphs (3) and (4) by inserting ''or an auditor appointed under section 586(f) of title 28'' after ''serving in the case''.

(d) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(4) the debtor has failed to explain satisfactorily—

"(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

"(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public, subject to such

appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

TITLE VII—BANKRUPTCY TAX PROVISIONS

SEC. 701. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting ''(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)'' after ''under this title'';

(2) in subsection (b)(2), by inserting ''(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred

under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)'' after ''507(a)(1)''; and

(3) by adding at the end the following:

''(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

''(1) exhaust the unencumbered assets of the estate; and

''(2) in a manner consistent with section 506(c), recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

''(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subject to the requirements of subsection (e), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:

''(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(4).

''(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).''.

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.''.

SEC. 702. TREATMENT OF FUEL TAX CLAIMS.

Section 501 of title 11, United States Code, is amended by adding at the end the following:

''(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement and, if so filed, shall be allowed as a single claim.''.

SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended—

(1) in the first sentence, by inserting ''at the address and in the manner designated in paragraph (1)'' after ''determination of such tax'';

(2) by striking ''(1) upon payment'' and inserting ''(A) upon payment'';

(3) by striking ''(A) such governmental unit'' and inserting ''(i) such governmental unit'';

(4) by striking ''(B) such governmental unit'' and inserting ''(ii) such governmental unit'';

(5) by striking ''(2) upon payment'' and inserting ''(B) upon payment'';

(6) by striking ''(3) upon payment'' and inserting ''(C) upon payment'';

(7) by striking ''(b)'' and inserting ''(2)''; and

(8) by inserting before paragraph (2), as so designated, the following:

''(b)(1)(A) The clerk of each district shall maintain a listing under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may—

''(i) designate an address for service of requests under this subsection; and

''(ii) describe where further information concerning additional requirements for filing such requests may be found.

"(B) If a governmental unit referred to in subparagraph (A) does not designate an address and provide that address to the clerk under that subparagraph, any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of that governmental unit.".

SEC. 704. RATE OF INTEREST ON TAX CLAIMS.

(a) IN GENERAL.—Subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

"§ 511. Rate of interest on tax claims

"(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

"(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 510 the following:

"511. Rate of interest on tax claims.".

SEC. 705. PRIORITY OF TAX CLAIMS.

Section 507(a)(8) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by inserting ''for a taxable year ending on or before the date of filing of the petition'' after ''gross receipts'';

(B) in clause (i), by striking ''for a taxable year ending on or before the date of filing of the petition''; and

(C) by striking clause (ii) and inserting the following:

''(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

''(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

''(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period; plus 90 days.''; and

(2) by adding at the end the following:

''An otherwise applicable time period specified in this paragraph shall be suspended for (i) any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus (ii) any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.''.

SEC. 706. PRIORITY PROPERTY TAXES INCURRED.

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking ''assessed'' and inserting ''incurred''.

SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 13.

Section 1328(a)(2) of title 11, United States Code, as amended by section 314 of this Act, is amended by striking ''paragraph'' and inserting ''section 507(a)(8)(C) or in paragraph (1)(B), (1)(C),''.

SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 11.

Section 1141(d) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt described in section 523(a)(2) or for a tax or customs duty with respect to which the debtor—

''(A) made a fraudulent return; or

''(B) willfully attempted in any manner to evade or defeat that tax or duty.''.

SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO PREPETITION TAXES.

Section 362(a)(8) of title 11, United States Code, is amended by striking ''the debtor'' and inserting ''a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning an individual debtor's tax liability for a taxable period ending before the order for relief under this title''.

SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by striking ''deferred cash payments,'' and all that follows through the end of the subparagraph, and inserting ''regular installment payments in cash—

''(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

''(ii) over a period ending not later than 5 years after the date of the entry of the order for relief under section 301, 302, or 303; and

''(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for in the plan (other than cash payments made to a class of creditors under section 1122(b)); and''; and

(3) by adding at the end the following:

''(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive

on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).''.

SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 545(2) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: '', except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law''.

SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Any''; and

(2) by adding at the end the following:

''(b) A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, unless—

''(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable period of time after the lien attaches by the trustee of a bankruptcy estate under section 554 of title 11; or

"(2) payment of the tax is excused under a specific provision of title 11.

"(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11, if—

"(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

"(2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.".

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B)(i) of title 11, United States Code, is amended by inserting "whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both," before "except".

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by adding ''and'' at the end; and

(3) by adding at the end the following:

''(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;''.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting ''or State statute'' after ''agreement''; and

(2) in subsection (c), by inserting '', including the payment of all ad valorem property taxes with respect to the property'' before the period at the end.

SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.

Section 726(a)(1) of title 11, United States Code, is amended by striking ''before the date on which the trustee commences distribution under this section;'' and inserting the following: ''on or before the earlier of—

"(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

"(B) the date on which the trustee commences final distribution under this section;".

SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (1)(B)—

(A) in the matter preceding clause (i), by inserting "or equivalent report or notice," after "a return,";

(B) in clause (i), by inserting "or given" after "filed"; and

(C) in clause (ii)—

(i) by inserting "or given" after "filed"; and

(ii) by inserting ", report, or notice" after "return"; and

(2) by adding at the end the following:

"For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section

6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.''.

SEC. 715. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b)(2) of title 11, United States Code, as amended by this Act, is amended by inserting ''the estate,'' after ''misrepresentation,''.

SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.''.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—

(1) IN GENERAL.—Subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

"§ 1308. Filing of prepetition tax returns

''(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

''(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

''(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

''(B) for any return that is not past due as of the date of the filing of the petition, the later of—

''(i) the date that is 120 days after the date of that meeting; or

''(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is enti-

tled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

''(2) Upon notice and hearing, and order entered before the tolling of any applicable filing period determined under this subsection, if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under this subsection for—

''(A) a period of not more than 30 days for returns described in paragraph (1); and

''(B) a period not to extend after the applicable extended due date for a return described in paragraph (2).

''(c) For purposes of this section, the term 'return' includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.''.

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

''1308. Filing of prepetition tax returns.''.

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

''(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.''.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by inserting before the period at the end the following '', and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required''.

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States should, as soon as prac-

ticable after the date of enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, an objection to the confirmation of a plan filed by a governmental unit on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed before such confirmation; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax with respect to which a return is required to be filed under section 1308 of title 11, United States Code, shall be filed until such return has been filed as required.

SEC. 717. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a)(1) of title 11, United States Code, is amended—

(1) by inserting "including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and

a hypothetical investor typical of the holders of claims or interests in the case,'' after ''records''; and

(2) by striking ''a hypothetical reasonable investor typical of holders of claims or interests'' and inserting ''such a hypothetical investor''.

SEC. 718. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (26), as added by this Act, the following:

''(27) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the order for relief against an income tax liability for a taxable period that also ended before the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, upon motion of the trustee and after notice and hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of that authority in the setoff under section 506(a);''.

SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.

(a) IN GENERAL.—Section 346 of title 11, United States Code, is amended to read as follows:

"§ 346. Special provisions related to the treatment of state and local taxes

''(a) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of such estate shall be taxed to or claimed by the estate, a separate taxable estate is also created for purposes of any State and local law imposing a tax on or measured by income and such income, gain, loss, deductions, and credits shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence shall not apply if the case is dismissed. The trustee shall make tax returns of income required under any such State or local law.

''(b) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax

on or measured by income and may not be taxed to or claimed by the estate. The trustee shall make such tax returns of income of corporations and of partnerships as are required under any State or local law, but with respect to partnerships, shall make said returns only to the extent such returns are also required to be made under such Code. The estate shall be liable for any tax imposed on such corporation or partnership, but not for any tax imposed on partners or members.

''(c) With respect to a partnership or any entity treated as a partnership under a State or local law imposing a tax on or measured by income that is a debtor in a case under this title, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of any income, gain, loss, deduction, or credit of a partner or member that is distributed, or considered distributed, from such partnership, after the commencement of the case, is gain, loss, income, deduction, or credit, as the case may be, of the partner or member, and if such partner or member is a debtor in a case under this title, shall be subject to tax in accordance with subsection (a) or (b).

''(d) For purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor in a case under this title shall terminate only

if and to the extent that the taxable period of such debtor terminates under the Internal Revenue Code of 1986.

''(e) The estate in any case described in subsection (a) shall use the same accounting method as the debtor used immediately before the commencement of the case, if such method of accounting complies with applicable non-bankruptcy tax law.

