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Senate

The Senate met at 9 a.m. and was called to order by the Presiding Officer, the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

God of peace, we confess anything that may be disturbing our peace with You as we begin this day. We know that if we want peace in our hearts, we cannot harbor resentment. We seek forgiveness for any negative criticism, gossip, or destructive innuendos we may have spoken. Forgive any way that we have brought acrimony to our relationships instead of helping to bring peace into any misunderstanding among or between the people of our lives. You have shown us that being a reconciler is essential for continued, sustained experience of Your peace. Most of all, we know that lasting peace is the result of Your indwelling spirit, Your presence in our minds and hearts.

Show us how to be communicators of peace that passes understanding, bringing healing reconciliation, deeper understanding, and hope and communication.

In the name of the Prince of Peace. Amen.

PLEDGE OF ALLEGIANCE

The Honorable HILLARY RODHAM CLINTON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 17, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. CLINTON thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader.

SCHEDULE

Mr. DASCHLE. Madam President, today the Senate will resume consideration of the Bankruptcy Reform Act. The prior agreement called for 3 hours of debate prior to a rollcall vote on cloture of a substitute amendment at approximately 12 o'clock today. There will be a recess for the weekly party conferences from 12:30 to 2:15. We expect to return then to the Energy and Water Appropriations Act today, with rollcall votes on amendments expected throughout the afternoon.

Last week the Senate confirmed 53 nominations. I don't know that there has been a week in recent times where we have accomplished that much with regard to nominations. I expect to continue that level of progress this week. There are currently 10 nominations on the Executive Calendar. Our caucus is prepared to move immediately on 8 of those 10. One of the remaining two, Mr. GRAHAM, already has a time agreement regarding his consideration. I expect to be able to dispose of his nomination between the energy and water appropriations bill, which we will resume after the bankruptcy bill is sent to conference, and the Transportation appropriations bill. I also expect to dispose of the Ferguson nomination at that time.

The legislative branch appropriations bill is on the calendar. The committee staff has informed us that they know of no amendments. So we hope to be able to complete action on that bill as well this week.

If we can accomplish these items, including the Transportation bill, by the close of business on Thursday, then we will not have votes this Friday. If not, of course, we will then be on the bill on Friday with votes possible throughout the day.

That is the plan for the week. We will do bankruptcy this morning, energy and water this afternoon for whatever length of time it takes. Tomorrow we will do the Graham nomination, then the Transportation and legislative appropriations bills.

This will be a busy week but, I think, a productive week. Hopefully, we can accomplish a good deal by continuing to work together.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 333, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 333) to amend title 11, United States Code, and for other purposes.

Pending:

Leahy/Hatch/Grassley amendment No. 974, in the nature of a substitute.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 3 hours for debate, 2 hours under the control of the Senator from Minnesota, Mr. WELLSTONE, and 1 hour to be equally divided between the chairman and ranking member of the Judiciary Committee or their designees.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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The Senator from Iowa.

Mr. GRASSLEY. Madam President, I yield myself such time as I need from the time allotted to Senator HATCH.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRASSLEY. Madam President, I urge my colleagues to support the cloture motion to substitute the language of S. 420 to H.R. 333, the House bankruptcy bill.

As we all know, the substitute amendment to the House bill is the text of the bill that passed the Senate on March 15 by an overwhelmingly bipartisan vote of 83–15. This bill went through hearings and markups in Judiciary, went through an extensive amendment process on the floor, so no one can dispute that this is a bipartisan bill that has gone through a bipartisan process in the Senate.

The bill has gone through the regular order and we should proceed to conference under the regular order.

There are a lot of reports out there that have distorted the truth about this bill. Many groups have said this bill is very controversial. That is not the case. I first started working on bankruptcy reform back in the 1990s, when Senator Heflin, now retired, and I set up a Bankruptcy Review Commission to study the bankruptcy system. This commission was not made up of any Members of the Congress. It was made up of experts in the area of bankruptcy to study the issue so that what we did in this Chamber, with their recommendations, would be done right.

The debate that set up the Bankruptcy Review Commission was prompted by small business and other small proprietors that had problems with individuals who were reneging on their debts but then turned out, it seemed, to have the ability to pay their bills. The impact on these small businesses, obviously, was significant: Prices had to be raised for items; maybe some businesses went out of business. When that happens, employees are laid off. There is no sense having this economic condition, not because we want to deny people a fresh start, because it has been a policy of our bankruptcy laws to let people have a fresh start when they are in financial straits through no fault of their own—natural disaster, high medical bills, et cetera—but when people have the ability to repay, then they should not get off scot-free and cause employees of businesses that go out of business to lose jobs.

We want to be fair to everybody. You can't be fair to businesses and employees that lose their businesses and jobs when somebody who has the ability to pay bills gets off without paying those bills.

I was interested in what was going on in the bankruptcy system in the early 1990s when we set up this commission because of my concern about fundamental fairness.

Why should people get out of repaying their debts if they can pay them? The issue is not new. In fact, the issue of bankruptcy and personal responsibility has been debated since the 1930s, and Congress has made numerous attempts to decrease the moral stigma associated with bankruptcy. As in previous versions of the bankruptcy bill, the language in the substitute amendment is part of an effort to ensure that bankruptcy is reserved for those who truly need it, and that persons with the means to repay their debts should assume their responsibilities.

Some say this bill is unfair and unbalanced because it makes it harder for normal people to avail themselves of bankruptcy. This is just not true either.

First, the bankruptcy bill applies to everyone, rich and poor, and the premise behind the bill—that you should pay your debts if you can—does not discriminate against poor people. In fact, there is a safe harbor provision for lower income people. The bill specifically exempts people who earn less than the median income for their State. And for those consumers to which the bill does apply, the means test that is set forth in the bill is flexible, as it should be. It takes into account the reasonable expenses of a debtor as applicable under standards not set by me but issued by the IRS for the area in which the debtor resides. The means test permits every person to deduct 100 percent of medical expenses. The means test permits every person to deduct expenses for the support and care of elderly parents, grandparents, and disabled children. In addition, the means test would permit battered women to deduct domestic violence expenses and protects their privacy. Furthermore, the means test allows every consumer to show ''special circumstances'' to avoid a repayment plan, just in case there is something within this formula that just doesn't fit every particular family in America.

Let me again remind people about the enhanced consumer protections and credit card disclosures that are contained in the bill. The bankruptcy bill requires credit card companies to provide key information about how much a customer owes on his credit card, as well as how long it is going to take to pay off the balance by making just a minimum payment. We do that by requiring that the credit card companies set up a toll-free number for consumers to get information on their specific credit card balances.

The bill prohibits deceptive advertising of low introductory rates. The bill provides for penalties on creditors who refuse to renegotiate reasonable payment schedules outside of bankruptcy. The bill strengthens enforcement against abusive creditors and increases penalties for predatory debt collection practices. The bill also includes credit counseling programs to help avoid and break the cycle of indebtedness.

Let me remind colleagues about the provisions contained in this bill that will help women and children because there has been a dramatic change in the direction of this legislation when it was introduced three Congresses ago until it now has reached the point where it is today. The bill before us makes family support obligations the first priority in bankruptcy. The bill makes staying current on child support a condition of discharge. The bill gives parents and State child support enforcement collection agencies notice when a debtor who owes child support or alimony files for bankruptcy. It also requires bankruptcy trustees to notify child support creditors of their right to use State support child support enforcement agencies to collect outstanding amounts due. The bill also permits battered women to deduct domestic violence expenses and protects their privacy in bankruptcy.

I also remind colleagues that we adopted a number of amendments in the Judiciary Committee and in this Chamber that make this a bipartisan bill. It started out as a bipartisan bill anyway, through the help of Senator TORRICELLI of New Jersey. If I am correct, I believe we adopted something on the order of 8 amendments in the Judiciary Committee and 30 amendments on the floor of the Senate. For example, the Senate adopted an amendment that, for the first time, would protect consumer privacy when businesses go into bankruptcy. Specifically, the Senate agreed that personally identifiable information given by a consumer to a business debtor in bankruptcy should have privacy protections. The Senate also created a consumer privacy ombudsman in the bankruptcy court.

The Senate agreed to amendments that expand farmer eligibility in bankruptcy and facilitate postbankruptcy proceedings for farmers. The list goes on. While I did not agree with all of the amendments adopted, the Senate went through a lengthy and fair process. That is why it got an 83–15 vote. The whole process doesn't need to be repeated now. Some of those 15 who voted against it won't give up, and that is their right under the Senate rules. But, eventually, an overwhelming majority in the Senate wins out. Maybe all the time a majority in the Senate doesn't win out, but eventually an overwhelming majority in the Senate wins out. And if it doesn't, it should. This is one of those times. So we need to go to conference now and iron out the differences with the House.

I am asking my colleagues to join me in supporting this bill. We need to send a message that people cannot use bankruptcy as a financial tool or an easy way out of paying their debt. The bill promotes responsible borrowing and provides financial education to financially troubled consumers. It also provides some of the more proconsumer provisions relative to credit card companies in years. We have not dealt with these issues in years. This bill deals with it and it should. We all recognize that the proliferation of advertising for

credit cards and the junk mail we get is part of the cause that we have people in bankruptcy.

It also creates new protections for patients when hospitals and nursing homes declare bankruptcy. The bill makes permanent chapter 12 bankruptcy for family farmers and lessens the capital gains tax burden on financially strapped farmers who declare bankruptcy. This is a bill that the Senate passed with this overwhelming margin, which my colleagues probably get tired of my mentioning so many times, but it was 83–15. So I think it is just common sense. Maybe common sense doesn't rule around this institution enough, but it is common sense that we move on to the next step. I urge my colleagues to vote in support of the cloture and in support of the Leahy-Hatch-Grassley substitute amendment.

I yield the floor, and since there are no other Members present, I suggest the absence of a quorum and that it be charged to Senator WELLSTONE. I have been advised by staff that that is the proper thing to do.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Madam President, I ask unanimous consent the order for the quorum call be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WELLSTONE. Madam President, my understanding is that there may be a number of other Senators who are coming to the floor to speak in opposition to the bankruptcy bill. Senator DURBIN may try to come down. So Senator DURBIN and others know, when they come I will simply break my remarks and others can speak at their convenience.

At the beginning of last week, the majority leader moved to proceed to the bill and I objected. Then we had a cloture vote on the motion to proceed. In the time I had, I implored, called upon, begged the Senate to step back from the brink and to decline to go to conference with the House on this so-called bankruptcy reform. I believe we would be making a grave mistake.

I am trying to figure out a way not to repeat all the arguments I made last week. I will simply say I think this is a measure we are going to deeply regret. There are a lot of people—Elizabeth Warren comes to mind, law professor at Harvard—who have done some very important scholarship at Harvard in this area. I don't know that I can think of a single law professor who has argued in favor of this bill. Maybe there is someone somewhere. The opinion of the scholars in the field, the opinion of people who work in the field, is almost unanimous that this is a huge mistake.

We need to understand that bankruptcy is something most families do not think they will ever need. They do not think they will ever need to file for bankruptcy. But it is really a safety net, not just for low-income families but for middle-income families as well.

Fifty percent of the people who file for bankruptcy in our country today do it because of a medical bill. You have a double whammy. It is not just the situation where you have the expense of the medical bills but also it may be that, because of the illness or injury, you yourself are not able to work so you are hit both ways, or it might be your child's medical bill, but also you may not be able to bring in the income because you are not able to go to work because you need to be at home taking care of your child. That is 50 percent of the people. We are not talking about deadbeats.

Frankly, most of the rest of the cases can be explained—it should not surprise anybody—by loss of job or divorce. These are the major explanatory variables why people file for bankruptcy, file for chapter 7. The irony of it—and I tried to make this argument last week as well—is that for a long time my colleagues were facing a problem that did not exist; that is to say, they were talking about all the abuse and all the ways in which people were gaming the system in American bankruptcy, but they came out with a record that said that is 3 percent of the debt. So let's come out with legislation that deals with the 3 percent, but let's not have legislation where people who find themselves in terrible economic circumstances no longer are able to rebuild their lives, all because of a small number of people who abuse the system.

Moreover, actually the bankruptcies were going down. So quite to the contrary of the claim we had this rash of bankruptcies and people no longer felt any stigma or shame and people were no longer responsible, none of it really held up very well if you closely examined the arguments.

Now what we have, in case anybody has not noticed, is an economy that is leveling off with a turn downward. It is not the boom economy we saw while the Presiding Officer's husband, President Clinton, was President of the United States of America. It is a different economy now. There are going to be more people who will lose their jobs and more people who will be faced with these difficult economic circumstances through no fault of their own. We are going to make it well nigh impossible for them to rebuild their lives.

Madam President, I argued last week that we are hardly talking about deadbeats. This bill assumes people who file for chapter 7 are deadbeats and they are not. The means test aside, there are 15 provisions in the House and Senate-passed bills that will affect all debtors, regardless of their income—15 provisions. The means test will not protect them. The safe harbor will not protect them. These provisions are going to make bankruptcy relief more complicated, more expensive, and therefore harder to achieve for debtors—again, regardless of income. That means they will also fall the hardest, in terms of the people who will be most affected by this legislation, on low- and moderate-income debtors.

The irony is that those who advocate for this bill justify it by arguing that we need to go after the wealthy deadbeats. But if the cost of filing for bankruptcy doubles, which is exactly what it does in this bill, who gets hurt the most? A middle-income family who had to save for 6 months, under current law, to pay for an attorney and for filing fees, or a multimillionaire like the ones the proponents cite in this statement? It just makes no sense.

There will be no problem for millionaires who are gaming the system. They are not the people who get hurt by this legislation. This legislation is the most harsh on the most vulnerable.

I also argued and tried to make the case that this couldn't be a worse time to do this in terms of where the economy is headed.

So while the bill would be terrible for consumers and for regular working-class families even in the best of times, its effects will be all the more devastating now that we have a weakening economy.

Colleagues, you are going to regret this.

It boggles the mind that at a time when Americans are most economically vulnerable and when they are most in need for protection from financial disaster we would eviscerate the major fiscal safety net in our society for the middle class. It is the height of insanity that we would be contemplating doing what we are doing right now given what is happening to this economy.

Colleagues, I couldn't support this legislation in the best of times. Even in the sunniest of economic circumstances, there are many families who are down on their luck and who are sent to the sidelines. Bankruptcy relief lets these families rebuild their lives again. It is a little bit like ''there but for the grace of God go I.''

I think Time magazine had a series which was just a blistering attack on this bill. They did it in two ways. They did it, first of all, by talking about what this legislation means in times—which quite often on the floor of the Senate we don't make those connections as we should—to a lot of these families and what happened to these families because of their economic circumstances. They did not ask that their child be stricken by a terrible illness. They did not ask for the physical pain. They did not ask for the economic pain. But we are going to make it harder for them to rebuild their lives. People do not ask to be laid off work. People do not ask that their families be shredded because there is a divorce. You wish it would not have to happen. But it does happen. Sometimes

someone is at fault and sometimes no one is at fault, but it happens.

It is usually the woman who is the one taking care of the children, and she doesn't have the income she once had. These are the kinds of citizens who file for bankruptcy relief. That is why every labor organization, civil rights, women's, and consumer organizations in the country and more—religious organizations—oppose this legislation.

This legislation is a testimony to the absolutely sickening power of the financial services industry in Congress. We wouldn't be doing this otherwise.

I did not say this is a one-to-one correlation. Anyone can play the game that people vote this way because they are in the pockets of the financial services. That is not the argument that I make. Everybody can say that about everybody who votes in the Senate on every issue.

What I am saying is not at the personal level but at the institutional level in terms of who has the lobbying coalition, who is ever present, who has all the financial resources, and who has the political power. This industry has a heck of a lot more power than ''ordinary consumers and ordinary citizens'' who are the very people we ought to be representing.

I want to make it clear that this is not a debate about winners and losers because we all lose if we erode the middle class in this country. We all lose if we take away some of the critical underpinnings that shore up working families. Sure, in the short run big banks and credit card companies may take their profits. But in the long run, it is going to be ordinary families and entrepreneurs—all businesspeople—who take the risk and who are going to pay the price.

This isn't a debate about reducing the high number of bankruptcies. In no way will this legislation do that. Indeed, I would argue that by rewarding reckless lending that got us here in the first place, you are going to see more consumers overburdened by debt.

By the way, there isn't hardly a word in this legislation that calls on these credit card companies to be accountable. It is all a one-way street.

This debate is about punishing failure—whether self-inflicted or uncontrolled and unexpected. This is a debate about punishing failure. If there is one thing that our country has learned, punishing failure doesn't work. You need to correct the mistakes. You need to prevent abuse. But you also need to lift people up when they stumble and not beat them down.

I thought I made a pretty good case last week. I didn't think it was really refuted. The proponents of the bill came down and they did their thing, but I don't think they did much damage to my argument.

What did the proponents of this legislation say? We need to talk about this. It might be that it is going to go through. But, darn it, there ought to be some discussion before the Senate about what we are doing.

What do the proponents say? My friend from Alabama got up and complained that I was taking on or presenting this critique of the big banks and credit card companies. He said this is a bankruptcy bill, and it only deals with the bankruptcy code and bankruptcy court reform. Therefore, holding the lender accountable is not appropriate.

That was one criticism. It sounded a little bizarre to me, as much fondness as I have for him. I think it sounds kind of bizarre to most commonsense Americans in Minnesota who reach in their mailboxes every day of the week and pull out a handful of credit card solicitations. But apparently some of my colleagues see no connection whatsoever between the irresponsibility of the lenders and the high number of bankruptcies. That is preposterous.

The reason colleagues do not see any connection between the irresponsibility of the lenders and the high number of bankruptcies is because they don't want to see any connection because these folks have a lot of clout and a lot of power.

Both the House and the Senate bills basically give a free ride to banks and credit card companies that deserve much of the blame for the high number of bankruptcy filings because of their lose credit card standards. Even the Senate bill, which is better than the House bill, does very little to address this problem. There are some minor disclosure provisions in the Senate bill. But even those don't go nearly as far as they should. Lenders should not be rewarded for reckless lending.

Where is the balance? If you are holding a debtor accountable, why are you not holding lenders accountable in this legislation?

Let me just give you some examples of some of the poor choices that can be made. In this particular case I am talking about the lenders—not the borrowers. Here are some real world examples.

In June of 1999 the Office of the Comptroller of the Currency reached a settlement with Providian Financial Corporation in which Providian agreed to pay at least $300 million to its customers to compensate them for using deceptive marketing tactics. Among these were baiting customers with ''no annual fees'' but then charging an annual fee unless the customer accepted the $156 credit protection program—coverage which was itself deceptively marketed. The company also misrepresented the savings their customers would get from transferring account balances from another card.

In 1999, Sears, Roebuck & Co. paid $498 million in settlement damages and $60 million in fines for illegally coercing reaffirmations—agreements with borrowers to repay debt—from its cardholders. But apparently this is just the cost of doing business: bankruptcy judges in California, Vermont, and New York have claimed that Sears is still up to its old strong arm tactics but is now using legal loopholes to avoid disclosure. Now, I say to my colleagues, Sears is a creditor in one third of all personal bankruptcies. And by the way, this legislation contains provisions that would have protected Sears from paying back any monies that customers were tricked into paying under these plans.

That is unbelievable. I will tell you something. With the one-sidedness of this legislation, there is no wonder. Again, I am not attacking colleagues at a personal level but at an institutional level. No wonder ordinary people think the political process in Washington is dominated by powerful folks and that powerful interests are opposed to them.

How else can one explain the complete lack of balance? July 2000, North American Capital Corporation, a subsidiary of GE, agreed to pay a $250,000 fine to settle charges brought by the Federal Trade Commission that the company had violated the Fair Debt Collection Practices Act by lying to and harassing customers during collections.

Another example: October 1998, the Department of Justice brought an antitrust suit against Visa and Mastercard, the two largest credit card associations, charging them with illegal collusion that reduced competition and made credit cards more expensive for borrowers.

To make the argument that when we look at bankruptcies we only hold those who are the lenders accountable and not the creditors makes no sense whatsoever.

The goal of this bill was supposed to be to reduce bankruptcies. That is why the big banks and credit card companies have been pushing for it. They are the only ones pushing for it. I am hard pressed to find one bankruptcy judge in the United States who supports this legislation. I am hard pressed to find one bankruptcy expert in the United States who supports this legislation. This legislation was written by and for the lenders. It is that simple.

Maybe it is different in Rhode Island; I doubt it. I can't remember a conversation in a coffee shop anywhere in Minnesota, be it metro or be it in greater Minnesota, out in rural Minnesota, where people have rushed up to me and said: What we want you to do is please support that bankruptcy bill which will make it more difficult for people who are going under because of medical bills or because they have lost their job or because of a divorce in their family to rebuild their lives. Please, Senator, that is our priority.

I hear people talking about children and a good education. I hear young working people talking about affordable child care. I hear elderly people talking about the price of prescription drugs. I hear elderly people terrified, along with their children, about what will happen to them at the end of their life if they are faced with catastrophic medical expenses. I hear people talking

about all of the health insecurity they feel because they don't believe they have good coverage or because it costs much more than they can afford.

I hear veterans who are concerned about veterans health care. This Thursday we are going to have a hearing in the veterans committee, which Senator ROCKEFELLER chairs, on homeless veterans. I am guessing that probably a third of all the homeless males—too many are women and children—are veterans, and most of them are Vietnam vets. Many of them are struggling with PTSD. Many are struggling with substance abuse. It is a scam that these veterans are homeless in America.

I hear discussion about why can't we do better for veterans. I hear concern about the environment. I hear concern about energy costs. I hear concern about a fair price in farm country. I hear small businesspeople talk to me about how hard it is to have access to capital. I don't see the ground swell of support all around the United States for this piece of legislation.

What in the world are we doing debating this piece of legislation in the Senate today? Why is this legislation out here? What kind of good does this do for the people we represent? It does a lot of good for the credit card companies. It does a lot of good for the financial services industry. I know that. I would just like somebody to explain to me how it does a lot of good for ordinary people, those folks who don't hire the lobbyists, the people who don't have the big bucks, the people we see every day. I hope we see them every day when we are back home.

It is ridiculous on its face that we can divorce the behavior of the credit card companies from the high number of bankruptcies. Indeed, all the evidence points to the fact that the lenders and their poor practices are a big part of the problem. It is just outrageous we don't take them on.

I call this going down the path of least political resistance. It is easy to pass legislation that has such a cruel and harsh effect on people who are being put under because of medical bills or because they have lost their jobs. They don't have that much economic clout, and they don't have that much political clout. As a matter of fact, I will come up with an amendment on our bill sometime when there is an appropriate vehicle that will go after the credit card companies and the lenders on their lending practices; we will have a vote on it. Then it will be more difficult because we have to go against those interests, but we ought to at least have some balance.

In the debate last week, my friend from Alabama stood up and said that the core of this bill is the means test. All the means test does is force those folks with high incomes to go to chapter 13. What is wrong with that? Therefore, the bill doesn't hurt low-income people.

The means test is only 9 pages of a 200-page bill. If the means test were all this bill consisted of, then it would have passed 12 years ago. We have been trying to hold this matter up for 2½ years, something such as that.

The bankruptcy bill purports to target abuses of the bankruptcy code by wealthy scofflaws and deadbeats who make up 3 percent of the filers, according to the American Bankruptcy Institute. Yet hundreds of thousands of Americans file for bankruptcy every year, not to game the system but because they are overwhelmed by medical bills or job loss or divorce.

Unfortunately, there are at least 15 provisions in both bills that make it harder to get a fresh start regardless of whether the debtor is a scofflaw and/or a person who must file because they are made insolvent by their medical debt. These include, but are in addition to, the means test.

Neither the means tests nor the safe harbor in this bill applies to the vast majority of the new burdens placed on debtors under both bills. Debtors will face these hurdles to filing regardless of their circumstance.

The final point made by proponents last week was actually made by several Senators. I think in some ways it is the most insidious. The argument advanced is that the bill is good for women and children because it places child support as the first priority debt to be paid in bankruptcy.

First, it is the case that this is a useful change in the law as far as it goes. Unfortunately, it doesn't go very far. Child support is already nondischargeable in bankruptcy. In theory under this bill, a woman who is owed child support is more likely to receive that support from her deadbeat husband while he is going through bankruptcy. But once he emerges from bankruptcy, the other provisions of these bills will make it less likely that his ex-wife or kids will get anything.

Under current law, an ex-spouse postbankruptcy often has few other debts; they have all been discharged. The child support is nondischargeable. After his other debts are gone, the ex-spouse can devote more of their income to their support obligations. In this way, the current law actually helps women and children because they don't have to compete with other more sophisticated creditors postbankruptcy. But under this bill, the ex-spouse will emerge with much more debt than under current law. Less credit card debt is dischargeable. Creditors will have more leeway to force reaffirmations, agreements where debtors reaffirm their intention to pay back debt, and so the debt is not wiped out in bankruptcy.

The net effect is that women and children whose spouses file for bankruptcy under this bill will have to compete more than ever with auto dealers, with big retailers such as Sears, and with credit card companies for the paycheck of their ex-husband. Do we think they are going to do well?

The Senate giveth with one hand and taketh away with the other. That is part of the reason that 31 groups that are devoted to women's and children's issues oppose this bill.

I can't think of one women's or children's organization that supports this legislation.

May I make one other point. There is another reason. That is, one group of citizens—in fact, it is the fastest growing number of citizens who file for bankruptcy—are women. Since 1981, the number of women filing increased 700 percent. Divorced women are the ones who end up supporting the children. Income drops.

Are single women with children deadbeats? This bill assumes they are. The new nondischargeability of credit card debt will hit hard those women who use the cards to tide them over after a divorce until their income stabilizes. The ''safe harbor'' in the House bill, which proponents argue will shield low- and moderate-income debtors from the means test, will not benefit many single mothers who need help the most because it is based on the combined income of the debtor and the debtor's spouse—are you ready for this—even if they are separated, the spouse is not filing for bankruptcy, and the spouse is providing no debt for the debtor and her children. That is figured in as the mother's income.

I will tell you something. This is one harsh, mean-spirited piece of legislation, and I am stunned that so many Senators are supporting it.

Now, while I am waiting for Senator DURBIN to come to the floor, let me talk about the pending amendment to this bill, which is actually the text of the bill that the Senate passed earlier this year. Here is where I will give the Senate some credit. We started this year with a truly terrible, completely one-sided bill. It was basically identical to the House version. The committee marked it up over the chairman's objections and made improvements. Once it was considered by the Senate, additional improvements were made. The Senate bill is still a very bad piece of legislation. Unfortunately, most of what we have accomplished has been nibbling around the edges. But it is better than the House bill; that is clear.

The Senate bill has better credit card disclosure provisions. They are inadequate, but the House is completely silent on that. The Senate bill allows more credit to be discharged, thanks to an amendment by Senator BOXER. The Leahy amendment fixed the ''separated spouse problem'' with the safe harbor. Why there was even a fight on that is beyond me. The House bill has no such fix.

The Senate bill is less harsh when it comes to filing chapter 13 cases. We also limited some but not all of the hurdles this bill creates in the successful filing of chapter 13 cases.

A Feingold amendment adopted in committee protects, to some degree, renters from eviction if they pay the overdue rent when they file for bankruptcy.

Very significant is the Kohl amendment on the homestead exemption. With its adoption, the Senate takes on wealthy debtors who file frivolous claims and shield their assets in multimillion-dollar mansions. This is a real abuse of the current system and it ought to be corrected. Five States, under current law, allow a debtor to shield from creditors an unlimited amount of equity in their home. In fact, the Florida Supreme Court, in a case last month, established that even if a debtor uses Florida's unlimited homestead exemption for nakedly fraudulent purposes, there is nothing the courts can do. You would think that with all the bluster of the proponents of the bill about curbing abuse of the deadbeats they would rush to close this loophole. Not so. Senator KOHL had to drag the Senate kicking and screaming to plug this obvious gap.

Unfortunately, the House and the President have drawn a line in the sand over this issue. While the House of Representatives—or at least the majority party in the House—and the President of the United States of America support harsh, punitive hurdles to a fresh start for low- and moderate-income folks who virtually nobody claims are abusing the system, they are unprepared to go to the mat for folks who want to protect their mansions and who are openly flouting their obligation.

May I repeat this again. The Republicans in the House of Representatives and the President of the United States support a very harsh and punitive piece of legislation making it very difficult for people to rebuild their lives—people who have been put under because of medical bills, for example. On the other hand, they have no problem with folks who want to protect their property and protect their income by buying these multimillion-dollar mansions in States in the country and shielding themselves from any obligation.

It doesn't get any weirder than that—actually, it does. It does if the Senate conferees—and I don't have any illusion; this bill will go to conference—knuckle under to the House on any of these issues. I think the Senate conferees should be trying to improve this bill further in conference. I think that is Senator LEAHY's intention, and I salute him for it. But I certainly hope you can get the backing of the Senate conferees.

I have to worry about what is going to happen in the conference committee. Look at the past. Look at the evidence from the past. Since 1998, the House has passed terrible bills. The Senate has passed better bills. Every time it emerges from conference, it is a nightmare. I hope that doesn't happen again, and I certainly hope all of the Senate conferees will stick with the Senate position on the Kohl amendment, the Schumer amendment, and other efforts which have made the bill at least slightly better.

This time, I am sorry to say, this legislation is much more likely to become law. With this President, this ridiculous giveaway to the big banks and credit card companies is going to make it. To the everlasting credit of President Clinton, he vetoed this legislation. Look, I was certainly one of his critics in the Senate. I have to admit that sometimes as I look at the values and policy preferences of this administration, I certainly miss the Clinton administration. I certainly do. But to give credit where it is due, President Clinton vetoed this legislation.

The White House has all but said they will sign the bill, as long as it protects wealthy deadbeats and their mansions. That is the position of the White House: We will sign this piece of legislation as long as you guarantee us that you will protect the wealthy deadbeats and their mansions—as in Texas.

I am afraid, given what wealth and power get you in this town, given the kind of backing this bill has, and given that some of the biggest investors of both parties are involved, it is going to be far too easy for the majority of the conferees to go along with this proposition. I am sorry, I am going to repeat this again. People in Minnesota—I do no damage to the truth—and I think people in Rhode Island do not know about this legislation or any of the details. I promise you, they will be deeply offended with this proposition, that a whole lot of people—because a few people game the system. True, a small percentage. Every independent study says that regarding bankruptcy. If we pass this piece of legislation that basically makes it impossible for a lot of good people, middle-class people, low- and moderate-income people, who, through no fault of their own—there but for the grace of God go I—through the loss of job, medical bills, you name it, find themselves in brutal circumstances, this legislation is going to make it difficult to rebuild their lives.

At the same time, this piece of legislation, because of the insistence of the President and the Republicans in the House of Representatives, is going to protect wealthy deadbeats and their mansions and enable people to shield their assets—not the people I am talking about but the wealthy people. Does that make any sense whatsoever? That offends me as a Senator from Minnesota.

I hope I am wrong. I hope the Democratic conferees in the Senate will support Senator LEAHY, the chairman. He has done good work on this bill under very difficult circumstances. He did good work with an equally divided Senate. I don't agree on the final product, but I am not going to ignore some of the improvements. I just hope the Democrats in the Senate do not let him down.

Mr. President, I will conclude on this note. Last week, the Senate voted to move forward to conference. The Senate voted overwhelmingly. I think it is fair to say that. The die is cast. It is going to happen. I can block the Senate, I suppose, for a week, but the result will be no different. I know that.

I came to the Chamber last week. I have come to the Chamber today. I will have another amendment probably postcloture, but I do not know how to stop this any longer. I do not know of any way to stop it.

Let me say this: I will have an amendment that is going to call for a GAO study of this bill over the next 2 years, and I say to Senators, there should be 100 votes for it. I will wait to use my hour after the vote to talk about it, but there should be 100 votes for it.

I am going to go over each of the arguments and ask GAO to look at them, and we will see who is right or wrong. I am not saying that in some macho way. I am saying at a minimum we ought to be willing to have an evaluation of this legislation and what it is going to do to people.

I do not regret holding up this legislation. Maybe it comes with being 5 foot 6 inches. I am almost defiantly proud, along with the help of other Senators, in stopping this, in blocking it, in fighting it. I do not regret it at all. This bill should not be moving forward. I do not think it should be a priority. I am in disagreement with the Senate majority leader on this question. I think it is too harsh and too one-sided. Unfortunately, it is a perfect reflection of who all too often has the power in the Nation's Capital. With the economy heading in the wrong direction right now and slowing up and people losing jobs and people being underemployed—that is to say, they are not counted among the ranks of the official unemployed, but they are not working at the kinds of jobs they would be working at with a better economy, and people under more economic pressure and more economic strain—this is the worst time to pass this legislation.

In fact, I do not know—maybe this is a stretch. I read an article the other day in the New York Times that a number of economists were expressing their concern that it has been the consumer spending which has kept the economy going because a lot of business investment is way down now. They are saying they do not know how much longer consumers will continue to spend. There is a fair amount of debt.

I imagine this legislation may, in fact, add to our economic troubles. People may be even more skiddish about consuming; they may be even more reluctant to be buyers, especially if they are going to wind up in the poorhouse for the rest of their life.

This legislation does not make sense on economic grounds. It does not make sense in terms of what people in our States are asking us to do and what our priorities should be. This legislation should not be before the Senate. I am in disagreement with my majority leader on this question. This legislation violates the basic standard of elementary justice. It is going to pass, but it should not.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. REED). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the quorum call be charged to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. My understanding, Mr. President, is Senator HUTCHISON of Texas and Senator BROWNBACK want to speak, and if they do, I allocate to each one of them 10 minutes. My understanding is Senator DURBIN also wants to speak. I allocate to the Senator the rest of my time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I rise today, as I did earlier this year, in opposition to the Senate-passed bankruptcy bill, Senate bill 420. It is likely this week we will appoint conferees and start the debate about this bankruptcy bill.

Let me say at the outset, I support bankruptcy reform. A few years ago, as a member of the Judiciary Committee, I was the ranking Democrat on the subcommittee that produced a bankruptcy bill. At the time, we saw a rather dramatic increase of public bankruptcy filings across America, and there also appeared to be, and I believe there are, serious abuses where people are going to bankruptcy court to be discharged from debts when, in fact, they could pay many of those debts. When a person is able to pay their debts and does not, for whatever reason, the economy absorbs it and all of us as consumers are taxed or end up paying the cost of those unpaid debts. It is passed along in one version or another.

So bankruptcy reform in and of itself is warranted and should be part of our agenda. I was happy to be part of the creation of a bill a few years ago which dealt with changing our bankruptcy code.

Bankruptcy law is one of the most arcane laws in America. Although it affects probably more Americans than we imagine, it is an area of the law to which very few people pay attention. Almost by accident, I took a course in bankruptcy law in law school at Georgetown. As a practicing attorney in Springfield, IL, I was appointed as a trustee in bankruptcy for a local truckstop that was going bankrupt. Those were my two brushes in the law with bankruptcy. Other than that, I didn't include it in my practice, and I paid little attention to it. When the time came to debate it in the Senate Judiciary Committee, it turned out I had more experience in bankruptcy law than any other Senator. It is a rather obscure area of the law that, unless it is focused on, is difficult to understand, and more difficult to suggest meaningful reforms that make a difference.

What I tried to do in the earlier debate on the bankruptcy law was to suggest that if there are abuses, there should be reforms so people do not abuse the bankruptcy process. But we should also look to the other side of the ledger. There are abuses on the credit side, on the financing of debt side, which also should be addressed as part of bankruptcy reform. I believe this balanced approach, saying don't go in and abuse the bankruptcy courts, is a good one as long as we couple it with an admonition, warning, a prohibition in the law, if necessary, against those who abuse the credit side.

I still remember and I have repeated it often, those who came to see me first about bankruptcy reform—these are people from banks and financial industry and credit card companies—said it used to be filing bankruptcy was something of which people were ashamed. They didn't want to do it, they didn't want to admit they had done it. They were embarrassed by the experience. Now, in the words of those who came to see me, bankruptcy has lost its moral stigma.

I am not sure if that is altogether true. In fact, I question whether it is true except in isolated cases. I said back to them: Do you believe there is a moral stigma attached to credit practices, as well?

The fact is, when I went to a college football game in Illinois and went up the ramp, and as I started to go into the stadium in Champaign-Urbana there stood someone offering me a free T-shirt for signing up for a University of Illinois credit card sponsored by one of the major credit card companies. Let me make it clear, they were not looking for me at the top of the stairs. They were looking for students to try to get them to sign up for credit cards and get deeper into debt. Where is the moral stigma there? Who is asking the hard question whether that student can pay off a debt?

At the University of Indiana a few years ago, the dean of students said the No. 1 reason kids were dropping out of school and taking some time away from school was to pay off credit card debts. So I say to the credit industry, when we are talking about moral stigma, do you think twice about offering credit cards?

I suggest to anybody listening to this debate, go home tonight and open your mail. How many new solicitations will you receive for a new credit card? Literally hundreds of millions of them descend on America. Are hard questions asked whether a person is creditworthy? Perhaps. But in many cases, no.

You see people getting deeper and deeper into debt, finally being pushed over the edge into bankruptcy court. I suggest as part of this bankruptcy debate, let's ask the question on both sides: Who is abusing the bankruptcy court? But also, who is abusing when it comes to offering credit in the United States?

I think, to address bankruptcy reform in that context is an honest approach. It is one that I think is sensible and balanced. The bill I supported that passed this Senate a few years ago with 97 votes was a balanced bill. This bill we have before us is not. This bill, which has been pushed through by the credit industry, by the financial institutions, sadly, does not have the balance that I think is absolutely essential.

I had hoped we would be able to come up with such a bill. That has not happened. We had a conference committee after we passed this bill a few years ago. It was a conference committee in name only because what it boiled down to was the Republican members of the conference committee did not invite the Democrats to attend. They sat down with the financial industry and wrote a bill and said take it or leave it, and we left it, as we should have.

Fast forward a couple of years: Same experience, credit industry comes forward with a bill, they refuse to include in there protections for consumers when it comes to credit, and that bill died as well.

Now we are in the third chapter of this long saga and we are considering this bankruptcy bill, which is S. 420. The question is whether or not we will report out a bill from conference that addresses some of the issues I have raised.

I think this bill has some serious defects and weaknesses. I am disappointed the Senate failed to take the opportunity to achieve meaningful reform on credit card disclosure and marketing practices.

There was a recent study by the Federal Reserve Bank in Boston. It concludes that the rise in personal bankruptcy in America roughly mirrors the increase in credit card loans outstanding—a direct relationship. So we see people getting deeper and deeper into credit card debt until a moment comes that pushes them over the edge. What is that moment? Perhaps it is when the debt becomes intolerably high, or the loss of a job, or a serious illness, or a divorce. These sorts of things push people over the edge and into bankruptcy court. But the reason they reach these terrible situations has a lot to do with credit card debt in America that continues to grow.

I was back in Illinois over the weekend and ran into a couple who started

talking about some of the outrageous things happening to them. They told me a story about some of the things of which I was not aware. The fellow said:

Our family, like a lot of families, has several credit cards.

This is on a Friday night at the Navy Pier in Chicago. He pulled me over, and we weren't even talking about bankruptcy. He said:

I wanted to ask you about credit card companies. Did you know if you fail to make a timely payment on one of your credit cards that information is shared among the credit card companies? What happened is that I missed a payment on one of my furniture loans. As a result, my monthly interest rate on all my credit cards went from 12 to 20 percent. I called them and said I made timely payments on all these credit cards. They said, ''But you missed your furniture loan over here.''

He said:

Is that right? Is that fair?

I said:

The sad reality is, that is probably part of your contract.

I am a lawyer. When I flip over that monthly statement from the credit card companies—I have reached the point where I need pretty good glasses to read something, but I could not even make sense of the fine print on the back of my monthly credit card statement. I imagine most Americans, when they sign up for a credit card or see the monthly statement, don't say, Dear, we are not going to be able to go out to the movie because I need to take the next half-hour and read the back of my monthly credit card statement. People don't do that. But there are things going on with those credit cards that can severely disadvantage you.

We had an opportunity to do something about it in this bill and we did not do it. We did not do it. One of the things I pushed for I think is so basic, I cannot believe the credit card industry opposed it. Let me tell you what it was. On each monthly statement they say: Here is the minimum monthly payment. This is all we really want to receive from you.

I suggested as part of that monthly statement they say: This is the minimum monthly payment which you can make on your credit card balance. If you make that minimum monthly payment, here are the number of months you will have to pay to eliminate the balance completely. Here is how much you will have paid in principal and how much in interest. So people would be knowledgeable when they made a minimum monthly payment that in fact they were really signing up for paying off that balance over a period of years—and it is literally years—if they made the minimum monthly payment. Because what credit card companies do is keep charging interest so you just never catch up with yourself.

I suggested the credit card companies at least give us that information so consumers across America will be knowledgeable: OK, I have a $2,000 balance. If the minimum monthly payment is $25—or whatever it happens to be—how long is it going to take me to pay off that balance? Guess what. It is about 5 or 6 years or more. So, will I just pay $25? If I could, I would pay more. Let's get rid of that balance because the interest is going to accumulate.

I went to the credit card industry and said: Include that information in the monthly statement. That cannot be something you would oppose. Do you know what they said? We just can't figure that out. We can't calculate that. We cannot produce that information for every borrower, it is just too complicated.

Baloney. With computers today and all the information we have available, that would be an easy calculation. But the credit card industry doesn't want you to know it. They want you to dig that hole deeper and deeper because they make money in the process.

People who genuinely need credit, who may in a bad month only be able to make that minimum monthly payment—that is a situation that families can face. But shouldn't consumers be informed in America? When we talk about a bankruptcy reform bill, is it unreasonable to suggest that kind of credit card disclosure be part of that bill? The credit card industry said flat no, and it is not included.

Let me tell you another area that really rankles me. This is an amendment I offered on the bill, the bankruptcy bill here on the floor. It relates to a situation called predatory lenders. You read about them occasionally and see them on television. We see stories on some of the news reports. Here is what it is. You have people who prey on those who are elderly and not well informed and have them sign up for new debt on their homes, particularly for home improvements or vinyl siding or a new furnace or whatever it happens to be. They put provisions in those predatory loans that give them an opportunity to make extraordinarily high interest profits off those predatory loans, and they include other provisions called balloon payments and the like.

How many times have you read in the newspaper or watched on TV the story of a retired widow—and it has happened in the city of Chicago where I represent a lot of people—a retired widow who was safely in her little home for which she saved up for her life, and some smooth talker came by and had her sign up for what turned out to be a new mortgage on her home with really bad conditions and terms. So as time went on—usually the work turns out to be shoddy and the debt turns out to be intolerable, and it reaches a breaking point. When it reaches that breaking point, sometimes this person, in retirement, in their safe little family home, stands the risk of losing their home because of these predatory lending situations.

These are the most deceptive loans in America. They cost borrowers an estimated $11 billion each year in lost equity, back-end penalties, and excess interest paid.

The American Association of Retired Persons, the largest group of seniors in America, did a survey. Eight out of ten Americans over the age of 65 own their home free of any mortgage. That is good. It shows people have planned ahead. When they reach retirement, they want to have that home and not have to worry about a monthly mortgage payment. We want seniors to be in that position.

However, the unscrupulous lenders out there know those seniors have an asset and if they can get their hands on it, get their hooks into that senior, they set out to do that, and foreclosure is often the result when the senior fails to make these outrageous loan payments. The elderly person, the senior living alone or a person from a low-income neighborhood, can get a cold call from a telemarketer or a visit from somebody knocking on the door, telling them how they can get a new roof or windows: We can give you insulated windows with a little cheap loan; just sign up. It usually puts the unsuspecting victim in danger of losing their home. Almost before the victims know what hit them, they are whacked with outrageous fees, $8,000 or more, slapped with skyrocketing interest rates and battered into a financial hole they never get out of.

This is what happened to Janie and Gilbert Coleman from Bellwood. The Colemans had purchased their home with a court settlement and had no mortgage payment at all. But this elderly couple with a 9th grade education had Social Security disability income and predators mortgage lenders moved in for the kill.

Although the Colemans were first able to meet the $200 monthly payments on a $12,000 loan, 8 years and 5 refinancings later they found themselves $130,000 buried in debt.

They borrowed $12,000. Over a period of 8 years, with all of the refinancing and all of the interest payments on this little home, the debt grew to $130,000. That is what I am talking about.

Six loans were made to the Colemans. Four of these loans were made by a national lender, Associates, including two loans made just seven weeks apart.

Associates repeatedly sold the Colemans insurance that they did not want or need. And twice they were charged more for fees and insurance than they received.

Associates, a lending arm of Citigroup, is now the target of a multimillion dollar lawsuit filed by the Federal Trade Commission.

Associates earned over $1 billion in premiums last year but paid only $668 million in benefits.

This is a situation that is also going to illustrate what I am talking about.

People like 72-year-old Bessy Alexander from the South Side who believed that she was getting a fixed rate

but really received a mortgage with an interest rate adjusting upward every 6 months—from an initial rate 10.75 percent to as high as 17.25 percent.

People like Nancy and Harry Swank of Roanoke, IL, who took a small loan from Associates to pay for a new stove and ended up with two loans, one at nearly 19 percent interest, totaling over $76,000, well above the $60,000 value of their home.

They started off buying a stove for their $60,000 home. When it was all over, they owed $76,000 more than the value of their home.

People like 70-year-old Mrs. Genie McNab and other victims of predatory lending practices testified in 1998 before the Special Committee on Aging in a hearing chaired by Senator GRASSLEY.

If my colleagues have not done so already, I would encourage them to read the committee report from this hearing for a human face on this issue.

You ask yourself, what does this have to do with the bankruptcy bill that is before us? I will tell you what it does. I said in my amendment that if you have been guilty of violating fair credit practices, if you have taken advantage of people such as those I have described, if you are in a position as a company where you have used the law improperly and now have a foreclosure against someone who is going into bankruptcy court, we will not allow you to walk in and claim you have clean hands in bankruptcy court and take the home. Predatory lenders would have been put on notice that when it was all said and done after they battered these elderly people to the point where they can no longer make payments and force them into bankruptcy that our bankruptcy code will not protect these vultures.

My amendment lost on the floor of the Senate by one vote. You think to yourself, if you are going to have a balanced bill that says people shouldn't file for bankruptcy who have used the process, shouldn't the balance in the law also extend to creditors who walk into bankruptcy court and want the protection of our legal system to collect from these poor people who have been swindled out of their life savings? That seems fairly obvious to me. Doesn't it really suggest a balance in the law that we should have?

My amendment was defeated. Who defeated it? The financial institutions that don't want to be held accountable for their lending practices. That to me is one of the sad realities of the law that faces us.

We know who these predatory lenders are. When we had this testimony before our committees, we asked them: How do you pick out the homes of the people who you are going after? Well, they said, we look for primarily elderly people—primarily elderly widows, those who appear to be able to make a decision and sign the document but don't have a lot of advice from lawyers, or relatives, or anyone on whom they can rely.

They catch them in the most vulnerable situation. They take advantage of them. They take their money. They take their homes away, and they take it away in our court system. This bankruptcy law which we are now considering should be protecting those people instead of preying on them as it does.

There is a study I would like to share with you entitled ''Unequal Burden: Income and Racial Disparities in Subprime Lending in America'' by the U.S. Department of Housing and Urban Development. They found that: subprime loans are five times more likely in black neighborhoods than in white neighborhoods. In addition, homeowners in high-income black areas are twice as likely as homeowners in low-income white areas to have subprime loans.

Unsuspecting minority and low- to moderate-income consumers—often equity rich and cash poor—are targeted by predatory lenders that extend credit to high-risk borrowers ineligible for conventional loans. Of course, predatory lenders do not commit outright fraud. Many of these borrowers lack not only sufficient funds but also financial literacy. And they take advantage of them.

Let me tell you what one of these predatory lenders said when he was assured that he would be testifying behind the screen so that the television cameras couldn't see his face. He was so embarrassed and afraid that he didn't want to say this in public.

My perfect customer would be an uneducated woman who is living on a fixed income, hopefully from her deceased husband's pension and Social Security, who has her house paid off, is living off of credit cards, but having a difficult time keeping up with payments, and who must make a car payment in addition to her credit card payments.

There you have it. When you are out there looking for your prey as a predatory lender, that is what you are looking for. Your hope is that you push them so deeply into debt that they make all the payments they can until they reach the breaking point and then they go into bankruptcy court and you take the home.

Oh, what a happy day it must be that these predatory lending offices just picked up another home from another widow in bankruptcy court.

When I put the amendment on the floor, I basically wanted to spoil this party that these predatory lenders have at the expense of senior citizens across America. My amendment failed by one vote. This bill does not address that problem. To think we can call this bankruptcy reform and not offer that kind of balance, as far as I am concerned, is disgraceful.

We have seen the percentage of these predatory loans in precincts across the United States. It seems over and over again that these situations are where elderly people have become victims. Predatory lending is an epidemic.

Seven years ago, mortgages to people with below average credit was a $35 billion business. Today, it is a $140 billion business.

Who are we talking about? We are talking about somebody's parents, or grandparents, who are caught unsuspecting by one of these predatory lenders who are ultimately going to run the risk of losing the home they saved for their entire lives. AARP—with 34 million members—has launched a campaign to fight this problem.

I know Senator SARBANES of Maryland, the Senate Banking Committee chairman, is going to have hearings this month on lenders that take advantage of vulnerable borrowers. I commend him for his leadership on this important issue.

Why wasn't this included in the bankruptcy bill? We have Senators standing up and saying: We need to protect these predator lenders. That is exactly what happened. I lost by one vote.

Let me talk to you for a moment about credit card disclosure and whether or not there is more information that we can ask for so we can have some balance when it comes to credit card predators across the United States.

There are 78 million creditworthy households in America. Remember that number—78 million. Each year there are 3.5 billion credit card solicitations. As I said, go home tonight and look through your mail. You are going to find them. If it is not there tonight, it will be there tomorrow night asking you to sign up for a new credit card. They are coming at you in every direction—not just through the mail, but in magazines, television; wherever you turn, they want us to sign up for more credit cards. Frankly, I think you understand what they are looking for.

One of the things they like to do is go after college students. There is a brand loyalty here. Major credit card companies think that when they set up a college student for a credit card, the college student will stick with their credit card for the rest of their lives. They do not ask hard questions as to whether the student will pay off the debt.

One of the things that I suggested about the minimum monthly payments was rejected by the credit card industry. I don't think it is a difficult thing to calculate. If you were to pay a 2-percent monthly minimum on a balance of about $1,300, it would take you 93 months to pay it off. We are talking about over 7 years with your minimum monthly payment.

I am not for credit rationing. I believe credit cards have done quite a bit of good for a number of people. The credit card industry knows the fact that 10 or 20 years ago it might have been impossible for someone such as a waitress to get a credit card. Today they can in America. That is a good thing. There are times when credit cards are invaluable for individuals and

their families. But we see that the credit card industry is not just offering credit to people who otherwise might not have a chance to get it; we see them overwhelmingly offering credit way beyond the means of people to pay it off. I think the monthly statement should be a lot more informative.

Let me also go to one other issue before I give the floor to my colleague from Kansas. One of the issues which is part of this is the so-called homestead exemption. The homestead exemption is this: If you go into bankruptcy court and you say you have more debts than you can possibly pay off, you list all of your debts and all of your assets. And many States have said one of the things that you are able to retain is your homestead or your home. The value that you are able to keep depends on the State in which you live. So each State kind of defines what a home can be worth to be exempt from bankruptcy.

On its face it doesn't sound unreasonable that people would be allowed to keep their home even if they are bankrupt. You wouldn't want them to be homeless or out on the street. But there is such a gross disparity in the exemptions States offer for this homestead that we have seen some terrible and outrageous abuses.

There was a fellow who was the commissioner of baseball, Bowie Kuhn, who many years ago decided to file for bankruptcy. Before he filed, he moved to Florida. Why did he move to Florida? He bought himself a mansion worth hundreds of thousands of dollars. Then he filed for bankruptcy in Florida, and he was able to keep all of the money that he put in that mansion set aside and not opened to the creditors because Florida had a very generous homestead exemption.

The same thing is true in many other States. One of the famous actors, Burt Reynolds, did the same thing; he bought himself a big ranch worth over $2 million and then filed for bankruptcy realizing that he had protected his assets. That is allowed; that is part of State law.

The PRESIDING OFFICER (Ms. LANDRIEU). The time of the Senator has expired.

Mr. DURBIN. I ask unanimous consent for an additional 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. If we are going to have real bankruptcy reform, then shouldn't we have some consistency? The poor person I mentioned earlier who goes into court suffering from a predatory lender and is about to lose her home, for which she saved for a lifetime, is not going to have the same advantages that this actor and this commissioner of baseball had when it comes to a homestead exemption.

If it is real bankruptcy reform, it should address all levels of income in this country. It should be fair to every one. This bill is not.

O.J. Simpson filed for bankruptcy after being ordered by the court to pay a $33.5 million judgment. He got to keep his $650,000 Los Angeles home. These poor people I talked about in Chicago who are about to lose their little home over predatory lenders don't have the advantage O.J. Simpson had in California. That isn't fair.

Actor Burt Reynolds' home was worth $2.5 million. He got to keep that. Onetime corporate raider Paul A. Bilzerian kept his extravagant 11-bedroom, 36,000 square foot estate, the largest in the Tampa Bay area. It had a basketball court, movie theater, nine-car garage, elevator, and it was worth $5 million. Because Florida law is very generous to wealthy people filing for bankruptcy, he was able to keep his home. The person I talked about in the city of Chicago didn't have that benefit.

Elmer Hill, Tennessee coal broker, 3 days before being ordered to pay $15 million to a company he defrauded, shielded his assets by purchasing a $650,000 waterfront home in Florida and paying $75,000 to furnish it. Then he declared bankruptcy. The Florida Supreme Court recently ruled he was permitted to keep his home. The court said that ''a debtor with specific intent to hinder, delay or defraud creditors'' is presently able to shield his or her assets in their home.

Senator KOHL of Wisconsin offered an amendment to reform this. I supported it. The amendment passed. But, the interests that support wealthy people here want this provision stripped in conference.

When we consider bankruptcy reform, should we not have basic fairness? Shouldn't all families across America, regardless of their wealth and income, be treated fairly? Sadly, this bill does not.

I will not be supporting this bankruptcy bill in its current form.

I ask unanimous consent that Senator TORRICELLI be allocated 10 minutes of the time controlled by the proponents of the substitute amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Pursuant to the previous order, the Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I appreciate the comments of my colleague from Illinois who I have some agreement with on the bankruptcy bill, although not on the homestead provision. I want to articulate why I have a different viewpoint.

Overall, I believe the House version of this legislation, the bankruptcy legislation, is a good piece of legislation with which we can work. I have worked hard on it. We have worked hard for a number of years on getting bankruptcy reform. The last conference report on bankruptcy passed with over 70 votes, which is a substantial vote and the agreement of a number of people.

One of the key provisions that was worked out on this overall bankruptcy legislation was the homestead provision. That is key to me. It is key to my State because of the nature of the homestead provision throughout bankruptcy and the bankruptcy code's history, how we have left that to the States. In previous bankruptcy bills, we have constantly left the homestead provision to the States, which is where it should be. The States should determine this.

In seven States in this country, including my own of Kansas, there is a homestead provision that is in our State's constitution. The founders of my State saw as so important the protection of the homestead that they provided in the constitution of our State a protection for the homestead of 160 acres, 160 contiguous acres to be in a farm, or one acre in town of contiguous acreage in protecting that home. They said this is something that is central to us. I will talk about why that is central.

It is central because farming, agriculture has been so much a part of our State's past. A number of farmers would borrow to protect, not against the homestead; they would borrow against other areas for the farm and leave the homestead out of it because if they would lose the farm, they could at least protect their home and 160 contiguous acres.

I used to be a lawyer in private practice prior to getting involved in public office. As such, I would examine a number of abstracts. Abstracts are titles to the land. They are histories of the land—who used to own it, who had a mortgage against the land, who had a lien against the property. You would examine that to see if there was clear title to the land or not.

You could track a piece of property and see the farm cycles in it. If the years were going well, there wouldn't be a mortgage against the property. If it was going poorly, there would be a mortgage against the property. But almost always they would leave clear and free, if they possibly could, that homestead because just as sure as you would get one bad year, you might get 2, and then you might get 3, and then you would lose the farm.

The history would follow the farm cycle. Just as farm prices and farm production would go down, mortgages would mount up. And then you would have a loss of the farm.

They would set aside and protect this homestead. They wouldn't put a mortgage against it, if at all possible, because our State's constitution said they could keep that homestead to start farming again. If they got on the bottom of the trough, lost the rest of the farm, lost livestock, they could still have that home and 160 acres to be able to start farming again and build back up in a cycle.

We built this into our State's constitution. Seven other States did. It was an important part of maintaining that farming tradition and of keeping people on the farm. That is what it did.

In the last cycle we went through, which was the early 1980s, I was still practicing law at that time. We continued to have at that time the homestead

provision for family farmers, where you would leave within that a home and 160 acres. There are a number of people in Kansas who are still farming today because they didn't mortgage the homestead. They lost much of the rest of the farm in the downturn of the farm cycle, but they were able to rebuild around that home and 160 acres and start and move forward again.

It was used then. It will be used again in the next farm cycle, if we don't take that right away in the Bankruptcy Reform Act of 2001.

What has taken place is that this has been a long, hard-fought battle over the past several years—the bankruptcy reform that we have put forward. We worked out a compromise in the House that protects the sanctity of those State laws on homestead provisions and allows accumulation of a certain amount of property. It doesn't allow fraud. If you are trying to move money into the homestead within 5 years of bankruptcy, that can get pulled back out in bankruptcy proceedings. It doesn't allow you to fraudulently say: I am going to cash out this asset and put that into my homestead as a way of building up equity on the homestead. That can all be set aside by the court. This was a carefully compromised package that came from the House bill.

The problem is in the Senate bill where it takes away the States rights to establish a homestead. There was an exemption provision carved out for the family farm by Senator KOHL, for which I am grateful; but it wasn't within the home in town. So now you have the Federal Government, for the first time in 120 years, telling the States what is the homestead. They have not done that for 120 years. We should not do that now. This is the wrong time for us to start; it is the wrong thing for us to do to take that away.

As I understand it, we are going to vote on inserting the Senate package, which takes away this homestead right from the States. That is in the Senate package on which we will soon be voting. I am opposed to doing that, and I will vote against that bill if it continues to maintain that type of homestead provision which takes away the homestead rights from the States and puts it into Federal bankruptcy law. That is against our State's constitution and against the constitution in seven other States in this country. We should not be doing that. It is a bad precedent to start.

I have no doubt that if we start it in this bankruptcy reform, in the next bankruptcy reform we do we will go after the family farm homestead provision because there will be some allegation of, OK, there was somebody who shielded assets here and they were able to protect too much, going through a family farm type of setting, and then we will set it aside. There will undoubtedly be an example or two, but we find in most of the lawsuits—the vast majority—that there are not abuses taking place to the homestead provisions. It would be wrong for us to say we have a couple of examples, and because of the abuse in a couple of cases we want to take this right completely away from the States for thousands of people, hundreds of thousands of people who have depended upon this for the past 120, 130 years.

I think particularly if we start down this road of Federalizing the homestead provision, while we may not hit the family farmers now, we will the next time around, and that would be a wrong way for us to go.

I want to make it clear on this point again that if there is fraud involved, if somebody is taking assets from another area and putting them in the homestead to hide from a creditor, that is covered by the law. You cannot do that today. You cannot do that under the provision that is in the House bill, and we should not allow people to do that. So we are not talking about fraudulent transactions. Many examples cited by my colleagues on the homestead provision actually involve fraudulent transactions. They are against the law and they should be. We should not allow people to fraudulently hide assets. But we should not, as well, take away this homestead provision from States on homes and family farms because of allegations of examples that don't even apply in the situation. This is not fraud—what I am talking about. This is about a basic home, a home on 160 acres in the country, if you are a family farmer.

The Kohl amendment in the Senate version is one that I vigorously oppose because it jeopardizes the compromise that was worked out last year in the bankruptcy bill, and I believe it jeopardizes the fate of the entire bill, as well, because of what it does to the homestead provision. That is what this amendment is about.

I urge my colleagues to vote against inserting the text of the Senate bill into H.R. 333 and to support, instead, the House version, which contains the compromise language with which I am comfortable, and with which I believe Senator HUTCHISON of Texas is comfortable as well. It maintains the homestead provision and authority in the States, with some limitation on it, which is a concession on our part.

The Senate bankruptcy bill, if it is inserted in the House version with the Kohl amendment included, radically alters the homestead provision from what was crafted last year. It is in this carefully balanced legislation we have before us. If the Senate language is put in with the Kohl amendment that takes away the homestead rights from the States, I will be vigorously opposing this legislation, as will a number of other colleagues who have similar homestead problems, given the constitutions within their States. I urge my colleagues to vote against doing that.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TORRICELLI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the Senator from New Jersey is recognized for up 10 minutes.

Mr. TORRICELLI. I thank the Chair.

Madam President, for more than 4 years, the Senate has been considering various proposals to address the bankruptcy system in the United States. Everyone on all sides of this debate seems to have agreed the bankruptcy system is in need of serious repair.

There have, however, been many questions about how to address the problem. In both the 105th and 106th Congresses, efforts to pass bankruptcy reform came very close. In the final days of each session, we could not make the mark.

At the start of the 106th Congress when I assumed the role of the ranking Democratic member on the Judiciary subcommittee of jurisdiction, I felt some optimism that we could succeed. In the previous Congress, Senator DURBIN had come very close, and we began with an outline of his legislation.

During the 106th Congress, literally hundreds of hours were spent with Senators GRASSLEY, BIDEN, HATCH, SESSIONS, and LEAHY over many of these very difficult issues.

The bill before the Senate today is a culmination of all of those hours, months, indeed, years of work. It represents the suggestions of many Members of this Senate now included in provisions of this bill.

It is a fair bill. It genuinely represents the sentiments of the Senate and both political parties. It improves the bankruptcy system, eliminating many of its abuses without doing injury to vulnerable Americans and continuing the protection that Americans need to reorganize their lives. It may be tougher than current law, but it is also fair.

The best indication, I believe, of our success in this effort is the bipartisan vote in the Senate itself earlier this year when the bill passed by an 83–15 vote.

For the Senate to speak in such a loud, consistent, and bipartisan voice is probably a reflection of the understanding of the depth of the problem. In 1998, during the largest economic expansion in American history, 1.4 million Americans sought bankruptcy protection. That is a staggering 350-percent increase since 1980.

In 1999, filings were reduced by 100,000 but still remained at the 1.3 million filing level. It is estimated that 70 percent of these filings were made in chapter 7, allowing a debtor to obtain relief from most of their unsecured debts. Conversely, only 30 percent of filings were in chapter 13 which requires a repayment plan.

The Department of Justice has estimated that 182,000 people per year, people currently filing under chapter 7 to avoid their debts, properly belong in chapter 13 where they will repay part of their debts. The difference is not insignificant. If those 182,000 people were moved into chapter 13 and were paying those debts which were affordable, $4 billion would be returned to creditors.

Critics of the bill argue that $4 billion would only enrich large financial institutions, transferring money from people who live marginal economic lives to wealthy institutions. That claim ignores the fact that much of the debt burden that is avoided by chapter 7 filings also goes to local contractors—the mechanic on the corner, the small retailer, the family business which provides services or goods, only to face someone entering into bankruptcy and avoiding paying their debts. This creates a situation where one debtor passes a debt on to a family business and causes that business to fail and then another family business. It is not fair, and it is not right.

Critics have also argued that bankruptcy reform will deny poor people the protection of the bankruptcy system, recognizing the bankruptcy system has always been an important part of American life, giving people a second chance, ensuring that because someone has made a mistake or, more likely, through a problem of health in the family or divorce, illness, they are not denied a chance of fulfilling a prosperous life.

This claim simply is not true. No American is being denied access to bankruptcy. Indeed, the bill contains several provisions to ensure that no one genuinely in need of debt cancellation is prevented from receiving a fresh start under chapter 7. It is done in several ways.

First, the bill gives the judge discretion to consider the debtor's special circumstances under which they are unable to meet a payment plan, an escape clause where a judge can always ensure that a person with no means is given chapter 7 protection.

Second, it contains a safe harbor to ensure that all debtors earning less than the State median income will have access to chapter 7 without qualification. If one is under the median income, one is in chapter 7, period.

Third, the bill adds a floor to the means test to guarantee that debtors unable to pay more than $6,000 of their outstanding debt will not be moved into chapter 13: Again, protection for people of modest means.

All this gives people of lower income a chance to sweep away their debts and to start again an American life. It has always been our way.

Finally, probably the most unfair criticism and the one to which I am most sensitive is the issue of whether this adds a new burden to women and children. The bill contains language that Senator HATCH and I offered in an amendment to protect exactly this element of our society: single parents and children in need of protection.

Under current law, when it comes to prioritizing which debts must be paid off first, child support is seventh in bankruptcy court. It ranks after rent, storage garages, accountant fees, tax claims, or other claims by government, and that is wrong.

Not only does this new bill not make it worse, we make it better. Under the bill, child support is moved to where it belongs: First, ahead of government, other businesses, or financial institutions. The obligations of a father or mother to their child will never be put behind another debt.

Finally, this compromise deals with one other area of the law that is equally important. We were not going to reform bankruptcy laws without doing something about the overreaching efforts by the credit card industry itself.

The credit card industry yearly has more than 3.5 billion solicitations of Americans, encouraging them to incur debt. That is 41 mailings for every American household, 14 for every man, woman, and child in the Nation. Not surprisingly, with this level of solicitation, Americans with incomes below the poverty line have doubled their credit usage in the last decade. The result is not surprising. This doubling of credit usage has involved 27 percent of families earning less than $10,000 a year, having consumer debt that is 40 percent or more of their income.

If we are going to do something about the abuse of bankruptcy laws, it is only right and fair we do something about the credit industry encouraging Americans to incur debts they cannot afford and in which they should not have become involved.

We deal with these abuses of the credit industry in several ways. First, we require that lenders prominently disclose the following aspects of their debt solicitations: The effects of making only the minimum payment every month; second, when late fees will be imposed; third, the date on which introductory or teaser rates will expire, as well as what the permanent rate will be after that time.

This is balanced legislation protecting the most vulnerable Americans who have marginal economic lives; ensuring that single parents and children are protected; ensuring that the credit industry itself has new obligations but also ensuring that bankruptcy laws are not misused and do not become an opportunity for Americans to escape the financial obligations they have willfully encountered and passing that burden on to other small businesses or institutions that cannot afford them.

Madam President, $4 billion of unpaid bills, unfairly passed on to others, is more than American businesses, industries, family firms, and farms should have to incur.

At long last we have reached reform of our bankruptcy laws. It is a good moment for the Senate and for the Judiciary Committee for these years of struggle with this legislation. I commend again Senator LEAHY, Senator HATCH, and all who joined in the process through the years.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Madam President, I am pleased to rise today to support the motion to invoke cloture on the substitute amendment to H.R. 333. The substitute language is the text of S. 420, the Bankruptcy Reform Act, which passed this Chamber with a bipartisan vote of 83 to 15 on March 15. As you may recall, the conference report to last year's bill, H.R. 833, passed the Senate by a similarly wide margin just last December, but was pocket-vetoed by President Clinton at the end of the legislative session.

Today, we are another step closer to getting this bill to conference and heading down the home stretch of this legislative marathon. It is time to wrap up this debate and appoint conferees who will present a good bill to the President for his signature so American consumers can reap the benefits.

As my colleagues well know, we have cooperated and compromised at every step along the way in order to produce a fair piece of legislation that provides new consumer protections, helps children in need of child support, and makes other necessary reforms to a system that is open to abuse.

Contrary to the views of the bill's opponents, this legislation does not make it more difficult for people to file for bankruptcy, but it does eliminate some of the opportunities for abuse that exist under the current system. Right now, certain debtors with the demonstrated ability to pay continue to abuse the system at the expense of everyone else. Current law perpetuates a system in which people with high incomes can run up massive debts, and then use bankruptcy to get out of honoring them. In the end, all of us pay the price for those who abuse the system in the form of higher interest rates and rising consumer prices.

I am optimistic that this much needed bankruptcy reform legislation will be signed into law this year once the procedural roadblocks put down by the narrow opposition have been removed. It is beyond time to appoint conferees and to enact meaningful bankruptcy reform. As I have said many times here on the floor, and just as lately as last week, the American people have waited long enough.

I also oppose amendments that may be offered at this stage after we invoke cloture.

I take very seriously the role of the Senate as a deliberative body, but with

respect to this reform bill, I am beginning to feel like the passenger on the *Titanic* who said, ''I asked for ice, but this is ridiculous.'' The offering of any additional amendments on this bill at this stage will set a dangerous precedent for reopening bills that have already been fully considered here on the Senate floor. I urge any and all of the 83 Senators who voted for this bill in March to vote to defeat these amendments to send a clear message that ''final passage'' means just that. Resolving remaining issues is the job of a conference committee. It is simply fortunate, and, in my opinion bad faith, to reopen issues after holding a hearing and mark-up in committee followed by a prolonged debate on the floor, with almost one hundred amendments considered at that time.

No one can say that the Senate has not already adequately considered bankruptcy reform. The Senate has literally been engaged in the process of deliberating on this issue for years, with numerous hearings, markups, and votes. Back in 1997, a comprehensive bankruptcy reform bill was developed by Senators GRASSLEY and DURBIN which we marked up and reported out of committee in May of 1998. In September of that year, the Senate passed bankruptcy reform by a vote of 97 to 1. This overwhelming Senate vote in favor of bankruptcy reform was followed by the appointment of conferees, negotiations with the House, and in October of 1998, an overwhelming House vote in favor of the conference report.

Although the motion to proceed to consideration of the conference report was agreed to in the Senate by a strong vote of 94 to 2, the Senate ran out of time for a vote on final passage before the end of the Congress.

In February of 1999, Representative GEORGE GEKAS introduced bankruptcy reform again, which passed out of the House in May of 1999 by another overwhelming vote of 313 to 108. Then, the Senate Judiciary Committee once again marked up Senator GRASSLEY's bill and in May of 1999, we reported it out of committee.

Then, in February of last year, the reform legislation passed the Senate by another impressive margin of 83 to 14. The Senate requested a conference, but the objection of a single member from the other side of the aisle blocked the appointment of conferees. As a result, we had to turn to an informal conference process with the House. With a great deal of effort by members on both sides of the aisle, we reached a compromise agreement on over 400 pages of legislation, and on all but one issue.

In October of 2000, the House passed the bankruptcy reform conference report, and in December, the Senate passed it by yet another vote of 70 to 28. And, as my colleagues know, later that month, the President pocket-vetoed the legislation.

The issue of bankruptcy reform is not a new one. We have studied it, held hearings on it, compromised on it, and come to resolution on it with veto-proof margins, in both houses time and again. An elaborate record that sets out the issues, documents the debate and makes the compelling case for reform is available to anyone who cares to give it their attention. At some point, the process of deliberation needs to come to a close, and the will of the Congress needs to be exercised

Only those who want to use delay to kill bankruptcy reform altogether could possibly argue for more process. Now is our opportunity to enact into law the legislation that the Congress supports and that the American people want. Let's get on with the Nation's business.

I would hope that we defeat any obstructionist amendments at this stage, or we may never see the end to any legislation already passed by this body ever again.

I yield the floor:

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak on this motion for up to 15 minutes, and at the conclusion of my remarks that the vote on the motion commence.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, I commend the Senator from Minnesota for his efforts to educate our colleagues and the American people about the unfairness of this bankruptcy bill. It has been a lonely struggle for him, but the Senator from Minnesota has never avoided a struggle because it is lonely. He has succeeded in framing the issues for the conference quite well. Are we passing this reform for the credit card companies or for consumers? Who is the Senate working on behalf of here? Are we going to pass a bill that passes muster with bankruptcy law experts in the law schools and the courts or with the big banks?

I spoke back when we considered this bill in March about the problems with this legislation and why I believe it should not be passed. Even with the addition of a number of important amendments during the Senate debate—and I hope that the bill that emerges from conference is more like that bill than the House bill—I still believe that the bill will do terrible damage to the bankruptcy system in this country, and even more importantly, to many hard-working American families who will bear the brunt of the unfair so-called ''reforms'' that are included in this bill. It is unfortunate to have to say it, but this is a harsh and unfair measure pushed by the most powerful and wealthy lobbying forces in this country, and it will harm the most vulnerable of our citizens. I voted against the bill when it came up for final passage in March, and I voted against proceeding to it last week. I continue to support bankruptcy reform, but not this version.

One of the major problems with the bill that came to the Senate floor was fixed by an amendment offered by the senior Senator from my State, Mr. KOHL. Senator KOHL has been crusading for years against the millionaire's loophole in the bankruptcy law—abuse of the unlimited homestead exemption. By a lopsided vote of 60–39, the Senate voted not to table his amendment to set a national ceiling on the use of that exemption. It is clear to everyone that the fate of Senator KOHL's homestead exemption will be the most fiercely contested issue in a House-Senate conference.

Let me put it as simply and clearly as I can: A bankruptcy reform bill that does not contain limits on abuse of the homestead exemption is a fraud on the American people. We cannot claim to be acting in an even handed fashion if we leave this major loophole untouched, while at the same time imposing harsh new limitations on average hard working people forced by circumstances to seek the protection of the bankruptcy laws.

There are a number of other problems with the bill that I hope the conference committee will try to work out. I will take my remaining time this morning to highlight one. It has to do with the new definition of ''household goods'' in section 313 of the substitute amendment.

As written, this bill very quietly undermines an extremely important protection that current bankruptcy law offers to debtors. Section 313 is a gift to finance companies who have what I consider to be a questionable practice of taking liens on the personal property of the people to whom they lend money.

To understand how unfair the bill is here, my colleagues must be aware that the practice of taking a non-purchase money security interest in certain household goods has been illegal for many years. Under 16 C.F.R. § 444.2, a regulation first promulgated by the Federal Trade Commission during the Reagan Administration, it is an unfair credit practice under section 5 of the Federal Trade Commission Act for a lender to ''take or receive from a consumer an obligation that constitutes or contains a non-possessory security interest in household goods other than a purchase money security interest.''

Let me take a step back and remind my colleagues of the difference between a purchase money security interest and a non-purchase money security interest. A purchase money security interest is a lien that is taken on the property that is being purchased with the proceeds of a loan. For example, an auto manufacturer or a bank takes a purchase money security interest in your car when you get a loan to pay for it. That security means the lender can repossess the car to satisfy the loan if you don't make your payments. Major department stores might take a purchase money security interest in a home entertainment center or a computer or a major appliance that you buy on credit. It makes perfect sense

for these lenders to be secured creditors and to protect their interest in getting their loans repaid. No one has a problem with that.

But when a finance company takes an interest in property already in the home to secure a loan, property that is already purchased and paid for, that is a non-purchase money security interest. And as I said, the FTC determined long ago that such an interest on household goods is illegal. The FTC's definition of household goods, however, is limited. On this chart, you can see the definition of household goods in the FTC regulation—clothing, furniture, appliances, one radio and one television, linens, crockery, kitchenware, and personal effects, including wedding rings.

So this definition of household goods is relatively narrow. It includes only a single TV, for example, and it doesn't cover things such as CD players that hadn't even been invented in 1984, or personal computers that were not nearly as common in family homes as they are today. Nonetheless, the FTC rule prohibits finance companies from taking non-purchase money liens on items covered by this definition.

But finance companies that like having these liens as a bargaining chip with their borrowers have hardly been deterred. They want to turn what is essentially an unsecured loan into a secured loan. So they take liens in everything in the house they can get their hands on that is not on the FTC's list of household goods.

This chart shows a typical form that the finance companies use to get borrowers to list their personal property when they apply for a loan. They take a lien on everything that a borrower identifies—things like garden tools, jewelry, rugs, cameras, exercise equipment. Make no mistake, these companies have no intention of repossessing these items—most of them are probably worthless—they just use them as a threat to try to get their loans repaid. This chart shows a typical loan application with a list of household goods that these lenders try to take an interest in. They try to cover it all: bicycles, tennis rackets, hedge trimmers, leaf blowers, mirrors, model airplanes, sleeping bags, the list goes on and on and on.

Under section 522(f) of the Bankruptcy Code, a debtor can apply to the bankruptcy court to avoid these non-purchase money liens in household goods. And the courts have generally interpreted household goods broadly to include all items kept in or around the home to facilitate the day-to-day living of the debtor. The courts have specifically rejected the narrow list of household goods contained in the FTC's regulation as too narrow.

Remember, in bankruptcy, liens can't be avoided on extremely expensive items. The power of lien avoidance under section 522(f) only applies to property that falls under an exemption from the bankruptcy estate, and there are strict limits on the value of property that is exempt from liquidation in bankruptcy under State and Federal law. But the power of lien avoidance serves the purpose of treating creditors equally and fairly, particularly in Chapter 13, and it protects debtors from being pressured into reaffirming debts that they would otherwise be able to discharge in bankruptcy because they fear they will lose their family heirlooms or their child's model airplanes.

Section 313 of the bill is a new and very restrictive definition of household goods for purposes of the lien avoidance power. It essentially codifies the FTC's list of household goods and makes it the exclusive list of household goods on which liens can be avoided in bankruptcy.

This chart shows how section 313 compares to the FTC's definition. The bill would turn the law on its head. In effect, it says that virtually the only liens that can be avoided are those that the FTC's regulation already prohibits. As you can see here, liens can be avoided on clothing, furniture, appliances, one radio and one television, linens, crockery, kitchenware, and personal effects, including wedding rings—all items that are on the FTC's list already.

Thus, under this definition, section 522(f) lien avoidance, which is intended to protect the exemptions for personal property that states and federal law provide, is almost completely gutted.

All of the things I mentioned before that finance companies commonly take liens in are not included in the definition—garden tools, jewelry, rugs, cameras, exercise equipment, bicycles, tennis rackets, hedge trimmers, leaf blowers, mirrors, model airplanes, and sleeping bags. Finance companies can take liens in these items and enforce them in a bankruptcy case.

The real problem here is that no list can be exhaustive. And there is really no reason to have an exhaustive list anyway. The courts are fully capable of determining in a bankruptcy case what kinds of things are standard household items. The list in the bill is far too narrow, and there is absolutely no evidence that there are abuses taking place that need to be addressed.

The reason that this provision is in the bill is simple—the finance companies that support the bill want more power to take these borderline unethical liens. They want more power to coerce people into reaffirming debts because they don't want their home stripped bare by a company that holds an interest in everything in it. This provision is part of the ''deal'' between all the creditors that support this bill. All of them are getting their special protections in this bill, and consumers are left with nothing.

Mr. President, I was prepared to offer an amendment to strike section 313 back in March, but time ran out before I could offer it. I filed it so that it could be offered once cloture is invoked. I will not offer it today, but I believe we should remove this offensive provision in conference. That would move this bill just a little closer to one that actually treats American families fairly.

I thank my colleague from Minnesota for all he has done to fight for American families on this issue. I yield back the balance of my time.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The senior assistant bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the substitute amendment No. 974, the text of S. 420, as passed by the Senate, for H.R. 333, the bankruptcy reform bill:

John Breaux, Harry Reid, Byron Dorgan, E. Benjamin Nelson of Nebraska, Kent Conrad, Thomas Carper, Chuck Grassley, Daniel Inouye, Joe Biden, Robert Torricelli, Joseph Lieberman, Blanche Lincoln, Max Baucus, Zell Miller, James Jeffords, Tim Johnson, and Patrick Leahy.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on amendment No. 974 to H.R. 333, an act to amend title 11, United States Code, and for other purposes, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. SMITH) is necessarily absent.

I further announce that if present and voting, the Senator from New Hampshire (Mr. SMITH) would vote ''yea.''

The yeas and nays resulted—yeas 88, nays 10, as follows:

[Rollcall Vote No. 234 Leg.]