''(f) For purposes of any State or local law imposing a tax on or measured by income, a transfer of property from the debtor to the estate or from the estate to the debtor shall not be treated as a disposition for purposes of any provision assigning tax consequences to a disposition, except to the extent that such transfer is treated as a disposition under the Internal Revenue Code of 1986.

''(g) Whenever a tax is imposed pursuant to a State or local law imposing a tax on or measured by income pursuant to subsection (a) or (b), such tax shall be imposed at rates generally applicable to the same types of entities under such State or local law.

''(h) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in

the manner required by such tax law, and with the same priority as the claim from which such amount was withheld or collected was paid.

''(i)(1) To the extent that any State or local law imposing a tax on or measured by income provides for the carryover of any tax attribute from one taxable period to a subsequent taxable period, the estate shall succeed to such tax attribute in any case in which such estate is subject to tax under subsection (a).

''(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) to the extent consistent with the Internal Revenue Code of 1986.

''(3) The estate may carry back any loss or tax attribute to a taxable period of the debtor that ended before the order for relief under this title to the extent that—

''(A) applicable State or local tax law provides for a carryback in the case of the debtor; and

''(B) the same or a similar tax attribute may be carried back by the estate to such a taxable period of the debtor under the Internal Revenue Code of 1986.

''(j)(1) For purposes of any State or local law imposing a tax on or measured by income, income is not realized by the estate, the debtor, or a successor to the debtor by

reason of discharge of indebtedness in a case under this title, except to the extent, if any, that such income is subject to tax under the Internal Revenue Code of 1986.

''(2) Whenever the Internal Revenue Code of 1986 provides that the amount excluded from gross income in respect of the discharge of indebtedness in a case under this title shall be applied to reduce the tax attributes of the debtor or the estate, a similar reduction shall be made under any State or local law imposing a tax on or measured by income to the extent such State or local law recognizes such attributes. Such State or local law may also provide for the reduction of other attributes to the extent that the full amount of income from the discharge of indebtedness has not been applied.

''(k)(1) Except as provided in this section and section 505, the time and manner of filing tax returns and the items of income, gain, loss, deduction, and credit of any taxpayer shall be determined under applicable nonbankruptcy law.

''(2) For Federal tax purposes, the provisions of this section are subject to the Internal Revenue Code of 1986 and other applicable Federal nonbankruptcy law.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 728 of title 11, United States Code, is repealed.

(2) Section 1146 of title 11, United States Code, is amended—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

(3) Section 1231 of title 11, United States Code, is amended—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX RETURNS.

Section 521 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(k)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

''(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within

90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.''.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

''CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

''Sec.
''1501. Purpose and scope of application.

''SUBCHAPTER I—GENERAL PROVISIONS

''1502. Definitions.
''1503. International obligations of the United States.
''1504. Commencement of ancillary case.
''1505. Authorization to act in a foreign country.
''1506. Public policy exception.
''1507. Additional assistance.
''1508. Interpretation.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

''1509. Right of direct access.
''1510. Limited jurisdiction.
''1511. Commencement of case under section 301 or 303.
''1512. Participation of a foreign representative in a case under this title.
''1513. Access of foreign creditors to a case under this title.
''1514. Notification to foreign creditors concerning a case under this title.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

''1515. Application for recognition.
''1516. Presumptions concerning recognition.
''1517. Order granting recognition.
''1518. Subsequent information.

"1519. Relief that may be granted upon filing petition for recognition.
"1520. Effects of recognition of a foreign main proceeding.
"1521. Relief that may be granted upon recognition.
"1522. Protection of creditors and other interested persons.
"1523. Actions to avoid acts detrimental to creditors.
"1524. Intervention by a foreign representative.

"SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

"1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.
"1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
"1527. Forms of cooperation.

"SUBCHAPTER V—CONCURRENT PROCEEDINGS

"1528. Commencement of a case under this title after recognition of a foreign main proceeding.
"1529. Coordination of a case under this title and a foreign proceeding.
"1530. Coordination of more than 1 foreign proceeding.
"1531. Presumption of insolvency based on recognition of a foreign main proceeding.
"1532. Rule of payment in concurrent proceedings.

"§ 1501. Purpose and scope of application

"(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

"(1) cooperation between—

"(A) United States courts, United States trustees, trustees, examiners, debtors, and debtors in possession; and

"(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

"(2) greater legal certainty for trade and investment;

"(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

"(4) protection and maximization of the value of the debtor's assets; and

"(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

"(b) This chapter applies where—

"(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

"(2) assistance is sought in a foreign country in connection with a case under this title;

"(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

"(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

"(c) This chapter does not apply to—

"(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);

"(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

"(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

"(d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 1502. Definitions

"For the purposes of this chapter, the term—

"(1) 'debtor' means an entity that is the subject of a foreign proceeding;

"(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

"(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

"(4) 'foreign main proceeding' means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

"(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

"(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title;

"(7) 'recognition' means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter; and

"(8) 'within the territorial jurisdiction of the United States', when used with reference to property of a debtor, refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any

property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

"§ 1503. International obligations of the United States

''To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

"§ 1504. Commencement of ancillary case

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

"§ 1505. Authorization to act in a foreign country

''A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

"§ 1506. Public policy exception

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

"§ 1507. Additional assistance

''(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

''(1) just treatment of all holders of claims against or interests in the debtor's property;

''(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

''(3) prevention of preferential or fraudulent dispositions of property of the debtor;

''(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

''(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

"§ 1508. Interpretation

"In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

"SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

"§ 1509. Right of direct access

"(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.

"(b) If the court grants recognition under section 1515, and subject to any limitations that the court may impose consistent with the policy of this chapter—

"(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

"(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

"(3) a court in the United States shall grant comity or cooperation to the foreign representative.

"(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied

by a certified copy of an order granting recognition under section 1517.

''(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

''(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

''(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

''§ 1510. Limited jurisdiction

''The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

''§ 1511. Commencement of case under section 301 or 303

''(a) Upon recognition, a foreign representative may commence—

''(1) an involuntary case under section 303; or

"(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

"(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

"§ 1512. Participation of a foreign representative in a case under this title

"Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

"§ 1513. Access of foreign creditors to a case under this title

"(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

"(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority

solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

"§ 1514. Notification to foreign creditors concerning a case under this title

''(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

''(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.

"(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

"(1) indicate the time period for filing proofs of claim and specify the place for their filing;

"(2) indicate whether secured creditors need to file their proofs of claim; and

"(3) contain any other information required to be included in such a notification to creditors under this title and the orders of the court.

"(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

"SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

"§ 1515. Application for recognition

"(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

"(b) A petition for recognition shall be accompanied by—

"(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

"(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

"(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

"(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

"(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

"§ 1516. Presumptions concerning recognition

"(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding (as defined in section 101) and that the person or body is a foreign representative (as defined in section 101), the court is entitled to so presume.

"(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

"(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

"§ 1517. Order granting recognition

"(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

"(1) the foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

"(2) the foreign representative applying for recognition is a person or body as defined in section 101; and

"(3) the petition meets the requirements of section 1515.

"(b) The foreign proceeding shall be recognized—

"(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

"(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

1 ''(c) A petition for recognition of a foreign proceeding
2 shall be decided upon at the earliest possible time. Entry
3 of an order recognizing a foreign proceeding constitutes
4 recognition under this chapter.

5 ''(d) The provisions of this subchapter do not prevent
6 modification or termination of recognition if it is shown
7 that the grounds for granting it were fully or partially
8 lacking or have ceased to exist, but in considering such
9 action the court shall give due weight to possible prejudice
10 to parties that have relied upon the order granting rec-
11 ognition. The case under this chapter may be closed in
12 the manner prescribed under section 350.

13 **''§ 1518. Subsequent information**

14 ''From the time of filing the petition for recognition
15 of the foreign proceeding, the foreign representative shall
16 file with the court promptly a notice of change of status
17 concerning—

18 ''(1) any substantial change in the status of the
19 foreign proceeding or the status of the foreign rep-
20 resentative's appointment; and

21 ''(2) any other foreign proceeding regarding the
22 debtor that becomes known to the foreign represent-
23 ative.