YEAS—88

Akaka	Collins	Hutchinson
Allard	Conrad	Inhofe
Allen	Craig	Inouye
Baucus	Crapo	Jeffords
Bayh	Daschle	Johnson
Bennett	DeWine	Kennedy
Biden	Domenici	Kerry
Bingaman	Dorgan	Kohl
Bond	Edwards	Kyl
Breaux	Ensign	Landrieu
Bunning	Enzi	Leahy
Burns	Feinstein	Levin
Byrd	Frist	Lieberman
Campbell	Graham	Lincoln
Cantwell	Gramm	Lott
Carnahan	Grassley	Lugar
Carper	Gregg	McCain
Chafee	Hagel	McConnell
Cleland	Hatch	Mikulski
Clinton	Helms	Miller
Cochran	Hollings	Murkowski

Murray	Sarbanes	Thomas
Nelson (FL)	Schumer	Thompson
Nelson (NE)	Sessions	Thurmond
Nickles	Shelby	Torricelli
Reed	Smith (OR)	Voinovich
Reid	Snowe	Warner
Roberts	Specter	Wyden
Rockefeller	Stabenow	
Santorum	Stevens	

NAYS—10

Boxer	Dodd	Hutchison
Brownback	Durbin	Wellstone
Corzine	Feingold	
Dayton	Harkin	

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING —- 1

Smith (NH)

The PRESIDING OFFICER. On this question, the yeas are 88, the nays are 10, with 1 Senator responding ''present.'' Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. REID. Mr. President, I know the hour for recess is here, but at 2:15 I will renew a unanimous consent agreement that Senator DOMENICI and I have offered on at least two or three separate occasions on previous days to have a cutoff time for the filing of amendments to the energy and water appropriations bill. I hope both the Democrats and Republicans during their noon conferences take up this issue. It is an important bill. Until there is a filing of amendments, staff cannot work on these to see if we can accept some of them. It would be helpful in moving this bill and having a fair, responsible piece of legislation so we wouldn't have to work on these at the last minute.

I will renew my request at 2:15.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask what is the pending matter before the Senate?

The PRESIDING OFFICER. Under the previous order, the Senate is to stand in recess until 2:15.

Mr. DODD. Mr. President, I ask unanimous consent I may be allowed to address the Senate as in morning business for the next 5 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator is recognized.

ELECTIONS

Mr. DODD. Mr. President, I am going to come to the floor later with lengthier remarks, but there are two subject matters I want to bring to the attention of my colleagues that I am sure they have taken note of over the last several days. The first is the continuing reports about last year's elections in the United States. Obviously, there was particular focus on the State of Florida. But, Mr. President, as you know because of your deep interest in the subject as well, we believe this was not exclusively a Florida issue. Nor was it merely an issue involving the national election last year. Mr. President, we have a serious problem, based on a number of studies that have been conducted by Members of the other body as well as the Civil Rights Commission and the Massachusetts Institute of Technology, whereby as many as 6 million people did not have their votes counted last year. That is in addition, I suppose, to the 3 million people we now know who actually tried to vote but were told they were not allowed to vote despite the fact they actually had the right.

That is now 9 million people. I know of 10 million people who are blind in this country who did not vote last year. Only one State in the United States actually allows people who are blind to go in and vote on their own. In any other jurisdiction, if you are blind you must be accompanied by someone else. You never get to vote in private, in spite of the fact there is hardly an elevator in America built in the last 5 years where there is not Braille to assist you. You can operate an elevator alone but you cannot cast a ballot alone in the United States.

So there is a growing sense of scandal, in my view, not because someone was involved in some criminal enterprise to deprive people of the right to vote or to manufacture or manipulate the outcome of the election. I use the word ''scandal'' to speak of a situation in which only one out of every two eligible Americans is casting his or her vote. And even those who do are not having their votes counted properly; that is of deep concern to me.

Patrick Henry, one of the great voices that gave birth to this Nation, once said that the right to vote is the right upon which all other rights depend. I believe he was correct more than 230 years ago, and even now, as we enter into the 21st century.

We lecture the world all the time on how to conduct free and democratic elections, yet there is a growing body of evidence that suggests we could do a much better job in America in how our elections are conducted, in what support we provide our local communities and precincts, and by setting some national standards so we never again idly sit and watch an election during which as many as 6 million votes went uncounted. These were people who exercised their civic responsibility and showed up on election day to cast a ballot and, because of faulty machinery or other shortcomings, their ballots were never counted—not to mention the people suffering a variety of physical disabilities who were denied that right as well.

It is my hope that in the coming weeks, as we gather more information from across the country about how we could do a better job, we will put adequate resources into this. I say this as my seatmate, normally sitting to my right, is now sitting over here in a chair to the left—the chairman of the Appropriations Committee. I have not had a chance to speak with the chairman about this. I will not abuse a public forum to do so at this moment, but I know he cares about these issues as much as I do, and we might talk about how we might provide some resources to our States to ensure that the equipment is modernized, that we no longer have machinery that is a half century old in some cases, as it is, to be used by people who wish to cast their ballots. My hope is we can come up with some national standards, provide the resources to our States, and do a much better job, a much better job in seeing to it that people vote in this country and that their votes are then counted.

I cannot begin adequately to express the sense of outrage I sense among people all across this country who were so terribly disappointed, to put it mildly, who went to vote and discovered their votes were not counted.

Put aside your feelings about the outcome of the election. We have a President. His name is George W. Bush. I stood on the west front of the Capitol on January 20, and I certainly believe in the depths of my soul that this is the President of the United States. My concerns are not about the legitimacy of the person who sits in the White House. My concerns are about the legitimacy of a process that I think is in dire need of repair—the election process in this country.

I don't know how much more evidence we need to have accumulated by independent studies based on last year's results, especially now that the New York Times, Miami Herald, other newspapers, as well as the organizations I have already mentioned, have looked at the elections of last year and have concluded by and large that there are serious problems with the present electoral process.

I would like to address this issue at greater length later today, but I wanted to raise the matter here before we went into recess over the next hour or two.

Finally, I would like to mention a matter that I think is tremendously important—and I should point out to my colleagues here that the Presiding Officer shares an equal passion about this issue as the Senator from Connecticut. I look forward very much, working with him as a member of the Judiciary Committee that has very specific jurisdiction over the Voting Rights Act of 1965, on how we can listen to people across this country, gather as much adequate information as we can and then propose to our colleagues some meaningful ideas, both resources and ideas, on how we can minimize the electoral problems that occurred not just last year but have been occurring over the last number of years.

THE ELEMENTARY AND SECONDARY EDUCATION ACT

Mr. DODD. The second subject matter is the Elementary and Secondary Education Act. This morning the New York Times as well as others reported that there were serious reservations

being expressed by superintendents of schools and educators across the country about this mandating of testing in the third, fourth, fifth, sixth, seventh, and eighth grades. I certainly want to see young people tested. I think it is worthwhile to know how children are doing under the elementary and secondary educational system of the country, but I am getting concerned that we are merely taking the educational temperature of these children without really dealing with the problem that has caused the public to lose faith in our public school system.

Every day the numbers indicate there is greater concern about the quality of public education. I think we can do a better job. But I do not necessarily believe that just testing kids every year, and at what cost, is necessarily going to improve the quality of education. So while I am not opposed to testing, I think we ought to think more about what we can do for those children who are failing, what ideas can we come up with and work on with our local communities and States to improve the quality of teachers, the quality of classrooms, the quality of educational materials, wiring schools to take advantage of the explosion in technology and information that is available.

I always find it somewhat mortifying when the Federal Government lectures the country about the quality of education, where we lecture local school districts, States and school boards about what they ought to be doing. The Federal Government contributes less than one-half of 1 percent of the entire Federal budget dedicated to elementary and secondary education. I find that scandalous, to use the word I used when talking about the election process. The fact that the Federal Government in its resources only contributes one-half of 1 percent of its budget to the elementary and secondary educational needs of America's children; that of every dollar that gets spent on education the Federal Government's one-half of 1 percent amounts to about 6 cents. Mr. President, 94 cents of every education dollar comes mostly from local property taxes and some from the States.

In my view, in the 21st century we ought to become an equal partner with local communities and States: one-third, one-third, one-third. That can reduce property taxes and provide more meaningful resources to communities that do not have the wealth, the support for the kinds of educational opportunities their students should have. No child in America ought to have the quality of their educational opportunity be determined solely by the wealth of the community in which they happen to have been born. That is just wrong.

If you are born in America, you ought to have an equal opportunity for a good education. It seems to me that the Federal Government ought to do a better job of being supportive, particularly as we write bills that mandate testing, without putting the resources there to allow communities to pay for these additional burdens.

For the last 35 years we did that on special education. We mandated a law that said you had to provide for the special education needs of children. Then we never came up with the money to pay for those costs. The bill we just passed in the Senate now mandates full funding of the 40-percent requirement of special education, but it has taken 35 years to do it. We have allowed for full funding of title I, but I would like to know when President Bush is going to tell us what sort of resources the Federal Government is going to commit to these elementary and secondary educational needs.

The President talks about how he wants this done, but I am waiting yet to hear from the White House. How much money is the administration willing to commit to full funding of title I and to special education needs?

They are telling us that they want to have mandatory testing. They want accountability, but they are unwilling to say whether or not they will commit the necessary resources to achieve those goals.

I hope the administration, as they urge us to get ready to pass this bill in conference, will also heed their own advice and more quickly expedite the commitments made by the President as to what resources will be provided.

It is now only a matter of a few weeks before children and their parents start to prepare to go back to school. We ought not wait much longer to get the job done.

My point of these brief remarks is to urge the administration to step up to the plate and tell us what the resources are. If they are not going to make any at all, then we ought to rethink this bill. Do not tell me the administration will mandate costs on the local community and then not have the resources to pay for it. And do not tell me that Americans will have to watch property taxes go through the ceiling because Uncle Sam tested their children every year from the third to the eighth grade without providing the resources to help communities and parents meet those greater educational goals.

Both on election reform, and on education, I hope we can get something done.

I wish the President would support election reform. I hope he will speak up and tell us what sort of resource commitments he is willing to make to support the elementary and secondary education needs of America's children.

I appreciate the indulgence of the Chair in listening to these brief remarks.

I yield the floor.

The PRESIDING OFFICER. I thank the Senator from Connecticut.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:51 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CLELAND).

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. REID. Mr. President, I have been in conversation with my counterpart, Senator NICKLES. We both recognize the importance of moving this bill and other appropriation bills. At this time, however, after consulting with Senator NICKLES, we are not going to ask for a unanimous consent agreement that there be a time for filing of amendments.

Senator DOMENICI and I will work through these amendments. We know there are several amendments, and as soon as we get off the bankruptcy bill, Senator STABENOW is going to offer one. There may be others. Senator DOMENICI and I will work through them.

When we get to a point where we think the amendments are not coming in, we will move to third reading, and we will keep the leadership of the minority advised as to what we are doing.

I appreciate the advice and counsel and suggestions made by my friend from Oklahoma. We will do our best to abide by these.

The PRESIDING OFFICER. The assistant Republican leader.

Mr. NICKLES. Mr. President, I thank my friend and colleague, Senator REID. I appreciate his not entering a request to limit or say that all amendments would have to be filed by a certain period of time. I encourage my colleagues to work with the managers of this bill, Senator DOMENICI on our side, if they have amendments, to bring those to his attention.

It is certainly not our intention to procrastinate on this bill. We would like to see the amendments that are pending and do some homework on the amendments, consider them, take them up, pass them or defeat them, and come to final passage in the not too distant future.

I urge all of our colleagues, Republicans and Democrats, if they have amendments, to please bring those forward so we can deal with those appropriately and finish consideration of this important bill.

Mr. REID. Mr. President, if my friend will yield, the other thing I would like to bring to the attention of the Senate is, as soon as we finish this bill, we move to one of President Bush's very

important nominations; that is, of Mr. Graham. The agreement that has been made by the two leaders and that is now part of the Senate record is that as soon as we finish this bill, we will move to that nomination. There is a time agreement that has already been made on that matter. The sooner we finish this bill, the sooner we can get to this important nomination of President Bush.

Mr. NICKLES. Mr. President, I concur. I compliment Senator REID for bringing forward Mr. Graham's nomination. That is a very important nomination. It deals with the Office of Regulatory Affairs. It deals with the cost of regulations. You cannot go a day without seeing some regulations that have an impact in the billions and billions of dollars. It is very difficult for President Bush to deal with this issue and not have his person installed as head of the office. We will have 7 hours of debate on Mr. Graham's nomination. I look forward to that debate and to his confirmation as well.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I thank my two colleagues. This is reasonable. I am concerned that when we have before us an important issue such as this energy bill, which really bears a lot on where we are going in this whole area of energy—and it is very important to me and to the American people—we get the amendments in. But this idea of having them filed by a certain time I think is really tough. We need a list perhaps. But thank you very much for this little change in direction.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001—Continued

Mr. WELLSTONE. I say to the majority whip, am I to do my amendment to the bankruptcy bill?

Mr. REID. The Senator is right. I believe the Chair would tell us that there is only one amendment to be in order, which is the amendment of the Senator from Minnesota. The Senator agreed to an hour time limit, it is my understanding. I think the Senator should move forward so we can get to the energy bill as soon as possible.

AMENDMENT NO. 977 TO AMENDMENT NO. 974

Mr. WELLSTONE. Mr. President, I send amendment No. 977 to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 977 to amendment No. 974.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require the General Accounting Office to conduct a study of the effects of the Act on bankruptcy filings, and for other purposes)

At the appropriate place, insert the following:

SEC. ___. STUDY OF THE EFFECT OF THE BANKRUPTCY REFORM ACT OF 2001.

(a) STUDY.—The General Accounting Office (in this section referred to as the ''GAO'') shall conduct a study to determine—

(1) the impact of this Act and the amendments made by this Act on—

(A) the number of filings under chapter 7 and chapter 13 of title 11, United States Code;

(B) the number of plan confirmations under chapter 13 of title 11, United States Code, and the number of such plans that are successfully completed; and

(C) the cost of filing for bankruptcy under chapter 7 and chapter 13 of title 11, United States Code, in each State;

(2) the effect of the enactment of this Act on—

(A) the availability and marketing of credit; and

(B) the price and terms of credit for consumers; and

(3) the extent to which this Act and the amendments made by this Act impact the ability of debtors below median income to obtain bankruptcy relief.

(b) REPORT TO CONGRESS.—Not later than 2 years after the effective date of this Act, the GAO shall submit a report to the Congress on the results of the study conducted under subsection (a).

(c) DATA COLLECTION BY UNITED STATES TRUSTEES.—

(1) IN GENERAL.—The Director of the Executive Office for United States Trustees shall collect data on the number of reaffirmations by debtors under title 11, United States Code, the identity of the creditors in such reaffirmations, and the type of debt that is reaffirmed.

(2) AVAILABILITY.—Periodically, but not less than annually, the Director shall make available to the public the data described in paragraph (1) in such manner as the Director may determine.

Mr. WELLSTONE. Mr. President, I want to get to the substance of my amendment in a moment. I want to respond for a moment to some of the comments from my colleague from Utah, Senator HATCH. The Senator from Utah said he was going to oppose this amendment because it was a ''delaying'' amendment.

I want Senators to know that I offer this amendment in good faith as an effort, in a modest way, to improve this bill. It says let's have a GAO study and look at the bankruptcy bill and analyze the effect of it. I don't know how Senators can vote against this, but I want to make it clear that a Senator could file a thousand amendments if this was all about delay. To my knowledge, this is the only amendment—my colleague from Wisconsin, Senator FEINGOLD, had filed an amendment, but I don't think he is going to offer it.

I just want to be clear that your vote on this amendment is a vote on whether or not you think we should be accountable for our vote. That is really what it is. So I don't want anybody to say I can vote against this amendment because it is some kind of a delaying tactic. That is simply not the case. What we have to say to people back in our States is: Look, in good conscience, I voted against an amendment to do a careful evaluation of this bankruptcy bill to see how it is working. You can figure out how you want to fill in the blank. That is the argument you have to make. You can't say: I voted against this amendment because it was a strategy of delay. That is ridiculous. It is just one amendment.

The second thing I have to do because you have to have a twinkle in your eye, and I think the Chair is one of the best at that. I just received today a solicitation from MBNA, which I think is the largest credit card bank in the country. They offered me a credit line of up to $100,000. There is an introductory 1.7-percent annual percentage rate, including cash advance. I thank the credit card industry for not taking this personally. This is sent to people—to our kids and grandchildren—every day.

This amendment is straightforward. I hope, I say to the Chair, that it will garner universal support. It should. It doesn't attempt to undo anything the Senate did earlier this year. It doesn't revisit any of the debate that we have had. This is no trick.

Look, if I had my way, I would kill this bill. For 2½ years, I have been trying to do that. This amendment is all about accountability. The main provision of the amendment requires that the GAO do a study of the impact of the bankruptcy bill on debtors and consumers of credit. It is that simple. Both sides have made dramatic arguments or dramatic claims about this legislation. In my case, they have been negative. In the case of some of my colleagues, they have been positive.

My amendment says, OK, 2 years after this bill has become effective, let's have the General Accounting Office give us a report on how things have turned out. How in the world—I am amazed that there is opposition. There was a great Swedish sociologist, Gunnar Myrdal, who wrote, ''Ignorance is never random.'' Sometimes maybe we don't want to know what we don't want to know. But I think it is really hard for Senators, Democrats and Republicans, to make an argument that you are unwilling to let the GAO do a study of this careful policy evaluation. That is what this amendment says. Will we be accountable for the votes we cast? For those who think it will be a great bill, you will get a chance to see. For those who think it is going to be harsh in its impact on people, of course, we want to know.

We are going to ask the GAO to study six things.

First, we are going to ask the GAO to report on the impact of the bill on the number of filings under chapter 7 and

chapter 13. This is important because the proponents of the bill have been something of a moving target on this issue. They argue that the point of the bill—particularly the means test—is to force more debtors who are now filing for chapter 7 into chapter 13—the logic being they can afford to do so.

I have heard colleagues say that is the only thing this is about. People should not get away with filing chapter 7 when they really have the money and they can instead file for chapter 13. But then the American Bankruptcy Institute found that very few people abuse chapter 7. Perhaps as low as 3 percent do that. And then the chapter 13 trustees reported that this bill will actually reduce chapter 13 filings by 20 percent from the current level because of the problem through additional burdens that the bill creates for chapter 13 filers.

Now, the proponents admit there may be fewer successful 13s. Also, I have argued that access to both chapters 7 and 13 are going to be reduced because of the means test and other burdensome requirements.

Let's find out. Those of you who say you are for the bill, you say it is because people have been gaming the system, but the evidence doesn't support that claim. I have talked about who the people are. Fifty percent of the people file for bankruptcy because of medical bills, or people have lost jobs, or there has been a divorce. But what I am saying is, since now we know that, in fact, there may not be so much abuse, and that many people can't file successfully for chapter 13, and maybe even are less able to do so under this legislation, let's have a study. Let's look at this. Two years hence, let's look at how this has worked. How can anybody be opposed to a careful policy evaluation?

Second, the GAO will look at chapter 13 specifically and the impact of this act on the number of plan confirmations in chapter 13 and the number of chapter 13 plans successfully completed. This is a key question because 67 percent of chapter 13 cases fail under current law. I will repeat that. Under current law, 67 percent of the people can't make it. If this legislation is going to make it even more difficult for people to make it, and this is what my colleagues call reform, what this amendment says is let's see what has happened. Let's see if I am right. Or forget me. Let's see if the U.S. Trustees are right, and if we aren't, no harm has been done. But if we are right, then perhaps the Congress might want to revisit this legislation.

When it becomes clear that a lot of hard-working people, through no fault of their own, wound up in very difficult, hellish financial circumstances, and then could not rebuild their lives because of this legislation, don't you think we want to know?

Colleagues, if you are right, you are right. But if you are wrong, you want to know if you are wrong. How can any Senator vote against this amendment?

Third, the General Accounting Office will examine the impact on the cost of filing chapter 7 and chapter 13 bankruptcies in each State. This is another key question—whether or not this bill will allow debtors to get bankruptcy relief. There is overwhelming evidence that the cost of filing bankruptcy is a major hurdle. Some families are going to have to save for months in order to do it.

They are, after all, insolvent. It is also a virtual certainty that this bill will make it more expensive to file, as the Wall Street Journal noted earlier this year. Again, let's hold ourselves accountable and have the General Accounting Office study this issue for certain.

Fourth, the GAO will report on the impact of the bill on the availability and marketing of credit. Something very interesting happened in 1999 and 2000 while the proponents of so-called reform were bleating about the rising number of bankruptcies. The bean counters in the consumer credit industry realized that all these bankruptcies were not good for profits so they started lending less money, and they were more careful about who they lent the money to and, in fact, overall consumer debt level actually declined in 1998, and guess what. We had fewer bankruptcies. This trend continued to 1999 and 2000. Bankruptcies only started rising again as the economy started to turn downward.

Several economists have suggested that when you restrict access to bankruptcy protection, as this bill does, you are going to increase the number of filings and defaults because the banks are going to be more willing to lend the money to marginal candidates because they do not have to worry about people then filing for bankruptcy. Indeed, it is no accident that that is exactly what happened after the bill was passed in 1984.

As the May 21 issue of Business Week notes in an article titled ''Reform That Could Backfire'':

> Indeed, [Mark] Zandi believes that tougher bankruptcy laws will simply induce lenders to ease their standards even more. States with the highest bankruptcy rates already have stringent wage garnishment laws, yet net losses to credit card issuers in such States have been similar to those in States following less restrictive bankruptcy rules.

Let's see if the experts are right. Have the General Accounting Office do a study.

Fifth, we want to look at the effective so-called reform bill on the price and terms of credit for consumers. What we hear by the credit card companies and proponents of these bills is that all of these bankruptcies have led to higher interest charges and fees for honest consumers. That is because, they say, the credit card companies and banks pass on the costs of the default to consumers.

In fact, I remind colleagues, the credit card companies have calculated the cost of this tax on consumers to be $400 per year. This has been cited as a reason that we need reform. The decent, hard-working people are getting charged $400 more a year because of people who are the slackers and are gaming the system, although there are not very many slackers.

Maybe this is all true, but it only matters in the context of the bill if passing this ''reform'' measure actually results in savings to consumers.

By the way, there is not much evidence that is going to happen. Consider this: In 1999 and 2000, when bankruptcy rates and defaults were dropping sharply, interest rates and fees on credit cards were actually rising, and the bank and credit card lender profits were also rising. This suggests that if there were any savings, they were not passed on to consumers.

If this industry is going to run the show, let's insist, after this bill passes, there are going to be these great savings for consumers. Let's just do a careful study of that.

Sixth, the GAO will investigate the extent to which the bill impacts the ability of debtors below median income to obtain bankruptcy relief.

I have heard colleagues say over and over that nothing in this bill will affect the ability of low-income debtors to get a fresh start. In fact, I heard the Senator from Alabama make that claim the other day. If that is the case and if the only thing this legislation is about is going after those people who are the slackers or the cheaters, then let's take a look at it.

As I said before, there are a lot of provisions in this bill that are going to make it much harder for people to get a fresh start, and it has nothing to do with whether or not they were cheaters or slackers. I am talking about the people who have really been put under, no fault of their own.

Let's have the GAO take a look at this question: Are we going to have a lot of debtors who are going to face these hurdles to filing regardless of their circumstances?

Finally, there is one other part of this amendment. It directs the Director of the Office of U.S. Trustees to collect data on reaffirmation agreements, the identity of the creditors in such reaffirmations, and the type of debt that is reaffirmed.

Under this bill, creditors will have more leeway to force reaffirmations—agreements where debtors reaffirm their intention to pay back the debt and so the debt is not wiped out in bankruptcy. Unfortunately, these agreements are commonly abused by creditors under current law.

I talked about what happened with Sears, Roebuck. They paid $498 million in settlement damages in 1999 and $60 million in fines for illegally coercing reaffirmations—agreements with borrowers to repay debt—from its cardholders. Apparently this is just the cost of doing business. Bankruptcy judges in California, Vermont, and New York have claimed that Sears is still

up to its old strong-arm tactics but is now using legal loopholes to avoid disclosure. This amendment will bring some transparency to the reaffirmations and allow us to study how they are being abused.

This is a modest amendment. I have been fighting this bankruptcy bill for a long time, and other Senators have been out here fighting. If it is going to go to conference committee, then I am going to depend on Senator LEAHY and others to improve this bill, although I think there is going to be a vote we are going to deeply regret.

The most vulnerable people are the ones who are going to pay the price. The economy is turning downward and a lot of people may find themselves in terrible circumstances—no fault of their own—and are going to have a very difficult time rebuilding their lives.

I am amazed that the credit card industry in institutional terms—not Senator to Senator. Every Senator votes how he or she thinks is right. I am saying can we not at least do an evaluation? Can we not at least make sure that 2 years from now we have the General Accounting Office do a study so we know what is happening around the country?

If the proponents of this legislation are right and this truly was a reform and it truly works well and all of the harsh and negative consequences I have spent hours talking about do not turn out to be the case, I will be glad to be proven wrong. But for those of you who support this legislation, surely you also, first of all, want to be right, but if you are wrong and I am right, then you want to know you are wrong so you can change the course of policy. You do not want to see a lot of innocent people, ordinary citizens hurt by this legislation just because the large financial service industry has such clout. We all know about their power. We all know that this is one-sided.

There is not a word in this legislation—I am sorry, on the Senate side, there is a minuscule piece on disclosure, but nowhere are they called into question or called into accountability. They pump this stuff out every day. I got one today. Credit line up to $100,000. Our children get it. Every day they send this stuff out in the mail. Every day they try to hook people on their credit, and we are arguing that when it comes to bankruptcy, the only people who are at fault are the people who wind up in trouble, not these big credit card companies for their irresponsible, reckless lending policies.

Shouldn't we call on them to be more accountable? We have not. Shouldn't there be more balance to this legislation? There is not. Am I right that a lot of low- and moderate-income people are going to be hurt, that a lot of single-parent families headed by women are going to be hurt? Am I right that a lot of children who live in these families are going to be hurt? Am I right that a lot of families who have been put under because of medical bills are going to be hurt? Am I right that families—because the husband or the wife, the major wage earner, loses his or her job and finds themselves in terrible circumstances—are going to be hurt?

I think I am right. If I am wrong, I will be prayerfully thankful to be wrong. If I am right and you are wrong, you will want to know you are wrong so we can do something in a hurry before a whole lot of ordinary citizens get hurt very badly by this legislation.

Every Senator should vote for this amendment. There is no reason to vote no.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that we leave the bankruptcy legislation now before the Senate until the hour of 3:20, at which time we expect Senator HATCH to return and speak on the amendment of the Senator from Minnesota. Senator DOMENICI and I would like to go to the energy and water bill during this short period of time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico is recognized.

Mr. DOMENICI. I thank the Chair.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 1186 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. DOMENICI. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. STABENOW. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2002—Resumed

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2311) making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes.

AMENDMENT NO. 987

Ms. STABENOW. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Ms. STABENOW) for herself, Mr. FITZGERALD, Mr. LEVIN, Mr. DURBIN, Mr. DAYTON, Mr. FEINGOLD, Mr. SCHUMER, Mr. KOHL, Mr. WELLSTONE, Mrs. CLINTON, Mr. BAYH, and Mr. VOINOVICH proposes an amendment numbered 987.

Ms. STABENOW. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To set aside funds to conduct a study on the effects of oil and gas drilling in the Great Lakes)

On page 2, line 18, before the period, insert the following: '', of which such sums as are necessary shall be used by the Secretary of the Army to conduct and submit to Congress a study that examines the known and potential environmental effects of oil and gas drilling activity in the Great Lakes (including effects on the shorelines and water of the Great Lakes): *Provided*, That during the fiscal year for which this Act makes funds available and during each subsequent fiscal year, no Federal or State permit or lease shall be issued for oil and gas slant, directional, or offshore drilling in or under 1 or more of the Great Lakes (including in or under any river flowing into or out of the lake)''.

Ms. STABENOW. Mr. President, my amendment, which is a bipartisan amendment and which shares the strong support of colleagues from around the Great Lakes Basin, seeks to protect the waters of the Great Lakes by asking for a study of the impact of any oil and gas drilling in our Great Lakes. And it places a moratorium on new drilling until we have factual scientific review of the danger of any potential oil and gas drilling.

In case my colleagues are not aware, 30 to 50 new oil and gas drilling permits could be issued as soon as the next few weeks for extraction under Lake Michigan and Lake Huron. This is moving forward only in the waters of the State of Michigan despite the overwhelming opposition of almost all local communities that would be affected by drilling and by the public at large.

We don't want to see these oil rigs dotting the shoreline of Lake Michigan or any of our beaches around the Great Lakes.

This amendment says that before anything as serious as this picture shows would occur we want to make sure that the Army Corps of Engineers does a complete study and analysis, and that we have thoughtful consideration of the impact this would create.

I want to make it clear that this is a local and regional issue. Drilling in the

Great Lakes is not a part of President Bush's energy strategy, nor is it a component of any of the major energy bills pending in Congress.

We are talking about the Great Lakes Basin. We have one of our Nation's most precious public natural resources. As you can imagine, the citizens of the Great Lakes and all of the States involved are very proud and protective of the Great Lakes waters. We have 33 million people who rely on the Great Lakes for their drinking water, including 10 million from Lake Michigan alone.

Millions of people use the Great Lakes each year to enjoy the beaches, great fishing, and boating. We welcome everyone to come and enjoy the splendor of the Great Lakes.

The latest estimate shows that recreational fishing totals $1.5 billion to Michigan's tourist economy alone. The Great Lakes confines also are home to wetlands, dunes, and endangered species and plants, including the rare piping plover, Michigan monkey flower, Pitcher's thistle, and the dwarf-lake iris. Lake Michigan alone contains over 417 coastal wetlands, the most of any Great Lake.

As you can see, we are proud of our lakes. All of the States surrounding the Great Lakes have a stake in what happens in these waters, as do all of us, because this is 20 percent of the world's fresh water. All of us have a stake in making sure we are wise stewards of this important waterway.

Great Lakes drilling would place the tourism economy, the Great Lakes ecosystem, and a vital source of drinking water at great risk for a small amount of oil.

Last year, Michigan produced about 2 minute's worth of oil from Great Lakes drilling of seven wells that have been in place since 1979. Since 1979, Michigan's wells have only produced 33 minutes of oil. U.S. consumers use 7 billion barrels per year.

This is not about a large source of oil. We are deeply concerned about the risks involved in drilling.

I cannot stress enough how important tourism is to the Michigan economy. Families from all over the country come to visit Mackinaw Island and the hundreds and hundreds of miles of beaches up and down Michigan's coastline.

As I know my colleagues feel the same about their borders and their coasts around Wisconsin, Ohio, Indiana, Illinois, New York, and Minnesota, all around the Great Lakes we are proud of and depend on tourism as a part of our economy.

As it gets warmer and warmer and more and more humid here, we welcome people to come and visit the beautiful Great Lakes' shoreline and the wonderful weather that we are now having in Michigan.

It is estimated, unfortunately, that a single quart of oil—a single quart of oil—through a mishap of any kind could foul as much as 2 million gallons of water. That is our fear.

If an oil spill happened in one of Michigan's tourist locations, it could ruin these local economies forever.

The Great Lakes are all interconnected and they border eight States, as we know, from Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio, Pennsylvania, and New York.

This means that an oil spill in Lake Michigan could wash up on the shores of Michigan, Indiana, Illinois, and Wisconsin. That is why we need to have the Federal Government study this issue because it affects more than just one State.

My amendment is a reasonable and prudent approach to the issue of any oil and gas drilling in the Great Lakes. It asks the Army Corps of Engineers to study the safety and environmental impact of drilling under the Great Lakes. It places a moratorium on new drilling.

Once this study is concluded, Congress can review this information and decide whether or not the moratorium should continue.

This is not a partisan issue. I am joining with colleagues on both sides of the aisle led by Senator FITZGERALD from Illinois, my Republican colleague.

I am so pleased to have colleagues on both sides of the aisle coming together to protect our wonderful natural resource called the Great Lakes.

We have in addition two prominent Republican Governors who have come out strongly against drilling in the Great Lakes.

If I might read their statements, Ohio Governor Bob Taft has stated that he cannot see any situation where he would support drilling under Lake Erie.

Governor Taft has ruled out drilling under the lake, saying many environmental issues would need to be considered before any drilling could be approved.

That was April 11 of this year.

Second, the Governor of Wisconsin, Gov. Scott McCullum, also stated his opposition to Great Lakes drilling. Governor McCullum's spokeswoman stated that he ''doesn't want any oil exploration in the Great Lakes. If it's for oil and it's going to interfere with the Great Lakes, then he opposes it.''

That was June 5 of this year.

This is a bipartisan issue—a joining together of those of us who believe very strongly that we have a special responsibility as stewards of this wonderful natural resource.

I encourage my colleagues to join us from both sides of the aisle to support this study and this prudent approach by placing a moratorium and studying this critical issue before anything moves forward.

It is important that 20 percent of the world's supply of fresh water be protected and that we be responsible in our approach. I am pleased I have from around the Great Lakes colleagues who are joining me in this important amendment.

I thank the chairman of the subcommittee for his assistance as well, Senator REID, and colleagues and staff who have been involved in putting this critical amendment together.

I yield the floor.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, 33 million people rely on the Great Lakes for drinking water, including 10 million on Lake Michigan alone. Millions of people use our Great Lakes for recreation, such as swimming, fishing, and boating. It is simply irresponsible to risk contamination of this source of drinking water and a large portion of our tourism industry and our recreation without studying the potential damages of drilling.

Our pristine Great Lakes' coastlines are home to wetlands, over 400 of them along Lake Michigan alone, and to some of the world's most spectacular sand dunes. They are home to endangered species. Even advocates of drilling acknowledge that some damage at the shoreline is inevitable from more and more slant drilling. It just is not worth the potential harm for the small amount of oil that could be produced in the Great Lakes. That is all we are talking about, a very small drop in a very large bucket, taking risks that we should not be taking with about 20 percent of the world's supply of fresh water.

The Great Lakes are a shared natural resource. That means that many of the States need to work together in order to protect them. What that also means is that if we are going to protect them, we must work at a broader level than just one State. That is why Governors of many States have stated their opposition to drilling of the kind which is being proposed.

One of our highest priorities in the Great Lakes area is to protect the ecological health of the Great Lakes and the economic and recreational value of our lands, our wetlands, our beaches, and our shorelines.

This amendment would accomplish that goal. I hope this body will support the amendment. I believe most of the Senators from the Great Lakes States support the amendment. It is an issue which is much broader than one State. We should be very leery, and very careful, before action is taken without adequate study of slant drilling beneath the Great Lakes because of the potential ecological damage that could be done, particularly along our shorelines.

For that reason, I hope this body will give a strong endorsement to the amendment of Senator STABENOW. It is the cautious, conservative thing to do. It does not jeopardize more than a minute amount of our energy supply,

and it does that for a very good cause—the protection of one of the world's truly great natural assets, the source of about 20 percent of the world's fresh water.

I yield the floor.

Mr. DOMENICI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, we have conferred with the two managers, and Senators STABENOW, LEVIN, and FITZGERALD who have an interest in this issue. We are confident we will resolve the issue. We have staff now working on preparing the necessary amendment, and we will do that subject to the approval of the movers of this amendment. In the meantime, we ask that we move off this amendment, that it be set aside, and that we move to Senator HATCH, who wants to move to the bankruptcy bill, which is now part of the order before the Senate.

The PRESIDING OFFICER. Under a previous order, the Senate will resume consideration of the bankruptcy bill——

Mr. DOMENICI. Mr. President, may I have 30 seconds before we do that?

I want to clear up the record. We have not spoken yet. This idea about drilling in the Great Lakes is not part of President Bush's energy policy. So we are not here arguing that the President should not get what he wants; their policy does not involve the notion of drilling in the Great Lakes. We are trying to put something together that would be a moratorium that would be satisfactory to the Great Lakes' Senators. We should have that ready soon, which we will be willing to accept and go to conference and do everything we can to keep it.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. FITZGERALD. Mr. President, I thank Senator DOMENICI and Senator REID and also the sponsor of this amendment, Senator STABENOW. I have been pleased to support this amendment, which would place a moratorium on drilling for oil in the Great Lakes. As a Senator from a State which has a large urban area—namely, the city of Chicago—and the surrounding communities that rely on Great Lakes water for drinking water, I think this moratorium is well advised.

Illinois, as a practical matter, doesn't allow any drilling off its Lake Michigan coast. The issue has arisen, however, in Senator STABENOW's State. I think this amendment has worked out very well. I appreciate Senator DOMENICI's commitment to work to try to hold this amendment in conference.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, I rise to thank Senator DOMENICI and Senator REID for working with us on this amendment to put together something that is a reasonable moratorium while a study is being conducted by the Army Corps of Engineers. As my friend from Illinois mentioned, this is important to all of us in the Great Lakes. We want to make sure that wise decisions are made. And for those of us in Michigan, we are extremely concerned about any effort to move ahead now with drilling in oil and gas reserves.

I thank my colleagues and I look forward to working with them to make sure this language moves all the way through the process and, in fact, becomes law.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I commend Senators STABENOW and FITZGERALD and all the cosponsors of this amendment. It is a very reasonable outcome that has been agreed to. Their leadership is really important in getting this done. We are very grateful for the support of Senator REID and Senator DOMENICI for this outcome and their commitment to fight for the Senate position in conference.

I yield the floor.

Mr. DURBIN. Mr. President, I rise in support of Senator STABENOW's amendment. This amendment simply asks that a study be conducted on the environmental effects of drilling in the Great Lakes. And to give that study time to be completed, a moratorium be placed on drilling for the next 2 years.

Before we put in jeopardy one of the world's largest bodies of freshwater, it is sound public policy that we first have a better understanding of the impact drilling would have on the Great Lakes.

After all, the Great Lakes contain 20 percent of the world's freshwater and 95 percent of the freshwater in the United States. The Great Lakes contain 6 quadrillion gallons of freshwater—only the polar ice caps and Lake Baikal in Siberia contain more.

Preserving our world's supply of freshwater is becoming increasingly important as the population grows. Think of it this way, if you put all the water in the world in a 1 gallon container, 1 tablespoon of that would represent all the freshwater in the world. And ⅕ of that tablespoon would represent the freshwater from the Great Lakes.

Lake Michigan alone provides safe drinking water for more than 10 million people every day. More than 33 million people live in the Great Lakes basin.

In addition to providing vital drinking water, the Great Lakes are a source of a thriving tourism industry, and provide ecological diversity and habitat for migratory waterfowl and fish.

Last week, the Senate passed my amendment to the Interior spending bill to prevent energy developing in our national monuments. Much like our national monuments, the Great Lakes will do little to add to our energy independence.

The 13 directionally drilled wells on the Michigan shore (7 of which are still in operation) have produced, since 1979, less than half a million barrels of oil. In contrast, the United States consumes more than 18 million barrels of oil a day, according to the American Petroleum Institute. So all the oil drilled from the Great Lakes in the past 20 years has amounted to less than 1 hour's worth of U.S. oil consumption.

As many as 30 new wells have been proposed for oil drilling under Lake Michigan and Lake Huron. Even if we produced 30 times as much oil from these new wells as we have from the older ones, it wouldn't supply enough crude oil to keep the United States running for one day.

A serious accident could contaminate Lake Michigan and put at risk the drinking water used by millions of people from Illinois, Michigan, and Wisconsin. Putting our Nation's largest supply of fresh water at risk for less than a day's worth of oil makes no sense.

Modern technology may reduce the chances for a bad oil spill, but there are always uncontrollable factors, as we saw with the *Exxon Valdez*. Who would have thought that just one tanker could do so much damage? The *Exxon Valdez* measured 986 feet long—about the size of three football fields. But it spilled 10.8 million gallons of oil. It affected about 1,300 miles of shoreline. And it cost about $2.1 billion for Exxon to cleanup.

Proponents of drilling in the Great Lakes focus on the revenues to be gained or the oil to be produced. Sensible expansion of crude oil production can be a valuable component of a new energy strategy. But we should focus also on improved energy efficiency and target production in areas where the environmental risks are not as great.

Let's take care to protect our natural resources, and explore for oil and gas in environmentally safe locations. There is no sound reason to put the Great Lakes at risk.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001—Continued

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I think we are ready to go to a vote on the Wellstone amendment. So I raise a point of order that the amendment of the Senator from Minnesota is not germane.

The PRESIDING OFFICER. The point of order is not well taken.

Mr. HATCH. As I understand it, the yeas and nays are ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. HATCH. Mr. President, I suggest we move to a vote.

The PRESIDING OFFICER. The clerk will call——

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, we are going to have a vote in a moment. I understand the Chair ruled in my favor on the point of order. I am glad that the Chair did so.

Let me be real clear about this amendment. There is no delay whatsoever. This is one amendment. There could be many amendments. This is one amendment. We have had Senators on both sides of this question. Some of us have argued very much in the positive about this legislation, and some of us have argued very much in the negative about this legislation.

Let the General Accounting Office take a look at this 2 years from now and give us a careful evaluation about how it is working, look at its impact on chapter 7, look at its impact on chapter 13, look at its impact on low- and moderate-income citizens, look at its impact on children and single-parent families. That is all my amendment says.

I say to colleagues, if I am wrong about this legislation, which I believe is unbelievably harsh, which I think is a testimony to the power of the financial service industry, I will be pleased to be wrong. But if my colleagues are wrong, they are going to want to know they are wrong. They are going to want to know what the impact is. I hope Senators will vote for this amendment.

All it calls for is a General Accounting Office study. At the very minimum we should all be accountable for the vote we cast, and I believe that is what this amendment is about.

The yeas and nays have been ordered. I hope colleagues will support it.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, it calls for more than that. It calls for data collection and other matters. I rise in opposition to this amendment. I will be very short, and we can go to the vote.

Senator WELLSTONE's amendment, which I am sure is well intended, is both dilatory and duplicative. Section 205 of the Senate bill also includes a GAO study on the reaffirmation process. This amendment was offered by Senators LEAHY and REID and agreed to by unanimous consent just before final passage of the bankruptcy bill on March 15.

At this point, this boils down to a question of both process and substance. Again, final passage should mean final passage. I urge my colleagues to vote no on this amendment for these simple reasons.

I am prepared to go to the vote.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I say to my colleague from Utah, he is absolutely right, the legislation does call for some studies, but there is nothing in the legislation that calls for a GAO study of all of the issues I indicated which are terribly important in understanding whether this legislation works. That is all I am saying. Let's at least have a policy evaluation to see how this works. I certainly hope colleagues will support this amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 977. The yeas and nays have been ordered. The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. SMITH) is necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. SMITH) would vote ''nay.''

The PRESIDING OFFICER (Mrs. MURRAY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 46, as follows:

[Rollcall Vote No. 235 Leg.]

YEAS—52

Akaka	Dayton	Levin
Baucus	Dodd	Lieberman
Bayh	Dorgan	Lincoln
Biden	Durbin	Mikulski
Bingaman	Edwards	Murray
Bond	Feingold	Nelson (FL)
Boxer	Feinstein	Nelson (NE)
Breaux	Graham	Reed
Brownback	Harkin	Reid
Byrd	Hollings	Rockefeller
Cantwell	Hutchison	Sarbanes
Carnahan	Inouye	Schumer
Cleland	Johnson	Snowe
Clinton	Kennedy	Stabenow
Collins	Kerry	Wellstone
Conrad	Kohl	Wyden
Corzine	Landrieu	
Daschle	Leahy	

NAYS—46

Allard	Gramm	Nickles
Allen	Grassley	Roberts
Bennett	Gregg	Santorum
Bunning	Hagel	Sessions
Burns	Hatch	Shelby
Campbell	Helms	Smith (OR)
Carper	Hutchinson	Specter
Chafee	Inhofe	Stevens
Cochran	Jeffords	Thomas
Craig	Kyl	Thompson
Crapo	Lott	Thurmond
DeWine	Lugar	Torricelli
Domenici	McCain	Voinovich
Ensign	McConnell	Warner
Enzi	Miller	
Frist	Murkowski	

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING—1

Smith (NH)

The amendment (No. 977) was agreed to.

Mr. WELLSTONE. Mr. President, I move to reconsider the vote.

Mr. FEINGOLD. I move to lay that motion on the table. The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Is there further debate on the amendment in the nature of a substitute?

If not, the question is on agreeing to amendment No. 974, as amended.

The amendment (No. 974), as amended, was agreed to.

The PRESIDING OFFICER. The question is one the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

Mr. REID. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. SMITH) is necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. SMITH) would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 82, nays 16, as follows:

[Rollcall Vote No. 236 Leg.]

YEAS—82

Akaka	Dorgan	McCain
Allard	Edwards	McConnell
Allen	Ensign	Mikulski
Baucus	Enzi	Miller
Bayh	Feinstein	Murkowski
Bennett	Frist	Murray
Biden	Graham	Nelson (NE)
Bingaman	Gramm	Nickles
Bond	Grassley	Reid
Breaux	Gregg	Roberts
Bunning	Hagel	Santorum
Burns	Hatch	Schumer
Byrd	Helms	Sessions
Campbell	Hollings	Shelby
Cantwell	Hutchinson	Smith (OR)
Carnahan	Inhofe	Snowe
Carper	Inouye	Specter
Chafee	Jeffords	Stabenow
Cleland	Johnson	Stevens
Clinton	Kohl	Thomas
Cochran	Kyl	Thompson
Collins	Landrieu	Thurmond
Conrad	Leahy	Torricelli
Craig	Levin	Voinovich
Crapo	Lieberman	Warner
Daschle	Lincoln	Wyden
DeWine	Lott	
Domenici	Lugar	

NAYS—16

Boxer	Feingold	Reed
Brownback	Harkin	Rockefeller
Corzine	Hutchison	Sarbanes
Dayton	Kennedy	Wellstone
Dodd	Kerry	
Durbin	Nelson (FL)	

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING—1

Smith (NH)

The bill (H.R. 333), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 333) entitled ''An Act to amend title 11, United States Code, and for other purposes.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Bankruptcy Reform Act of 2001''.

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

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 the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act (42 U.S.C. 10408), or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

''(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case) who is not a dependent and who is unable to pay for such reasonable and necessary expenses.

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

''(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child under the age of 18 years up to $1,500 per year per child to attend a private or public elementary or secondary school, if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and that such expenses are not already accounted for in the Internal Revenue Service standards referred to in section 707(b)(2) of this title.

''(V) In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the International Revenue Service, based on the actual expenses for home energy costs, if the debtor provides documentation of such expenses.

''(iii) The debtor's average monthly payments on account of secured debts shall be calculated as—

''(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 income, 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, modification, 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, 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.''.

(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, which shall be the date which is the last day of the calendar month immediately preceding the date of the bankruptcy filing. If the debtor is providing the debtor's current monthly income at the time of the filing and otherwise the date of determination shall be such date on which the debtor's current monthly income is determined by the court for the purposes of this Act; 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 statement 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 applicable 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) SPECIAL ALLOWANCE FOR HEALTH INSURANCE.—Section 1329(a) of title 11, United States Code, is amended by inserting the following new paragraph—

''(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor and any dependent of the debtor (if those dependents do not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

''(A) such expenses are reasonable and necessary;

''(B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy, or;

''(ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance and who has similar income, expenses, age, health status, and lives in the same geographic location with the same number of dependents that do not otherwise have health insurance coverage; and

''(C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title.

Upon request of any party in interest the debtor shall file proof that a health insurance policy was purchased.''.

(j) 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 appointed 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:

''(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 180-day period preceding the date of filing of the petition of that individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis.

''(2)(A) Paragraph (1) 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 nonprofit budget and credit counseling agencies for that district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from that agency by reason of the requirements of paragraph (1).

''(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. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling service may be disapproved by the United States trustee or bankruptcy administrator at any time.

''(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

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

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

''(iii) is satisfactory to the court.

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

(b) CHAPTER 7 DISCHARGE.—Section 727(a) of title 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 district 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 section 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 paragraphs (4) through (8), and shall be the only disclosures required in connection with the reaffirmation.

''(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms 'Amount Reaffirmed' and 'Annual Percentage Rate' shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases 'Before agreeing to reaffirm a debt, review these important disclosures' and 'Summary of Reaffirmation Agreement' may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms 'Amount Reaffirmed' and 'Annual Percentage Rate' must be used where indicated.

''(3) The disclosure statement required under this paragraph shall consist of the following:

''(A) The statement: 'Part A: Before agreeing to reaffirm a debt, review these important disclosures:';

''(B) Under the heading 'Summary of Reaffirmation Agreement', the statement: 'This Summary is made pursuant to the requirements of the Bankruptcy 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—

''(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act (15 U.S.C. 1638(a)(4)), as disclosed to the debtor in the most recent disclosure statement given the debtor prior to the reaffirmation agreement with respect to the debt, or, if no such disclosure statement was provided the debtor, 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 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 such balance included in the amount reaffirmed, or

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

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

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

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

'''3. If you were represented by an attorney during the negotiation of the reaffirmation agreement, the attorney must have signed the certification in Part C.

'''4. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, you must have completed and signed Part E.

'''5. The original of this disclosure must be filed with the court by you or your creditor. If a separate 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:

'''Borrower:

'''Co-borrower, if also reaffirming:

'''Accepted by creditor:

'''Date of creditor acceptance:'.

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

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

'''I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor(s); (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

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

''(B) In the case of reaffirmations in which a presumption of undue hardship has been established, the certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

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

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

'''Part D: Debtor's Statement in Support of Reaffirmation Agreement.

'''1. I believe this agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $_____, leaving $_____ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____.

'''2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

''(B) Where the debtor is represented by counsel and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(iv)), the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

'''I believe this agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

''(7) The motion, which may be used if approval of the agreement by the court is required in order for it to be effective and shall be signed and dated by the moving party, shall consist of the following:

'''Part E: Motion for Court Approval (To be completed only where debtor is not represented by an attorney.). I (we), the debtor, affirm the following to be true and correct:

'''I am not represented by an attorney in connection with this reaffirmation agreement.

'''I believe this agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement above, and because (provide any additional relevant reasons the court should consider):

'''Therefore, I ask the court for an order approving 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.

''(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

''(m)(1) Until 60 days after a reaffirmation agreement is filed with the court (or such additional period as the court, after notice and hearing and for cause, orders before the expiration of such period), it shall be presumed that the reaffirmation agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of the reaffirmation agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation which identifies additional sources of funds to make the payments as agreed upon under the terms of the reaffirmation agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove the agreement. No agreement shall be disapproved without notice and hearing to the debtor and creditor and such hearing shall be concluded before the entry of the debtor's discharge.

''(2) This subsection does not apply to reaffirmation 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.''.

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OF PREDATORY LOANS.

Section 363 of title 11, United States Code, is amended by adding at the end the following:

''(p) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act (15 U.S.C. 1601 et seq.), or any interest in a consumer credit contract as defined by the Federal Trade Commission Preservation of Claims Trade Regulation, and that interest is purchased through a sale under this section, then that person shall remain subject to all claims and defenses that are related to the consumer credit transaction or contract, to the same extent as that person would be subject to such claims and defenses of the consumer had the sale taken place other than under title 11.

SEC. 205. GAO STUDY ON REAFFIRMATION PROCESS.

(a) STUDY.—The General Accounting Office (in this section referred to as the ''GAO'') shall conduct a study of the reaffirmation process under title 11, United States Code, to determine the overall treatment of consumers within the context of that process, including consideration of—

(1) the policies and activities of creditors with respect to reaffirmation; and

(2) whether consumers are fully, fairly and consistently informed of their rights pursuant to this title.

(b) REPORT TO CONGRESS.—Not later than 1½ years after the date of enactment of this Act, the GAO shall submit a report to the Congress on the results of the study conducted under subsection (a), together with any recommendations for legislation to address any abusive or coercive tactics found within the reaffirmation process.

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 petition 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 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.'';

(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 at 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), and the holder of the claim, 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 subparagraph (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 ''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).

''(B) The legal advice referred to in subparagraph (A) includes advising the debtor—

''(i) whether—

''(I) to file a petition under this title; or

''(II) commencing a case under chapter 7, 11, 12, or 13 is appropriate;

''(ii) whether the debtor's debts will be eliminated or discharged in a case under this title;

''(iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;

''(iv) concerning—

''(I) the tax consequences of a case brought under this title; or

''(II) the dischargeability of tax claims;

''(v) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

''(vi) concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or

''(vii) concerning bankruptcy procedures and rights.'';

(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 unlawful 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''; 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 document separate from other documents or notices provided to the assisted person:

'''IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER.

'''If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

'''The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

'''Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a ''trustee'' and by creditors.

'''If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so and a creditor is not permitted to coerce you into reaffirming your debts.

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

'''If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what needs to be done from someone familiar with that type of relief.

'''Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.'.

''(c) Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance to an assisted person, to the extent permitted by nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which shall be provided in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

''(1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;

''(2) how to complete the list of creditors, including how to determine what amount is owed and 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).

SEC. 231. PROTECTION OF NONPUBLIC PERSONAL INFORMATION.

(a) IN GENERAL.—Section 363(b)(1) of title 11, United States Code, is amended by striking the period at the end and inserting the following:'', except that if the debtor has disclosed a policy to an individual prohibiting the transfer of personally identifiable information about the individual to unaffiliated third persons, and the policy remains in effect at the time of the bankruptcy filing, the trustee may not sell or lease such personally identifiable information to any person, unless—

''(A) the sale is consistent with such prohibition; or

''(B) the court, after notice and hearing and due consideration of the facts, circumstances, and conditions of the sale or lease, approves the sale or lease.''.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (41) the following:

''(41A) 'personally identifiable information', if provided by the individual to the debtor in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes—

''(A) means—

''(i) the individual's first name (or initials) and last name, whether given at birth or adoption or legally changed;

''(ii) the physical address for the individual's home;

''(iii) the individual's e-mail address;

''(iv) the individual's home telephone number;

''(v) the individual's social security number; or

''(vi) the individual's credit card account number; and

''(B) means, when identified in connection with one or more of the items of information listed in subparagraph (A)—

''(i) an individual's birth date, birth certificate number, or place of birth; or

''(ii) any other information concerning an identified individual that, if disclosed, will result in the physical or electronic contacting or identification of that person;''.

SEC. 232. CONSUMER PRIVACY OMBUDSMAN.

(a) IN GENERAL.—

(1) APPOINTMENT ON REQUEST.—If the trustee intends to sell or lease personally identifiable information in a manner which requires a hearing described in section 363(b)(1)(B), the trustee shall request, and the court shall appoint, an individual to serve as ombudsman during the case not later than—

(A) on or before the expiration of 30 days after the date of the order for relief; or

(B) 5 days prior to any hearing described in section 363(b)(1)(B) of title 11, United States Code, as amended by this Act.

(2) DUTIES OF OMBUDSMAN.—It shall be the duty of the ombudsman to provide the court information to assist the court in its consideration of the facts, circumstances, and conditions of the sale or lease under section 363(b)(1)(B) of title 11, United States Code, as amended by this Act. Such information may include a presentation of the debtor's privacy policy in effect, potential losses or gains of privacy to consumers if the sale or lease is approved, potential costs or benefits to consumers if the sale or lease is approved, and potential alternatives which mitigate potential privacy losses or potential costs to consumers.

(3) NOTICE TO OMBUDSMAN.—The ombudsman shall receive notice of, and shall have a right to appear and be heard, at any hearing described in section 363b(1)(B) of title 11, United States Code, as amended by this Act.

(4) CONFIDENTIALITY.—The ombudsman shall maintain any personally identifiable information obtained by the ombudsman under this title as confidential information.

(b) APPOINTMENT.—If the court orders the appointment of an ombudsman under this section, the United States Trustee shall appoint 1 disinterested person, other than the United States trustee, to serve as the ombudsman.

(c) COMPENSATION OF CONSUMER PRIVACY OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended in the matter preceding subparagraph (A), by inserting ''an ombudsman appointed under section 332,'' before ''an examiner''.

SEC. 233. PROHIBITION ON DISCLOSURE OF IDENTITY OF MINOR CHILDREN.

(a) PROHIBITION.—Chapter 1 of title 11, United States Code, is amended by adding after section 111, as added by this Act, the following:

''§ 112. Prohibition on disclosure of identity of minor children

''In a case under this title, the debtor may be required to provide information regarding a minor child involved in matters under this title, but may not be required to disclose in the public records in the case the name of such minor child. Notwithstanding section 107(a), the debtor may be required to disclose the name of such minor child in a nonpublic record maintained by the court. Such nonpublic record shall be available for inspection by the judge, United States Trustee, the trustee, or an auditor under section 603 of the Bankruptcy Reform Act of 2001. Each such judge, United States Trustee, trustee, or auditor shall maintain the confidentiality of the identity of such minor child in the nonpublic record.''.

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

''112. Prohibition on disclosure of identity of minor children.''.

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 substantial 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 subsequent 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)'' and 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, reaffirm 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 3-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. LIMITATION.

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 subsection (o),'' before ''any property''; and

(2) by adding at the end the following new subsection:

''(o)(1) 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 exceeds, in the aggregate, $125,000 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) 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.''.

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 evidence 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 $750 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 the

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.

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

(1) by inserting after paragraph (21), as added by this Act, the following:

''(23) under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor seeking possession of residential property—

''(A) on which the debtor resides as a tenant; and

''(B) with respect to which—

''(i) the debtor fails to make a rental payment that first becomes due under the unexpired specific term of a rental agreement or lease or under a tenancy under applicable State or local rent control law, after the date of filing of the petition or during the 10-day period preceding the date of filing of the petition, if the lessor files with the court a certification that the debtor has not made a payment for rent and serves a copy of the certification upon the debtor; or

''(ii) the debtor has a month to month tenancy (or one of shorter term) other than under applicable State or local rent control law where timely payments are made pursuant to clause (i) if the lessor files with the court a certification that the requirements of this clause have been met and serves a copy of the certification upon the debtor.

''(24) under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor seeking possession of residential property, if during the 2-year period preceding the date of filing of the petition, the debtor or another occupant of the leased premises—

''(A) commenced another case under this title; and

''(B) failed to make any rental payment that first became due under applicable nonbankruptcy law after the date of filing of the petition for that other case;

''(25) under subsection (a)(3), of an eviction action, to the extent that it seeks possession based on endangerment of property or the illegal use of controlled substances on the property, if the lessor files with the court a certification that such an eviction has been filed or the debtor has endangered property or illegally used or allowed to be used a controlled substance on the property during the 30-day period preceding the date of filing of the certification, and serves a copy of the certification upon the debtor;'';

(2) by adding at the end of the flush material at the end of the subsection the following: ''With respect to the applicability of paragraph (23) or (25) to a debtor with respect to the commencement or continuation of a proceeding described in any such paragraph, the exception to the automatic stay shall become effective on the 15th day after the lessor meets the filing and notification requirements under any such paragraph, unless—

''(A) the debtor files a certification with the court and serves a copy of that certification upon the lessor on or before that 15th day, that—

''(i) contests the truth or legal sufficiency of the lessor's certification; or

''(ii) states that the tenant has taken such action as may be necessary to remedy the subject of the certification under paragraph (23)(B)(i), except that no tenant may take advantage of such remedy more than once under this title; or

''(B) the court orders that the exception to the automatic stay shall not become effective, or provides for a later date of applicability.''; and

(3) by adding at the end of the flush material added by paragraph (2), the following:

''Where a debtor makes a certification under subparagraph (A), the clerk of the court shall set a hearing on a date no later than 10 days after the date of the filing of the certification of the debtor and provide written notice thereof. If the debtor can demonstrate to the satisfaction of the court that the rent payment due post-petition or 10 days prior to the petition was made prior to the filing of the debtor's certification under subparagraph (A), or that the situation giving rise to the exception in paragraph (25) does not exist or has been remedied to the court's satisfaction, then a stay under subsection (a) shall be in effect until the termination of the stay under this section. If the debtor cannot make this demonstration to the satisfaction of the court, the court shall order the stay under subsection (a) lifted forthwith. Where a debtor does not file a certification under subparagraph (A), the stay under subsection (a) shall be lifted by operation of law and the clerk of the court shall certify a copy of the bankruptcy docket as sufficient evidence that the automatic stay of subsection (a) is lifted.''.

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—

''(1) in a case filed under chapter 7, 11, or 12 of this title during the three-year period preceding the date of the order for relief under this chapter, or

''(2) in a case filed under chapter 13 of this title during the two-year period preceding the date of such order, except that if the debtor demonstrates extreme hardship requiring that a chapter 13 case be filed, the court may shorten the two-year period.''.

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 nonbankruptcy 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 requests 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 the judge, United States trustee, or any party in interest—

''(1) at the time filed with the taxing authority, the Federal tax returns or transcript thereof required under applicable law, 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, the Federal tax returns or transcript thereof required under applicable law, 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 Federal tax returns or transcripts thereof, 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 Reform 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 Reform 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 an individual 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. 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. 323. 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. 324. 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 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. 325. 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. 326. 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. 327. 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), compensates 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''.

SEC. 328. NONDISCHARGEABILITY OF DEBTS INCURRED THROUGH VIOLATIONS OF LAWS RELATING TO THE PROVISION OF LAWFUL GOODS AND SERVICES.

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

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

(2) in paragraph (18), as added by section 224 of this Act, by striking the period at the end of subparagraph (B) and inserting ''; or'';

(3) by adding at the end of the flush material immediately following that paragraph (18), as added by section 224 of this Act, the following: ''Nothing in paragraph (19) shall be construed to affect any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the first amendment to the Constitution of the United States.''; and

(4) by inserting before the flush material following that paragraph (18), the following:

''(19) that results from any judgment, order, consent order, or decree entered in any Federal or State court, or contained in any settlement agreement entered into by the debtor, including any court-ordered damages, fine, penalty, citation, or attorney fee or cost owed by the debtor, arising from—

''(A) an action alleging the violation of any Federal, State, or local statutory law, including but not limited to violations of sections 247 and 248 of title 18, that results from the debtor's—

''(i) harassment of, intimidation of, interference with, obstruction of, injury to, threat to, or violence against, any person—

''(I) because that person provides or has provided lawful goods or services;

''(II) because that person is or has been obtaining lawful goods or services; or

''(III) to deter that person, any other person, or a class of persons from obtaining or providing lawful goods or services; or

''(ii) damage or destruction of property of a facility providing lawful goods or services; or

''(B) a violation of a court order or injunction that protects access to a facility that provides lawful goods or services or the provision of lawful goods or services.''.

SEC. 329. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.

Section 503(b)(1)(A) of title 11, United States Code, is amended to read as follows:

''(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case, and wages and benefits awarded pursuant to an action brought in a court of law or the National Labor Relations Board as back pay attributable to any period of time after commencement of the case as a result of the debtor's violation of Federal or State law, without regard to when the original unlawful act occurred or to whether any services were rendered if the court determines that the award will not substantially increase the probability of layoff or termination of current employees or of nonpayment of domestic support obligations during the case;''.

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 (24), as added by this Act, the following:

''(25) 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);

(2) in subsection (i), as so redesignated, by inserting ''and subject to the prior rights of holders of security interests in such goods or the proceeds thereof,'' after ''consent of a creditor,''; and

(3) 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 Reform 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.

''(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

''(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

''(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

''(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider—

''(i) the absence of security before the date of filing of the petition;

''(ii) the payment by the debtor of charges for utility service in a timely manner before the date of filing of the petition; or

''(iii) the availability of an administrative expense 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 subsections (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.

SEC. 420. DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) IN GENERAL.—Section 521(a) of title 11, United States Code, as so designated by section 106(d) of this Act, is amended-

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

(2) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(6) unless a trustee is serving in the case, if at the time of filing, the debtor, served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002)) of an employee benefit plan, continue to perform the obligations required of the administrator.''.

(b) DUTIES OF TRUSTEES.—Section 704(a) of title 11, United States Code, as so designated and otherwise amended by this Act, is amended—

(1) in paragraph (10), by striking ''and'' at the end;

(2) in paragraph (11), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(12) where, at the time of the time of the commencement of the case, the debtor served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002)) of an employee benefit plan, continue to perform the obligations required of the administrator;''.

(c) CONFORMING AMENDMENT.—Section 1106(a) of title 11, United States Code, is amended by striking paragraph (1) and inserting the following:

''(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), (11), and (12) of section 704;''.

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:

''(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

''(51D) 'small business debtor'—

''(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than $3,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

''(B) does not include any member of a group of affiliated debtors that has aggregate 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 Conference 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)(1) In a small business case, the plan shall be confirmed not later than 45 days after the date that a plan is filed with the court as provided in section 1121(e).

''(2) The 45-day period referred to in paragraph (1) may be extended only if—

''(A) the debtor, after notice and hearing, demonstrates 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 at which the extension is granted; and

''(C) the order extending time is signed before the existing deadline has expired.''.

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 that—

''(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, as amended, or in cases in which these sections do not apply, 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.

''(3) 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.

''(4) For purposes of this subsection, the term 'cause' includes—

''(A) substantial or continuing loss to or diminution of the estate;

''(B) gross mismanagement of the estate;

''(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

''(D) unauthorized use of cash collateral harmful to 1 or more creditors;

''(E) failure to comply with an order of the court;

''(F) repeated failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

''(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered 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 Administration, 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 (separately 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 information 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 Reform 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 Reform 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 performing 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 subparagraph (A) or (B) of section 523(a)(2) that is owed to a domestic governmental unit or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31, United States Code, or any similar State statute, 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 entitled, 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 practicable 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 (25), as added by this Act, the following:

''(26) 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 nonbankruptcy 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

''§ 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.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. The case under this chapter may be closed in the manner prescribed under section 350.

''§ 1518. Subsequent information

''From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

''(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

''(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

''§ 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 (27) 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 (27) 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 section 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 section 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 relief 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 terminated 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 certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a 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 any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates 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, mortgage 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 including any guarantee or reimbursement obligation in connection with 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 including any guarantee or reimbursement obligation in connection with 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 master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV) including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.''.

(e) DEFINITION OF REPURCHASE AGREEMENT.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities 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, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage 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;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), 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 repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V) including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

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 foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option,

future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial 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 subclause (I), (II), (III), (IV), or (V) including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

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, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.''.

(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 institution'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 contracts 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 cleared by or 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) DEFINITIONS.—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, and the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.''.

(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;

(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).''; and

(3) by including at the end of section 11(e) the following new paragraph:

''(17) SAVINGS CLAUSE.—The meaning of terms used in this subsection (e) are applicable for purposes of this subsection (e) only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities law (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''.

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 '', that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act, or that is a multilateral clearing organization (as defined in section 408 of this 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 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).''.

(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 arrangement 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, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.—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 407A; and

(2) by inserting after section 406 the following new section:

''SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.

''(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, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, except that for such purpose—

''(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall

refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank;

''(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 appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank; and

''(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act.

''(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, 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 the case of an uninsured national bank or uninsured Federal branch or agency and the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Act, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

''(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each shall ensure that their 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 agreement 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) including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;'';

(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, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage 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);

''(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), 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 repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

''(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv) including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

''(B) does not include a repurchase obligation under a participation in a commercial 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—

''(I) an interest rate swap, option, future, or forward agreement, including 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 equity swap, option, future, or forward agreement;

''(V) a debt index or debt swap, option, future, or forward agreement;

''(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

''(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

''(VIII) a weather swap, weather derivative, or weather option;

''(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

''(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference therein); and

''(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial 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) including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; 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, the Gramm-Leach-Bliley

Act, and the Legal Certainty for Bank Products Act of 2000.'';

(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 securities, 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, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage 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, mortgage 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 including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial participant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; 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 including any guarantee or reimbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;''.

(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) by inserting after paragraph (22) the following:

''(22A) 'financial participant' means—

''(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, 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 agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period; or

''(B) a clearing organization (as that term is defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991);''; and

(3) 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 in a commodity, as defined 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, including any guarantee or reimbursement obligation related to 1 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 or financial 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 or financial 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 or financial participant to margin, guarantee, secure, or settle any swap agreement;''; and

(D) by inserting after paragraph (26), as added by this Act, the following new paragraph:

''(27) 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 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 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:

''(m) LIMITATION.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) 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'';

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement''; and

(C) by inserting ''or financial participant'' after ''swap participant'' each place that term appears; 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'';

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''; and

(3) in the second sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(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'';

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''; and

(3) in the third sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(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'';

(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''; and

(4) in the second sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(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; proceedings under chapter 15

''(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 terminate, 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 traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act 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 and traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act 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 or similar arrangement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under paragraph (1) or (2) of section 5c(c) of the Commodity Exchange Act and has not been abrogated or rendered ineffective by the Commodity Futures Trading Commission; 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 derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) 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; proceedings under chapter 15.''.

(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, 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, 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)(2)(B)(ii), by inserting before the semicolon the following: ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)'';

(2) 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)(27), 555, 556, 559, 560, or 561 of this title)''; and

(3) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 362(b)(27), 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 sections 362(b)(7) and 546(f), by inserting ''or financial participant'' after ''repo participant'' each place that term appears;

(3) in section 546(e), by inserting ''financial participant,'' after ''financial institution,'';

(4) in section 548(d)(2)(B), by inserting ''financial participant,'' after ''financial institution,'';

(5) in section 548(d)(2)(C), by inserting ''or financial participant'' after ''repo participant'';

(6) in section 548(d)(2)(D), by inserting ''or financial participant'' after ''swap participant'';

(7) in section 555—

(A) by inserting ''financial participant,'' after ''financial institution,''; and

(B) by striking the second sentence and inserting the following: ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), 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'';

(8) in section 556, by inserting '', financial participant,'' after ''commodity broker'';

(9) in section 559, by inserting ''or financial participant'' after ''repo participant'' each place that term appears; and

(10) in section 560, by inserting ''or financial participant'' after ''swap participant''.

(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, financial participants, 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, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''.

SEC. 907A. SECURITIES BROKER/COMMODITY BROKER LIQUIDATION.

The Securities and Exchange Commission and the Commodity Futures Trading Commission may consult with each other with respect to whether, under what circumstances, and the extent to which security futures products will be treated as commodity contracts or securities in a liquidation of a person that is both a securities broker and a commodity broker, and with respect to the treatment in such a liquidation of accounts in which both commodity contracts and securities are carried.

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 by regulation require more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to 12 U.S.C. 1831i).'';

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, 741, and 761 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, governmental unit, limited liability company (including a single member limited liability company), 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 on or 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.

SEC. 914. SAVINGS CLAUSE.

The meaning of terms used in this title are 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 similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN

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, 112 Stat. 2681-610), and amended by this Act, is reenacted.

(2) EFFECTIVE DATE.—Subsection (a) shall be deemed to have taken 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.

(a) IN GENERAL.—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.''.

(b) EFFECTIVE DATE.—The first adjustment required by section 104(b)(4) of title 11, United States Code, as added by subsection (a) of this section, shall occur on the later of—

(1) April 1, 2001; or

(2) 60 days after the date of enactment of this Act.

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''.

SEC. 1004. DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''$1,500,000'' and inserting ''$3,000,000''; and

(B) by striking ''80'' and inserting ''50''; and

(2) in subparagraph (B)(ii)—

(A) by striking ''$1,500,000'' and inserting ''$3,000,000''; and

(B) by striking ''80'' and inserting ''50''.

SEC. 1005. ELIMINATION OF REQUIREMENT THAT FAMILY FARMER AND SPOUSE RECEIVE OVER 50 PERCENT OF INCOME FROM FARMING OPERATION IN YEAR PRIOR TO BANKRUPTCY.

Section 101(18)(A) of title 11, United States Code, is amended by striking ''the taxable year preceding the taxable year'' and inserting ''at least 1 of the 3 calendar years preceding the year''.

SEC. 1006. PROHIBITION OF RETROACTIVE ASSESSMENT OF DISPOSABLE INCOME.

(a) IN GENERAL.—Section 1225(b) of title 11, United States Code, is amended by adding at the end the following:

''(3) If the plan provides for specific amounts of property to be distributed on account of allowed unsecured claims as required by paragraph (1)(B), those amounts equal or exceed the debtor's projected disposable income for that period, and the plan meets the requirements for confirmation other than those of this subsection, the plan shall be confirmed.''.

(b) MODIFICATION.—Section 1229 of title 11, United States Code, is amended by adding at the end the following:

''(d)(1) A modification of the plan under this section may not increase the amount of payments that were due prior to the date of the order modifying the plan.

''(2) A modification of the plan under this section to increase payments based on an increase in the debtor's disposable income may not require payments to unsecured creditors in any particular month greater than the debtor's disposable income for that month, unless the debtor proposes such a modification.

''(3) A modification of the plan in the last year of the plan shall not require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed, unless the debtor proposes such a modification.''.

SEC. 1007. FAMILY FISHERMEN.

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

(1) by inserting after paragraph (7) the following:

''(7A) 'commercial fishing operation' includes—

''(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products;

''(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A); and

''(C) the transporting by vessel of a passenger for hire (as defined in section 2101 of title 46) who is engaged in recreational fishing;

''(7B) 'commercial fishing vessel' means a vessel used by a fisherman to carry out a commercial fishing operation;'';

(2) by inserting after paragraph (19) the following:

''(19A) 'family fisherman' means—

''(A) an individual or individual and spouse engaged in a commercial fishing operation (including aquaculture for purposes of chapter 12)—

''(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

''(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

''(B) a corporation or partnership—

''(i) in which more than 50 percent of the outstanding stock or equity is held by—

''(I) 1 family that conducts the commercial fishing operation; or

''(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

''(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

''(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

''(III) if such corporation issues stock, such stock is not publicly traded;''; and

(3) by inserting after paragraph (19A) the following:

''(19B) 'family fisherman with regular annual income' means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title;''.

(b) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting ''or family fisherman'' after ''family farmer''.

(c) CHAPTER 12.—Chapter 12 of title 11, United States Code, is amended—

(1) in the chapter heading, by inserting ''**OR FISHERMAN**'' after ''**FAMILY FARMER**'';

(2) in section 1201, by adding at the end the following:

''(e)(1) Notwithstanding any other provision of law, for purposes of this subsection, a guarantor of a claim of a creditor under this section shall be treated in the same manner as a creditor with respect to the operation of a stay under this section.

''(2) For purposes of a claim that arises from the ownership or operation of a commercial fishing operation, a co-maker of a loan made by a creditor under this section shall be treated in the same manner as a creditor with respect to the operation of a stay under this section.'';

(3) in section 1203, by inserting ''or commercial fishing operation'' after ''farm'';

(4) in section 1206, by striking ''if the property is farmland or farm equipment'' and inserting ''if the property is farmland, farm equipment, or property of a commercial fishing operation (including a commercial fishing vessel)''; and

(5) by adding at the end the following:

''§ 1232. Additional provisions relating to family fishermen

''(a)(1) Notwithstanding any other provision of law, except as provided in subsection (c), with respect to any commercial fishing vessel of a family fisherman, the debts of that family fisherman shall be treated in the manner prescribed in paragraph (2).

''(2)(A) For purposes of this chapter, a claim for a lien described in subsection (b) for a commercial fishing vessel of a family fisherman that could, but for this subsection, be subject to a lien under otherwise applicable maritime law, shall be treated as an unsecured claim.

''(B) Subparagraph (A) applies to a claim for a lien resulting from a debt of a family fisherman incurred on or after the date of enactment of this chapter.

''(b) A lien described in this subsection is—

''(1) a maritime lien under subchapter III of chapter 313 of title 46 without regard to whether that lien is recorded under section 31343 of title 46; or

''(2) a lien under applicable State law (or the law of a political subdivision thereof).

''(c) Subsection (a) shall not apply to—

''(1) a claim made by a member of a crew or a seaman including a claim made for—

''(A) wages, maintenance, or cure; or

''(B) personal injury; or

''(2) a preferred ship mortgage that has been perfected under subchapter II of chapter 313 of title 46.

''(d) For purposes of this chapter, a mortgage described in subsection (c)(2) shall be treated as a secured claim.''.

(d) CLERICAL AMENDMENTS.—

(1) TABLE OF CHAPTERS.—In the table of chapters for title 11, United States Code, the item relating to chapter 12, is amended to read as follows:

''12. Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income ..... 1201''.

(2) TABLE OF SECTIONS.—The table of sections for chapter 12 of title 11, United States Code, is amended by adding at the end the following new item:

''1232. Additional provisions relating to family fishermen.''.

(e) Applicability.—

Nothing in this section shall change, affect, or amend the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, et seq.).

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), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the last known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

''(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

''(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by a patient or insurance provider, or request is not 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. If the health care business is a long-term care facility, the trustee may appoint 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.).

In the event that the trustee does not appoint the State Long-Term Care Ombudsman to monitor the quality of patient care in a long-term care facility, the court shall notify the individual who serves as the State Long-Term Care Ombudsman of the name and address of the individual who is appointed.

''(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. If the individual appointed as ombudsman is a person who is also serving as a State Long-Term Care Ombudsman appointed under title III or title VII of the Older Americans Act of 1965 (42 U.S.C. 3021 et seq., 3058 et seq.), that person shall have access to patient records, consistent with authority spelled out in the Older Americans Act and State laws governing the State Long-Term Care Ombudsman program.''.

(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 preceeding 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 (27), as added by this Act, the following:

''(28) 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), 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 308 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. 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. 1220. 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. 1221. 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. 1222. 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. 1223. 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) Three 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.

(S) One additional bankruptcy judgeship for the district of South Carolina.

(T) One additional bankruptcy judgeship for the district of Nevada, and one for the district of Delaware.

(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 district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), 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) 11 years or more after November 8, 1993, with respect to the northern district of Alabama;

(B) 13 years or more after October 28, 1993, with respect to the district of Delaware;

(C) 11 years or more after August 29, 1994, with respect to the district of Puerto Rico; and

(D) 11 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.

SEC. 1224. 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. 1225. 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. 1226. 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. 1227. 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 prior to 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 prior to 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. 1228. 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. 1229. 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. 1230. 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. 1231. 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. 1232. 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. 1233. EXPEDITED APPEALS OF BANKRUPTCY CASES TO COURTS OF APPEALS.

(a) APPEALS.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c)(1), by striking ''Subject to subsection (b),'' and inserting ''Subject to subsections (b) and (d)(2),''; and

(2) in subsection (d)—

(A) by inserting ''(1)'' after ''(d)''; and

(B) by adding at the end the following:

''(2)(A) A court of appeals that would have jurisdiction of a subsequent appeal under paragraph (1) or other law may authorize an immediate appeal of an order or decree, not otherwise appealable, that is entered in a case or proceeding pending under section 157 or is entered by the district court or bankruptcy appellate panel exercising jurisdiction under subsection (a) or (b), if the bankruptcy court, district court, bankruptcy appellate panel, or the parties acting jointly certify that—

''(i) the order or decree involves—

''(I) a substantial question of law;

''(II) a question of law requiring resolution of conflicting decisions; or

''(III) a matter of public importance; and

''(ii) an immediate appeal from the order or decree may materially advance the progress of the case or proceeding.

''(B) An appeal under this paragraph does not stay proceedings in the court from which the order or decree originated, unless the originating court or the court of appeals orders such a stay.''.

(b) PROCEDURAL RULES.—

(1) TEMPORARY APPLICATION.—A provision of this subsection shall apply to appeals under section 158(d)(2) of title 28, United States Code, as added by subsection (a) of this section, until a rule of practice and procedure relating to such provision and appeal is promulgated or amended under chapter 131 of such title.

(2) CERTIFICATION.—A district court, bankruptcy court, or bankruptcy appellate panel may enter a certification as described in section 158(d)(2) of title 28, United States Code, during proceedings pending before that court or panel.

(3) PROCEDURE.—Subject to the other provisions of this subsection, an appeal by permission under section 158(d)(2) of title 28, United States Code, shall be taken in the manner prescribed in rule 5 of the Federal Rules of Appellate Procedure.

(4) FILING PETITION.—When permission to appeal is requested on the basis of a certification of the parties, a district court, bankruptcy court, or bankruptcy appellate panel, the petition shall be filed within 10 days after the certification is entered or filed.

(5) ATTACHMENT.—When permission to appeal is requested on the basis of a certification of a district court, bankruptcy court, or bankruptcy appellate panel, a copy of the certification shall be attached to the petition.

(6) PANEL AND CLERK.—In a case pending before a bankruptcy appellate panel in which permission to appeal is requested, the terms ''district court'' and ''district clerk'', as used in rule 5 of the Federal Rules of Appellate Procedure, mean ''bankruptcy appellate panel'' and ''clerk of the bankruptcy appellate panel'', respectively.

(7) APPLICATION OF RULES.—In a case pending before a district court, bankruptcy court, or bankruptcy appellate panel in which a court of appeals grants permission to appeal, the Federal Rules of Appellate Procedure apply to the proceedings in the court of appeals, to the extent relevant, as if the appeal were taken from a final judgment, order, or decree of a district court, bankruptcy court, or bankruptcy appellate panel exercising appellate jurisdiction under subsection (a) or (b) of section 158 of title 28, United States Code.

SEC. 1234. EXEMPTIONS.

Section 522(g)(2) of title 11, United States Code, is amended by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

SEC. 1235. INVOLUNTARY CASES.