"§ 1519. Relief that may be granted upon filing petition for recognition

''(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

''(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

''(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

"(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

"(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

"(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (28) of section 362(b) or pursuant to section 362(l) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

"§ 1520. Effects of recognition of a foreign main proceeding

"(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

"(1) sections 361 and 362 apply with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;

"(2) sections 363, 549, and 552 of this title apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

"(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

"(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

"(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

"(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

"§ 1521. Relief that may be granted upon recognition

"(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

"(1) staying the commencement or continuation of an individual action or proceeding concerning the

debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

''(6) extending relief granted under section 1519(a); and

''(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

"(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

"(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

"(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

"(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

"(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (28) of section 362(b) or pursuant to section 362(l) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

"§ 1522. Protection of creditors and other interested persons

''(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.

''(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

''(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

"§ 1523. Actions to avoid acts detrimental to creditors

''(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

"(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

"§ 1524. Intervention by a foreign representative

"Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

"SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

"§ 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives

"(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

"(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

"§ 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

''(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

''(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

"§ 1527. Forms of cooperation

''Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

''(1) appointment of a person or body, including an examiner, to act at the direction of the court;

''(2) communication of information by any means considered appropriate by the court;

''(3) coordination of the administration and supervision of the debtor's assets and affairs;

''(4) approval or implementation of agreements concerning the coordination of proceedings; and

''(5) coordination of concurrent proceedings regarding the same debtor.

"SUBCHAPTER V—CONCURRENT PROCEEDINGS

"§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding

"After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

"§ 1529. Coordination of a case under this title and a foreign proceeding

"If a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

"(1) If the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

"(A) any relief granted under sections 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

"(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply.

"(2) If a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

"(A) any relief in effect under sections 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

"(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

"(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the re-

lief relates to assets that, under the laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

"§ 1530. Coordination of more than 1 foreign proceeding

''In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

''(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or termi-

nated if inconsistent with the foreign main proceeding.

''(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

"§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding

''In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

"§ 1532. Rule of payment in concurrent proceedings

''Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.''.

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 13 the following:

"15. Ancillary and Other Cross-Border Cases ..... 1501".

SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: ", and this chapter, sections 307, 362(l), 555 through 557, and 559 through 562 apply in a case under chapter 15"; and

(2) by adding at the end the following:

"(j) Chapter 15 applies only in a case under such chapter, except that—

"(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

"(2) section 1509 applies whether or not a case under this title is pending.".

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

"(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which

proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

''(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;''.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ''and'' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.''.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking ''Nothing in'' and inserting ''Except with respect to a case under chapter 15 of title 11, nothing in''.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by striking ''or 13'' and inserting ''13, or 15,''.

(4) VENUE OF CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Section 1410 of title 28, United States Code, is amended to read as follows:

''§ 1410. Venue of cases ancillary to foreign proceedings

''A case under chapter 15 of title 11 may be commenced in the district court for the district—

''(1) in which the debtor has its principal place of business or principal assets in the United States;

''(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

''(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.''.

(d) OTHER SECTIONS OF TITLE 11.—

(1) Section 109(b)(3) of title 11, United States Code, is amended to read as follows:

"(3)(A) a foreign insurance company, engaged in such business in the United States; or

"(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101) in the United States.".

(2) Section 303(k) of title 11, United States Code, is repealed.

(3)(A) Section 304 of title 11, United States Code, is repealed.

(B) The table of sections at the beginning of chapter 3 of title 11, United States Code, is amended by striking the item relating to section 304.

(C) Section 306 of title 11, United States Code, is amended by striking ", 304," each place it appears.

(4) Section 305(a)(2) of title 11, United States Code, is amended to read as follows:

"(2)(A) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted; and

"(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.".

(5) Section 508 of title 11, United States Code, is amended—

(A) by striking subsection (a); and

(B) in subsection (b), by striking "(b)".

TITLE IX—FINANCIAL CONTRACT PROVISIONS

SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by inserting ", resolution, or order" after "any similar agreement that the Corporation determines by regulation".

(b) DEFINITION OF SECURITIES CONTRACT.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

"(ii) SECURITIES CONTRACT.—The term 'securities contract'—

"(I) means a contract for the purchase, sale, or loan of a security, a

1 certificate of deposit, a mortgage loan,
2 or any interest in a mortgage loan, a
3 group or index of securities, certifi-
4 cates of deposit, or mortgage loans or
5 interests therein (including any inter-
6 est therein or based on the value
7 thereof) or any option on any of the
8 foregoing, including any option to
9 purchase or sell any such security,
10 certificate of deposit, loan, interest,
11 group or index, or option;
12 ''(II) does not include any pur-
13 chase, sale, or repurchase obligation
14 under a participation in a commercial
15 mortgage loan unless the Corporation
16 determines by regulation, resolution,
17 or order to include any such agree-
18 ment within the meaning of such
19 term;
20 ''(III) means any option entered
21 into on a national securities exchange
22 relating to foreign currencies;
23 ''(IV) means the guarantee by or
24 to any securities clearing agency of
25 any settlement of cash, securities, cer-

tificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or

(VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.''.

(c) DEFINITION OF COMMODITY CONTRACT.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

"(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

"(II) with respect to a foreign futures commission merchant, a foreign future;

"(III) with respect to a leverage transaction merchant, a leverage transaction;

"(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

"(V) with respect to a commodity options dealer, a commodity option;

"(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) any combination of the agreements or transactions referred to in this clause;

"(VIII) any option to enter into any agreement or transaction referred to in this clause;

"(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement

that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

"(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.".

(d) DEFINITION OF FORWARD CONTRACT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

"(iv) FORWARD CONTRACT.—The term 'forward contract' means—

"(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction,

consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the

1 master agreement that is referred to
2 in subclause (I), (II), or (III); or
3 ''(V) any security agreement or
4 arrangement or other credit enhance-
5 ment related to any agreement or
6 transaction referred to in subclause
7 (I), (II), (III), or (IV).''.
8 (e) DEFINITION OF REPURCHASE AGREEMENT.—
9 Section 11(e)(8)(D)(v) of the Federal Deposit Insurance
10 Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as
11 follows:
12 ''(v) REPURCHASE AGREEMENT.—The
13 term 'repurchase agreement' (which defini-
14 tion also applies to a reverse repurchase
15 agreement)—
16 ''(I) means an agreement, includ-
17 ing related terms, which provides for
18 the transfer of one or more certifi-
19 cates of deposit, mortgage-related se-
20 curities (as such term is defined in
21 the Securities Exchange Act of 1934),
22 mortgage loans, interests in mortgage-
23 related securities or mortgage loans,
24 eligible bankers' acceptances, qualified
25 foreign government securities or secu-

rities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

1 ''(III) means any combination of
2 agreements or transactions referred to
3 in subclauses (I) and (IV);
4 ''(IV) means any option to enter
5 into any agreement or transaction re-
6 ferred to in subclause (I) or (III);
7 ''(V) means a master agreement
8 that provides for an agreement or
9 transaction referred to in subclause
10 (I), (III), or (IV), together with all
11 supplements to any such master
12 agreement, without regard to whether
13 the master agreement provides for an
14 agreement or transaction that is not a
15 repurchase agreement under this
16 clause, except that the master agree-
17 ment shall be considered to be a re-
18 purchase agreement under this sub-
19 clause only with respect to each agree-
20 ment or transaction under the master
21 agreement that is referred to in sub-
22 clause (I), (III), or (IV); and
23 ''(VI) means any security agree-
24 ment or arrangement or other credit
25 enhancement related to any agree-

ment or transaction referred to in subclause (I), (III), (IV), or (V).

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).''.

(f) DEFINITION OF SWAP AGREEMENT.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other for-

1 eign exchange or precious metals
2 agreement; a currency swap, option,
3 future, or forward agreement; an eq-
4 uity index or equity swap, option, fu-
5 ture, or forward agreement; a debt
6 index or debt swap, option, future, or
7 forward agreement; a credit spread or
8 credit swap, option, future, or forward
9 agreement; a commodity index or
10 commodity swap, option, future, or
11 forward agreement; or a weather
12 swap, weather derivative, or weather
13 option;
14 ''(II) any agreement or trans-
15 action similar to any other agreement
16 or transaction referred to in this
17 clause that is presently, or in the fu-
18 ture becomes, regularly entered into
19 in the swap market (including terms
20 and conditions incorporated by ref-
21 erence in such agreement) and that is
22 a forward, swap, future, or option on
23 one or more rates, currencies, com-
24 modities, equity securities or other eq-
25 uity instruments, debt securities or

other debt instruments, or economic indices or measures of economic risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

"(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (I), (II), (III), (IV), or (V).

Such term is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations promulgated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.".

(g) DEFINITION OF TRANSFER.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

"(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institutions's equity of redemption.".

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (A)—

(A) by striking "paragraph (10)" and inserting "paragraphs (9) and (10)";

(B) in clause (i), by striking "to cause the termination or liquidation" and inserting "such person has to cause the termination, liquidation, or acceleration"; and

(C) by striking clause (ii) and inserting the following:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);"; and

(2) in subparagraph (E), by striking clause (ii) and inserting the following:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);".

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting "section 5242 of the Revised Statutes of the United States (12 U.S.C. 91) or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers," before "the Corporation".

SEC. 902. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking "other than paragraph (12) of this subsection, subsection (d)(9)" and inserting "other than subsections (d)(9) and (e)(10)"; and

(2) by adding at the end the following new subparagraphs:

"(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

"(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

"(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

"(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision

in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting ''or the exercise of rights or powers by'' after ''the appointment of''.

SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

"(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

"(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

"(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

"(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

"(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

"(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

"(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

"(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contract and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless,

under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

"(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

"(D) DEFINITION.—For purposes of this paragraph, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any

other institution, as determined by the Corporation by regulation to be a financial institution.''.

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking ''the conservator'' and all that follows through the period and inserting the following: ''the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.''.

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

"(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

"(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

"(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

"(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution

may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or sections 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or

other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

"(i) A bridge bank.

"(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

"(I) immediately upon the organization of the institution; or

"(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.".

SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively; and

(2) by inserting after paragraph (10) the following new paragraph:

"(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

"(A) disaffirm or repudiate all qualified financial contracts between—

"(i) any person or any affiliate of such person; and

"(ii) the depository institution in default; or

"(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).".

SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

"(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or

agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.''.

SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon '', or is exempt from such registration by order of the Securities and Exchange Commission''; and

(B) in subparagraph (B), by inserting before the period ''or that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act'';

(2) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

''(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;'';

and

(C) by amending subparagraph (C) (as redesignated) to read as follows:

''(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;'';

(3) in paragraph (11), by inserting before the period ''and any other clearing organization with which such clearing organization has a netting contract'';

(4) by amending paragraph (14)(A)(i) to read as follows:

''(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or closeout values relating to such obligations or entitlements) among the parties to the agreement; and''; and

(5) by adding at the end the following new paragraph:

''(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.''.

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance

Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code)."; and

(2) by adding at the end the following new subsection:

"(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than para-

graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or ar-

rangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

~~(1) by redesignating section 407 as section 408;~~

(1) by redesignating section 407 as 407A; and

(2) by inserting after section 406 the following new section:

''SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.

''(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply

to an uninsured national bank or uninsured Federal branch or Federal agency, except that for such purpose—

"(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency;

"(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency; and

"(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank or an uninsured Federal branch or Federal agency.

"(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank or uninsured Federal branch or agency shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

"(c) REGULATORY AUTHORITY.—

"(1) IN GENERAL.—The Comptroller of the Currency, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations to implement this section.

"(2) SPECIFIC REQUIREMENT.—In promulgating regulations to implement this section, the Comptroller of the Currency shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

"(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meanings as in section 1(b) of the International Banking Act of 1978.".

SEC. 907. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking ''means a contract'' and inserting ''means—

''(A) a contract'';

(ii) by striking '', or any combination thereof or option thereon;'' and inserting '', or any other similar agreement;''; and

(iii) by adding at the end the following:

''(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

''(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

''(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agree-

ment that is referred to in subparagraph (A), (B), or (C); or

''(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), but not to exceed the actual value of such contract on the date of the filing of the petition;'';

(B) in paragraph (46), by striking ''on any day during the period beginning 90 days before the date of'' and inserting ''at any time before'';

(C) by amending paragraph (47) to read as follows:

''(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(A) means—

''(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a

security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

''(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

''(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

1 ''(iv) a master agreement that pro-
2 vides for an agreement or transaction re-
3 ferred to in clause (i), (ii), or (iii), together
4 with all supplements to any such master
5 agreement, without regard to whether such
6 master agreement provides for an agree-
7 ment or transaction that is not a repur-
8 chase agreement under this paragraph, ex-
9 cept that such master agreement shall be
10 considered to be a repurchase agreement
11 under this paragraph only with respect to
12 each agreement or transaction under the
13 master agreement that is referred to in
14 clause (i), (ii), or (iii); or
15 ''(v) any security agreement or ar-
16 rangement or other credit enhancement re-
17 lated to any agreement or transaction re-
18 ferred to in clause (i), (ii), (iii), or (iv), but
19 not to exceed the actual value of such con-
20 tract on the date of the filing of the peti-
21 tion; and
22 ''(B) does not include a repurchase obliga-
23 tion under a participation in a commercial
24 mortgage loan;'';

(D) in paragraph (48), by inserting ", or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission," after "1934"; and

(E) by amending paragraph (53B) to read as follows:

"(53B) 'swap agreement'—

"(A) means—

"(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is an interest rate swap, option, future, or forward agreement, including—

"(I) a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

"(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

"(III) a currency swap, option, future, or forward agreement;

"(IV) an equity index or an equity swap, option, future, or forward agreement;

1 ''(V) a debt index or a debt swap,
2 option, future, or forward agreement;
3 ''(VI) a credit spread or a credit
4 swap, option, future, or forward
5 agreement;
6 ''(VII) a commodity index or a
7 commodity swap, option, future, or
8 forward agreement; or
9 ''(VIII) a weather swap, weather
10 derivative, or weather option;
11 ''(ii) any agreement or transaction
12 similar to any other agreement or trans-
13 action referred to in this paragraph that—
14 ''(I) is presently, or in the future
15 becomes, regularly entered into in the
16 swap market (including terms and
17 conditions incorporated by reference
18 therein); and
19 ''(II) is a forward, swap, future,
20 or option on one or more rates, cur-
21 rencies, commodities, equity securities,
22 or other equity instruments, debt se-
23 curities or other debt instruments, or
24 economic indices or measures of eco-
25 nomic risk or value;

"(iii) any combination of agreements or transactions referred to in this subparagraph;

"(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

"(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

"(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), but not to exceed the actual value of such contract

on the date of the filing of the petition; and

''(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.'';

(2) in section 741(7), by striking paragraph (7) and inserting the following:

''(7) 'securities contract'—

''(A) means—

''(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securi-

ties, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

''(ii) any option entered into on a national securities exchange relating to foreign currencies;

''(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

''(iv) any margin loan;

''(v) any other agreement or transaction that is similar to an agreement or

transaction referred to in this subparagraph;

''(vi) any combination of the agreements or transactions referred to in this subparagraph;

''(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

''(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

''(ix) any security agreement or arrangement or other credit enhancement,

related to any agreement or transaction referred to in this subparagraph, but not to exceed the actual value of such contract on the date of the filing of the petition; and

''(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan.''; and

(3) in section 761(4)—

(A) by striking ''or'' at the end of subparagraph (D); and

(B) by adding at the end the following:

''(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

''(G) any combination of the agreements or transactions referred to in this paragraph;

''(H) any option to enter into an agreement or transaction referred to in this paragraph;

''(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or

transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

"(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition;".

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

~~(1) by striking paragraph (22) and inserting the following:~~

~~"(22) 'financial institution' means—~~

~~"(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver~~

~~or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741, such customer; or~~

~~"(B) in connection with a securities contract, as defined in section 741, an investment company registered under the Investment Company Act of 1940,";~~

~~(2)~~ *(1)* by inserting after paragraph (22) the following:

"(22A) 'financial participant' means an entity that, at the time it enters into a securities contract, commodity contract, or forward contract, or at the time of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agree-

ments or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period;''; and

~~(3)~~ *(2)* by striking paragraph (26) and inserting the following:

''(26) 'forward contract merchant' means a Federal reserve bank, or an entity, the business of which consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761 or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;''.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

''(38A) 'master netting agreement'—

''(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of

section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing; and

"(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a);

"(38B) 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;".