Section 303 of title 11, United States Code, is amended—

(1) in subsection (b)(1), by—

(A) inserting ''as to liability or amount'' after ''bona fide dispute''; and

(B) striking ''if such claims'' and inserting ''if such undisputed claims''; and

(2) in subsection (h)(1), by inserting before the semicolon the following: ''as to liability or amount''.

SEC. 1236. FEDERAL ELECTION LAW FINES AND PENALTIES AS NONDISCHARGEABLE DEBT.

Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14A) (as added by this Act) the following:

''(14B) incurred to pay fines or penalties imposed under Federal election law;''.

SEC. 1237. NO BANKRUPTCY FOR INSOLVENT POLITICAL COMMITTEES.

Section 105 of title 11, United States Code, is amended by adding at the end the following:

''(e) A political committee subject to the jurisdiction of the Federal Election Commission under Federal election laws may not file for bankruptcy under this title.''.

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 clearly and conspicuously: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

''(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

''(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: _____.' (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

''(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest 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 Reform 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 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 responding 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 banking 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:

''(7) INTERNET-BASED APPLICATIONS AND SOLICITATIONS.—

''(A) IN GENERAL.—In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

''(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

''(ii) the information described in paragraph (6).

''(B) FORM OF DISCLOSURE.—The disclosures required by subparagraph (A) shall be—

''(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

''(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'Internet' means the 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 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. 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 protection 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 subsection (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.

TITLE XIV—EMERGENCY ENERGY ASSISTANCE AND CONSERVATION MEASURES

SEC. 1401. SHORT TITLE.

This title may be cited as the ''Energy Emergency Response Act of 2001''.

SEC. 1402. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) high energy costs are causing hardship for families;

(2) restructured energy markets have increased the need for a higher and more consistent level of funding for low-income energy assistance programs;

(3) conservation programs implemented by the States and the low-income weatherization program reduce costs and need for additional energy supplies;

(4) energy conservation is a cornerstone of national energy security policy;

(5) the Federal Government is the largest consumer of energy in the economy of the United States; and

(6) many opportunities exist for significant energy cost savings within the Federal Government.

(b) PURPOSES.—The purposes of this title are to provide assistance to those individuals most affected by high energy prices and to promote and accelerate energy conservation investments in private and Federal facilities.

SEC. 1403. INCREASED FUNDING FOR LIHEAP, WEATHERIZATION AND STATE ENERGY GRANTS.

(a) LIHEAP.—(1) Section 2602(b) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621(b)) is amended by striking the first sentence and inserting the following: ''There are authorized to be appropriated to carry out the provisions of this title (other than section 2607A), $3,400,000,000 for each of fiscal years 2001 through 2005.''.

(2) Section 2605(b)(2) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8624(b)(2)) is amended by adding at the end the following: ''and except that during fiscal year 2001, a State may make payments under this title to households with incomes up to and including 200 percent of the poverty level for such State''.

(b) WEATHERIZATION ASSISTANCE.—Section 422 of the Energy Conservation and Production Act (42 U.S.C. 6872) is amended by striking ''For fiscal years 1999 through 2003 such sums as may be necessary'' and inserting: ''$310,000,000 for fiscal years 2001 and 2002, $325,000,000 for fiscal year 2003, $400,000,000 for fiscal year 2004, and $500,000,000 for fiscal year 2005.''.

(c) STATE ENERGY CONSERVATION GRANTS.—Section 365(f) of the Energy Policy and Conservation Act (42 U.S.C. 6325(f)) is amended by striking ''for fiscal years 1999 through 2003 such sums as may be necessary'' and inserting: ''$75,000,000 for each of fiscal years 2001 through 2005''.

SEC. 1404. FEDERAL ENERGY MANAGEMENT REVIEWS.

Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is amended by adding at the end the following:

''(e) PRIORITY RESPONSE REVIEWS.—Each agency shall—

''(1) not later than October 1, 2001, undertake a comprehensive review of all practicable measures for—

''(A) increasing energy and water conservation; and

''(B) using renewable energy sources; and

''(2) not later than 180 days after completing the review, implement measures to achieve not less than 50 percent of the potential efficiency and renewable savings identified in the review.''.

SEC. 1405. COST SAVINGS FROM REPLACEMENT FACILITIES.

Section 801(a) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following:

''(3)(A) In the case of an energy savings contract or energy savings performance contract providing for energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities, benefits ancillary to the purpose of such contract under paragraph (1) may include savings resulting from reduced costs of operation and maintenance at such replacement buildings or facilities when compared with costs of operation and maintenance at the buildings or facilities being replaced.

''(B) Notwithstanding paragraph (2)(B), aggregate annual payments by an agency under an energy savings contract or energy savings performance contract referred to in subparagraph (A) may take into account (through the procedures developed pursuant to this section) savings resulting from reduced costs of operation and maintenance as described in subparagraph (A).''.

SEC. 1406. REPEAL OF ENERGY SAVINGS PERFORMANCE CONTRACT SUNSET.

Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

SEC. 1407. ENERGY SAVINGS PERFORMANCE CONTRACT DEFINITIONS.

(a) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

''(2) The term 'energy savings' means a reduction in the cost of energy, water, or wastewater treatment from a base cost established through a methodology set forth in the contract, used by either—

''(A) an existing federally owned building or buildings or other federally owned facilities as a result of—

''(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

''(ii) more efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

''(iii) more efficient use of water at an existing federally owned building or buildings, in either interior or exterior applications; or

''(B) a replacement facility under section 801(a)(3).''.

(b) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

''(3) The terms 'energy savings contract' and 'energy savings performance contract' mean a contract which provides for—

''(A) the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy, water conservation, or wastewater treatment measure or series of measures at one or more locations; or

''(B) energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities.''.

(c) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read a follows:

''(4) The term 'energy or water conservation measure' means—

''(A) an energy conservation measure, as defined in section 551(4) (42 U.S.C. 8259(4)); or

''(B) a water conservation measure that improves the efficiency of water use, is life cycle cost effective, and involves water conservation, water recycling or reuse, improvements in operation or maintenance efficiencies, retrofit activities or other related activities, not affecting the power generating operations at a federally owned hydroelectric dam.''.

SEC. 1408. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect upon the date of enactment of this title.

TITLE XV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1501. 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.

TITLE XVI—MISCELLANEOUS PROVISIONS

SEC. 1601. REIMBURSEMENT OF RESEARCH, DEVELOPMENT, AND MAINTENANCE COSTS.

(a) IN GENERAL.—Not later August 1, 2001, the Federal Crop Insurance Corporation shall promulgate final regulations to carry out section 522(b) of the Federal Crop Insurance Act (7 U.S.C. 522(b)), without regard to—

(1) the notice and comment provisions of section 553 of title 5, United States Code;

(2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(3) chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act'').

(b) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Corporation shall use the authority provided under section 808 of title 5, United States Code.

(c) EFFECTIVE DATE.—The final regulations promulgated under subsection (a) shall take effect on the date of publication of the final regulations.

SEC. 1602. STUDY OF THE EFFECT OF THE BANKRUPTCY REFORM ACT OF 2001.

(a) STUDY.—The General Accounting Office (in this section referred to as the ''GAO'') shall conduct a study to determine—

(1) the impact of this Act and the amendments made by this Act on—

(A) the number of filings under chapter 7 and chapter 13 of title 11, United States Code;

(B) the number of plan confirmations under chapter 13 of title 11, United States Code, and the number of such plans that are successfully completed; and

(C) the cost of filing for bankruptcy under chapter 7 and chapter 13 of title 11, United States Code, in each State;

(2) the effect of the enactment of this Act on—

(A) the availability and marketing of credit; and

(B) the price and terms of credit for consumers; and

(3) the extent to which this Act and the amendments made by this Act impact the ability of debtors below median income to obtain bankruptcy relief.

(b) REPORT TO CONGRESS.—Not later than 2 years after the effective date of this Act, the GAO shall submit a report to the Congress on the results of the study conducted under subsection (a).

(c) DATA COLLECTION BY UNITED STATES TRUSTEES.—

(1) IN GENERAL.—The Director of the Executive Office for United States Trustees shall collect data on the number of reaffirmations by debtors under title 11, United States Code, the identity of the creditors in such reaffirmations, and the type of debt that is reaffirmed.

(2) AVAILABILITY.—Periodically, but not less than annually, the Director shall make available to the public the data described in paragraph (1) in such manner as the Director may determine.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Madam President, I ask unanimous consent that H.R. 333, the bankruptcy reform bill, as passed by the Senate, be printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2002—Continued

Mr. REID. Madam President, it is my understanding that we are now back on the energy and water appropriations bill.

The PRESIDING OFFICER. The Senator is correct.

Mr. REID. Madam President, I ask unanimous consent that the Senator from Vermont, Mr. JEFFORDS, be recognized to speak on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise today to praise the managers of the energy and water appropriations bill for their commitment to renewable energy. I particularly want to thank Senator REID for his leadership in bringing additional funding to advance the cause of clean energy in this Nation.

Growing problems associated with fossil fuel energy use, including fine particulates and global warming, make it critically important that renewable energy play a much larger part in future energy needs.

Each year, the important role renewable energy should play in meeting our future energy needs becomes more apparent. This year 61 Senators joined Senator BINGAMAN and myself in requesting an increase for renewable energy in this year's budget. I am happy to say that this is seven more Senators than we had last year.

I am also happy to say that Chairman REID and Ranking Member DOMENICI provided almost $60 million more than last year for renewable energy and $160 million more than was requested by the administration. They recognize the importance of renewable energy and once again demonstrated their strong Senate leadership on this issue.

For many years, I have come to this Chamber to offer an amendment on renewable energy. This year is the second year in a row that I come to ask Members to praise—not raise—the renewable energy budget. This is a practice to which I could easily become accustomed to.

There is perhaps no better time to push these technologies forward. Our Nation is focused on energy issues unlike it was in the last decade. We are at crossroads where we can begin to see the end of the path toward a clean, sustainable energy future. Renewable energy is the most important landmark on that path.

Today, renewables are beginning to take hold. Our faith in these clean energy sources has not been without merit. Wind power, for example, is the fastest growing form of energy in the world. In the United States, my home

State of Vermont is a leader in the use of wind power. My wind energy bill with representatives Blanchard and Mineta started this program in the late 1970's. Worldwide almost 4,000 megawatts of new wind energy capacity were added in the year 2000. This year will likely see a similar, if not larger increase.

Although much of that capacity was added outside the United States, many of the high-tech jobs needed to make that possible came from inside the United States. And as the use of wind energy goes up, the costs will only come down. The best news of all is that our own wind resources remain largely untapped.

Other forms of renewable energy—such as solar, biomass and geothermal—have the same kinds of benefits:

These technologies provided high-tech jobs for U.S. workers.

They help reduce acid rain and other forms of air pollution, including greenhouse gas emissions.

They are not subject to the kinds of supply changes that lead to large fluctuations in the price of fossil fuels and they help us reduce our dependence on foreign sources of fossil fuels.

This is good for the health of citizens and for the health of our economy.

I thank Senators REID and DOMENICI, once again, for their leadership on this issue. I will continue to assist in whatever way I can to ensure that the strong statement made by the Senate today will be included in the final energy and water appropriations bill.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I say to my friend from Vermont, there are a lot of reasons that we increased the funding for renewables, but there is no reason more than the diligence the Senator from Vermont has shown over the past several years on this issue. As a result of his tenacity, every year we have had to increase the funding in this bill.

Senator DOMENICI and I thought: We are not going to do this anymore. The Senator should know his handprints are all over this part of the bill dealing with renewables. But for his efforts, it would not be here.

I am a real believer in renewables. Any long-term energy policy we are going to have in this country will not be successful unless a large segment of it deals with renewables. I express my appreciation to the Senator.

Mr. JEFFORDS. Madam President, I thank the Senator for those kind comments, and I assure him I will continue to work to improve our situation in this regard.

I yield the floor.

AMENDMENT NO. 987, AS MODIFIED

Mr. REID. Madam President, there is a matter pending. The Senator from Michigan has a modification to her amendment to have the amendment accepted.

On behalf of Senator DOMENICI and myself, I send a modification to the amendment to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

On page 2, line 18, before the period, insert the following: '', of which such sums as are necessary shall be used by the Secretary of the Army to conduct and submit to Congress a study that examines the known and potential environmental effects of oil and gas drilling activity in the Great Lakes (including effects on the shorelines and water of the Great Lakes): *Provided*, That during the fiscal years 2002 and 2003, no Federal or State permit or lease shall be issued for oil and gas slant, directional, or offshore drilling in or under 1 or more of the Great Lakes (including in or under any river flowing into or out of the lake)''.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Madam President, I inquire of the Senator from Nevada, is this the amendment we worked out when we put in a quorum call?

Mr. REID. I say to my friend from New Mexico, that is right. Our staffs have done just exactly what we asked them to do.

Mr. DOMENICI. Not only do we not have any objection, but we think it is a good compromise and ought to be accepted. We will do our best in conference to retain it.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I thank my colleagues and leader who are working so hard. I very much appreciate both Senator REID and Senator DOMENICI working with us to fashion a 2-year ban on any drilling of oil and gas in the Great Lakes, coupled with a study that would be commenced by the Army Corps of Engineers as to the environmental impacts of any future drilling.

I am very appreciative of the leadership on both sides of the aisle from our colleagues and their willingness to work with me to make sure the Senate language is adopted by the Congress in the conference committee.

I also thank staff who have worked very hard on this amendment—Sander Lurie, Noushin Jahanian, and my chief of staff, Jean Marie Neal—for all their hard work.

Mr. DOMENICI. Madam President, it is my understanding Senator REID was on the floor with reference to the amendment regarding the Great Lakes. It was his and my understanding we had agreed to that amendment. I think we stopped short of the magic words ''agreeing'' to it.

I indicate there is no further debate on the amendment, and we yield back all time.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 987, as modified.

The amendment (No. 987), as modified, was agreed to.

Mr. DOMENICI. I move to reconsider the vote by which the amendment was agreed to and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, we have the bill before the Senate and have recently accepted an amendment, and we have had a number of statements on the bill. Senator DOMENICI and I hope to move forward with amendments. I have spoken to the Senator from Idaho who has an amendment to offer, although he will not offer it this evening. We are waiting for him to offer that amendment.

Senator DOMENICI and I will be patient for the next little bit, but tomorrow afternoon if we do not have people offering amendments, we will move to third reading. It is not fair to everyone else. I say to my friends in the minority, they have been very anxious to move forward on nominations. We have the President's choice to lead his consumer safety board and we have agreed to go forward on that. It has been reported out of the committee. We have a time set for debating that nomination. That cannot take place until we finish this bill.

In addition to that, Senator DASCHLE wants to work on the Transportation appropriations bill. We have a number of things we need to do this week. We are not accomplishing them now. Part of it is not the fault of the minority or the majority who have interests in this bill. Part of the problem is having been interrupted by the bankruptcy legislation which takes our eye off the mark. We are back on it now and there is nothing to take us off this until we complete the bill.

We have submitted an unanimous consent agreement not on a filing deadline for amendments but, rather, a finite list of amendments. That is now being circulated. We hope that can be approved.

As chairman of this subcommittee and also the Transportation Subcommittee under the Environment and Public Works Committee, I spend a lot of my time thinking about and worrying about the State of our Nation's physical infrastructure. The American Society of Civil Engineers' 2001 report card for America's infrastructure gives the Nation's infrastructure a cumulative grade of D+. That is pretty low. The two prime reasons for the rating include explosive population growth, lack of current investment, and growing obsolescence of an aging system, identified as problems in California and in the Nation's decaying water structure. We have created some of the problems in Washington by setting, for example, water quality standards that

rural America simply does not have the money to meet. With these problems, our infrastructure is in a deep state of distress.

In Nevada, we are witnessing these problems on a daily basis. We have the most urban State in America. It is surprising to people when they learn Nevada is more urban than California, Illinois, Michigan, New York, and Florida. The reasons for that is 90 percent of the people live in the metropolitan areas of Las Vegas and Reno. Only 10 percent of the people live outside those metropolitan areas. However, in that 10 percent, it is very rural and it is an example of what we have in rural America.

The growth in the Las Vegas area has been phenomenal. We are having to build schools, roads, water systems, and all other basic infrastructure for modern life for the exploding population. We are having trouble keeping up. We have to build one school each month to keep up with the growth of school districts. We were the sixth largest school district a few months ago; we are now the fifth largest school district. There were 240,000 students in that school district, one new school each month. We hold the record in America for dedicating 18 new schools in one year.

The superintendent of education in Clark County where Las Vegas is located it not a superintendent of education; that person is a superintendent of construction. He spends a great deal of his time simply dealing with construction

At the same time, smaller communities throughout rural Nevada do not have clean drinking water due to natural contaminants in the ground water. The costs for moving the contaminants is several times the annual budgets of most small communities. Flooding problems throughout Nevada continue to devastate lives and property. As I said yesterday, people wonder, how can you have flooding problems in Nevada?

The Senator from Washington, the Presiding Officer, knows the whole State of Washington is not like Seattle, but as you move east in the State of Washington it becomes much the same as some parts of Nevada. I don't know if it could be called desert, but it sure doesn't rain very much so the Presiding Officer understands what I am talking about when I talk about the fact that these rural, arid areas can suffer from real flood problems. It happens. When the rains come the waters come, and they cause all kinds of degradation to property and sometimes lives are lost.

Environmental projects are sorely needed when we restore the natural areas of our environment, not only in Nevada but all over the country. Our Nation's medium and large cities have similar problems as well. Hartford, Atlanta, Chicago, and Richmond have antiquated storm systems that allow sewage and storm water runoff to be collected by the same system and sent to a treatment plant. During heavy rains, these systems are overwhelmed and raw sewage is dumped into our Nation's waterways.

Many of our citizens still live with the threat of flooding. Environmental restorations of degraded ecosystems are needed throughout our country. The infrastructure that makes up our inland and coastal waterways is really aging. The Corps of Engineers operates 276 navigation locks at 230 sites around the country. One hundred fifty of these locks are more than 50 years old. Nearly 100 of the remaining locks are nearly 25 years old. Most of these structures continue to perform as designed, but evidence of the need for reconstruction and modernization is becoming, very evident. Some facilities have reached their capacity and have reached the end of their design lives.

The Army Corps has been serving our Nation's infrastructure needs for more than 200 years, primarily in the areas of navigation and flood control. While some may quibble with individual projects that Congress instructs the Corps to undertake, no one can question the value that the Corps has historically played and continues to play in our Nation's development. However, we are slowly but surely strangling the Corps and our Nation's infrastructure to death with our fiscal inattention.

Financial shortfalls year in and year out in the water accounts of the Army Corps have now resulted in the backlog of $40 billion in authorized projects. They are awaiting the first dollar of funding; $40 billion of authorized projects have yet to receive their first dollar of funding.

This shortfall just takes into account the Corps' historic missions of navigation and flood control and does not take into account some of the new directions Congress has pushed the Corps in recent years. It is wrong to give short shrift to important components of our Nation's infrastructure. Flood control projects protect human lives and property. Navigation projects ensure that our Nation's economic engine continues to hum.

We have received some criticism in this bill that we spent too much money on dredging, having water areas made clear so dredges can come up and down. There are examples given that a lot of these projects that we have, there is not much commerce moving. But think what it would do if we did not have this barge traffic. It would only add to the trains that are already overwhelmed. It would only add to the number of trucks, and in my opinion there are too many of them on the roads anyway. So we have to understand that these projects are important.

In the western United States, the Bureau of Reclamation is facing similar issues as the Army Corps, an aging inventory of projects and a shrinking budget. Many do not realize Reclamation has been around for almost 100 years. Next year will be the 100th anniversary of the first ever Bureau of Reclamation project. It took place in Nevada. It was the Newlands Project named after the Nevada Congressman and it was to supposedly make the desert blossom like a rose.

A few problems developed as it was blossoming. It dried up one river. Lake Winnemucca is as dry as this table. Pyramid Lake is beautiful. There are only 21 lakes like it in the world, desert terminus lakes. We have two of them in Nevada. It almost dried up, but it is now on the road to recovery because of actions taken by this Congress to reverse some of the bad parts of the Newlands Act. But the Army Corps does the best it can, as has been said, with the tools it has.

The Newlands Project has done good for Nevada but also bad. We have to keep changing these projects. I cannot imagine what this part of Nevada would look like today without what has happened with water, but I can imagine what it used to look like with water going into these two lakes, one of which is now dried up.

Still, we continue to underinvest in both of these agencies. The need for water for municipal and industrial uses is not declining. The need for flood control is not declining. The need for a modern navigation system to transport products to market is not declining. Yet the budgets of these two agencies seems to continue to dwindle.

For example, I talked about the Newlands Project. One hundred years ago, people were enticed to come there. We said: This is going to be great for you and generations to come. People did come there. They have been farming for generations. Now the Federal Government has interfered, causing a disruption in their lives. It is not the fault of the farmers, but certainly the people who put in these reclamation projects did not understand what the full brunt of these programs would be.

So I repeat, we need to go back. We need to go back and review and change some of these projects. We have not had the money in the past to do that. We still don't. As I have indicated, we continue to underinvest in both of these agencies.

The need for water for municipal and industrial uses is not declining. The need for flood control is not declining. The need for a modern navigation system to transfer products to market is not declining. Yet the budgets of these two agencies continue to dwindle.

Public investment including authorization for water infrastructure in 1960 amounted to 3.9 percent of the gross domestic product. Today that figure is down to 2.6 percent, approximately. That may not sound like much of a change, but let's look at the Corps during that period.

In the mid-1960s, the country was investing $4.5 billion annually in new water infrastructure. Today, it is less than $1.5 billion. That is a significant change. From 1960 to now, we have gone from $4.5 billion to $1.5 billion. Our water resource needs are no less

today than they were 40 years ago; They are more. Yet we are investing one-third as much.

One major impact of that reduction is the increasingly drawn out construction schedules forced by underfunding these projects. These artificially lengthened schedules cause a loss of some $5 billion in annual benefits and increase the cost of these products by some $500 million.

When many of these reclamation projects came into being, the main, the only intent was for agricultural purposes. Over the years, it has been found that some areas are very interested in these reclamation projects because of the recreation aspects of them. People like to water ski. They like to fish. They like to boat. They like to have picnics on the beach. Now they are competing with these farming projects. We need to go back and take a look at them.

These artificially lengthened schedules cause the loss, as I have indicated, of some $5 billion in benefits, either agricultural or recreational, and increase the cost of these projects by some $500 million—and that is each year. Failure to invest in maintenance, major rehabilitation, research and development, and new infrastructure resulted in the gradual reduction in the value of our capital water resources stock and, in turn, the benefits we receive.

The value of the Corps' capital stock peaked in 1981 with a replacement value of $150 billion. Today its estimated value has decreased to $124 billion. We need to reverse this trend. Public infrastructure is too important to our lives.

Federal waterway projects, including ports and inland waterways, handle more than 2.2 billion tons of our Nation's cargo, valued at more than $660 billion. As I said before, we could try to put that on trains, on trucks, on airplanes—2.2 billion tons of our Nation's cargo. I do not think that would be a good idea.

These waterways generate more than 13 million jobs, and Federal taxes collected at ports generate more than $150 billion a year. Federal flood control projects prevent more than $2 billion per year in damages, and my being from Nevada, I can vouch for that. Even though Las Vegas gets 4 inches of rain a year, the flood control projects probably save hundreds of millions of dollars more than that in property damage, loss of production, and certainly in lives.

Federal flood control projects prevent more than $2 billion per year in damages. Recreation provided by Federal water projects provide more than 500,00 jobs and provide recreational opportunities to more than 10 percent of the U.S. population. Water stored at Federal projects provides more than 250 million acre-feet of water for municipal, rural, and industrial users.

How much water is that? Las Vegas with 1.6 million people uses just a little more water than that. Two-hundred and fifty million acre-feet of water is stored at Federal projects. That is important.

Finally, Federal water projects provide nearly 30 percent of our Nation's hydropower or about 4 percent of our total electric capacity. In the west, Federal hydropower project provide an even higher percentage of the total electric capacity—as we have recently learned with the California energy crisis.

Public water infrastructure is the only Federal program that is required to be analyzed on a strict benefit to cost basis. The water infrastructure provided by the Army corps alone provides an annual rate of return of approximately 26 percent. The steam of benefits are realized as flood damages prevented, reduced transportation costs, electricity, recreation, and water supply services.

Society's values are increasingly emphasizing sustainability and ecological considerations in water infrastructure management and development. Like most people, I support these considerations.

The Army corps and reclamation expend nearly a quarter of their annual budgets on environmental projects. These ranges from major restoration projects such as the Comprehensive Everglades Restoration, to smaller projects, such as oyster recovery efforts in the Chesapeake Bay. Both agencies will continue to meet the nation's challenges in this arena.

As you can see, I am one who firmly believes that investments in our nation's infrastructure more than pay for themselves through improved productivity and efficiency. To ignore these needs in the short term is going to cause us problems over the long haul.

All of this is to say that we, as a body, need to think about the state of our nation's infrastructure comprehensively and soon.

Our physical infrastructure sustains our way of life, so we must sustain it.

We are here today to discuss energy and water matters, but, in the next few weeks, I hope to come back to the floor to discuss our nation's transportation infrastructure, another area of concern.

Before I close, I want to say some words of praise for the Federal employees and contractors that populate the departments, agencies, and other organizations that are funded under this bill.

Members of Congress are frequently critical of Federal agencies and departments, particularly ones where we have an oversight role. As I mentioned earlier, I have been a frequent critic of the Department of Energy.

But I have said that I think things are greatly improving as a result of some work done by Senator DOMENICI and some of his colleagues.

None of that is to suggest that I, or any other Member, am anything other than proud of the hard work and accomplishments of our Federal workforce, including, contractors, lab employees, and others that make these important organizations run.

I invite everyone who has the opportunity—as I have had—to go to the Federal Laboratories and some of our test sites where they have done things relating to the cold war—places where Federal employees are in love with their jobs. They spend long hours with little recognition. Many of these agencies, such as the Corps of Engineers, the Bureau of Reclamation, and Department of Energy, that we fund in this bill I think do a wonderful job. I have very few criticisms of the employees. There is a tiny fraction—as in any organization—that tries to cause trouble to the whole organization, but as far as I am concerned, they haven't succeeded.

I throw a bouquet to those entities funded within this bill, and I am very proud of working with them. We expect a lot of these organizations. With very few exceptions, they live up to all of my expectations and the demands we impose on them. I think they serve our Nation with distinction. I think I speak for Senator DOMENICI when I say we appreciate all the work they do.

My friend from New Mexico has been very patient with me. We are waiting for somebody to come and offer the next amendment. The floor is open. This is a good time to do it. After 5 o'clock, we are happy to work, if the leader wants to work awhile tonight. But because I think we are not coming in until 10:30 tomorrow because we have a special order in the morning dealing with our dear friend, Paul Coverdell, we are not going to be able to start on this bill until 10:30 in the morning. I hope we can get some work done tonight.

I repeat that we are not going to be able to go to the nomination until we complete this bill. There are, I believe, 7 hours on it. All that time probably won't be used. But then we have the Transportation appropriations bill on which we need to also work this week. I hope Members will come and help work through this bill. If there are problems, tell us. We have had a number of Members come to us during the vote—some Democrat—and we have been able to recognize what the problems are, and we have been able in most instances to satisfy the problems.

The PRESIDING OFFICER (Mr. DAYTON). The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I thank the Chair.

Let me say to the Republican Senators that it is important you begin to tell us what amendments you have. Obviously, we haven't been on this bill very long. For anybody who thinks we are wasting time, when you consider all the time we took off this bill to do other things, we have been on it only a few hours. This is a serious bill with a lot of serious issues.

Once again, we are hopeful that Senators will be able to come up with amendments. If in fact we can't complete that list this evening, we will do

our best, and we will inform the distinguished chairman of our best efforts. For now, I once again ask if you have amendments, let us know through the Cloakroom. We can start listening. I think we only have a few at this point. We have specifically requested amendments on our side.

I do not know about our distinguished friend, the chairman of the subcommittee. Have you begun to accumulate a list? Is it small like our list?

Mr. REID. Yes. We are getting our Senators to tell us what amendments they want to offer. That is also being done on the other side. Hopefully, within a short time we will have at least a finite list, and hopefully we will be able to work through that. Of course, our very able staff will work through them also. I hope we can have that done pretty soon.

Mr. DOMENICI. Thank you.

Mr. President, let me proceed with some discussion while we wait for the activities and desires of our Senators, both Democrat and Republican.

First, I want to make a comment about the President's energy policy. Then I would like very much to talk about the future in terms of the economies of the world, prosperity and growth, and how it is related to energy, and how I see that future compared with others.

First, let me talk about the President's energy policy. It is contained in notebook form. For anyone who wants to read it from cover to cover, it is a cover-to-cover approach. It covers almost every issue. They have assessed almost every kind of energy and conservation issue that I believe has been in or around Washington, or anywhere in this Nation. They have begun to list what our energy needs of the future are and to come up with them in a rather basic way to let people challenge what we need in the future. That is all well and good.

But essentially, I would like to make a point that has not been made very often. If you look at the whole policy on energy that the President submitted to us—which was worked on for weeks on end by the Vice President and a distinguished staff, some of whom used to serve us here in the Senate—let's talk just a bit about how much new energy we are going to need out to 2020. They worked on it with economic experts, with projectors of growth, and with those who could estimate the electricity needs of our country for certain episodes during the next 20 years.

The conclusion was that the current ratio between energy demand and the gross domestic product might remain constant. Now gross domestic product is what we all reference to measure how much growth we have and how much we grow is measured as an addition to gross domestic product. When it is growing over a sustained period of time at a powerful rate, in America we equate that with prosperity, with jobs, with more opportunity, and higher pay for those who are not earning so. I don't think they have estimated the gross domestic product increase for the next 20 years at any exceptional rate, but rather sustained—something like blue chip experts estimate.

In doing that, we concluded we would need 77 percent more energy in 2020 than we are producing today.

If we drew a pie chart of a certain size which showed how much we are using today and then drew one around the outside, you would add 77 percent. Or you could take 2020 and draw one big pie. Then you would show a piece of it that is current needs and another piece that is future. In any event, the piece that is future needs would be 77 percent more than we are using today.

Most interesting, this national energy policy recommends conservation and efficiency measures that would reduce that increase by over half, resulting in us only needing to produce 29 percent in real energy additions.

The rest of it would be made up by enhancing and increasing our conservation and our efficiency. And there are numerous examples there on how you would increase efficiency, which equals a lot of research on products that will use less, on conservation. All kinds of things that we have already learned to do and are doing well, we would do more and do better.

Frankly, the President and some of the President's spokesmen may have started off talking about supply. We might have gotten a little bit excited about it. Some people in the country asked: What about conservation?

Well, I am just recalling, when it is all finally done, this is what it is: 77 percent new energy need; only 29 percent of it with new powerplants. They may use natural gas, which seems to be almost the singular source of every new powerplant in the country, and that can't continue forever. We will have to do some others. There's not been many new coal-burning powerplants, even though we are applying clean coal technology and, yes, not a new nuclear plant for two decades or so. But everything is moving in the direction of ''let's do it better.'' Let's do it more efficiently; let's do it cleaner. And let's permit America to grow.

That is for starters. I am not changing any of that when I speak of this bill being a very good start in implementing an energy policy that moves us in the direction of diversity of energy, not just one kind; diversity so there is competition; diversity so that, in fact, you can address some overarching issues such as ambient air pollution that produces global warming.

We ought to be able to address some of those issues in our future thinking, because they are caused by certain types of energy being used to produce our energy supply, by kinds that produce the carbon dioxide and other things that go into the atmosphere and cause pollution. What if we can produce energy that causes little or none of those gases or much less of those. You can understand that clearly we don't have to be worried about global warming to the extent that we reduce the very essence of global warming pollutants in the basic supply of energy for electricity in our country.

Obviously, we are not talking as much about automobiles and their pollution here, but clearly, it is a very powerful thing to just look at the electricity needs and see if we can do that in a way that truly helps us with reference to global warming instead of hurting us.

There are a lot of people around that say there is a Kyoto agreement and we should follow it, even though the Senate voted about 2½ to 3 years ago, 95–0, that the Senate would not ratify the Kyoto agreement if they sent it to us. It seems to me every time we get in this debate in this country and the President is talked to about Kyoto, or for those who argue with him overseas, nobody even brings up the subject: ''What about the Senate which voted 95–0 that we did not want to enforce that kind of program because it would put too much pressure on our future in terms of prosperity and, yes, indeed, may put a lot of pressure on countries that truly need to build new electric generating capacity so they can prosper.''

What I am suggesting is, this bill moves in the direction of what we might very well call ''beyond Kyoto'' or what we may call ''prosperity beyond Kyoto.''

I will go through some of the very exciting things that are done in this bill that permit us to move in the direction of having a mindset beyond the Kyoto agreement, having a mindset for great prosperity for the underdeveloped countries and the developed countries in terms of being able to use energy for growth and prosperity without concern about global warming.

This is a pretty big vision, a pretty big idea, but frankly, I believe America should do it. I believe our President should take the lead.

I will go through a few things we are doing here and then fit them into a wrap-up as to how that could be America's vision beyond Kyoto.

First, the renewable energy programs in this country have made great strides in terms of innovation, proving concepts, but today it is still a very small portion of the energy production in our country. We ought to do what we did in this bill—increase our focus on renewables, ask that more be done in that area, and that it be part of a great inventory of potential products for this ''beyond Kyoto'' idea.

In this bill we made a good start. We funded renewable programs to the tune of $435 million. This is not legislation saying we shall have solar and who will do what. It just says we have these programs going, the Department of Energy shall manage $435 million during this year for the various renewable programs we have. That is 16 percent higher than current levels. There is no

question that if we keep the pressure on and have a broader vision, this would be part of what we can do better. We can impose on that kind of technology to do more.

Then there are hydrogen-based technologies. Some think the world ought to be on a hydrogen diet for energy in the not too distant future, and some think it could be the basis for future growth projections. I am not quite there yet, but clearly it belongs in the equation. We have added about 30 percent to the research in that area.

This might end up decreasing our use of petroleum products in transportation, even though our basic agenda here is not with reference to the automobile and the internal combustion engine and the like. That research is largely being moved ahead in another appropriations bill.

High temperature superconductivity is important because it causes us to waste a lot less electricity as you run the electricity down the lines. Superconductivity would make it such that you would lose very little, if any, a very dramatic step forward. We have increased that about 20 percent, hoping that our great scientists can move into superconductivity and capture some of the waste that now goes into transmitting electricity—an exciting kind of idea.

Geothermal: We know there is a lot of it out there. We have added some research money, although we have been doing this for many years; that is, spending money on this system. We think we should try harder and do more.

Wind systems: They are already in existence. Now I am not one who thinks that wind energy can be as big a component of the future as others, just because I have observed what we currently do and I can't visualize doing 10 times as much or 50 times as much. But in any event, we said let's proceed with a little more dispatch.

And then on the side that we would call nuclear: The problem is that when you say nuclear power, people think of driving by a nuclear powerplant. Incidentally, you don't see any smoke come out of the chimneys because there is none. You don't see any pollution because there is none.

The spent fuel rods are inside that machine, and to the extent they are not careful with those, that creates some source of problem for human beings. But these are gigantic nuclear powerplants. They are almost all of one type. It is amazing how the American people, over the last 15 years, have grown more accustomed to driving by them and living with them, such that today in America there is a willingness to take another look at nuclear.

I know as soon as we take another look there will be those who would like to blindfold us right now and say: ''Stop that. It is terrible, bad for everything.''

Let me tell you, it is not bad for global warming; I will guarantee you that. If any group of environmentalists are really committed to solving the problem of global warming, let them at least listen to a proposal that would bring the world into contact with a new generation of nuclear powerplants. We might be able to set a goal for 10 or 15 years from now when we would be diminishing the pollution that would be commensurate with that growth, as far as global warming is concerned.

Why should that be dismissed when it is that profound and gigantic a potential? Why would we dismiss clean coal, moving it to the furthest level of cleanliness, even if it costs a lot of money to do the research? Why would we say that would not work? What are we supposed to live on?

Right now, people would say: Your State will continue to flourish, Senator DOMENICI. Natural gases will do it. New Mexico is the fourth largest producer, and it is going up and away. Every new powerplant we have heard of, including the three in New Mexico—that won't be for our people but for somebody else—will be built with natural gas, as far as we know. We didn't have any for many years. The price is causing people to invest in natural gas. For the long term, you need natural gas, but you also need some other things.

What does this bill do about nuclear? Well, first, there are some very significant increases and some very interesting approaches to keeping this option alive. For the 21 percent that we already get from nuclear power today, we need to make sure we don't close those plants down prematurely but continue them for their entire useful life and do what we can to make sure that transition is smooth, functional, and safe.

Now, let me go through some of the things we are doing to create this option. This bill pushes nuclear power forward with the following initiatives: $19 million for university research reactor support—that is a $7 million increase—to make sure our country has the educational resources necessary for an economy that continues to rely substantially on nuclear power—the old ones plus new ones. After all, we came up with this technology. Some of our great companies built these powerplants. They are all over the world, although we didn't build all of them in foreign countries

Seventy-eight percent of France's electricity comes from nuclear power. If you tell people that, they say they don't believe it, or so what? Well, they have a lot less problems with greenhouse gases than we do—sufficiently less that Mr. Chirac can lecture our President about it. That is pretty interesting. If we had 68 or 70 percent of our electricity from nuclear plants, we might be lecturing him. But we don't; we have 21 percent. Germany has around 35 percent, and Japan is building new ones—in fact, as we speak, they are building new ones.

The United States is sitting on this problem of not having enough energy so we can maintain our prosperity in the future. We say our universities used to be the pride of the world in terms of creating nuclear physicists and design engineers who worked in this field. All of the universities, except a few, have dramatically reduced these programs and are very excited about building some of this back into their programs through intramural-type grant programs, where they can do research and learn these particular scientific professions.

There is a $4 million increase in a program to improve the reliability of our 103 existing nuclear powerplants. Let me suggest another thing that is little known. While we had some brownouts in California and some shortages elsewhere, they were minimized because the Nuclear Regulatory Commission and the nuclear powerplant industry in America had been working so well together, and the licensing process and the regulatory processed worked so well during the last decades, that more energy was produced by the nuclear powerplants by upping their capacity in total safety, such that, on average, they increased by the equivalent of 22 new powerplants. Nobody knows that, but that happened.

So while we are looking around for new sources, these licensed facilities, getting up in years, ratcheted up a bit and produced the energy equivalent of 22 new nuclear powerplants on top of the 100-plus we have in the United States.

This bill continues with an increase of $7 million for a total of $14 million, in an area which is very exciting. I hope it will be used prudently. In fact, I hope it will be used to join with partners in the world to produce something really important. This is for the next generation of nuclear reactors. Some people call it generation IV reactors. There are a couple of them in the design stage today, and some people have read about them. They are very exciting new technology.

They are going to produce nuclear reactors that are passively safe. That means that their makeup, in terms of the physics, is such that they can't melt down. They will not have a meltdown possibility in the generation IV reactors that will be produced. In addition, they will have much less left over, much less unused, enriched uranium, so there is much less risk. This reduces greatly the proliferation concerns, with reference to the byproduct from the reactors.

This bill also addresses the Nuclear Regulatory Commission—which, incidentally, has been doing an outstanding job. The chairman now is a Democrat appointee. We urged the President to keep him on. He has been so exciting and powerful and such a force in terms of leading that Nuclear Regulatory Commission in the right direction toward the safety and well-being of our people, and maintaining the essence of our nuclear industry. We

hope he is going to remain as the chairman. Now, I don't think I was saying anything out of school there. I think the chairman knows what is thought of him. I think I may have indicated that he is going to stay on and he wants to stay on.

Remember, just a few years ago we didn't have any money in these programs that I am talking about. We decided it was best to have an Energy Department for this great United States. But back then, when you walked in the door, what we wanted was no nuclear energy and nothing nuclear in the Department of Energy for the greatest nation on Earth. That is the end to which we had gone in terms of our anti-nuclear-power sentiments. I am not exaggerating; that is a truism.

I was fortunate to be chairman of the subcommittee for 6 years. My good friend was ranking member part of the time—Senator REID. We started to build a little bit of nuclear energy capacity back up, so that now they are no longer ashamed. Obviously, they have divisions and departments that are doing nuclear work, so they can't hide anymore. I think they are very forward-thinking about it.

But just remember, with generation IV we are not talking about the kind of reactors we have now, although they are pretty safe and people now are excited about how clean they are.