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by this Act, is amended—

(A) in paragraph (6), by inserting ", pledged to, and under the control of," after "held by";

(B) in paragraph (7), by inserting ", pledged to, and under the control of," after "held by";

(C) by striking paragraph (17) and inserting the following:

"(17) under subsection (a), of the setoff by a swap participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, and under the control of, or due from such swap participant to margin, guarantee, secure, or settle any swap agreement;"; and

(D) by inserting after paragraph (27), as added by this Act, the following new paragraph:

"(28) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that con-

stitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, and under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; or''.

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(l) LIMITATION.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (28) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.''.

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement''; and

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement''; and

(2) by adding at the end the following:

''(k) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.''.

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.''.

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract'';

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract";

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement";

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement";

(2) in the first sentence, by striking ''termination of a swap agreement'' and inserting ''liquidation, termination, or acceleration of one or more swap agreements''; and

(3) by striking ''in connection with any swap agreement'' and inserting ''in connection with the termination, liquidation, or acceleration of one or more swap agreements''.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—

(1) IN GENERAL.—Title 11, United States Code, is amended by inserting after section 560 the following:

"§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts

''(a) IN GENERAL.—Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

''(1) securities contracts, as defined in section 741(7);

''(2) commodity contracts, as defined in section 761(4);

''(3) forward contracts;

''(4) repurchase agreements;

''(5) swap agreements; or

''(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

''(b) EXCEPTION.—

''(1) IN GENERAL.—A party may exercise a contractual right described in subsection (a) to ter-

minate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

"(2) COMMODITY BROKERS.—If a debtor is a commodity broker subject to subchapter IV of chapter 7—

"(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under that subchapter IV; and

"(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

"(3) CONSTRUCTION.—No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

"(A) a cross-margining agreement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under section 5(a)(12)(A) of the Commodity Exchange Act and has been approved; or

"(B) any other netting agreement between a clearing organization, as defined in section 761, and another entity that has been approved by the Commodity Futures Trading Commission.

"(c) DEFINITION.—As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

"(d) CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under chapter 15 of this title, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).".

(2) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

"561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts.".

(l) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

"§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(m) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

"§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant,

commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(3)(C), by inserting before the period the following: ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(28), 555, 556, 559, 560, or 561 of this title)''; and

(2) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 362(b)(28), 555, 556, 559, 560, 561''.

(o) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking ''financial institutions,'' each place such term appears and inserting ''financial institution, financial participant,'';

(2) in section 546(e), by inserting ''financial participant,'' after ''financial institution,'';

(3) in section 548(d)(2)(B), by inserting ''financial participant,'' after ''financial institution,'';

(4) in section 555—

(A) by inserting ''financial participant,'' after ''financial institution,''; and

(B) by inserting before the period at the end '', a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice''; and

(5) in section 556, by inserting '', financial participant,'' after ''commodity broker''.

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

''555. Contractual right to liquidate, terminate, or accelerate a securities contract.

''556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.'';

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

''559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

"560. Contractual right to liquidate, terminate, or accelerate a swap agreement.";

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following:

"767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.";

and

(B) by inserting after the item relating to section 752 the following:

"753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.".

SEC. 908. RECORDKEEPING REQUIREMENTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

"(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping with respect to qualified financial contracts (including market valuations) by insured depository institutions.".

SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

"(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

"(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

"(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

"(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

"(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.".

SEC. 910. DAMAGE MEASURE.

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by this Act, the following:

"§ 562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements

''If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

''(1) the date of such rejection; or

''(2) the date of such liquidation, termination, or acceleration.''; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by this Act) the following:

"562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.".

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(g)"; and

(2) by adding at the end the following:

"(2) A claim for damages calculated in accordance with section 562 of this title shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.".

SEC. 911. SIPC STAY.

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION FROM STAY.—

"(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement,

as those terms are defined in sections 101 and 741 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

''(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

''(iii) As used in this subparagraph, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a

clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.''.

SEC. 912. ASSET-BACKED SECURITIZATIONS.

Section 541 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting after paragraph (7), as added by this Act, the following:

''(8) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a);''; and

(2) by adding at the end the following new subsection:

''(f) For purposes of this section—

''(1) the term 'asset-backed securitization' means a transaction in which eligible assets transferred to an eligible entity are used as the source of

payment on securities, including, without limitation, all securities issued by governmental units, at least one class or tranche of which was rated investment grade by one or more nationally recognized securities rating organizations, when the securities were initially issued by an issuer;

''(2) the term 'eligible asset' means—

''(A) financial assets (including interests therein and proceeds thereof), either fixed or revolving, whether or not the same are in existence as of the date of the transfer, including residential and commercial mortgage loans, consumer receivables, trade receivables, assets of governmental units, including payment obligations relating to taxes, receipts, fines, tickets, and other sources of revenue, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any residual interest in property subject to receivables included in such financial assets plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

''(B) cash; and

"(C) securities, including without limitation, all securities issued by governmental units;

"(3) the term 'eligible entity' means—

"(A) an issuer; or

"(B) a trust, corporation, partnership, governmental unit, limited liability company (including a single member limited liability company), or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;

"(4) the term 'issuer' means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto; and

"(5) the term 'transferred' means the debtor, under a written agreement, represented and warranted that eligible assets were sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to subsection (b)(8) (whether or not reference is made to this title or any section hereof), irrespective and without limitation of—

"(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

"(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

"(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.".

SEC. 913. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—This title shall take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply with respect to cases commenced or appointments made under any Federal or State law after the date of enactment of this Act, but shall not apply with respect to cases commenced or appointments made under any Federal or State law before the date of enactment of this Act.

TITLE X—PROTECTION OF FAMILY FARMERS

SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—

(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), ~~and amended by this Act, is reenacted.~~ *is hereby reenacted, and as here reenacted is amended by this Act.*

(2) EFFECTIVE DATE.—Subsection (a) shall take effect on July 1, 2000.

(b) CONFORMING AMENDMENT.—Section 302 of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

SEC. 1002. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, is amended by adding at the end the following:

''(4) The dollar amount in section 101(18) shall be adjusted at the same times and in the same manner as the dollar amounts in paragraph (1) of this subsection, beginning with the adjustment to be made on April 1, ~~2001~~ *2004*.''.

SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, is amended to read as follows:

"(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

"(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

"(B) the holder of a particular claim agrees to a different treatment of that claim;".

(b) SPECIAL NOTICE PROVISIONS.—Section 1231(b) of title 11, United States Code, as so designated by this Act, is amended by striking "a State or local governmental unit" and inserting "any governmental unit".

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

SEC. 1101. DEFINITIONS.

(a) HEALTH CARE BUSINESS DEFINED.—Section 101 of title 11, United States Code, is amended—

(1) by redesignating paragraph (27A), as added by this Act, as paragraph (27B); and

(2) by inserting after paragraph (27) the following:

"(27A) 'health care business'—

"(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

"(i) the diagnosis or treatment of injury, deformity, or disease; and

"(ii) surgical, drug treatment, psychiatric, or obstetric care; and

"(B) includes—

"(i) any—

"(I) general or specialized hospital;

"(II) ancillary ambulatory, emergency, or surgical treatment facility;

"(III) hospice;

"(IV) home health agency; and

"(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

"(ii) any long-term care facility, including any—

"(I) skilled nursing facility;

"(II) intermediate care facility;

"(III) assisted living facility;

"(IV) home for the aged;

"(V) domiciliary care facility; and

"(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living;".

(b) PATIENT AND PATIENT RECORDS DEFINED.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (40) the following:

"(40A) 'patient' means any person who obtains or receives services from a health care business;

"(40B) 'patient records' means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium;".

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) of this section shall not affect the interpretation of section 109(b) of title 11, United States Code.

SEC. 1102. DISPOSAL OF PATIENT RECORDS.

(a) IN GENERAL.—Subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

"§ 351. Disposal of patient records

''If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

''(1) The trustee shall—

''(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

''(B) during the first 180 days of the 365-day period described in subparagraph (A),

1 promptly attempt to notify directly each patient
2 that is the subject of the patient records and
3 appropriate insurance carrier concerning the
4 patient records by mailing to the last known ad-
5 dress of that patient, or a family member or
6 contact person for that patient, and to the ap-
7 propriate insurance carrier an appropriate no-
8 tice regarding the claiming or disposing of pa-
9 tient records.

10 ''(2) If, after providing the notification under
11 paragraph (1), patient records are not claimed dur-
12 ing the 365-day period described under that para-
13 graph, the trustee shall mail, by certified mail, at
14 the end of such 365-day period a written request to
15 each appropriate Federal agency to request permis-
16 sion from that agency to deposit the patient records
17 with that agency, except that no Federal agency is
18 required to accept patient records under this para-
19 graph.