The only thing people who oppose nuclear power are saying is: What about the waste that comes out of them? We are doing well when we can produce energy that will no longer cause any global warming, but we have a problem of how do we get rid of the waste. Just think of this. What is the dimension of this problem?

I want to speak of it in physical dimensions. A football field—you have a number in your great State, Mr. President. A football field 12 feet deep is the waste problem of America. That is how big it is. When people scare us to death about it, the truth is, it is just a matter of human beings deciding with technical excellence, engineering expertise, and resources what to do about that. You can either bury it, put it away for an interim period of time, or change it from its current form to another.

In Europe, they are not in a hurry to bury it permanently. They are doing other things with it—interim storage—and they are moving ahead with other technologies to make the end product far less toxic.

This bill says we are not going to fund Yucca Mountain, the permanent repository, as much as we have in the past. Although we will go to conference, where the House has a higher number to keep it going. We will have that debate in conference, and we do not always win every nickel and every penny. So we are looking forward to going to conference and seeing what can be done.

There are two other technologies that are right there ready to go. One of them is called accelerator transmutation. This is very exciting new technology, proven out beyond the experimental stage, and we have $70 million to continue the work.

It is an accelerator, therefore it is not a nuclear reactor, that will change what high-level waste is as this accelerator does its work on the waste product. Ultimately, just to make it simple, what it will produce is a residue that instead of having a half-life in the neighborhood of tens of thousands of years, the residue will have a half-life in the neighborhood of 700 years. After 300 years, it would be no more dangerous than uranium ore from the ground.

If we can get a byproduct like that, there is nobody who would stand up and say we cannot handle that. What is difficult to handle is proving modular-wise and scientific-wise what will happen 10,000 years from now when we put something underground and leave it there. That is what makes the problem and the job for nuclear power of the future a difficult one. I repeat. We are singularly the only country saying let's put it underground and forget about it forever, when it has only used up 5 percent of its energy. Ninety-five percent of the energy is still in the rod that you put in the ground.

So true and so powerful is that statement that you cannot talk to the Russian leaders at any level about energy. You cannot talk to any of them about getting rid of the waste product in any way other than using it, which is amazing. As a matter of fact, they just put out word the other day that if we are so frightened about the waste product, they would accept it. Nobody is seriously thinking about that, although maybe some are. But it just shows you the difference, the mentality between those who have worked that problem in Russia. Some of them learned from us; we learned some from them.

They had the greatest nuclear scientists; we had the greatest. We never did decide who had the best. They both had so much respect for each other in nuclear weaponry; I think that kept us from ever having war. You can bet the greatest scientists working on our nuclear weapons knew exactly who the greatest scientists were over there. And they were the greatest. They were not just getting a degree in physics and going over and taking on a program. They were fantastic people. That expertise has come down to nuclear reactor waste and they understand it. They even moved to the next generation of nuclear power, breeder reactors, which we have become so frightened about that even Senator DOMENICI does not talk about it. So we moved to an interim discussion of the kind of nuclear reactors we are talking about today.

We have transmutation, a big word which means changing the makeup and content of this product into something far less toxic.

Incidentally, it has two other uses that are very positive that come out of this accelerator process, one of which is to produce all the radioactive isotopes you need for the medical programs of the country. One of these major accelerators would provide all you need.

Plus another use that is rather significant would be to back up our tritium production; it will do that, too. We are currently going to use reactors to do that job. Under Secretary of Energy Bill Richardson we decided to do it down in Tennessee at one of their TVA nuclear reactors. So that is where the tritium in the program will be produced. This could even be a backup for that reactor in the event we moved ahead.

Some people talk about the estimated costs of transmutation. They use the numbers wrong because the total number over a long period of time, when they tell you how much that is, does not take into consideration how much electricity it produces. It is just telling you what it costs. That would be like saying the next 10 nuclear powerplants, my gosh, are going to cost $1.5 billion each, but you don't know how much electricity it produces. You just hold to the $15 billion number.

Let me emphasize I want to stop using the word ''waste'' and use ''spent fuel'' because I just gave you an example of how much of the energy is still in the spent fuel. It is 95 percent. It is still energy that can be used. As long as we have cheap uranium, it is obvious we are not going to go full speed ahead to produce byproducts that cost a lot of money. In the process we do know these are some of the approaches to making sure we have options in the future.

To wrap up the vision, the vision is to take these resources and others the administration might need to ask us for and produce a commitment by the United States of America, led by our President, to put together a 10-, 15-, or 20-year plan that says ''beyond Kyoto'' and say to the world: ''Let's bring together the electricity-producing resources we have been discussing—renewables, biomass, clean coal, nuclear—let's bring them together and decide in a scheduled approach to begin to produce them so that we can begin to use them in the world without any effect on global warming.

It is very doable. We ought to be excited about it. It means this problem in America might have brought out the best in us. We may be able to tell poor countries with these new reactors that we can put one in every country. They will be very small. They will be modular in size. Perhaps they will be 50 megawatts each instead of 1,000 megawatts. Perhaps they have the characteristics I described here. But let's set the world under our leadership to working on these kind of criteria and then develop the science and technology with our businesses and other countries to do it.

I have asked the President to think about this. I call it now ''reaching beyond Kyoto,'' but it may be ''prosperity in abundance for everyone post-Kyoto.'' It may be an equal title because if, in fact, we have to restrain the growth substantially because the energy source is polluting and thus causes some problems with reference to global warming, then it is an admission that other people cannot become as wealthy as we are; that they cannot have as many things as we have.

We constantly remind the world how much energy we use, and, yes, we do; we use more than any other country. We use maybe 25 percent. But this little country, America, also produces about 25 percent of the gross domestic product of the world, too.

We have a chance to reach beyond this bill, beyond the discussions about an energy policy in detail with reference to each of these different things on transmission lines, using the public domain for more gas and oil, and to set a goal beyond all of that which would say to the United States and the world: You can almost pick your resource because if you do not have any coal, you can use uranium; you can use these new fourth-generation reactors. If you have coal, we are developing the cleanest of coal technology so you can use that, be a nonpolluter and grow.

I think it makes a lot of sense. I am pleased to have thought it through a little bit and to have spoken to it a couple times. The Senator can tell I might have spoken about it one time or another. Yes, I have. It is a pretty good message to be accompanying an energy and water bill if, in fact, this bill is supposed to be doing something about the energy crisis.

We have discussed the approach that there might be something in America that says it is good enough for an America of the future and an America that can help lead the world in the future. I yield the floor.

Mr. CONRAD. Mr. President, I am pleased to rise today in support of S. 1171, the Energy and Water Development Appropriations Act for fiscal year 2002.

The Senate bill provides $24.96 billion in discretionary budget authority, which will result in new outlays in 2002 of $16.2 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for the Senate bill total $24.7 billion in 2002. Of that total, $15.2 billion in budget authority and $14.9 billion in outlays is for defense spending. The Senate bill is within its Section 302(b) allocations for budget authority and outlays for both general purpose and defense spending. Further, the committee has met its target without the use of any emergency designations.

I again commend Chairman BYRD and Senator STEVENS for their bipartisan effort in moving this and other appropriations bills quickly to make up for the late start in this year's appropriations process. I also commend subcommittee Chairman REID and Senator DOMENICI for not only bringing this important measure to the floor within its allocation, but also for providing significant additional resources above the President's request for both the Department of Energy's Atomic Energy Defense Programs, which will help dramatically reduce the threat of proliferation of nuclear warheads, materials, and expertise in the former Soviet Union, and for renewable energy resources, which will help ensure an energy portfolio that balances the Nation's long-term needs for both energy and the environment. I hope all Senators will join me in thanking our able colleagues from Nevada and New Mexico for their vision and good work.

I urge the adoption of the bill.

I ask unanimous consent that a table displaying the Budget Committee scoring of this bill be inserted in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1171, ENERGY AND WATER DEVELOPMENT, 2002; SPENDING COMPARISONS—SENATE REPORTED BILL

[In millions of dollars]

	General purpose	Defense	Mandatory	Total
Senate-reported bill:				
Budget Authority	9,713	15,247	0	24,960
Outlays	9,782	14,908	0	24,690
Senate 302(b) allocation: [1]				
Budget Authority	9,713	15,247	0	24,960
Outlays	24,916	0	0	24,916
House-passed:				
Budget Authority	9,670	14,034	0	23,740
Outlays	9,806	14,122	0	23,928
President's request:				
Budget Authority	9,003	13,514	0	22,517
Outlays	9,336	13,758	0	23,094
SENATE-REPORTED BILL COMPARED TO:				
Senate 302(b) allocation: [1]				
Budget Authority	0	0	0	0
Outlays	(226)	0	0	(226)
House-passed:				
Budget Authority	43	1,213	0	1,256
Outlays	(24)	786	0	762
President's request:				
Budget Authority	710	1,733	0	2,443
Outlays	446	1,150	0	1,596

[1] The 2002 budget resolution includes a ''firewall'' in the Senate between defense and nondefense spending. Because the firewall is for budget authority only, the appropriations committee did not provide a separate allocation for defense outlays. This table combines defense and nondefense outlays together as ''general purpose'' for purposes of comparing the Senate-reported outlays with the subcommittee's allocation.

Notes.—Details may not add to totals due to rounding. For enforcement purposes, the Budget Committee compares the Senate-reported bill to the Senate 302(b) allocation.

LAKE BOND

Mr. HUTCHINSON. I would like to thank the Senator for his support of continued funding for a small flood control project for Bono, Arkansas, which is very important to me. I appreciate his efforts to help me secure language in the statement of managers which would fund this project under the section 205 small flood control projects program.

Mr. DOMENICI. I say to my good friend from Arkansas that I understand the situation in Arkansas and the reason for his amendment. I am happy to support report language which will take care of this project in place of the Senate voting on your amendment.

Mr. HUTCHINSON. I thank the ranking member and I also thank the honorable chairman, Senator REID, for his help with this vital flood control project.

I withdraw my amendment.

The PRESIDING OFFICER. The Senator from Nevada.

APPOINTMENT OF CONFEREES—H.R. 333

Mr. REID. I ask unanimous consent, with respect to H.R. 333, the Senate insist on its amendment, request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate, with no intervening action.

There being no objection, the Presiding Officer appointed Mr. LEAHY, Mr. KENNEDY, Mr. BIDEN, Mr. KOHL, Mr. FEINGOLD, Mr. SCHUMER, Mr. DURBIN, Mr. HATCH, Mr. GRASSLEY, Mr. KYL, Mr. DEWINE, Mr. SESSIONS, and Mr. MCCONNELL conferees on the part of the Senate.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMENDING ELIZABETH LETCHWORTH

Mr. DASCHLE. Mr. President, earlier today both the Democratic and Republican Conferences unanimously passed resolutions which I believe ought to be made part of the RECORD at this point during the business of the Senate.

I ask unanimous consent that both resolutions by read at this time.

The PRESIDING OFFICER. Without objection, the clerk will read the Democratic resolution.

The assistant legislative clerk read as follows:

RESOLUTION COMMENDING ELIZABETH LETCHWORTH

Whereas Elizabeth Letchworth has served the Senate for over 25 years serving as both Secretary for the Majority and Secretary for the Minority;

Whereas she has worked for, and with, 6 different Majority Leaders;

Whereas, though she has worked for our colleagues on the other side of the aisle, her assistance, over the years, to members of the Democratic conference has often been appreciated.

Whereas her institutional memory, unflappable demeanor, and good humor will be missed by Senators and staff alike on both sides of the aisle: Now therefore be it

Resolved by the Democratic Conference, That Elizabeth Letchworth is to be commended and thanked for her many years of service to the Senate and wishes her, and her husband Ron, all the best in the years to come.

The PRESIDING OFFICER. The clerk will read the Republican resolution.

The assistant legislative clerk read as follows:

RESOLUTION RELATING TO THE RETIREMENT OF ELIZABETH LETCHWORTH

Whereas Elizabeth B. Letchworth has served this conference ably and honorably for over 25 years;

Whereas in 1995 she was elected as the Secretary for the Majority becoming the first women to hold this post;

Whereas during her service she has assisted all members of this Republican Conference with diligence and professionalism;

Whereas her knowledge of the Senate rules and Institutional history has been a valuable asset to all Members: Now therefore be it

Resolved, That the Republican Conference extends its sincere thanks to Elizabeth B. Letchworth for her service for over 25 years and wishes her all the best in her future endeavors.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, I thank Senator DASCHLE for allowing me to comment on these resolutions. I would like to begin by thanking the Democratic caucus for doing this. This is a very magnanimous gesture and I know it is being done because of appreciation for the job that our floor assistants do, but specifically for the job that has been done over many, many years by Elizabeth Letchworth. She protects the institution. She loves the institution. She works not only with Republicans but, as your resolution says, with Democrats too, Senators on both sides of the aisle, collectively and individually. So we in the Republican Conference appreciate the generosity of your resolution and the fact that you did that.

We did one also. But I must confess, when I made the announcement that she would be leaving after 25 years, there was a very strong round of boos and objections to the whole idea. I said: My colleagues, this is not in the form of a motion; this is an announcement of a decision that has been made by a friend and loved one—to which they stood and applauded, unanimously thanking her for her dedication and professionalism.

I believe later on we will have a resolution on behalf of the entire Senate at a time when we will notify all of our colleagues that it would be appropriate for them to come to the floor and express their appreciation. I know she has a special relationship with Senator BYRD, for instance, because she not only knows his love of the institution but respects his knowledge of the rules and his insistence that we comply with them, sometimes when we are a little bit derelict in doing that. So we will have that opportunity to speak further. At that time, I will go into great detail about her Senate service.

We all know she has been part of the institution for 25 years. It is hard to believe, looking at her, that she has been here 25 years. It is obvious, Senator BYRD, that she was very young when she started working for the Senate—and that in fact is true. She came here, I believe, as a page, working for then-Senator Hugh Scott from Pennsylvania. I know she did a great job there.

Over the years she has worked in the Cloakroom, worked as a floor assistant, worked for Senator Baker, Senator Dole, and for me when I was majority leader and when I was minority leader. She has served so well as the Secretary for the Majority since 1995 and Secretary for the Minority for the past few weeks. She has just done an outstanding job.

I appreciate her knowledge of the rules, but I also appreciate her determination to make sure we conduct ourselves appropriately, knowing what the rules are. We have been through some tough times while she has been here, both in the majority and the minority. We did the historic impeachment trial for only the second time in history, and I think we did it in a way that was appropriate. We complied with our responsibility under the Constitution. We did it in a reasonable period of time, and we tried to make sure we did it in a respectful way and a fair way for all concerned. That took a lot of time, a lot of effort by our floor assistants, by all of our staff members.

But beyond her knowledge is just the fact that she is a very fine person. I have grown to appreciate her, love her, admire her—as a member of the family, if you will. I must say she has shown great, great wisdom because in the husband to whom she is married she chose one with a Mississippi background, so she truly became even further a member of the family by making that wise decision.

They have plans for the future that include a little more free time, not quite as many nights here in the Senate Chamber, 6 or 7 or 9 or so on a Thursday night, but also, hopefully, some business investments that will be a great success—just, most importantly, some personal time.

To Elizabeth Letchworth and to Ron I offer my most sincere appreciation personally and the appreciation of the Senate Republican Conference.

Again, my thanks to Senator DASCHLE and our Democratic colleagues for their gesture in their resolution also.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I think the distinguished Republican leader has spoken for all of us in expressing his affection and his gratitude for a very special person. This will not be our farewell speech. We will give that later as it accompanies an official Senate resolution that I am certain will be offered on a bipartisan basis by the two leaders and perhaps with the cosponsorship of others but certainly with the unanimous, enthusiastic support of the entire Senate. But we take the floor this afternoon to acknowledge the decision Elizabeth has made and to call attention to that decision and to express our gratitude and our deep affection for a person to whom we have turned, on both sides of the aisle, on countless occasions.

I have been leader now for about 7 years. I have had the good fortune of working with Elizabeth all 7 of those years. But that is just less than a third of the time she has worked in various capacities in this Chamber.

She has served the Senate, not just the Republican caucus but the Senate, so admirably, so professionally, so capably that it goes without saying that on occasions such as this it is a heartfelt gesture for us to pass a resolution as we did in the caucus this afternoon.

I might say, even though she wasn't there, there was rousing applause after the resolution passed, with the hope that she might have heard it even though she wasn't in the room.

Isaac Bassett was the second page to serve in the Senate. He was Daniel Webster's choice as a page. He served here for a long period of time, over a half a century. Isaac Bassett wrote prodigiously about his experiences and never rose to a level any higher than Assistant Doorkeeper. Isaac Bassett would talk about his remarkable view of history. To read his notes is to read history in the first person. I think Elizabeth could write notes in the first person about the history she has witnessed, as Senator LOTT has noted.

She could write history that I am sure would enlighten all of us. I am sure it would be every bit as valuable to future historians and future citizens a hundred years from now as Isaac Bassett's notes are to me today. Regardless of how much history she writes, she should know that she has helped make history. She has been a witness to history. As she has witnessed history, and as she has made it, she has done it in a way that will make her family and future generations very proud.

Today, rather than saying farewell, we simply say that we admire her, and we are grateful to her not only for what she has done but for what she will continue to do here in the Senate for the next few weeks and beyond as she serves in other roles and recognizes the importance of being a member of the family that goes beyond the Senate.

I yield the floor.

Mr. STEVENS. Mr. President, I received late word of this little seance and wanted to make sure that I was present to thank our friend who is retiring.

My first father-in-law said that English is the only language in which that word means other than go to bed. I am glad to know that Elizabeth is going on to another career and a beautiful place in the country. And I am here to wish her very well.

I can remember the various steps of her employment in the Senate. At each level she has excelled and deserved the promotions she has gotten. But above all, Catherine and I will remember the trips that she and her husband have taken with us as she represented the Senate so well as one of our officers.

I have no prepared remarks. I heard the leaders' very kind remarks. I join

with both leaders in wishing you well and expressing our sadness that you are leaving because you have been really one of the Senate in terms of your services here. We will miss you very much.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, as one who has served with Elizabeth for these long years now, I will have something to say on another day about that service and about my feeling toward her.

KATHARINE GRAHAM

Mr. BYRD. Mr. President, Washington Post publisher Katharine Graham, who passed away today, was a towering figure in the world of journalism.

Her courageous stance during the publication of the Pentagon Papers in 1971 and during the Watergate saga, and her steadfast support for her editors and reporters during those trying times, left an unalterable mark upon American journalism and earned her a place in history. With Mrs. Graham at the helm, the Post became one of the leading newspapers in the United States and a veritable American institution.

During her three decades at the helm of the Post she became one of the most influential and admired women in the business world. She was the first woman to head a Fortune 500 company and the first woman to serve as a director of the Associated Press.

Mrs. Graham was an accomplished scribe in her own right. She began her career as a newspaper reporter in San Francisco. After her many successful years in the business end of journalism, she returned to writing and in 1997, at the age of 80, earned a Pulitzer Prize for her autobiography, ''Personal History.''

Despite the Post's success under her leadership, Mrs. Graham remained modest about her own role. In words that could serve as a guide to future publishers, or even to United States Senators, she said:

> You inherit something and you do what you can. And so the person who succeeds you inherits something different, and you add to it or you subtract from it . . . . But you never totally control it.

Katharine Graham certainly added ''something'' to the world of American journalism—a mark of professionalism and integrity that time cannot erase.

Personally, I shall recall her as gracious, elegant, and extremely dignified. She had a bearing one did not forget. She will serve as an example of journalism at its best for many, many years to come.

Erma and I extend our condolences to Mrs. Graham's family and her host of friends.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BAYH). Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. DASCHLE. Mr. President, it is nearly 6:30 and we have not had an opportunity to make much progress on the energy and water appropriations bill. I am a little disappointed. I had hoped that we could move at least to the adoption of a few of the amendments that I know are pending. I am hopeful that we can get an agreement on a finite list tomorrow morning. The Republican leader has indicated that might be a possibility tomorrow morning.

We have colleagues on both sides of the aisle who, I know, have amendments, and I hope they can come to the floor as quickly as possible and begin offering them. I will say to those who may feel the need to drag this out that we have to get this work done. If we can't get it done between now and Thursday night, of course, we will have no recourse but to continue for a reasonably full day on Friday—Friday morning and at least a part of Friday afternoon.

I will also say that these appropriations bills I know are important to the administration, important to the Congress, and I hope nobody makes any definite date for their plans for the August recess. We are going to finish this work, and if we have to bump into the August recess some to complete it, we will do that. Each day we delay now possibly entails additional days at the end of the July work period that we will have to use in order to accommodate the work. We will not allow this work to go over until September. We will stay here. That is not meant to be anything other than an observation of the reality of our responsibilities here.

So I just caution everybody not to let these days go by thinking that somehow it is time that we can make up down the road. We are going to have to make it up before we leave for the August break.

So I hope we can make this a productive week. My hope is that we can complete our work on the energy and water bill in a reasonably prudent period of time, and then we will move on to the Graham nomination, which I know is important to the administration, as well as other nominations.

I am hopeful, as well, that we will take up the legislative branch appropriations and Transportation. It would be my expectation that we can make a lot of progress on those bills as well. Senators have to come to the floor to offer amendments. I thank my colleague, the chairman of the Subcommittee on Energy and Water, for his effort in getting us to this point. I know he shares my interest in working for whatever length of time is necessary.

I think I will announce at this point that there will be no more rollcall votes tonight. But it is with the expectation that we can get a finite list of amendments, and we could be in late tomorrow. We will take amendments, and if we have to do it, we will do other work. We will stay in to accommodate the need to get a lot of additional matters done before the end of the week. So there will be no more votes tonight. There will be a number of votes tomorrow.

I yield to the Senator from Nevada.

Mr. REID. I say to the majority leader, I know he has an important statement to give. I wanted to make this observation. These are not Senate bills alone. The President of the United States needs these bills to operate the Government. He needs these bills, as we do. I think if there were ever a time when we needed to work together, it is now. We have a Democratic majority in the Senate, a Republican majority in the House, and a Republican President. These bills are our joint responsibility. If anybody thinks they are being clever by stalling, they are only hurting George W. Bush, not us. He runs the Government of this country. Would the Senator agree with me in that regard?

Mr. DASCHLE. The Senator is absolutely right. Just today, I have had, I don't know the number but I would say countless discussions with my colleagues about other legislative items that ought to come up, and all with good reason.

There are a number of authorizations and legislative issues that deserve the consideration of the Senate. What we have said is that we want to work as the Senator suggests, in a very constructive way, in an effort to try to accommodate the priorities of the administration, as well as the Congress, in achieving what we know we have to in passing these appropriations bills. It is important to get the work done, and it is important to spend the time on the Senate floor to ensure that happens. We have not had a very productive couple of hours, but I am confident that tomorrow will be a much more productive day.

Mr. REID. If I can say one more thing, the majority leader and the minority leader and the two managers of this bill, Senator DOMENICI and I, had a conference earlier in the day. Senator DOMENICI said he thought we could finish the bill tomorrow. He is one of the real pros here, very experienced. He knows this bill as well as anyone. So I take the Senator at his word, as I do everything he tells me.

I say to the majority leader, tomorrow it would seem to me that we not only have to finish this bill but also we have the Graham nomination that we have to finish tomorrow. Because the majority leader told me this previously—and everybody should understand this—we could be working well

into tomorrow night, real late, to finish the assigned time we have on the Graham amendment. Is that a fact?

Mr. DASCHLE. The Senator is correct. If I didn't say it as clearly as I needed to, let me repeat it. We will have a full day tomorrow. We will be, hopefully, completing our work on energy and water and taking up the Graham nomination. My hope is that we can complete both of those tomorrow. We will stay late and make some decision late in the day about how much time may be required. But there is no reason to believe that we cannot finish energy and water and the Graham nomination before the end of the day tomorrow.

So Senators should be prepared to work late tomorrow in order to accommodate those two very important priorities—again, not just to us but certainly to the administration. The administration has made it very clear that this Graham nomination is important, and they have a right to assert that. We will attempt to accommodate their desire to complete the work on that confirmation before the end of the day tomorrow.

THE LIFE AND EXTRAORDINARY CONTRIBUTIONS OF KATHARINE GRAHAM

Mr. DASCHLE. Mr. President, I join my colleagues in expressing my great admiration for Katharine Graham and my profound sadness on her passing.

I also convey my regrets to Mrs. Graham's family and friends. Our thoughts and prayers are with them on this very sad day.

America lost a legend this afternoon.

Katharine Meyer Graham was a woman of great dignity, intelligence, and wit. She was a pioneer. She was a patriot who believed deeply in the strength of our democracy, and in the indispensability of a free press in preserving this democracy.

Much has been made of Mrs. Graham's gender—and rightly so. No woman has ever achieved what she achieved in journalism, and her accomplishments helped change people's perceptions about the role women could play in journalism, in business, and in the world. But Katharine Graham needs no modifiers.

She was not simply one of the best woman newspaper publishers in the country; she was one of the best newspaper publishers America has ever seen—period.

Katharine Graham was a 46-year-old widowed mother of four when she took over as president of the Washington Post in 1963.

At the time, the Post was one of three daily papers in Washington and not even the best or most widely read of the bunch.

A decade later, largely because of the courage and the extraordinary talent of Katharine Graham and editor Ben Bradlee, the Post was not only indisputably the best newspaper in Washington; it was one of the best newspapers in the world.

In June 1971, with Katharine Graham's backing, the Washington Post joined the New York Times in fighting a court order banning publication of the so-called Pentagon Papers.

Thirty years later, the Supreme Court decision overturning that injunction remains one of the most important decisions in first amendment law.

One year later, in June 1972—again with Katharine Graham's blessing—the Post began its coverage of the Watergate break-in and cover-up. She never wavered in her support of her reporters and their quest for the truth.

Mrs. Graham was modest about her professional achievements. She once said of her paper's Watergate coverage:

> The best we could do was to keep investigating . . . to look everywhere for hard evidence . . . to get the details rights . . . and to report accurately what we found.

She made it sound almost like a routine story. It was, of course, anything but routine.

It led eventually to the resignation of a President of the United States, and it earned the Post the Pulitzer Prize for Public Service.

Over the next nearly three decades, there would be many other awards and accolades for Katharine Graham, including a Pulitzer of her own—the Pulitzer Prize for Biography for her 1998 autobiography, ''Personal History.''

We are so fortunate that in what would be the last years of her life, she took the time to sit down and write an incredible story that had largely gone untold—her story.

In recalling her sudden ascendancy as president of the Post, she remarked:

> What I essentially did was to put one foot in front of the other, shut my eyes and step off the ledge. The surprise was that I landed on my feet.

For those who knew her, for those who loved her, and for those of us who were simply lucky enough to have met her and seen her work, Katharine Graham's success seems no surprise at all. She was a woman of remarkable insight and remarkable strength.

My deepest sympathies go out to her children, Donald, Lally, William, and Stephen, her many grandchildren, and her great-grandchildren.

Our Nation's Capital will not be the same without her and neither will American journalism.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF LORI A. FORMAN TO BE ASSISTANT ADMINISTRATOR OF AID FOR ASIA AND NEAR EAST

Mr. DASCHLE. Mr. President, I come to the floor, as I did earlier this spring, to commend the efforts of a South Dakotan who is having a direct impact on America's international interests. Last Thursday evening, I was proud when the Senate confirmed Lori A. Forman, born and raised in Sioux Falls, SD, to be Assistant Administrator of USAID for Asia and the Near East. She is the first South Dakotan nominated and confirmed to serve in the Bush Administration.

The Assistant Administrator for Asia and the Near East, ANE, has a tremendous responsibility. Stretching from Morocco in the West to the Philippines in the East, the ANE region is large and diverse and covers a wide range of issues of critical importance to the U.S., including the challenges posed by terrorism and the proliferation of weapons of mass destruction.

The region is also home to vital economic interests. As a market for U.S. goods and services, it is second only to Europe. Countries in the region provide 50 percent of the oil consumed in the United States and control vital shipping lanes for the world's commerce. As the world witnessed with the Asian Financial Crisis in 1997, instability in this region has direct and significant ramifications for global economic interests.

Furthermore, the region poses a development challenge for the United States. According to the World Bank, the ANE region accounts for more than two-thirds of the world's extremely poor. And those poor are succumbing more and more to the threat of infectious disease, especially HIV/AIDS. In India alone, there are 1,500 additional cases of HIV daily.

In such an important region, USAID requires a talented and experienced Assistant Administrator. Our interests there are too vital and the costs of failure too high for us to accept anyone but the finest.

I can think of no better candidate than Lori Forman. She has written extensively on the development challenges in Asia. Her writings are based on years of experience—in both the governmental and non-governmental sectors—as a development practitioner throughout Asia. She knows the region and Washington, ensuring that assistance will get to the people for whom it is intended, not become tied up in bureaucratic wrangling here.

Lori has an additional asset which has served her well in her career—and will continue to serve her well. Though she has been engaged in Asia policy for much of the last 25 years, she is from the Great State of South Dakota. In South Dakota we pride ourselves on humility, self-reliance and hard work, traits that are valuable, even crucial, to anyone in the development field.

Americans from each and every state are having a positive impact on the

lives of people the world over. I am particularly proud when individuals from South Dakota have done such a fine job. Lori Forman's efforts make me proud, America stronger and the world better.

TRIBUTE TO COY SHORT

Mr. THURMOND. Mr. President, whether as an officer in the United States Army or as a dedicated public servant at the Social Security Administration, Coy A. Short has served his Nation with honor and integrity. After two and a half decades of devoted service, Coy will retire from the Social Security Administration, and I rise today to pay tribute to a man who has made countless contributions to the welfare of America.

Coy has a rich history of public service which began when he volunteered to serve as an officer in the United States Army. Recognized as a leader with a solid work ethic and uncompromising character, Coy eventually rose to the rank of Captain. After departing the Army, he has continued to support our Armed Forces. He served as Chairman of the Georgia Committee for Employer Support of the Guard and Reserve for over ten years, and continues to work with this committee and other organizations dedicated to assisting our men and women in uniform.

Coy's selfless involvement with these associations has resulted in his receipt of numerous awards and recognitions, including the Sam Nunn Award, the Oglethorpe Distinguished Service Medal for Outstanding Support of the Georgia Guard, and the Patrick Henry Award from the National Guard Association both in 1997 and 1999. Also, in 1998, he was appointed to the prestigious position of Ambassador for the U.S. Army Reserve.

Though a successful businessman, Coy's devotion to his country eventually lured him back to the realm of public service. In 1977, he began his career at the Social Security Administration—an agency on which many livelihoods depend.

During Coy's tenure with the Social Security Administration, his workhorse attitude and proficient managerial skills enabled him to quickly ascend through the ranks. He held several management positions at both district and branch offices throughout the Atlanta region and served as Director of the Office of Congressional, Governmental and External Affairs prior to his selection as Deputy Regional Commissioner. Though a humble man, whose greatest reward is assisting others, he was recognized for his dedication to the Social Security Administration with their highest award, the ''Commissioner's Citation.''

It has been a privilege to know Coy for the last thirty years. He is a true patriot, and I commend him for his service to our Nation. Though the Administration will be losing one of their finest, they will no doubt continue to benefit from his contributions for years to come. I wish him, his wife Judy, and their two children, Greg and Karen, health, happiness, and success in all of their future endeavors.

BUDGET SCOREKEEPING REPORT

Mr. CONRAD. Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of section 5 of S. Con. Res. 32, the first concurrent resolution on the budget for 1986.

This report shows the effects of congressional action on the 2001 budget through July 10, 2001. The estimates of budget authority, outlays, and revenues are consistent with the assumptions of H. Con. Res. 83, the concurrent resolution on the budget for fiscal year 2002, which replaced H. Con. Res. 290, the concurrent resolution on the budget for fiscal year 2001.

The estimates show that current level spending in 2001 is below the budget resolution by $12.1 billion in budget authority and by $8 billion in outlays. The current level is $1 million above the revenue floor in 2001.

I ask unanimous consent that a letter to me from Dan L. Crippen, Director, CBO, and an accompanying report be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 11, 2001.

Hon. KENT CONRAD,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed tables show the effects of Congressional action on the 2001 budget and are current through July 10, 2001. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of H. Con. Res. 83, the Concurrent Resolution on the Budget for Fiscal Year 2002, which replaced H. Con. Res. 290, the Concurrent Resolution on the Budget for Fiscal Year 2001.

Since my last report, dated March 27, 2001, the Congress has cleared and the President has signed the following acts that changed budget authority, outlays, or revenues for 2001: an act to provide reimbursement authority to the Secretaries of Agriculture and the Interior from wildland and fire management funds (P.L. 107–13), the Fallen Hero Survivor Benefit Fairness Act of 2001 (P.L. 107–15), the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107–16), and an act to clarify the authority of the Department of Housing and Urban Development with respect to the use of fees during fiscal year 2001 (P.L. 107–18). The effects of these new laws are identified in Table 2.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosures.

TABLE 1.—FISCAL YEAR 2001 SENATE CURRENT LEVEL REPORT, AS OF JULY 10, 2001

[In billions of dollars]

	Budget resolution	Current level [1]	Current level over/ under (−) resolution
ON–BUDGET			
Budget Authority	1,568.4	1,556.3	−12.1
Outlays	1,515.3	1,507.2	−8.0
Revenues	1,556.7	1,556.7	(2)
Debt Subject to Limit	5,660.7	5,628.3	−32.4
OFF–BUDGET			
Social Security Outlays	434.6	434.6	0.0
Social Security Revenues	504.1	504.1	0.0

[1] Current level is the estimated effect on revenue and direct spending of all legislation that the Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. The current level of debt subject to limit reflects the latest information from the U.S. Treasury.

[2] Less than $50 million.

Source: Congressional Budget Office.

TABLE 2.—SUPPORTING DETAIL FOR THE FISCAL YEAR 2001 SENATE CURRENT LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES, AS OF JULY 10, 2001

[In millions of dollars]

	Budget authority	Outlays	Revenues
Enacted in previous sessions:			
Revenues	n.a.	n.a.	1,630,462
Permanents and other spending legislation	928,957	879,358	n.a.
Appropriation legislation [1]	942,112	942,622	n.a.
Offsetting receipts	−314,754	−314,754	n.a.
Total, enacted in previous sessions	1,556,315	1,507,226	1,630,462
Enacted this session:			
An act to provide reimbursement authority to the Secretaries of Agriculture and the Interior from wildland fire management funds (P.L. 107–13)	0	3	0
Fallen Hero Survivor Benefit Fairness Act of 2001 (P.L. 107–15)	0	0	−1
Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107–16) [2]	0	0	−73,808
An act to clarify the authority of the Dept. of Housing and Urban Development with respect to the use of fees (P.L. 107–18)	6	4	2
Total, enacted this session	6	7	−73,807
Total Current Level	1,556,321	1,507,233	1,556,655
Total Budget Resolution	1,568,430	1,515,278	1,556,654
Current Level Over Budget Resolution	n.a.	n.a.	1
Current Level Under Budget Resolution	12,109	8,045	n.a.

TABLE 2.—SUPPORTING DETAIL FOR THE FISCAL YEAR 2001 SENATE CURRENT LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES, AS OF JULY 10, 2001—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Memorandum:			
Emergency designations for bills enacted this session	0	0	0

[1] Excludes administrative expenses of the Social Security Administration, which are off-budget.
[2] The estimated budgetary impact of P.L. 107–16 was provided by the Joint Committee on Taxation.

Note.—n.a. = not applicable.

Sources: Congressional Budget Office and Joint Committee on Taxation.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of this year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred October 25, 1996 in Trevose, PA. A gay man, James Rebuck, 55, was stabbed to death at his residence after he allegedly made a pass at a man at a bar. David Alan Elliott, 23, and Scott Stocklin were charged with first-degree murder, burglary, criminal conspiracy and possession of deadly instruments.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

VA LEADS THE NATION IN QUALITY OF CARE

Mr. ROCKEFELLER. Mr. President, the Department of Veterans Affairs has made great strides in becoming a leader within the health care profession. Too often, we dwell only on what is going wrong or what else can be done. However, as Chairman of the Committee on Veterans' Affairs, I would like to instead draw attention to what VA has done to bring a high quality of care to our nation's veterans. While there is no doubt that VA go even further in this area, we know that they have made great strides in delivering the standard of care veterans deserve.

A few years ago, the Democratic staff of the Committee on Veterans' Affairs issued a report examining the standards of quality within the VA Health Care system. VA spends considerable effort and resources aimed at providing veterans with the highest quality health care in its hospitals and clinics. Over the years, VA has developed dozens of programs devoted exclusively to quality of care issues, yet public attention continues to be focused on examples of poor care within the health care system.

With nearly 950 sites and growing, VA operates the largest health care system in the United States. Veterans should know that the care at one VA hospital or clinic is at the same high quality level as the care at another VA health care facility. The study concluded that this can only be possible if the VA has a national system of quality which has built-in safeguards sufficient to overcome the inevitable fact that human error will always occur.

The committee is currently working on a follow-up to the original study. As more technological solutions to the problem of quality standardization are implemented, they will need to be examined. Quality of care is a vital issue to which I am very committed, and will continue to monitor closely as the VA health care system reconfigures itself to accommodate the changing demographics of the population it serves.

Coronary disease care is one area in particular that VA has excelled in with regard to quality of care. With coronary atherosclerosis being the second-most frequent diagnosis among veterans enrolled in VA health care, it is imperative that VA is able to treat this condition with the best care possible. They have met that challenge, with VA medical facilities now providing the same level of care as non-VA hospitals. The New England Journal of Medicine recently published a report that made this conclusion, based on a study of heart attack patient care within VA. The report also applauded VA's efforts to improve their overall quality of care.

I ask unanimous consent that an article from The Topeka Capital-Journal, highlighting the report from The New England Journal of Medicine on the study of VA's quality of care, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

VA SYSTEM QUIETLY BECOMING MODEL FOR HEALTH CARE

(By Mathew J. Kelly)

It has long been one of American medicine's most precious assets and, until recent years, its best-kept secret.

On Dec. 27, the New England Journal of Medicine (NEJM) published a report on a study that found the quality of care for heart attack patients is as high in Department of Veterans Affairs medical facilities as in non-VA hospitals.

At first review, that might seem like faint praise—but not for a health care system often singled out to prove its value and justify its existence. And it continues to do so. The accompanying NEJM commentary of a VA doctor nailed it: ''Overall, the [VA health care system's] quest to improve quality must be regarded as a laudable success and itself deserves study for lessons that may have general value.''

The study and associated observations corroborate what we in VA have long been aware of—the exceptional quality of care we provide, and the fact that VA is a model for the health care industry, often outperforming the private sector. VA is delivering cutting-edge health care, and its patients and the medical world are noticing and applauding.

For too long VA has methodically and quietly improved the way it delivers health care to a special population, while allowing the public to believe that our hospitals are like those shown in movies such as 'Born on the Fourth of July'' and ''Article 99.'' At the time these motion pictures were released, the portrayal was inaccurate, and today, they and the images they conjure are even more distorted.

The Department of Veterans Affairs health care delivery system, once maligned, has overcome the stereotypes, is quieting its critics, and has established itself as a force in health care delivery, research, and medical education, and in such special services as blind rehabilitation, severe psychological conditions, prosthetics and spinal cord injury. Of the latter, actor Christopher Reeve, now quadriplegic, said, ''The whole VA system today is a model for what research can and must be. And when I look down the list of accomplishments of various centers and how proactive it is, I just rejoice.''

The patient population VA cares for is, on average, significantly older and poorer than the non-veteran population, more likely to have mental illness or substance abuse problems, more likely to have hepatitis C, more likely to have multiple diseases, and less likely to be married and have a social support structure. Despite these challenges, VA health care has transformed itself into what Dr. Donald Berwick, President and CEO of the Institute for Healthcare Improvement, calls ''the most impressive work in the country so far on patient safety'' and ''the benchmark in many areas.''

Even though the veteran population is declining, veterans' health problems are increasing as they age. More veterans than ever are enrolling for VA health care. In the last five years, VA, which operates the nation's largest integrated health care organization, has shifted from an inpatient-focused system—we have closed more than half of our acute care beds—to one that is outpatient-based.

To apply for health care, veterans can now fill out and submit an easy-to-follow Internet-based application form, which is automatically electronically mailed to the VA health care facility selected by the veteran. VA employees register the data, print the form and mail it back to the veteran for signature. Veterans can also print out the completed form and mail it to a VA health care facility themselves.

Since 1996, when all honorably discharged veterans became eligible to enroll for VA health care, more than a half-million additional veterans have done so. Why? Every VA patient now has a primary care provider and team. VA has computerized mail-out pharmacy services that ensure the timely delivery of drugs to patients. VA has instituted

aggressive performance measures that have led to implementation of the best practices of government and private sector health care. On average, VA medical facilities now receive higher accreditation scores than do private sector facilities.

While this transformation was taking place, VA became an industry leader in such areas as patient safety, surgical quality assessment, the computerization of medical records, telehealth, preventive screenings and immunizations.

There have been no big wars lately, no long lines of troops coming home, no welcoming parades necessary. And as these events and the years between fade, so too do memories. It might be only human to become complacent about those who not so long ago left their families, their schools, their jobs, and the security of their lives because their country asked. They now need our help, as will future generations of servicemen and women, but platitudes on Veterans Day and Memorial Day are woefully inadequate. Words alone will not mend broken spirits and cannot heal broken bodies. The best possible care—the type VA provides as part of a comprehensive system of benefits—is the most appropriate honor we can bestow on veterans.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, July 16, 2001, the Federal debt stood at $5,709,313,725,685.43, five trillion, seven hundred nine billion, three hundred thirteen million, seven hundred twenty-five thousand, six hundred eighty-five dollars and forty-three cents.

Five years ago, July 16, 1996, the Federal debt stood at $5,158,430,000,000, five trillion, one hundred fifty-eight billion, four hundred thirty million.

Ten years ago, July 16, 1991, the Federal debt stood at $3,541,429,000,000, three trillion, five hundred forty-one billion, four hundred twenty-nine million.

Fifteen years ago, July 16, 1986, the Federal debt stood at $2,069,283,000,000, two trillion, sixty-nine billion, two hundred eighty-three million.

Twenty-five years ago, July 16, 1976, the Federal debt stood at $618,625,000,000, six hundred eighteen billion, six hundred twenty-five million, which reflects a debt increase of more than $5 trillion, $5,090,688,725,685.43, five trillion, ninety billion, six hundred eighty-eight million, seven hundred twenty-five thousand, six hundred eighty-five dollars and forty-three cents during the past 25 years.

ADDITIONAL STATEMENTS

PRAISE FOR GEORGIA'S KWAME BROWN ON BEING NBA'S NUMBER ONE DRAFT

● Mr. MILLER. Mr. President, every one of us has a life story. Every person is a book, and I would like to tell you about one young man from the state of Georgia who is beginning a new chapter in his.

Kwame Brown has known adversity since the age of 5, when his parents split up for good and he landed in a shelter with his mother and siblings for 10 months. With the help of relatives, Kwame and his family got out of that shelter and things got better—but not by much. Kwame's mother, Joyce, raised him and his seven siblings by herself in Brunswick, GA, supporting the family by cleaning hotel rooms. That job ended in 1993 when a back injury and other health problems left Ms. Brown unable to work. Since then, the family has scraped by on a monthly disability check and a few extra dollars from babysitting. Their mode of transportation: a bicycle. Such adversity would break most families, but not Kwame Brown's family.

With the help of a church mentor, Kwame and his siblings became focused and set goals for themselves. Kwame decided he wanted to be a better student and a better basketball player. Through his faith and many hours of hard work, Kwame improved his grades so much that he landed on the honor roll at Brunswick's Glynn Academy. And now he has achieved something that no other person in this country ever has.

On June 27, 2001, 19-year-old Kwame became the first high school player ever to be picked as the No. 1 draft in the NBA. This young man who once lived in a neighborhood so poor it was nicknamed ''The Bottom'' has pulled himself up to the very top.

At 6-feet-11 inches tall and 240 pounds, Kwame averaged 20.1 points, 13.3 rebounds and 5.8 blocked shots as a senior last year at Glynn Academy; he scored 1,539 career points. His exceptional talent has given rise to a number of awards. He was named to McDonald's All-America Team and USA Today's All-USA First team. He was also Georgia's High School Player of the Year.

Kwame Brown is not only a star on the court. His off-the-court life is just as exemplary. Even though he went against his mother's wishes in postponing plans to attend the University of Florida, Kwame believes that his decision to enter the NBA will allow him to give his family a better life than they have ever known. And he has promised his mother and himself that he will still get that college education. First, he wants to give his mother something she has never had: the keys to a brand new home.

Basketball legend Michael Jordan, who is part-owner of the Wizards, called Kwame ''a confident kid who understands his surroundings . . . He comes from a family where nothing has been given to him. He has gotten this far with hard work and a little dreaming.''

I am honored to recognize Kwame Brown, a young man who is not only a talented athlete, but also humble, wise and mature beyond his years. I look forward to this new chapter in Kwame's life with great anticipation. I know his will be a fascinating story with a wonderful ending.●

TRIBUTE TO JAMES LAKE

● Mr. CRAIG. Mr. President, I rise today to pay tribute to James Lake upon the occasion of his completion in June of a tenure as the President of the American Nuclear Society for the 2000/2001 year. The American Nuclear Society is an international scientific and educational organization established in 1954. Its membership now has approximately 11,000 engineers, scientists, administrators, and educators representing over 1,600 corporations, educational institutions, and government agencies.

The work of nuclear engineers and scientists is especially relevant to meeting the increasing need of the Nation for electricity. Around the United States, there is a growing public interest in new nuclear plants which offer an economical, safe and environmentally-friendly alternative for the generation of electricity. The development of nuclear professionals is a valuable service for the Nation that advances our energy security and economic well-being.

Jim Lake's service as the President of the American Nuclear Society this year has helped to stimulate the interest in new nuclear generation which has stemmed from energy shortages in California and higher energy prices in many areas. He has crossed the Nation many times this year to meet with nuclear professionals, industry executives, public servants, educators and students to seek their views and ideas on an expanding role for nuclear energy in the Nation's future. He has represented the professionals of the United States in many forums overseas, and has brought home a broad perspective on nuclear energy's role in a balanced energy portfolio.

Jim Lake's career now spans twenty-eight years, of which he has spent the last seventeen at the Idaho National Engineering and Environmental Laboratory in my State. As he completes his tenure as President, he returns to the Laboratory as an Associate Laboratory Director with an enthusiasm for nuclear energy that is fueled by his many experiences of the last year.

Always interested in the development of the professionals at the Laboratory, Jim has been an active and tireless supporter of the Idaho Section of the American Nuclear Society. His leadership of that section resulted in its award for Outstanding Section Management in 1992. The Idaho Section has won many awards in the last ten years and is considered to be truly one of the best in the society.

Jim Lake attended the Georgia Institute of Technology, receiving a Master's degree in 1969 and a Doctoral degree in 1972. He was elected a Distinguished Engineering Alumnus by Georgia Tech in 1996, and a Fellow of the American Nuclear Society in 1992. He is the author of over thirty technical publications in the disciplines of reactor physics, nuclear engineering and nuclear reactor design. I ask my colleagues to join me in extending our

deep appreciation to Jim Lake for his outstanding service, for his leadership of the American Nuclear Society and in wishing him well in all future endeavors.●

IN RECOGNITION OF WILLIAM N. GUERTIN

● Mrs. FEINSTEIN. Mr. President, I am pleased today to commend Mr. William N. Guertin for his election as President of the American Association of Medical Society Executives and for his 30 years of service to the medical doctors of Alameda-Contra Costa counties and his many achievements.

Mr. Guertin has been a member of the Alameda-Contra Costa Medical Association, ACCMA, since 1971, and has held two executive offices, Assistant Executive Director and Executive Director. The ACCMA serves over 3,100 doctors and is the second largest medical association in California.

Mr. Guertin's leadership supported many California doctors' efforts to help, cure, and care for people in need of support and medical help. He has worked to create programs that promote public health, quality access to care, and professional standards in California. Mr. Guertin has worked to protect physicians from impositions that would interfere with their ability to interact successfully with their patients. Mr. Guertin created the first doctor-owned professional liability insurance carrier in California, at a time when doctors were not able to obtain the insurance necessary to practice quality medicine.

The practice of medicine has long been a profession of people who devote their time and effort to helping others. Mr. Guertin has worked tirelessly for the past 30 years to facilitate the work of physicians and to enhance the quality of care for the people of Alameda-Contra Costa counties.

For these reasons, I congratulate Mr. Guertin on his new position as President of the American Association of Medical Society Executives. I am confident that Mr. Guertin will succeed in his new position and work to augment the lives of patients and physicians throughout the Nation.●

JAN KARSKI—A QUIET HERO

● Mr. DEWINE. Mr. President, today I remind my colleagues of a story I read in the New York Times almost exactly one year ago today. It was the July 15, 2000, obituary of a man named Jan Karski. I was absolutely fascinated by this man's life story and with the first anniversary of his death, I am reminded of the role he played in our modern history. Like few others, he had a unique window view into an appalling and shameful era of history—the Holocaust. Let me explain.

During World War II, Jan Karski brought to the Allied leaders in the West—and at no small risk to his own life—what is believed to be the first eyewitness reports of Hitler's indescribable acts of hate and cruelty against the Jews. In 1942, Jewish resistance leaders asked Jan, then a 28-year-old courier for the Polish underground, to be their voice to the West—to convey to the Allies an actual eyewitness account of the Jewish genocide in Europe.

He readily accepted this dreadful task, as he knew that someone had to tell the world exactly what was happening in Europe. Though he succeeded in relaying the nightmarish sights to Western leaders, his reports were met initially by indifference. While many others eventually would confirm Jan's horrifying accounts of the Jewish concentration camps and the Warsaw Ghetto in Poland, he was one of the first—and one of very few—to take a stand against these atrocities.

We are discovering that Jan's voice was not the only warning of the wholesale slaughter of innocent human life by Nazi Germany. As we speak, a dedicated group of individuals, both in government and in the private sector, are declassifying and releasing to the public thousands and thousands of pages of previously classified material about Nazi war criminals, persecution, and looting. This effort is the result of the ''Nazi War Crimes Disclosure Act''—legislation I wrote into law with my friends and colleagues from New York, Senator PATRICK MOYNIHAN and Congresswoman CAROLYN MALONEY.

Just this past April, in fact, our law made history with the release of 10,000 pages of previously classified Central Intelligence Agency, (CIA), files on 20 key figures from the Nazi party, including Adolf Hitler, Klaus Barbie, Adolf Eichmann, Kurt Waldheim, Heinrich Mueller, and Josef Mengele. And, prior to that last summer, 400,000 pages of other historical documents were released.

A number of those documents contained information that Fritz Kolbe provided to U.S. intelligence authorities in 1943. Mr. Kolbe was a member of the German resistance and worked in the German Foreign Office. Codenamed ''George Wood,'' Mr. Kolbe put his life on the line by traveling to Switzerland, carrying highly sensitive information on Nazi activities for delivery to U.S. intelligence agents. A complete set of these documents in translation is now available for historical review. Also available in its entirety is the U.S. State Department's complete debrief of Mr. Kolbe from September 1945. This document shows that he did not act alone, but relied on what he called his ''Inner Circle,'' which consisted of as many as 20 other Germans. The names of these individuals are not well known members of the resistance—they are ordinary people, like Jan Karski.

While the gruesome reality of Nazi Germany eventually became clear to the world and as the Allies acted to end Hitler's evil regime, Jan's job—his mission—never really ended. For the rest of his life, he carried with him the sights, the sounds, the smells, and the sadness of the Holocaust. Karski, himself, once said: ''This sin will haunt humanity to the end of time. It does haunt me. And, I want it to be so.''

Jan Karski wanted us all to be haunted by the Holocaust. He wanted us never to forget. He devoted his life to ensuring that such inhumane horror would be present forever in our collective conscience, so that we, above all else, will never let this dark chapter in our history ever, ever repeat itself.

While we often think of heroes in terms of epic feats on the battlefield or in the face of great danger, Jan Karski is no less a hero for giving a voice to a silent slaughter. I ask my colleagues to think about that and to take some time to consider the life of Jan Karski and the life of Fritz Kolbe. Their stories, along with others newly discovered, help fill the holes of history, while revisiting a fundamental, troubling question of what the West knew about the Holocaust and when we knew it.

I encourage my colleagues to learn more about Jan and Fritz. Read last year's New York Times obituary about Jan's life. Talk about his story with your families. To understand the Holocaust is to remember the lives of Jan Karski and Fritz Kolbe—to remember—''always remember,'' as Jan would say—what their sacrifices meant—and still mean—for our world.●

TRIBUTE TO DR. MORTIMER ADLER

● Mrs. BOXER. Mr. President, today I would like to pay tribute to a great American who passed away on June 28, at the age of 98½—an American whose life spanned virtually the entire 20th century and whose work influenced the course of the century.

Dr. Mortimer Jerome Adler, author, educator and philosopher was born in New York City and subsequently moved to California where he lived a great portion of his life.

Mortimer Adler devoted his life to the pursuit of wisdom, understanding, truth and knowledge, and to sharing what he learned with others. After having read John Stuart Mill's Autobiography at age 14 and learning that Mill had read Plato by the time he was five, he hit the books and never looked back.

A prolific writer, Adler authored well over 50 books, including How to Read a Book; The American Testament; The Common Sense of Politics; Aristotle for Everyone; Ten Philosophical Mistakes; and Art, the Arts and the Great Ideas. It is readily apparent, Mr. President, that his interests were wide ranging and extensive. As editor of the Encyclopedia Britannica, Adler was responsible for revamping the encyclopedia in the form we know it today. He was also editor of the 60 volume set, The Great Books of the Western World and was also instrumental in devising

the Great Books reading program, a book discussion program with chapters throughout the United States in which participants read and discuss classic texts.

A professor at several universities including Columbia University and the University of Chicago, Mortimer Adler was probably the only person in America to receive his PhD before receiving his high school diploma, bachelors or masters degrees. As part of his unending quest to reform the American education system, he wrote, on behalf of the Paideia Group, The Paideia Proposal, a book explaining how and why the education that the best receive should be the education that all receive.

Known as ''Everyone's Philosopher'' or ''the Philosopher of the Common Man,'' Mortimer Adler spent a lifetime demonstrating that philosophy was not a field only for some, but an endeavor for everyone. As the title of a journal that he published since the early 90's puts it succinctly, ''Philosophy is Everybody's Business.''

He was also the founder of the Institute for Philosophical Research and was instrumental in founding the Aspen Institute, an organization which engages leaders in business, academia and politics in discussions of perennial ideas using classic texts to facilitate discussion.

Only rarely does a person of Mortimer Adler's intellect and ability come along. We are fortunate that Professor Adler was with us for as long as he was.●

TRIBUTE TO LT. GEN. HENRY T. GLISSON

● Mr. ALLEN. Mr. President, I rise today to honor a lifetime commitment to serving the United States of America. On August 31, 2001, Lt. Gen. Henry T. Glisson of Alexandria, Virginia, will retire as a Lieutenant General after 34 years of dedicated service in the United States Army.

General Glisson was commissioned as a Second Lieutenant of the Quartermaster Corps through the Reserve Officer Training Corps program at North Georgia College, where he earned his bachelor of science degree in Psychology. Thereafter, he received his master's degree in Education from Pepperdine University of California. His military educational background includes the Quartermaster Officer Basic and Advanced Courses, the Command and General Staff College, and the Army War College.

Selected as a Regular Army Officer in 1967, and detailed to the Infantry for 18 months, his early years included assignment as a Platoon Leader for the 549th Quartermaster Company, Air Delivery, and Aide-de-Camp for the Commanding General of the U.S. Army in Japan; Advisory in the U.S. Military Assistance Command in Vietnam; and S4, Logistics, and Commander of the Headquarters Company of the 2nd Battalion of the 5th Infantry; Commander of Company C of the 425th Support Battalion; Executive Officer/S3 of the 25th Supply and Transport Battalion.

From 1978 to 1982, he served as the S3 of the Division Support Command; Executive Officer of 701st Maintenance Battalion; and Commander of the Materiel Management Center of the 1st Infantry Division in Fort Riley, Kansas. His next assignment was Commander of the 87th Maintenance Battalion of the 7th Support Group for the United States Army in Europe. He served as Chief of the Quartermaster Branch of the United States Army Military Personnel Command in Alexandria, Virginia, from 1985 to 1987.

In 1989 he became Commander of Division Support Command for the 4th Infantry Division in Fort Carson, Colorado. He returned to the Pentagon in 1991, serving as the Executive Officer and Special Assistant to the Deputy Chief of Staff for Logistics; and then as Deputy Director, Directorate for Plans and Operations in the Office of the Deputy Chief of Staff for Logistics. In 1993, he was promoted to Brigadier General and has served in four consecutive command assignments: Commander of the Defense Personnel Support Center for the Defense Logistics Agency; Commander of the U.S. Army Soldier Systems Command of the U.S. Army Materiel Command; and 44th Quartermaster General and Commandant of the U.S. Army Quartermaster Center and School. In 1997, he was promoted to Lieutenant General and began his service as Director of the Defense Logistics Agency in Fort Belvoir, Virginia.

His tireless and selfless dedication to serving his country is represented by the many decorations he has earned, including the Defense Distinguished Service Medal, the Defense Superior Service Medal, the Legion of Merit with Five Oak Leaf Clusters, the Bronze Star with ''V'' Device, the Bronze Star, the Purple Heart, the Meritorious Service Medal with Four Oak Leaf Clusters, the Army Commendation Medal, the Air Medal, the Combat Infantryman Badge, the Parachutist Badge, the Parachute Rigger Badge and the Army Staff Identification Badge.

In closing, I wish to commend General Glisson for his many years of distinguished service to our Nation, protecting our freedoms of life, liberty and the pursuit of happiness. I wish him and his wife, Sherry, Godspeed in his retirement.●

TRIBUTE TO REVEREND CHRISTIAN

● Mr. CORZINE. Mr. President, I bring to the attention of my colleagues a great man in the State of New Jersey, Rev. Ron Christian.

Reverend Christian is a man of integrity who is committed to the spiritual, mental, social, civil, and economic well-being of his congregation and of the residents of Essex County.

I want to congratulate him on his installation as the pastor of the Christian Love Baptist Church. He is a dynamic gentleman who has turned his life around and has become a leader and role model in the community.

Reverend Christian is a true American, who believes that all people should have access to America's Promise. He has the enviable gift of being able to bring people together to work for a common cause. Reverend Christian is an unselfish man whose motivation is not self-gratification. He possesses a higher calling.

On July 8, Reverend Christian became the pastor of the Christian Love Baptist Church in Irvington, New Jersey. I am certain that under his guidance, Christian Love Baptist Church will experience enormous growth and will continue its tradition of being a warm congregation filled with joy and love.

Reverend Christian's devotion to the community is very well known, and the State of New Jersey is a better place because of his leadership.

Lastly, I am proud to call Reverend Christian a friend. It is an honor for me to bring him to your attention.●

ALBUQUERQUE HISPANO CHAMBER OF COMMERCE GRAND OPENING

● Mr. DOMENICI. Mr. President, I rise today and ask my colleagues to join me in congratulating the Albuquerque Hispano Chamber of Commerce in my home state of New Mexico, as they continue their work to serve the community, with the opening of their Barelas Job Opportunity Center.

The Albuquerque Hispano Chamber of Commerce was founded in May 1975 and is dedicated to improving the quality of life for citizens, by promoting economic and education activities, with an emphasis on small business.

In those many years, the Albuquerque Hispano Chamber of Commerce has helped small business people by providing much needed services and informing them of business opportunities. It also serves as an advocate for issues affecting the small businessperson.

Through the Chamber, the entrepreneur also has access to a portal through which they can contribute to the economic and civic development of the community.

The Chamber just moved into a new building in an area of Albuquerque that is not affluent or wealthy, but one that is predominately Hispanic, and with history and pride: the South Valley. It is a fitting location for the Chamber, since it has always worked to protect, perpetuate and promote the Hispanic Culture, language and tradition.

The Albuquerque Hispano Chamber of Commerce will now be able to take their assistance a step further with the opening of their Barelas Job Opportunity Center within their new building.

The Opportunity Center, to be dedicated on August 10, 2001, will allow the

Chamber to provide even more services individually designed to help members and small businesspersons with their business needs.

The Barelas Job Opportunity Center will serve the neighborhood, community, State and Nation for generations to come.

I applaud the Albuquerque Hispano Chamber of Commerce as it opens its new Barelas Job Opportunity Center. The Chamber has made a great impact on our community and with the new Job Opportunity Center, will continue and further its contribution. We wish them much continued success in the future.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO SIERRA LEONE MESSAGE—FROM THE PRESIDENT—PM 35

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

As required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), I transmit herewith a 6-month periodic report on the national emergency with respect to Sierra Leone that was declared in Executive Order 13194 of January 18, 2001.

GEORGE W. BUSH.

THE WHITE HOUSE, *July 17, 2001.*

MESSAGES FROM THE HOUSE

At 2:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 360. An act to honor Paul D. Coverdell.

S. 560. An act for the relief of Rita Mirembe Revell (a.k.a. Margaret Rita Mirembe).

At 3:14 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 360. An act to honor Paul D. Coverdell.

S. 560. An act for the relief of Rita Mirembe Revell (a.k.a. Margaret Rita Mirembe).

The enrolled bills were signed subsequently by the President pro tempore (Mr. BYRD).

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, July 17, 2001, she had presented to the President of the United States the following enrolled bill:

S. 360. An act to honor Paul D. Coverdell.

S. 560. An act for the relief of Rita Mirembe Revell (a.k.a. Margaret Rita Mirembe).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HOLLINGS for the Committee on Commerce, Science, and Transportation.

*Allan Rutter, of Texas, to be Administrator of the Federal Railroad Administration.

*Ellen G. Engleman, of Indiana, to be Administrator of the Research and Special Programs Administration, Department of Transportation.

*Samuel W. Bodman, of Massachusetts, to be Deputy Secretary of Commerce.

By Mr. BAUCUS for the Committee on Finance.

*Wade. F. Horn, of Maryland, to be Assistant Secretary for Family Support, Department of Health and Human Services.

*Kevin Keane, of Wisconsin, to be an Assistant Secretary of Health and Human Services.

*William Henry Lash, III, of Virginia, to be an Assistant Secretary of Commerce.

*Brian Carlton Roseboro, of New Jersey, to be an Assistant Secretary of the Treasury.

*Allen Frederick Johnson, of Iowa, to be Chief Agricultural Negotiator, Office of the United States Trade Representative, with the rank of Ambassador.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. MURRAY:

S. 1178. An original bill making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2002, and for other purposes; from the Committee on Appropriations; placed on the calendar.

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated, on July 17, 2001:

By Mr. CLELAND (for himself and Mr. MILLER):

S. 1184. A bill to designate the facility of the United States Postal Service located at 2853 Candler Road in Decatur, Georgia, as the ''Earl T. Shinhoster Post Office''; to the Committee on Governmental Affairs.

By Mr. WYDEN (for himself and Ms. SNOWE):

S. 1185. A bill to amend title XVIII of the Social Security Act to assure access of medicare beneficiaries to prescription drug coverage through the SPICE drug benefit program; to the Committee on Finance.

By Mr. DOMENICI (for himself, Mr. INOUYE, Mr. CAMPBELL, Mr. BINGAMAN, Mr. BAUCUS, Mr. CRAPO, Mr. ALLARD, Mr. JOHNSON, and Mr. KYL):

S. 1186. A bill to provide a budgetary mechanism to ensure that funds will be available to satisfy the Federal Government's responsibilities with respect to negotiated settlements of disputes related to Indian water rights claims and Indian land claims; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. BUNNING:

S. 1187. A bill to provide for the management of environmental matters at the Paducah Gaseous Diffusion Plant, Kentucky, through the Assistant Secretary of Energy for Environmental Management; to the Committee on Energy and Natural Resources.

By Mr. ROCKEFELLER (for himself and Mr. CLELAND):

S. 1188. A bill to amend title 38, United States Code, to enhance the authority of the Secretary of Veterans Affairs to recruit and retain qualified nurses for the Veterans Health Administration, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. HOLLINGS (for himself, Mr. INOUYE, and Mr. DORGAN):

1189. A bill to require the Federal Communications Commission to amend its daily newspaper cross-ownership rules, and for other purposes; to the Committee on Commerce, Science, and Transportation.

SUBMISSION ON CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BIDEN:

S. Res. 135. A resolution honoring Drs. Arvid Carlsson, Paul Greengard, and Eric R. Kandel for being awarded the Nobel Prize in Physiology or Medicine for 2000, and for other purposes; to the Committee on Foreign Relations.

By Mr. HELMS (for himself, Mr. SMITH of Oregon, Mr. LOTT, and Mr. ALLEN):

S. Con. Res. 60. A concurrent resolution expressing the sense of the Congress that the continued participation of the Russian Federation in meetings of the Group of Eight countries must be conditioned on the Russian Federation's voluntary acceptance of and adherence to the norms and standards of democracy; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS, MONDAY, JULY 16, 2001

S. 29

At the request of Mr. BOND, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 29,

a bill to amend the Internal Revenue Code of 1986 to allow a deduction for 100 percent of the health insurance costs of self-employed individuals.

S. 124

At the request of Mr. BROWNBACK, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 124, a bill to exempt agreements relating to voluntary guidelines governing telecast material, movies, video games, Internet content, and music lyrics from the applicability of the antitrust laws, and for other purposes.

S. 127

At the request of Mr. MCCAIN, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 127, a bill to give American companies, American workers, and American ports the opportunity to compete in the United States cruise market.

S. 180

At the request of Mr. FRIST, the names of the Senator from Arkansas (Mrs. LINCOLN), the Senator from Kentucky (Mr. BUNNING), and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 180, a bill to facilitate famine relief efforts and a comprehensive solution to the war in Sudan.

S. 258

At the request of Mrs. LINCOLN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 258, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of annual screening pap smear and screening pelvic exams.

S. 388

At the request of Mr. MURKOWSKI, the names of the Senator from Virginia (Mr. ALLEN) and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. 388, a bill to protect the energy and security of the United States and decrease America's dependency on foreign oil sources to 50% by the year 2011 by enhancing the use of renewable energy resources conserving energy resources, improving energy efficiencies, and increasing domestic energy supplies; improve environmental quality by reducing emissions of air pollutants and greenhouse gases; mitigate the effect of increases in energy prices on the American consumer, including the poor and the elderly; and for other purposes.

S. 389

At the request of Mr. MURKOWSKI, the names of the Senator from Virginia (Mr. ALLEN), the Senator from Mississippi (Mr. COCHRAN), and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. 389, a bill to protect the energy and security of the United States and decrease America's dependency on foreign oil sources to 50% by the year 2011 by enhancing the use of renewable energy resources conserving energy resources, improving energy efficiencies, and increasing domestic energy supplies; improve environmental quality by reducing emissions of air pollutants and greenhouse gases; mitigate the effect of increases in energy prices on the American consumer, including the poor and the elderly; and for other purposes.

S. 454

At the request of Mr. BINGAMAN, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 454, a bill to provide permanent funding for the Bureau of Land Management Payment in Lieu of Taxes program and for other purposes.

S. 472

At the request of Mr. DOMENICI, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 472, a bill to ensure that nuclear energy continues to contribute to the supply of electricity in the United States.

S. 486

At the request of Mr. LEAHY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 486, a bill to reduce the risk that innocent persons may be executed, and for other purposes.

S. 543

At the request of Mr. WELLSTONE, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 543, a bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

At the request of Mr. DOMENICI, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 543, supra.

S. 550

At the request of Mr. DASCHLE, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 550, a bill to amend part E of title IV of the Social Security Act to provide equitable access for foster care and adoption services for Indian children in tribal areas.

S. 661

At the request of Mr. THOMPSON, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Tennessee (Mr. FRIST) were added as cosponsors of S. 661, a bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

S. 701

At the request of Mr. BAUCUS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 701, a bill to amend the Internal Revenue Code of 1986 to provide special rules for the charitable deduction for conservation contributions of land by eligible farmers and ranchers, and for other purposes.

S. 778

At the request of Mr. HAGEL, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 778, a bill to expand the class of beneficiaries who may apply for adjustment of status under section 245(i) of the Immigration and Nationality Act by extending the deadline for classification petition and labor certification filings.

S. 781

At the request of Mr. AKAKA, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 781, a bill to amend section 3702 of title 38, United States Code, to extend the authority for housing loans for members of the Selected Reserve.

S. 808

At the request of Mr. BAUCUS, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 808, a bill to amend the Internal Revenue Code of 1986 to repeal the occupational taxes relating to distilled spirits, wine, and beer.

S. 829

At the request of Mr. BROWNBACK, the names of the Senator from Rhode Island (Mr. CHAFEE), the Senator from Minnesota (Mr. WELLSTONE), and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 829, a bill to establish the National Museum of African American History and Culture within the Smithsonian Institution.

S. 847

At the request of Mr. DAYTON, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 860

At the request of Mr. GRASSLEY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 860, a bill to amend the Internal Revenue Code of 1986 to provide for the treatment of certain expenses of rural letter carriers.

S. 871

At the request of Mr. CLELAND, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 871, a bill to amend chapter 83 of title 5, United States Code, to provide for the computation of annuities for air traffic controllers in a similar manner as the computation of annuities for law enforcement officers and firefighters.

S. 913

At the request of Ms. SNOWE, the names of the Senator from South Carolina (Mr. HOLLINGS) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 913, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of all oral anticancer drugs.

S. 937

At the request of Mr. CLELAND, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 937, a bill to amend title 38, United States Code, to permit the transfer of entitlement to educational assistance

under the Montgomery GI Bill by members of the Armed Forces, and for other purposes.

S. 942

At the request of Mr. GRAHAM, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 942, a bill to authorize the supplemental grant for population increases in certain states under the temporary assistance to needy families program for fiscal year 2002.

S. 1005

At the request of Mr. JEFFORDS, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1005, a bill to provide assistance to mobilize and support United States communities in carrying out community-based youth development programs that assure that all youth have access to programs and services that build the competencies and character development needed to fully prepare the youth to become adults and effective citizens, and for other purposes.

S. RES. 71

At the request of Mr. HARKIN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. Res. 71, a resolution expressing the sense of the Senate regarding the need to preserve six day mail delivery.

S. RES. 119

At the request of Mr. BAYH, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Res. 119, a resolution combating the Global AIDS pandemic.

S. RES. 121

At the request of Mr. KERRY, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. Res. 121, a resolution expressing the sense of the Senate regarding the policy of the United States at the 53rd Annual Meeting of the International

Whaling Commission.

S. CON. RES. 3

At the request of Mr. FEINGOLD, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. Con. Res. 3, a concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued in honor of the U.S.S. *Wisconsin* and all those who served aboard her.

S. CON. RES. 45

At the request of Mr. FITZGERALD, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. Con. Res. 45, a concurrent resolution expressing the sense of Congress that the Humane Methods of Slaughter Act of 1958 should be fully enforced so as to prevent needless suffering of animals.

S. CON. RES. 53

At the request of Mr. HAGEL, the names of the Senator from Illinois (Mr. DURBIN), the Senator from Iowa (Mr. GRASSLEY), and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. Con. Res. 53, concurrent resolution encouraging the development of strategies to reduce hunger and poverty, and to promote free market economies and democratic institutions, in sub-Saharan Africa.

S. CON. RES. 59

At the request of Mr. HUTCHINSON, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. Con. Res. 59, a concurrent resolution expressing the sense of Congress that there should be established a National Community Health Center Week to raise awareness of health services provided by community, migrant, public housing, and homeless health centers.

ADDITIONAL COSPONSORS, TUESDAY, JULY 17, 2001

S. 29

At the request of Mr. BOND, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. 29, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for 100 percent of the health insurance costs of self-employed individuals.

S. 174

At the request of Mr. KERRY, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 174, a bill to amend the Small Business Act with respect to the microloan program, and for other purposes.

S. 177

At the request of Mr. AKAKA, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 177, a bill to amend the provisions of title 39, United States Code, relating to the manner in which pay policies and schedules and fringe benefit programs for postmasters are established.

S. 358

At the request of Mr. BREAUX, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 358, a bill to amend the Social Security Act to establish a Medicare Prescription Drug and Supplemental Benefit Program and for other purposes.

S. 400

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 400, a bill to lift the trade embargo on Cuba, and for other purposes.

S. 401

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 401, a bill to normalize trade relations with Cuba, and for other purposes.

S. 402

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 402, a bill to make an exception to the United States embargo on trade with Cuba for the export of agricultural commodities, medicines, medical supplies, medical instruments, or medical equipment, and for other purposes.

S. 457

At the request of Ms. SNOWE, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 457, a bill to amend title 38, United States Code, to establish a presumption of service-connection for certain veterans with Hepatitis C, and for other purposes.

S. 486

At the request of Mr. LEAHY, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 486, a bill to reduce the risk that innocent persons may be executed, and for other purposes.

S. 540

At the request of Mr. DEWINE, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 540, a bill to amend the Internal Revenue Code of 1986 to allow as a deduction in determining adjusted gross income the deduction for expenses in connection with services as a member of a reserve component of the Armed Forces of the United States, to allow employers a credit against income tax with respect to employees who participate in the military reserve components, and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

S. 543

At the request of Mr. WELLSTONE, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 543, a bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

S. 572

At the request of Mr. CHAFEE, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 572, a bill to amend title XIX of the Social Security Act to extend modifications to DSH allotments provided under the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.

S. 611

At the request of Ms. MIKULSKI, the names of the Senator from South Carolina (Mr. HOLLINGS), the Senator from Washington (Ms. CANTWELL), and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 611, a bill to amend title II of the Social Security Act to provide that the reduction in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 658

At the request of Mr. LEAHY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 658, a bill to amend title 32, United States Code, to authorize units of the National Guard to conduct small arms competitions and athletic competitions, and for other purposes.

S. 668

At the request of Mr. AKAKA, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 668, a bill to amend the Animal Welfare Act to ensure that all dogs and cats used by research facilities are obtained legally.

S. 723

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 723, a bill to amend the Public Health Service Act to provide for human embryonic stem cell generation and research.

S. 760

At the request of Mr. HATCH, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 760, a bill to amend the Internal Revenue Code of 1986 to encourage and accelerate the nationwide production, retail sale, and consumer use of new motor vehicles that are powered by fuel cell technology, hybrid technology, battery electric technology, alternative fuels, or other advanced motor vehicle technologies, and for other purposes.

S. 830

At the request of Mr. CHAFEE, the names of the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 830, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 847

At the request of Mr. DAYTON, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 866

At the request of Mr. REID, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 866, a bill to amend the Public Health Service Act to provide for a national media campaign to reduce and prevent underage drinking in the United States.

S. 882

At the request of Ms. MIKULSKI, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 882, a bill to amend title II of the Social Security Act to provide that a monthly insurance benefit thereunder shall be paid for the month in which the recipient dies, subject to a reduction of 50 percent if the recipient dies during the first 15 days of such month, and for other purposes.

S. 885

At the request of Mr. HUTCHINSON, the names of the Senator from New York (Mrs. CLINTON) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 885, a bill to amend title XVIII of the Social Security Act to provide for national standardized payment amounts for inpatient hospital services furnished under the medicare program.

S. 887

At the request of Mr. WELLSTONE, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 887, a bill to amend the Torture Victims Relief Act of 1986 to authorize appropriations to provide assistance for domestic centers and programs for the treatment of victims of torture.

S. 890

At the request of Mr. MCCAIN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 890, a bill to require criminal background checks on all firearms transactions occurring at events that provide a venue for the sale, offer for sale, transfer, or exchange of firearms, and to provide additional resources for gun crime enforcement.

S. 940

At the request of Mr. DODD, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 940, a bill to leave no child behind.

S. 1017

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 1017, a bill to provide the people of Cuba with access to food and medicines from the United States, to ease restrictions on travel to Cuba, to provide scholarships for certain Cuban nationals, and for other purposes.

At the request of Mr. DODD, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1017, supra.

S. 1047

At the request of Mr. GRAMM, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 1047, a bill to amend the Internal Revenue Code of 1986 to provide for nonrecognition of gain on dispositions of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, and for other purposes.

S. 1050

At the request of Mr. SANTORUM, the name of the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 1050, a bill to protect infants who are born alive.

S. 1052

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 1052, a bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

S. 1078

At the request of Mr. LEVIN, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 1078, a bill to promote brownfields redevelopment in urban and rural areas and spur community revitalization in low-income and moderate-income neighborhoods.

S. 1079

At the request of Mr. LEVIN, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 1079, a bill to amend the Public Works and Economic Development Act of 1965 to provide assistance to communities for the redevelopment of brownfield sites.

S. 1087

At the request of Mr. CONRAD, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 1087, a bill to amend the Internal Revenue Code of 1986 to provide a shorter recovery period of the depreciation of certain leasehold improvements.

S. 1104

At the request of Mr. GRAHAM, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1104, a bill to establish objectives for negotiating, and procedures for, implementing certain trade agreements.

S. 1116

At the request of Mr. INOUYE, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1116, a bill to amend the Foreign Assistance Act of 1961 to provide increased foreign assistance for tuberculosis prevention, treatment, and control.

S. 1119

At the request of Mr. LEAHY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1119, a bill to require the Secretary of Defense to carry out a study of the extent to the coverage of members of the Selected Reserve of the Ready Reserve of the Armed Forces under health benefits plans and to submit a report on the study of Congress, and for other purposes.

S. 1152

At the request of Mr. DURBIN, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 1152, a bill to ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses, and for other purposes.

S. CON. RES. 53

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. Con. Res. 53, concurrent resolution encouraging the development of strategies to reduce hunger and poverty, and to promote free market economies and democratic institutions, in sub-Saharan Africa.

At the request of Mr. HAGEL, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. Con. Res. 53, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CLELAND (for himself and Mr. MILLER):

S. 1184. A bill to designate the facility of the United States Postal Service located at 2853 Candler Road in Decatur, Georgia, as the ''Earl T. Shinhoster Post Office''; to the Committee on Governmental Affairs.

Mr. CLELAND. Mr. President, I rise today to recognize Mr. Earl Shinhoster for his distinguished career of service to the public and the cause of civil and human rights. In tribute to Mr. Shinhoster I hereby introduce legislation to designate the facility of the United States Postal Service located at 2853 Candler Road in Decatur, Georgia, as the ''Earl T. Shinhoster Post Office.'' Before his tragic death on June 12, 2000, he had been an active member of the National Association for the Advancement of Colored People, NAACP, for more than 30 years as both a volunteer and staff member, most recently as Acting Executive Director and Chief Executive Officer of its National Board of Directors in 1996, and Southeast Regional Director from 1978–1994.

In May 1998, Mr. Shinhoster was Chairman of the Georgia Delegation to the National Summit on Africa and he was the Field Director for the National Democratic Institute in Accra, Ghana from 1996 to 1997 where he observed and monitored the 1996 Presidential and Parliamentary elections. He also monitored and observed the electoral process in South Africa and Nigeria. He was active on both the State and local level serving in the administration of Georgia Governor George Busbee from 1975 to 1978 as Director of the Governor's Office of Human Affairs. In 1998, Mr. Shinhoster served as Coordinator of Voter Education for the State's Election Division.

Earl Shinhoster earned his Bachelor of Arts degree in political science from Morehouse College in Atlanta, GA in 1972 before pursuing legal studies at Cleveland State University College of Law in Cleveland, OH. The particular Post Office to be named after him is the same Post Office in South DeKalb where he retrieved his mail and is located in the same community where his family and friends still reside today. I, along with Senator MILLER, urge my colleagues to support this legislation and recognize Mr. Shinhoster's long and distinguished career as a public servant promoting civil and human rights in Georgia, the United States, and around the world. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1184

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

SECTION 1. DESIGNATION OF EARL T. SHINHOSTER POST OFFICE.

(a) IN GENERAL.—The facility of the United States Postal Service located at 2853 Candler Road in Decatur, Georgia, shall be known and designated as the ''Earl T. Shinhoster Post Office''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Earl T. Shinhoster Post Office.

By Mr. WYDEN (for himself and Ms. SNOWE):

S. 1185. A bill to amend title XVIII of the Social Security Act to assure access of Medicare beneficiaries to prescription drug coverage through the SPICE drug benefit program; to the Committee on Finance.

Mr. WYDEN. Mr. President, today Senator SNOWE and I are introducing our bipartisan legislation to provide a Medicare prescription drug benefit. Yesterday, I spoke about our proposal, The Senior Prescription Insurance Coverage Equity Act of 2001. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1185

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Seniors Prescription Insurance Coverage Equity (SPICE) Act of 2001''.

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

SEC. 2. SPICE DRUG BENEFIT PROGRAM.