20 ''(3) If, following the 365-day period described
21 in paragraph (2) and after providing the notification
22 under paragraph (1), patient records are not claimed
23 by a patient or insurance provider, or request is not
24 granted by a Federal agency to deposit such records

with that agency, the trustee shall destroy those records by—

"(A) if the records are written, shredding or burning the records; or

"(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 350 the following:

"351. Disposal of patient records.".

SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF CLOSING A HEALTH CARE BUSINESS AND OTHER ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as that term is defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

"(A) in disposing of patient records in accordance with section 351; or

"(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business;

"(9) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or related to a failure to operate or penalty provisions, for the period of 2 years following the later of the rejection date or date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6); and".

SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PATIENT ADVOCATE.

(a) IN GENERAL.—

(1) APPOINTMENT OF OMBUDSMAN.—Subchapter II of chapter 3 of title 11, United States Code, is amended by inserting after section 331 the following:

"§ 332. Appointment of ombudsman

"(a) IN GENERAL.—

"(1) AUTHORITY TO APPOINT.—Not later than 30 days after a case is commenced by a health care business under chapter 7, 9, or 11, the court shall order the appointment of an ombudsman to monitor the quality of patient care to represent the interests of the patients of the health care business, unless the court finds that the appointment of the ombudsman is not necessary for the protection of patients under the specific facts of the case.

"(2) QUALIFICATIONS.—If the court orders the appointment of an ombudsman, the United States trustee shall appoint 1 disinterested person, other than the United States trustee, to serve as an ombudsman, including a person who is serving as a State Long-Term Care Ombudsman appointed under title III or VII of the Older Americans Act of 1965 (42 U.S.C. 3021 et seq., 3058 et seq.).

"(b) DUTIES.—An ombudsman appointed under subsection (a) shall—

"(1) monitor the quality of patient care, to the extent necessary under the circumstances, including interviewing patients and physicians;

"(2) not later than 60 days after the date of appointment, and not less frequently than every 60

days thereafter, report to the court, at a hearing or in writing, regarding the quality of patient care at the health care business involved; and

''(3) if the ombudsman determines that the quality of patient care is declining significantly or is otherwise being materially compromised, notify the court by motion or written report, with notice to appropriate parties in interest, immediately upon making that determination.

''(c) CONFIDENTIALITY.—An ombudsman shall maintain any information obtained by the ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. The ombudsman may not review confidential patient records, unless the court provides prior approval, with restrictions on the ombudsman to protect the confidentiality of patient records.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 331 the following:

''332. Appointment of ombudsman.''.

(b) COMPENSATION OF OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended—

(1) in the matter proceeding subparagraph (A), by inserting ''an ombudsman appointed under section 331, or'' before ''a professional person''; and

(2) in subparagraph (A), by inserting ''ombudsman,'' before ''professional person''.

SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO TRANSFER PATIENTS.

(a) IN GENERAL.—Section 704(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(11) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

''(A) is in the vicinity of the health care business that is closing;

''(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

''(C) maintains a reasonable quality of care.''.

(b) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, is amended by striking ''sections 704(2), 704(5), 704(7), 704(8), and 704(9)''

and inserting ''paragraphs (2), (5), (7), (8), (9), and (11) of section 704(a)''.

SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION NOT SUBJECT TO AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (28), as added by this Act, the following:

''(29) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f)) pursuant to title XI of such Act (42 U.S.C. 1301 et seq.) or title XVIII of such Act (42 U.S.C. 1395 et seq.).''.

TITLE XII—TECHNICAL AMENDMENTS

SEC. 1201. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by this Act, is amended—

(1) by striking ''In this title—'' and inserting ''In this title the following definitions shall apply:'';

(2) in each paragraph, by inserting ''The term'' after the paragraph designation;

(3) in paragraph (35)(B), by striking ''paragraphs (21B) and (33)(A)'' and inserting ''paragraphs (23) and (35)'';

(4) in each of paragraphs (35A) ~~and (38)~~, *(38), and (54A)*, by striking ''; and'' at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting ''who is not a family farmer'' after ''debtor'' the first place it appears; and

(B) by striking ''thereto having aggregate'' and all that follows through the end of the paragraph;

(6) by striking paragraph (54) and inserting the following:

''(54) The term 'transfer' means—

''(A) the creation of a lien;

''(B) the retention of title as a security interest;

''(C) the foreclosure of a debtor's equity of redemption; or

''(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

''(i) property; or

"(ii) an interest in property."; and

(7) in each of paragraphs (1) through (35), in each of paragraphs (36) and (37), and in each of paragraphs (40) through (55), by striking the semicolon at the end and inserting a period.

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, as amended by section 322 of this Act, is amended by inserting "522(f)(3)," after "522(d)," each place it appears.

SEC. 1203. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking "922" and all that follows through "or", and inserting "922, 1201, or".

SEC. 1204. TECHNICAL AMENDMENTS.

Title 11, United States Code, is amended—

(1) in section 109(b)(2), by striking "subsection (c) or (d) of"; and

(2) in section 552(b)(1), by striking "product" each place it appears and inserting "products".

SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(4) of title 11, United States Code, as so designated by this Act, is amended by striking "attorney's" and inserting "attorneys' ".

SEC. 1206. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting ''on a fixed or percentage fee basis,'' after ''hourly basis,''.

SEC. 1207. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting ''of the estate'' after ''property'' the first place it appears.

SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting ''subparagraph (A), (B), (C), (D), or (E) of'' before ''paragraph (3)''.

SEC. 1209. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, as amended by this Act, is amended—

(1) by transferring paragraph (15), as added by section 304(e) of Public Law 103–394 (108 Stat. 4133), so as to insert such paragraph after subsection (a)(14);

(2) in subsection (a)(9), by striking ''motor vehicle'' and inserting ''motor vehicle, vessel, or aircraft''; and

(3) in subsection (e), by striking ''a insured'' and inserting ''an insured''.

SEC. 1210. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking ''section 523'' and all that follows through ''or that'' and inserting ''section 523, 1228(a)(1), or 1328(a)(1), or that''.

SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting ''student'' before ''grant'' the second place it appears; and

(2) in paragraph (2), by striking ''the program operated under part B, D, or E of'' and inserting ''any program operated under''.

SEC. 1212. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting ''365 or'' before ''542''.

SEC. 1213. PREFERENCES.

(a) IN GENERAL.—Section 547 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (b), by striking ''subsection (c)'' and inserting ''subsections (c) and (i)''; and

(2) by adding at the end the following:

''(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity

that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.''.

(b) APPLICABILITY.—The amendments made by this section shall apply to any case that is pending or commenced on or after the date of enactment of this Act.

SEC. 1214. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting ''an interest in'' after ''transfer of'' each place it appears;

(2) by striking ''such property'' and inserting ''such real property''; and

(3) by striking ''the interest'' and inserting ''such interest''.

SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking ''1009,''.

SEC. 1216. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, as amended by this Act, is amended by inserting ''1123(d),'' after ''1123(b),''.

SEC. 1217. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1218. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1219. DISCHARGE UNDER CHAPTER 12.

Subsections (a) and (c) of section 1228 of title 11, United States Code, are amended by striking ''1222(b)(10)'' each place it appears and inserting ''1222(b)(9)''.

SEC. 1220. BANKRUPTCY CASES AND PROCEEDINGS.

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking ''made under this subsection'' and inserting ''made under subsection (c)''; and

(2) by striking ''This subsection'' and inserting ''Subsection (c) and this subsection''.

SEC. 1221. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting ''(1) the term'' before ''`bankruptcy''; and

(B) by striking the period at the end and inserting ''; and''; and

(2) in the second undesignated paragraph—

(A) by inserting ''(2) the term'' before ''`document''; and

(B) by striking ''this title'' and inserting ''title 11''.

SEC. 1222. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended by striking ''only'' and all that follows through the end of the subsection and inserting ''only—

''(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

''(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.''.

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code,

as amended by this Act, is amended by adding at the end the following:

"(16) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.".

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(g) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.".

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, or filed under that title on or after that date of enactment, except that the court shall not confirm a plan under chapter 11 of title 11, United States Code, without considering whether this section would substantially affect the rights

of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

SEC. 1223. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''30''.

SEC. 1224. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 2001''.

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENTS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judgeship for the eastern district of California.

(B) Four additional bankruptcy judgeships for the central district of California.

(C) One additional bankruptcy judgeship for the district of Delaware.

(D) Two additional bankruptcy judgeships for the southern district of Florida.

(E) One additional bankruptcy judgeship for the southern district of Georgia.

(F) Two additional bankruptcy judgeships for the district of Maryland.

(G) One additional bankruptcy judgeship for the eastern district of Michigan.

(H) One additional bankruptcy judgeship for the southern district of Mississippi.

(I) One additional bankruptcy judgeship for the district of New Jersey.

(J) One additional bankruptcy judgeship for the eastern district of New York.

(K) One additional bankruptcy judgeship for the northern district of New York.

(L) One additional bankruptcy judgeship for the southern district of New York.

(M) One additional bankruptcy judgeship for the eastern district of North Carolina.

(N) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(O) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(P) One additional bankruptcy judgeship for the district of Puerto Rico.

(Q) One additional bankruptcy judgeship for the western district of Tennessee.

(R) One additional bankruptcy judgeship for the eastern district of Virginia.

(2) VACANCIES.—The first vacancy occurring in the office of a bankruptcy judge in each of the judicial districts set forth in paragraph (1) shall not be filled if the vacancy—

(A) results from the death, retirement, resignation, or removal of a bankruptcy judge; and

(B) occurs 5 years or more after the appointment date of a bankruptcy judge appointed under paragraph (1).

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary bankruptcy judgeship positions authorized for the northern district of Alabama, the district of Delaware, the dis-

trict of Puerto Rico, the district of South Carolina, and the eastern district of Tennessee under paragraphs (1), (3), (7), (8), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring—

(A) 8 years or more after November 8, 1993, with respect to the northern district of Alabama;

(B) 10 years or more after October 28, 1993, with respect to the district of Delaware;

(C) 8 years or more after August 29, 1994, with respect to the district of Puerto Rico;

(D) 8 years or more after June 27, 1994, with respect to the district of South Carolina; and

(E) 8 years or more after November 23, 1993, with respect to the eastern district of Tennessee.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy

Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to temporary judgeship positions referred to in this subsection.

(d) TECHNICAL AMENDMENTS.—Section 152(a) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking the first sentence and inserting the following: "Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the United States court of appeals for the circuit in which such district is located."; and

(2) in paragraph (2)—

(A) in the item relating to the middle district of Georgia, by striking "2" and inserting "3"; and

(B) in the collective item relating to the middle and southern districts of Georgia, by striking "Middle and Southern . . . . . 1".

~~(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.~~

(e) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) With respect to the temporary bankruptcy judgeship authorized for the district of South Carolina under paragraph (8) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), subsection (c)(1) as it applies to the extension specified in subparagraph (D) of such subsection shall take effect immediately before December 31, 2000.

SEC. 1225. COMPENSATING TRUSTEES.

Section 1326 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''and'';

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

''(A) by prorating such amount over the remaining duration of the plan; and

"(B) by monthly payments not to exceed the greater of—

"(i) $25; or

"(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan."; and

(2) by adding at the end the following:

"(d) Notwithstanding any other provision of this title—

"(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior proceeding under this title; and

"(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).".

SEC. 1226. AMENDMENT TO SECTION 362 OF TITLE 11, UNITED STATES CODE.

Section 362(b)(18) of title 11, United States Code, is amended to read as follows:

"(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment

on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the filing of the petition;''.

SEC. 1227. JUDICIAL EDUCATION.

The Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in implementing this Act and the amendments made by this Act, including the requirements relating to the means test and reaffirmations under section 707(b) of title 11, United States Code, as amended by this Act.

SEC. 1228. RECLAMATION.

(a) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:

''(c)(1) Except as provided in subsection (d) of this section and subsection (c) of section 507, and subject to the prior rights of holders of security interests in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, not later than 45 days after the date

of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

"(A) not later than 45 days after the date of receipt of such goods by the debtor; or

"(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

"(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(7).".

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(10) the value of any goods received by the debtor not later than 20 days after the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.".

SEC. 1229. PROVIDING REQUESTED TAX DOCUMENTS TO THE COURT.

(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual seeking bankruptcy under chapter 7 of title 11, United States Code,

unless requested tax documents have been provided to the court.

(b) CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganization in the case of an individual under chapter 11 or 13 of title 11, United States Code, unless requested tax documents have been filed with the court.

(c) DOCUMENT RETENTION.—The court shall destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the date of the conclusion of a bankruptcy case filed by an individual under chapter 7, 11, or 13 of title 11, United States Code. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

SEC. 1230. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the indiscriminate solicitation and extension of credit by the credit industry;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds

necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

SEC. 1231. PROPERTY NO LONGER SUBJECT TO REDEMPTION.

Section 541(b) of title 11, United States Code, is amended by inserting after paragraph (8), as added by this Act, the following:

"(9) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

"(A) the tangible personal property is in the possession of the pledgee or transferee;

"(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

"(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b) of this title; or".

SEC. 1232. TRUSTEES.

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting ''(1)'' after ''(d)''; and

(2) by adding at the end the following:

''(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the United States district court for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the United States district court for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without

cause based on the administrative record before the agency.''.

(b) EXPENSES OF STANDING TRUSTEES.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

''(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the United States district court in the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

''(4) The Attorney General shall prescribe procedures to implement this subsection.''.

SEC. 1233. BANKRUPTCY FORMS.

Section 2075 of title 28, United States Code, is amended by adding at the end the following:

''The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.''.

SEC. 1234. EXPEDITED APPEALS OF BANKRUPTCY CASES TO COURTS OF APPEALS.

(a) IN GENERAL.—Section 158 of title 28, United States Code, is amended—

(1) by striking subsection (d) and inserting the following:

''(d)(1) In a case in which the appeal is heard by the district court, the judgment, decision, order, or decree of the bankruptcy judge shall be deemed a judgment, decision, order, or decree of the district court entered 31 days after such appeal is filed with the district court, unless not later than 30 days after such appeal is filed with the district court—

''(A) the district court—

''(i) files a decision on the appeal from the judgment, decision, order, or decree of the bankruptcy judge; or

''(ii) enters an order extending such 30-day period for cause upon motion of a party or upon the court's own motion; or

''(B) all parties to the appeal file written consent that the district court may retain such appeal until it enters a decision.

''(2) For the purpose of this subsection, an appeal shall be considered filed with the district court on the date on which the notice of appeal is filed, except that in a

case in which the appeal is heard by the district court because a party has made an election under subsection (c)(1)(B), the appeal shall be considered filed with the district court on the date on which such election is made.

''(e) The courts of appeals shall have jurisdiction of appeals from—

''(1) all final judgments, decisions, orders, and decrees of district courts entered under subsection (a);

''(2) all final judgments, decisions, orders, and decrees of bankruptcy appellate panels entered under subsection (b); and

''(3) all judgments, decisions, orders, and decrees of district courts entered under subsection (d) to the extent that such judgments, decisions, orders, and decrees would be reviewable by a district court under subsection (a).

''(f) In accordance with rules prescribed by the Supreme Court of the United States under sections 2072 through 2077, the court of appeals may, in its discretion, exercise jurisdiction over an appeal from an interlocutory judgment, decision, order, or decree under subsection (e)(3).''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 305(c) of title 11, United States Code, is amended by striking ''section 158(d)'' and inserting ''subsection (e) or (f) of section 158''.

(2) Section 1334(d) of title 28, United States Code, is amended by striking ''section 158(d)'' and inserting ''subsection (e) or (f) of section 158''.

(3) Section 1452(b) of title 28, United States Code, is amended by striking ''section 158(d)'' and inserting ''subsection (e) or (f) of section 158''.

SEC. 1235. EXEMPTIONS.

Section 522(g)(2) of title 11, United States Code, is amended by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

TITLE XIII—CONSUMER CREDIT DISCLOSURE

SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) MINIMUM PAYMENT DISCLOSURES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11)(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed

1 clearly and conspicuously: 'Minimum Payment
2 Warning: Making only the minimum payment will
3 increase the interest you pay and the time it takes
4 to repay your balance. For example, making only the
5 typical 2% minimum monthly payment on a balance
6 of $1,000 at an interest rate of 17% would take 88
7 months to repay the balance in full. For an estimate
8 of the time it would take to repay your balance,
9 making only minimum payments, call this toll-free
10 number: _____.' (the blank space to be
11 filled in by the creditor).

12 ''(B) In the case of an open end credit plan
13 that requires a minimum monthly payment of more
14 than 4 percent of the balance on which finance
15 charges are accruing, the following statement, in a
16 prominent location on the front of the billing state-
17 ment, disclosed clearly and conspicuously: 'Minimum
18 Payment Warning: Making only the required min-
19 imum payment will increase the interest you pay and
20 the time it takes to repay your balance. Making a
21 typical 5% minimum monthly payment on a balance
22 of $300 at an interest rate of 17% would take 24
23 months to repay the balance in full. For an estimate
24 of the time it would take to repay your balance,
25 making only minimum monthly payments, call this

1 toll-free number: _____.' (the blank space to
2 be filled in by the creditor).
3 ''(C) Notwithstanding subparagraphs (A) and
4 (B), in the case of a creditor with respect to which
5 compliance with this title is enforced by the Federal
6 Trade Commission, the following statement, in a
7 prominent location on the front of the billing state-
8 ment, disclosed clearly and conspicuously: 'Minimum
9 Payment Warning: Making only the required min-
10 imum payment will increase the interest you pay and
11 the time it takes to repay your balance. For exam-
12 ple, making only the typical 5% minimum monthly
13 payment on a balance of $300 at an interest rate of
14 17% would take 24 months to repay the balance in
15 full. For an estimate of the time it would take to
16 repay your balance, making only minimum monthly
17 payments, call the Federal Trade Commission at
18 this toll-free number: _____.' (the blank
19 space to be filled in by the creditor). A creditor who
20 is subject to this subparagraph shall not be subject
21 to subparagraph (A) or (B).
22 ''(D) Notwithstanding subparagraph (A), (B),
23 or (C), in complying with any such subparagraph, a
24 creditor may substitute an example based on an in-
25 terest rate that is greater than 17 percent. Any

creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

''(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

''(F)(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph

(A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

''(ii)(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, a toll-free telephone number, or provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)), with total assets not exceeding $250,000,000. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers

whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

''(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking and Financial Services of the House of Representatives a report on the program described in subclause (I).

''(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

"(H) The Board shall—

"(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

"(ii) establish the table required under clause (i) by assuming—

"(I) a significant number of different annual percentage rates;

"(II) a significant number of different account balances;

"(III) a significant number of different minimum payment amounts; and

"(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

"(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in re-

sponding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

''(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

''(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

''(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: 'Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: _____.' (the blank space to be filled in by the creditor).''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System (hereafter in this title referred to as the ''Board'') shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section.

(2) EFFECTIVE DATE.—Section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 18 months after the date of enactment of this Act; or

(B) 12 months after the publication of such final regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES.—

(1) IN GENERAL.—The Board may conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default.

(2) FACTORS FOR CONSIDERATION.—In conducting a study under paragraph (1), the Board should, in consultation with the other Federal bank-

ing agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which—

(A) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider those obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(B) minimum periodic payment features offered in connection with open end credit plans impact consumer default rates;

(C) consumers make only the required minimum payment under open end credit plans;

(D) consumers are aware that making only required minimum payments will increase the cost and repayment period of an open end credit obligation; and

(E) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(3) REPORT TO CONGRESS.—Findings of the Board in connection with any study conducted under this subsection shall be submitted to Congress. Such

report shall also include recommendations for legislative initiatives, if any, of the Board, based on its findings.

SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking ''CONSULTATION OF TAX ADVISER.—A statement that the'' and inserting the following: ''TAX DEDUCTIBILITY.—A statement that—

''(A) the''; and

(B) by striking the period at the end and inserting the following: ''; and

''(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Internal Revenue Code of 1986) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.''.

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking ''If any'' and inserting the following:

''(1) IN GENERAL.—If any''; and

(B) by adding at the end the following:

''(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

(A) in subsection (a), by adding at the end the following:

''(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''; and

(B) in subsection (b), by adding at the end the following:

''(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.''.

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

''(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

''(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(c) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the amendments made by this section.

(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1303. DISCLOSURES RELATED TO "INTRODUCTORY RATES".

(a) INTRODUCTORY RATE DISCLOSURES.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

"(6) ADDITIONAL NOTICE CONCERNING 'INTRODUCTORY RATES'.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

"(i) use the term 'introductory' in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

"(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

"(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c)), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that

was in effect within 60 days before the date of mailing the application or solicitation.

"(B) EXCEPTION.—Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

"(C) CONDITIONS FOR INTRODUCTORY RATES.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

"(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

"(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

"(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

"(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

"(D) DEFINITIONS.—In this paragraph—

"(i) the terms 'temporary annual percentage rate of interest' and 'temporary annual percentage rate' mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

"(ii) the term 'introductory period' means the maximum time period for which the temporary annual percentage rate may be applicable.

"(E) RELATION TO OTHER DISCLOSURE REQUIREMENTS.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—Section 127(c)(6) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.

(a) INTERNET-BASED APPLICATIONS AND SOLICITATIONS.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

1 "(7) INTERNET-BASED APPLICATIONS AND SO-
2 LICITATIONS.—
3 "(A) IN GENERAL.—In any solicitation to
4 open a credit card account for any person under
5 an open end consumer credit plan using the
6 Internet or other interactive computer service,
7 the person making the solicitation shall clearly
8 and conspicuously disclose—
9 "(i) the information described in sub-
10 paragraphs (A) and (B) of paragraph (1);
11 and
12 "(ii) the information described in
13 paragraph (6).
14 "(B) FORM OF DISCLOSURE.—The disclo-
15 sures required by subparagraph (A) shall be—
16 "(i) readily accessible to consumers in
17 close proximity to the solicitation to open
18 a credit card account; and
19 "(ii) updated regularly to reflect the
20 current policies, terms, and fee amounts
21 applicable to the credit card account.
22 "(C) DEFINITIONS.—For purposes of this
23 paragraph—
24 "(i) the term 'Internet' means the
25 international computer network of both

Federal and non-Federal interoperable packet switched data networks; and

"(ii) the term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.

(a) DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

"(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

"(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

"(B) The amount of the late payment fee to be imposed if payment is made after such date.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

(a) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(h) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under para-

graph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1307. DUAL USE DEBIT CARD.

(a) REPORT.—The Board may conduct a study of, and present to Congress a report containing its analysis of, consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on its findings.

(b) CONSIDERATIONS.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g), as in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced or may enhance the level of pro-

tection afforded consumers in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), or revisions to regulations promulgated by the Board to carry out that Act, are necessary to further address adequate protection for consumers concerning unauthorized use liability.

SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

(a) STUDY.—

(1) IN GENERAL.—The Board shall conduct a study regarding the impact that the extension of credit described in paragraph (2) has on the rate of bankruptcy cases filed under title 11, United States Code.

(2) EXTENSION OF CREDIT.—The extension of credit described in this paragraph is the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled within 1 year of successfully completing all required secondary education requirements and on a full-time basis, in postsecondary educational institutions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Board shall submit to the Senate and the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.

(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Board, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration Board, and the Federal Trade Commission, shall promulgate regulations to provide guidance regarding the meaning of the term ''clear and conspicuous'', as used in subparagraphs (A), (B), and (C) of section 127(b)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act referred to in subsection (a).

(c) STANDARDS.—In promulgating regulations under this section, the Board shall ensure that the clear and conspicuous standard required for disclosures made under the provisions of the Truth in Lending Act referred to in sub-

section (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

SEC. 1310. ENFORCEMENT OF CERTAIN FOREIGN JUDGMENTS BARRED.

(a) IN GENERAL.—Notwithstanding any other provision of law or contract, a court within the United States shall not recognize or enforce any judgment rendered in a foreign court if, by clear and convincing evidence, the court in which recognition or enforcement of the judgment is sought determines that the judgment gives effect to any purported right or interest derived, directly or indirectly, from any fraudulent misrepresentation or fraudulent omission that occurred in the United States during the period beginning on January 1, 1975, and ending on December 31, 1993.

(b) EXCEPTION.—Subsection (a) shall not prevent recognition or enforcement of a judgment rendered in a foreign court if the foreign tribunal rendering judgment giving effect to the right or interest concerned determines that no fraudulent misrepresentation or fraudulent omission described in subsection (a) occurred.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—Except as otherwise provided in this Act, the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.