(a) IN GENERAL.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by redesignating part D as part E and by inserting after part C the following new part:

''PART D—SPICE DRUG BENEFIT PROGRAM

''ESTABLISHMENT OF SPICE DRUG BENEFIT PROGRAM

''SEC. 1860A. (a) ACCESS TO SPICE PRESCRIPTION DRUG COVERAGE.—

''(1) IN GENERAL.—Beginning in 2003, the SPICE Board (established under section 1860M) shall provide for a SPICE drug benefit program under which all eligible medicare beneficiaries who voluntarily enroll under this part shall be entitled to obtain SPICE prescription drug coverage (meeting the terms and conditions under this part) as follows:

''(A) MEDICARE+CHOICE PLAN.—If the eligible medicare beneficiary is eligible to enroll in a Medicare+Choice plan, the beneficiary may enroll in the plan and obtain SPICE prescription drug coverage (as defined in section 1860B(a)) through such plan.

''(B) MEDICARE SUPPLEMENTAL POLICY.—If the eligible medicare beneficiary is not enrolled in a Medicare+Choice plan but is enrolled in a medicare supplemental policy, the beneficiary may—

''(i) obtain SPICE prescription drug coverage through such policy; or

''(ii) waive basic coverage (as defined in section 1860B(b)) pursuant to section 1860C(a)(3) and obtain financial assistance pursuant to section 1860K(c) for stop-loss coverage (as defined in section 1860B(c)) provided under such policy.

''(C) MEDICARE DRUG PLAN FOR NONCOMPETITIVE AREAS.—If the eligible medicare beneficiary is not enrolled in a Medicare+Choice plan, a medicare supplemental policy, or a basic coverage plan under section 1860F, and there is a Medicare Drug Plan for Noncompetitive Areas available in the area in which the beneficiary resides, the beneficiary may obtain SPICE prescription drug coverage under this part through enrollment in such plan.

''(D) BASIC COVERAGE ONLY THROUGH A PRIVATE ENTITY.—If the eligible medicare beneficiary is not enrolled in a Medicare+Choice plan, a medicare supplemental policy, or a Medicare Drug Plan for Noncompetitive Areas, the beneficiary may obtain basic coverage (including financial assistance for such coverage under section 1860K(b) and access to negotiated prices under section 1860B(d)) through enrollment in a plan offered by a private entity with a contract to offer such plan under section 1860F.

''(2) VOLUNTARY NATURE OF PROGRAM.—Nothing in this part shall be construed as requiring an eligible medicare beneficiary to enroll in the program established under this part.

''(3) ADMINISTRATION OF BENEFITS.—In providing SPICE prescription drug coverage to an eligible medicare beneficiary under this part, an entity offering a medicare supplemental policy, a Medicare+Choice plan, a Medicare Drug Plan for Noncompetitive Areas, or a basic coverage plan under section 1860F may—

''(A) directly administer the benefits under such coverage; or

''(B) contract with an entity that meets the applicable requirements under this part to administer such benefits.

''(b) ACCESS TO ALTERNATIVE PRESCRIPTION DRUG COVERAGE.—In the case of an eligible medicare beneficiary who has creditable prescription drug coverage (as defined in section 1860C(b)(4)) under a policy or plan, such beneficiary—

''(1) may continue to receive such coverage under such policy or plan and not enroll under this part; and

''(2) pursuant to section 1860C(b)(3), is permitted to subsequently enroll under this

part and obtain SPICE prescription drug coverage without any penalty if such policy or plan terminated, ceased to provide, or substantially reduced the value of the prescription drug coverage under such plan or policy.

''(c) FINANCIAL ASSISTANCE.—

''(1) UNDER SPICE DRUG BENEFIT PROGRAM.—Under the SPICE drug benefit program, the SPICE Board shall provide financial assistance, with such assistance varying depending upon the income of such beneficiary, for any eligible medicare beneficiary enrolled under this part who voluntarily obtains—

''(A) basic coverage (pursuant to subsection (b) of section 1860K); or

''(B) stop-loss coverage (pursuant to subsection (c) of such section).

''(2) ASSISTANCE TO GROUP HEALTH PLANS THAT PROVIDE PRESCRIPTION DRUG COVERAGE TO ELIGIBLE MEDICARE BENEFICIARIES.—Pursuant to the Employer Incentive Program established under section 1860L, the SPICE Board shall make payments to employers and other sponsors of employment-based health care coverage to encourage such employers and sponsors to provide adequate prescription drug coverage to retired individuals.

''(d) ELIGIBLE MEDICARE BENEFICIARY DEFINED.—For purposes of this part, the term 'eligible medicare beneficiary' means an individual who is entitled to benefits under part A and enrolled under part B.

''(e) FINANCING.—The costs of providing benefits under this part shall be payable from the SPICE Prescription Drug Account (as established under section 1860N) within the Federal Supplementary Medical Insurance Trust Fund under section 1841.

''SPICE PRESCRIPTION DRUG COVERAGE

''SEC. 1860B. (a) IN GENERAL.—For purposes of this part, the term 'SPICE prescription drug coverage' means coverage consisting of the following:

''(1) BASIC COVERAGE.—Basic coverage (as defined in subsection (b)) and access to negotiated prices under subsection (d), except as waived pursuant to section 1860C(a)(3).

''(2) STOP-LOSS COVERAGE.—Stop-loss coverage (as defined in subsection (c)).

''(b) BASIC COVERAGE.—For purposes of this part, the term 'basic coverage' means coverage of covered outpatient drugs (as defined in subsection (e)) that meets the following requirements:

''(1) DEDUCTIBLE.—The coverage has an annual deductible—

''(A) for 2003, that is equal to $350; or

''(B) for a subsequent year, that is equal to the amount specified under this paragraph for the previous year increased by the percentage specified in paragraph (4) for the year involved.

Any amount determined under subparagraph (B) that is not a multiple of $5 shall be rounded to the nearest multiple of $5.

''(2) COINSURANCE.—The coverage has coinsurance (for the cost of a covered outpatient drug above the annual deductible specified in paragraph (1) for the year and up to the initial coverage limit specified in paragraph (3) for the year) that does not exceed 25 percent of the cost of such drug.

''(3) INITIAL COVERAGE LIMIT.—

''(A) IN GENERAL.—The coverage has an initial coverage limit for covered outpatient drugs in a year that is reached when the eligible medicare beneficiary has incurred the applicable amount of out-of-pocket expenses in the year.

''(B) APPLICABLE AMOUNT DEFINED.—For purposes of subparagraph (A), the term 'applicable amount' means—

''(i) for 2003, $3,000; or

''(ii) for a subsequent year, the amount specified in this subparagraph for the previous year, increased by the annual percentage increase described in paragraph (4) for the year involved.

Any amount determined under clause (ii) that is not a multiple of $25 shall be rounded to the nearest multiple of $25.

''(C) APPLICATION.—In applying paragraph (1)—

''(i) incurred out-of-pocket expenses shall only include expenses incurred for the annual deductible (described in paragraph (1)) and coinsurance (described in paragraph (2)); and

''(ii) such expenses shall be treated as incurred without regard to whether the individual or another person, including a State program or other third-party coverage, has paid for such expenses.

''(4) ANNUAL PERCENTAGE INCREASE.—For purposes of this part, the annual percentage increase specified in this paragraph for a year is equal to the annual percentage increase in average per capita aggregate expenditures for benefits under this title, as determined by the Secretary for the 12-month period ending in July of the previous year.

''(c) STOP-LOSS COVERAGE.—For purposes of this part, the term 'stop-loss coverage' means coverage of covered outpatient drugs in a year without any coinsurance after the eligible medicare beneficiary has reached the initial coverage limit specified in subsection (b)(3) for the year.

''(d) ACCESS TO NEGOTIATED PRICES.—Under SPICE prescription drug coverage offered under a policy or plan, the entity offering the policy or plan (or the administering entity pursuant to subsection (a)(3)(B)) shall provide beneficiaries with access to negotiated prices (including applicable discounts) used for payment for covered outpatient drugs, regardless of the fact that no benefits may be payable under the coverage with respect to such drugs because of the application of the annual deductible.

''(e) COVERED OUTPATIENT DRUGS DEFINED.—

''(1) IN GENERAL.—Except as provided in this subsection, for purposes of this part, the term 'covered outpatient drug' means—

''(A) a drug that may be dispensed only upon a prescription and that is described in subparagraph (A)(i) or (A)(ii) of section 1927(k)(2); or

''(B) a biological product described in clauses (i) through (iii) of subparagraph (B) of such section or insulin described in subparagraph (C) of such section,

and such term includes any use of a covered outpatient drug for a medically accepted indication (as defined in section 1927(k)(6)).

''(2) EXCLUSIONS.—

''(A) IN GENERAL.—Such term does not include drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under section 1927(d)(2), other than subparagraph (E) thereof (relating to smoking cessation agents) and except to the extent otherwise specifically provided by the SPICE Board with respect to a drug in any of such classes.

''(B) AVOIDANCE OF DUPLICATE COVERAGE.—A drug prescribed for an individual that would otherwise be a covered outpatient drug under this part shall not be so considered if payment for such drug is available under part A or B or would be available under part B but for the application of a deductible under such part (but shall be so considered if such payment is not available because benefits under part A or B have been exhausted).

''(3) APPLICATION OF FORMULARY RESTRICTIONS.—A drug prescribed for an individual that would otherwise be a covered outpatient drug under this part shall not be so considered under a policy or plan if the policy or plan excludes the drug under a formulary that meets the requirements of section 1860I(c)(3) (including providing an appeal process).

''(4) APPLICATION OF GENERAL EXCLUSION PROVISIONS.—An entity may exclude from SPICE prescription drug coverage any covered outpatient drug—

''(A) for which payment would not be made if section 1862(a) applied to part D; or

''(B) which are not prescribed in accordance with the policy or plan or this part.

Such exclusions are determinations subject to reconsideration and appeal pursuant to section 1860I(c)(6).

''ENROLLMENT UNDER SPICE DRUG BENEFIT PROGRAM

''SEC. 1860C. (a) ESTABLISHMENT OF PROCESS.—

''(1) ESTABLISHMENT.—

''(A)IN GENERAL.—The SPICE Board, in consultation with the Secretary, the National Association of Insurance Commissioners, issuers of medicare supplemental policies, and Medicare+Choice organizations, shall establish a process through which an eligible medicare beneficiary (including an eligible medicare beneficiary enrolled in a Medicare+Choice plan) may enroll under this part.

''(B) SIMILAR TO PART B.—

''(i) IN GENERAL.—Except as provided in clause (ii), the process established under subparagraph (A) shall be similar to the process for enrollment in part B under section 1837.

''(ii) BENEFICIARY MUST AFFIRMATIVELY ENROLL.—Notwithstanding section 1837(f), such process shall require that an eligible medicare beneficiary affirmatively enroll under this part rather than deeming the beneficiary to be so enrolled if certain requirements are met.

''(2) REQUIREMENT OF ENROLLMENT.—An eligible medicare beneficiary must enroll under this part in order to be eligible to receive SPICE prescription drug coverage, including financial assistance for basic and stop-loss coverage under section 1860K.

''(3) WAIVER OF BASIC COVERAGE FOR MEDIGAP ENROLLEES.—

''(A) IN GENERAL.—The process established under paragraph (1) shall permit a beneficiary enrolled under this part and enrolled under a medicare supplemental policy to—

''(i) waive the basic coverage available under this part; and

''(ii) rescind such waiver in order to obtain such coverage.

''(B) RULES.—If a beneficiary waives basic coverage pursuant to subparagraph (A)(i), the following rules shall apply:

''(i) Such waiver shall not effect the stop-loss coverage that the beneficiary receives under the medicare supplemental policy, including the entitlement to financial assistance under section 1860K(c) for such coverage.

''(ii) The beneficiary shall not be liable for the basic monthly premium under section 1860H(a).

''(iii) The beneficiary shall not receive basic coverage but shall be entitled to negotiated prices for covered outpatient drugs as if the beneficiary had not waived such coverage.

''(iv) If the beneficiary subsequently rescinds such waiver pursuant to subparagraph (A)(ii), the beneficiary shall be subject to the late enrollment penalty under subsection (b).

''(b) LATE ENROLLMENT PENALTY.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, in the case of an eligible medicare beneficiary whose coverage period under this part began pursuant to an enrollment after the beneficiary's initial enrollment period under part B (determined pursuant to section 1837(d)) and not pursuant to the open enrollment period described in subsection (c), the SPICE

Board shall establish procedures for increasing the amount of the basic monthly premium under section 1860H(a) applicable to such beneficiary—

''(A) by an amount that is equal to 25 percent of such premium for each full 12-month period (in the same continuous period of eligibility) in which the eligible medicare beneficiary could have been enrolled under this part but was not so enrolled; or

''(B) if determined appropriate by the SPICE Board, by an amount that the SPICE Board determines is actuarily sound for each such period.

''(2) PERIODS TAKEN INTO ACCOUNT.—For purposes of calculating any 12-month period under paragraph (1), there shall be taken into account—

''(A) the months which elapsed between the close of the eligible medicare beneficiary's initial enrollment period and the close of the enrollment period in which the beneficiary enrolled;

''(B) in the case of an eligible medicare beneficiary who reenrolls under this part, the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period in which the beneficiary reenrolled; and

''(C) in the case of an eligible medicare beneficiary who is enrolled under this part but has waived basic coverage pursuant to subsection (a)(3), the months which elapsed between the effective date of such waiver and the effective date of the rescission of such waiver.

''(3) PERIODS NOT TAKEN INTO ACCOUNT.—

''(A) IN GENERAL.—For purposes of calculating any 12-month period under paragraph (1), subject to subparagraph (B), there shall not be taken into account months for which the eligible medicare beneficiary can demonstrate that the beneficiary—

''(i) met such exceptional conditions (including conditions recognized under section 1851(e)(4)(D)) as the SPICE Board may provide; or

''(ii) had creditable prescription drug coverage (as defined in paragraph (4)).

''(B) APPLICATION.—The exception described in subparagraph (A)(ii) shall only apply with respect to a coverage period the enrollment for which occurs before the end of the 63-day period that begins on the first day of the month which includes the date on which the policy or plan involved terminates, ceases to provide, or substantially reduces the value of the prescription drug coverage under such policy or plan.

''(4) PRESCRIPTION DRUG COVERAGE.—For purposes of this part, the term 'creditable prescription drug coverage' means any of the following:

''(A) MEDICAID PRESCRIPTION DRUG COVERAGE.—Prescription drug coverage under a medicaid plan under title XIX, including through the Program of All-inclusive Care for the Elderly (PACE) under section 1934, through a social health maintenance organization (referred to in section 4104(c) of the Balanced Budget Act of 1997), or through a Medicare+Choice project that demonstrates the application of capitation payment rates for frail elderly medicare beneficiaries through the use of a interdisciplinary team and through the provision of primary care services to such beneficiaries by means of such a team at the nursing facility involved.

''(B) PRESCRIPTION DRUG COVERAGE UNDER GROUP HEALTH PLAN.—Any outpatient prescription drug coverage under a group health plan, including a health benefits plan under the Federal Employees Health Benefit Plan under chapter 89 of title 5, United States Code, and a qualified retiree prescription drug plan as defined in section 1860L(e)(3).

''(C) PRESCRIPTION DRUG COVERAGE UNDER CERTAIN MEDIGAP POLICIES.—Coverage under a medicare supplemental policy under section 1882 that provides benefits for prescription drugs but only if the policy was in effect on December 31, 2002, and only until the date such coverage is terminated.

''(D) STATE PHARMACEUTICAL ASSISTANCE PROGRAM.—Coverage of prescription drugs under a State pharmaceutical assistance program.

''(E) VETERANS' COVERAGE OF PRESCRIPTION DRUGS.—Coverage of prescription drugs for veterans under chapter 17 of title 38, United States Code.

''(5) PERIODS TREATED SEPARATELY.—Any increase in an eligible medicare beneficiary's basic monthly premium under paragraph (1) with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which the beneficiary may have.

''(6) CONTINUOUS PERIOD OF ELIGIBILITY.—

''(A) IN GENERAL.—Subject to subparagraph (B), for purposes of this subsection, an eligible medicare beneficiary's 'continuous period of eligibility' is the period that begins with the first day on which the beneficiary is eligible to enroll under section 1836 and this part and ends with the beneficiary's death.

''(B) SEPARATE PERIOD.—Any period during all of which an eligible medicare beneficiary satisfied paragraph (1) of section 1836 and which terminated during or before the month preceding the month in which the beneficiary attained age 65 shall be a separate 'continuous period of eligibility' with respect to the beneficiary (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this subparagraph).

''(c) OPEN ENROLLMENT PERIOD FOR CURRENT BENEFICIARIES IN WHICH LATE ENROLLMENT PROCEDURES DO NOT APPLY.—The SPICE Board shall establish an applicable period, which shall begin on the date on which the SPICE Board first begins to accept enrollments under this part, during which any eligible medicare beneficiary may enroll under this part without the application of the late enrollment procedures established under subsection (b)(1).

''(d) PERIOD OF COVERAGE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), an eligible medicare beneficiary's coverage under the program under this part shall be effective for the period provided in section 1838, as if that section applied to the program under this part.

''(2) OPEN ENROLLMENT.—An eligible medicare beneficiary who enrolls under the program under this part pursuant to subsection (c) shall be entitled to the benefits under this part beginning on the first day of the month following the month in which such enrollment occurs.

''(3) RESCISSION OF WAIVER.—The SPICE Board shall establish procedures regarding coverage periods for an eligible medicare beneficiary enrolled under this part who previously waived basic coverage under subsection (a)(3) and now wishes to rescind such waiver.

''(4) LIMITATION.—Coverage under this part shall not begin prior to January 1, 2003.

''(e) TERMINATION.—

''(1) IN GENERAL.—The causes of termination specified in section 1838 shall apply to this part in the same manner as they apply to part B.

''(2) COVERAGE TERMINATED BY TERMINATION OF COVERAGE UNDER PARTS A AND B.—

''(A) IN GENERAL.—In addition to the causes of termination described in paragraph (1), the SPICE Board shall terminate an individual's coverage under this part if the individual is no longer enrolled in either part A or B.

''(B) EFFECTIVE DATE.—The termination described in subparagraph (A) shall be effective on the effective date of termination of coverage under part A or (if earlier) under part B.

''(3) PROCEDURES REGARDING TERMINATION OF A BENEFICIARY UNDER A PLAN OR POLICY.—The SPICE Board shall establish procedures for determining the status of an eligible medicare beneficiary's enrollment under this part if the beneficiary's enrollment in a medicare supplemental policy, a Medicare+Choice plan, a Medicare Drug Plan for Noncompetitive Areas, or a basic coverage plan under section 1860F is terminated by the entity offering such policy or plan for cause (under the applicable requirements established under this title).

''ENROLLMENT IN A POLICY OR PLAN

''SEC. 1860D. (a) ENROLLMENT IN MEDICARE DRUG PLAN FOR NONCOMPETITIVE AREAS.—The SPICE Board shall establish a process through which an eligible medicare beneficiary who is enrolled under this part (but not enrolled in a medicare supplemental policy, a Medicare+Choice plan, or a basic coverage plan under section 1860F) and resides in an area in which a Medicare Drug Plan for Noncompetitive Areas is available may enroll in such plan. Such process shall include rules for enrollment, disenrollment, and termination of enrollment in such plan.

''(b) ENROLLMENT IN A MEDICARE SUPPLEMENTAL POLICY OR A MEDICARE+CHOICE PLAN.—Enrollment in a medicare supplemental policy or a Medicare+Choice plan is subject to the rules for enrollment in such policy or plan under sections 1882 and 1851, respectively.

''(c) ENROLLMENT IN A BASIC COVERAGE PLAN OFFERED BY A PRIVATE ENTITY WITH A CONTRACT UNDER THIS PART.—The SPICE Board shall establish a process through which an eligible medicare beneficiary who is enrolled under this part (but not enrolled in a medicare supplemental policy, a Medicare+Choice plan, or a Medicare Drug Plan for Noncompetitive Areas) may enroll in a basic coverage plan offered by a private entity with a contract under section 1860F to offer such plan. Such process shall include rules for enrollment, disenrollment, and termination of enrollment in such plan.

''(d) COORDINATION OF ENROLLMENTS, DISENROLLMENTS, AND TERMINATIONS OF ENROLLMENTS.—The SPICE Board shall establish procedures for coordinating enrollments, disenrollments and terminations of enrollments under plans described in subsections (a) and (c) with enrollments, disenrollments and terminations of enrollments under part C.

''MEDICARE DRUG PLAN FOR NONCOMPETITIVE AREAS

''SEC. 1860E. (a) IN GENERAL.—The SPICE Board shall provide for a Medicare Drug Plan for Noncompetitive Areas that—

''(1) provides enrollees with SPICE prescription drug coverage; and

''(2) is available to eligible medicare beneficiaries residing in an area that has been designated by the SPICE Board as a noncompetition area.

''(b) DESIGNATION OF NONCOMPETITION AREA.—

''(1) IN GENERAL.—The SPICE Board shall establish procedures for designating areas as noncompetition areas.

''(2) NONCOMPETITION AREA DEFINED.—

''(A) IN GENERAL.—For purposes of this section, the term 'noncompetition area' means an area in which only 1 or no medicare supplemental policy is available to eligible medicare beneficiaries residing in the area.

''(B) CONSTRUCTION REGARDING MULTIPLE POLICIES OFFERED BY SINGLE ISSUER.—If there is an entity that offers more that 1 type of

medicare supplemental policy in an area, then that area is not a noncompetition area for purposes of this section.

''(c) CONTRACTS.—In order to provide the Medicare Drug Plan for Noncompetitive Areas under this section, the SPICE Board shall do 1 of the following:

''(1) SINGLE CONTRACT THAT COVERS ALL NONCOMPETITION AREAS.—Enter into a contract with 1 entity to administer and deliver the benefits under the plan in every designated noncompetition area.

''(2) MULTIPLE CONTRACTS.—Enter into a contract with 1 entity to administer and deliver the benefits under the plan in 1 or more (but less than all) of the designated noncompetition areas.

''(d) BIDDING PROCESS.—

''(1) IN GENERAL.—The SPICE Board shall establish procedures under which the SPICE Board accepts bids submitted by entities and awards a contract (or contracts pursuant to subsection (c)(2)) to an entity in order to administer and deliver the benefits under the Medicare Drug Plan for Noncompetitive Areas to eligible medicare beneficiaries.

''(2) COMPETITIVE PROCEDURES.—Competitive procedures (as defined in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5))) shall be used to enter into contracts under this section.

''(e) REQUIREMENTS FOR ENTITIES.—

''(1) IN GENERAL.—The SPICE Board may not award a contract to an entity under this section unless the entity meets such terms and conditions as the SPICE Board shall specify, including the following:

''(A) The terms and conditions described in section 1860I(c).

''(B) The entity meets the quality and financial standards specified by the SPICE Board.

''(C) The entity meets applicable State licensure requirements.

''(2) PREMIUMS.—The terms and conditions specified under paragraph (1) shall—

''(A) permit an entity with a contract under this section to require that beneficiaries enrolled in the plan covered by the contract pay a premium for benefits provided under the contract; and

''(B) except as provided in section 1860H(b)(3) (relating to an increased premium for delayed enrollment under this part), require that the amount of any such premium is the same for all beneficiaries enrolled in the plan.

''SELECTION OF PRIVATE ENTITIES TO PROVIDE BASIC COVERAGE PLANS

''SEC. 1860F. (a) SELECTION OF ENTITIES.—

''(1) IN GENERAL.—The SPICE Board shall establish procedures under which the SPICE Board—

''(A) accepts bids submitted by private entities for the basic coverage plans which such entities intend to offer in an area established under subsection (b); and

''(B) awards contracts to such entities to provide such plans to eligible medicare beneficiaries in the area.

''(2) COMPETITIVE PROCEDURES.—Competitive procedures (as defined in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5))) shall be used to enter into contracts under this section.

''(b) AREAS FOR CONTRACTS.—

''(1) IN GENERAL.—The SPICE Board shall determine the areas to award contracts under this section.

''(2) NO ADMINISTRATIVE OR JUDICIAL REVIEW.—The determination of contract areas under paragraph (1) shall not be subject to administrative or judicial review.

''(3) MULTIPLE CONTRACTS.—If determined appropriate, the SPICE Board may award more than 1 contract in a contract area.

''(c) REQUIREMENTS FOR ENTITIES.—

''(1) IN GENERAL.—The SPICE Board may not award a contract to a private entity under this section unless the entity meets such terms and conditions as the SPICE Board shall specify, including the following:

''(A) The terms and conditions described in section 1860I(c).

''(B) The entity meets the quality and financial standards specified by the SPICE Board.

''(C) The entity meets applicable State licensure requirements.

''(D) Under the plan, the entity will provide basic coverage with access to negotiated prices.

''(d) PRIVATE ENTITY DEFINED.—For purposes of this part, the term 'private entity' means any private entity that the SPICE Board determines to be appropriate to provide basic coverage plans to eligible medicare beneficiaries under this part, including—

''(1) a pharmacy benefit management company;

''(2) a retail pharmacy delivery system;

''(3) a health plan or insurer;

''(4) any other private entity approved by the SPICE Board; or

''(5) any combination of the entities described in paragraphs (1) through (4) approved by the SPICE Board.

''PROVIDING INFORMATION TO BENEFICIARIES

''SEC. 1860G. (a) ACTIVITIES.—

''(1) IN GENERAL.—The SPICE Board shall provide for activities that are designed to broadly disseminate information to eligible medicare beneficiaries (and prospective eligible medicare beneficiaries) on the SPICE drug benefit program under this part.

''(2) LATE ENROLLMENT PENALTIES TO BE WELL PUBLICIZED.—The SPICE Board shall ensure that information on the sanctions for delayed enrollment under section 1860C(b) and on the possibility of increased premiums for stop-loss coverage under section 1860H(b)(3) are well publicized.

''(3) SPECIAL RULE FOR INITIAL ENROLLMENT UNDER THE PROGRAM.—

''(A) CONSULTATION.—The SPICE Board shall consult with the Secretary, issuers of medicare supplemental policies, State insurance commissioners, Medicare+Choice organizations, and interested consumer organizations in developing the activities described in paragraph (1) that will be used to provide information regarding the initial enrollment under this part during the period described in section 1860C(c).

''(B) TIMEFRAME.—The activities described in paragraph (1) shall ensure that eligible medicare beneficiaries (and prospective eligible medicare beneficiaries) are provided with such information not later that December 1, 2002, in order to ensure that coverage under this part may be effective as of January 1, 2003.

''(4) COORDINATION WITH ACTIVITIES PERFORMED BY THE SECRETARY.—The SPICE Board shall work with the Secretary to ensure that the activities provided under this subsection are coordinated with the activities performed by the Secretary that provide information with respect to benefits under this title to eligible medicare beneficiaries and prospective eligible medicare beneficiaries.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—The activities described in subsection (a) shall—

''(A) be similar to the activities performed under section 1851 (including the approval of policy marketing materials and maintaining a toll-free number and an Internet site); and

''(B) include provisions to ensure that consumer counselors are available to provide face-to-face counseling to eligible medicare beneficiaries (and prospective eligible medicare beneficiaries) on the SPICE drug benefit program under this part.

''(2) CONTRACTS TO PROVIDE CONSUMER COUNSELING.—The SPICE Board may contract with private entities to provide the consumer counseling described in paragraph (1)(B).

''(c) COORDINATION WITH OTHER INFORMATION.—The SPICE Board shall, in cooperation with the Secretary, enter into such arrangements as may be appropriate to disseminate the information referred to in subsection (a) in coordination with materials distributed by the Secretary to medicare beneficiaries, including the medicare handbook under section 1804 and materials distributed under section 1851(d).

''PREMIUMS

''SEC. 1860H. (a) PREMIUM FOR BASIC COVERAGE FOR ALL BENEFICIARIES.—

''(1) ANNUAL ESTABLISHMENT OF BASIC MONTHLY PREMIUM RATES.—The SPICE Board shall, during September of each year (beginning in 2002), determine and promulgate a basic monthly premium rate for the succeeding year in accordance with the provisions of this subsection.

''(2) ACTUARIAL DETERMINATIONS.—

''(A) DETERMINATION OF ANNUAL BENEFIT AND ADMINISTRATIVE COSTS FOR BASIC COVERAGE.—The SPICE Board shall estimate annually for the succeeding year the amount equal to the total of the benefits (including financial assistance provided under subsections (b) and (c) of section 1860K and payments made to sponsors under section 1860L) and administrative costs that will be payable from the SPICE Prescription Drug Account within the Federal Supplementary Medical Insurance Trust Fund for providing benefits under this part in such calendar year.

''(B) DETERMINATION OF BASIC MONTHLY PREMIUM RATES.—

''(i) IN GENERAL.—The SPICE Board shall determine the basic monthly premium rate for such succeeding year, which shall be 1/12 of the amount determined under subparagraph (A), divided by the average total number of enrollees under this part who have not waived basic coverage under section 1860C(a)(3) (as estimated for the year), and rounded (if such rate is not a multiple of 10 cents) to the nearest multiple of 10 cents.

''(ii) PREMIUM REDUCED BY AMOUNT OF FINANCIAL ASSISTANCE.—The amount that shall be charged a beneficiary for basic coverage under this part is the basic monthly premium determined under clause (i), reduced by the amount of the financial assistance for basic coverage determined for the beneficiary under section 1860K(b).

''(3) PUBLICATION OF ASSUMPTIONS.—The SPICE Board shall publish, together with the promulgation of the basic monthly premium rates for the succeeding year, a statement setting forth the actuarial assumptions and bases employed in arriving at the amounts and rates determined under paragraphs (1) and (2).

''(4) COLLECTION OF PREMIUMS.—Any basic monthly premium applicable to an eligible medicare beneficiary pursuant to this subsection, after application of the reduction described in paragraph (2)(B)(ii) and any increase for late enrollment under section 1860C(b), shall be collected and credited to the SPICE Prescription Drug Account in the same manner as the monthly premium determined under section 1839 is collected and credited to the Federal Supplementary Medical Insurance Trust Fund under section 1840.

''(b) PREMIUMS FOR STOP-LOSS COVERAGE.—

''(1) BENEFICIARY RESPONSIBLE FOR MAKING PAYMENT DIRECTLY TO ENTITY.—Subject to paragraph (2), any eligible medicare beneficiary who is receiving stop-loss coverage, either through enrollment in a medicare supplemental policy, a Medicare+Choice plan, or

a Medicare Drug Plan for Noncompetitive Areas, shall be responsible for making payments for any premiums required under the policy or plan for such coverage directly to the entity offering such policy or plan.

''(2) PREMIUM REDUCED BY AMOUNT OF FINANCIAL ASSISTANCE.—The entity offering such policy or plan shall reduce the premium described in paragraph (1) by the amount of the financial assistance for stop-loss coverage determined for the beneficiary under section 1860K(c).

''(3) INCREASE IN PREMIUM FOR LATE ENROLLMENT OR FOR LACK OF CONTINUOUS STOP-LOSS COVERAGE.—In the case of an eligible medicare beneficiary who is subject to a late enrollment penalty under section 1860C or who has not had continuous stop-loss coverage under this part because the beneficiary was enrolled in a basic coverage plan under section 1860F, the entity offering the medicare supplemental policy, the Medicare+Choice plan, or the Medicare Drug Plan for Noncompetitive Areas in which the beneficiary is enrolled may, notwithstanding any provision in this title, increase the portion of the premium attributable to stop-loss coverage that is otherwise applicable to such beneficiary for such enrollment in a manner that reflects the additional actuarial risk involved. Such a risk shall be established through an appropriate actuarial opinion of the type described in subparagraphs (A) through (C) of section 2103(c)(4).

''APPROVAL FOR ENTITIES OFFERING SPICE PRESCRIPTION DRUG COVERAGE

''SEC. 1860I. (a) APPROVAL.—No payments may be made to an entity offering a policy or plan that provides SPICE prescription drug coverage under section 1860J unless the entity has been approved by the SPICE Board.

''(b) PROCEDURES.—

''(1) IN GENERAL.—The SPICE Board shall establish procedures for approving entities that offer policies and plans that provide SPICE prescription drug coverage under this part, including an entity with a contract under section 1860F.

''(2) COORDINATION.—The procedures established under subparagraph (A) shall be coordinated with—

''(A) in the case of the approval of medicare supplemental policies, the procedures for approval of such policies under State law; and

''(B) in the case of the approval of Medicare+Choice plans, the procedures established by the Secretary for approval of such plans under part C.

''(c) TERMS AND CONDITIONS.—The SPICE Board may not approve an entity under subsection (b) unless the entity, with respect to such policy or plan, meets such terms and conditions as the SPICE Board shall specify, including the following:

''(1) DISSEMINATION OF INFORMATION.—

''(A) GENERAL INFORMATION.—The entity shall disclose, in a clear, accurate, and standardized form to each enrollee under the policy or plan at the time of enrollment and at least annually thereafter, the information described in section 1852(c)(1) relating to such policy or plan. Such information shall include the following:

''(i) Access to covered outpatient drugs, including access through pharmacy networks.

''(ii) How any formulary used by the entity functions.

''(iii) Coinsurance and deductible requirements.

''(iv) Grievance and appeals procedures.

''(B) DISCLOSURE UPON REQUEST OF GENERAL COVERAGE, UTILIZATION, AND GRIEVANCE INFORMATION.—Upon request of an individual eligible to enroll under the policy or plan, the entity shall provide the information described in section 1852(c)(2) (other than subparagraph (D)) to such individual.

''(C) RESPONSE TO BENEFICIARY QUESTIONS.—The entity shall have a mechanism for providing specific information regarding the policy or plan to enrollees upon request and shall make available, through the Internet website described in paragraph (7) and in writing upon request, information on specific changes in its formulary.

''(D) CLAIMS INFORMATION.—The entity shall furnish to each enrollee under the plan or policy in a form easily understandable to such enrollees an explanation of benefits (in accordance with section 1806(a) or in a comparable manner) and a notice regarding how close the enrollee is to getting stop-loss coverage for the year, whenever prescription drug benefits are provided under this part (except that such notice need not be provided more often than monthly).

''(2) ACCESS TO COVERED BENEFITS.—

''(A) ASSURING PHARMACY ACCESS.—The entity shall secure the participation of sufficient numbers of pharmacies to ensure convenient access (including adequate emergency access) for enrollees under the policy or plan. Nothing in the preceding sentence shall be construed as requiring the participation of all pharmacies in any area under a policy or plan.

''(B) ACCESS TO NEGOTIATED PRICES FOR PRESCRIPTION DRUGS.—The entity shall issue a card that may be used by an enrollee under the policy or plan to assure access to negotiated prices pursuant to section 1860B(d).

''(3) FORMULARIES.—If an eligible entity uses a formulary under the policy or plan, such entity shall—

''(A) establish the formulary based on the medical needs of eligible medicare beneficiaries;

''(B) ensure that the formulary includes drugs within all therapeutic categories and classes of covered outpatient drugs (although not necessarily for all drugs within such categories and classes);

''(C) have in place an appeals process—

''(i) under which any eligible medicare beneficiary could receive any medically necessary covered outpatient drug that is not on the formulary;

''(ii) that does not impose a significant financial burden on an eligible medicare beneficiary or delay the provision of medically necessary covered outpatient drugs to such a beneficiary; and

''(iii) that provides for at least a level of protection that is similar to or better than the level of protection provided with respect to benefits under Medicare+Choice plans under part C; and

''(D) provide notification to enrollees of any change in the formulary at least 60 days prior to such change.

''(4) COST AND UTILIZATION MANAGEMENT; QUALITY ASSURANCE; MEDICATION THERAPY MANAGEMENT PROGRAM.—

''(A) IN GENERAL.—The entity shall have in place—

''(i) an effective cost and drug utilization management program, including appropriate incentives to use generic drugs when appropriate;

''(ii) quality assurance measures and systems to reduce medical errors and adverse drug interactions, including a medication therapy management program described in subparagraph (B); and

''(iii) a program to control fraud, abuse, and waste.

''(B) MEDICATION THERAPY MANAGEMENT PROGRAM.—

''(i) IN GENERAL.—A medication therapy management program described in this subparagraph is a program of drug therapy management and medication administration that is designed to assure that covered outpatient drugs under the policy or plan are appropriately used to achieve therapeutic goals and reduce the risk of adverse events, including adverse drug interactions.

''(ii) ELEMENTS.—Such program may include—

''(I) enhanced beneficiary understanding of such appropriate use through beneficiary education, counseling, and other appropriate means; and

''(II) increased beneficiary adherence with prescription medication regimens through medication refill reminders, special packaging, and other appropriate means.

''(iii) DEVELOPMENT OF PROGRAM IN COOPERATION WITH LICENSED PHARMACISTS.—The program shall be developed in cooperation with licensed pharmacists and physicians.

''(iv) CONSIDERATIONS IN PHARMACY FEES.—The entity shall take into account, in establishing fees for pharmacists and others providing services under the medication therapy management program, the resources and time used in implementing the program.

''(C) TREATMENT OF ACCREDITATION.—Section 1852(e)(4) (relating to treatment of accreditation) shall apply to policies and plans under this part with respect to the following requirements, in the same manner as they apply to Medicare+Choice plans under part C with respect to the requirements described in a clause of section 1852(e)(4)(B):

''(i) Subparagraph (A) (including quality assurance), including medication therapy management program under subparagraph (B).

''(ii) Paragraph (2)(A) (relating to access to covered benefits).

''(iii) Paragraph (8) (relating to confidentiality and accuracy of enrollee records).

''(5) GRIEVANCE MECHANISM.—The entity shall provide meaningful procedures for hearing and resolving grievances between the entity (including any entity or individual through which the entity provides covered benefits) and enrollees of the policy or plan under this part in accordance with section 1852(f).

''(6) COVERAGE DETERMINATIONS, RECONSIDERATIONS, AND APPEALS.—The entity shall meet the requirements of section 1852(g) with respect to covered benefits under the policy or plan it offers under this part in the same manner as such requirements apply to a Medicare+Choice organization with respect to benefits it offers under a Medicare+Choice plan under part C.

''(7) PROVIDE INFORMATION ON THE INTERNET.—The entity shall maintain a web site on the Internet that provides eligible medicare beneficiaries with information regarding any policy or plan offered by the entity that provides SPICE prescription drug coverage.

''(8) CONFIDENTIALITY AND ACCURACY OF ENROLLEE RECORDS.—The entity shall meet the requirements of section 1852(h) with respect to enrollees under this part in the same manner as such requirements apply to a Medicare+Choice organization with respect to enrollees under part C.

''(d) SPICE BOARD MODELS FOR FORMULARIES.—

''(1) MODEL.—The SPICE Board may issue models for formularies for use in providing covered outpatient drugs under this part. Such models, and any revised models (pursuant to paragraph (3)) shall meet the requirements of subparagraphs (A) and (B) of subsection (c)(3).

''(2) EFFECT OF COMPLIANCE WITH A MODEL.—If the SPICE Board determines that a formulary used by an entity offering a policy or plan that provides SPICE prescription drug coverage is in compliance with a model formulary issued under paragraph (1), or the revised model (as the case may be), then the

entity shall be deemed to meet the requirements of subparagraphs (A) and (B) of subsection (c)(3).

''(3) REVISIONS OF MODELS.—

''(A) IN GENERAL.—The SPICE Board may periodically (but not more frequently than annually) revise any model established under this subsection.

''(B) PERIOD TO COMPLY WITH REVISION.—If the SPICE Board revises a model formulary pursuant to subparagraph (A), the SPICE Board shall provide for an appropriate period of time for entities who were in compliance with such model before such revision to comply with the revised model.

''(e) RULE OF CONSTRUCTION REGARDING COST-EFFECTIVE PROVISION OF BENEFITS.—Nothing in this part shall be construed as preventing an entity that provides SPICE prescription drug coverage under a policy or plan from employing mechanisms to provide such coverage economically, including the use of—

''(1) formularies (pursuant to subsection (c)(3));

''(2) alternative methods of distribution;

''(3) generic drug substitution;

''(4) pharmacy networks; and

''(4) mail order pharmacies.

''PAYMENTS TO ENTITIES

''SEC. 1860J. (a) PAYMENTS FOR ADMINISTERING BASIC COVERAGE.—

''(1) IN GENERAL.—The SPICE Board shall establish procedures for making payments to an entity offering a medicare supplemental policy, a Medicare+Choice plan, a Medicare Drug Plan for Noncompetitive Areas, or a basic coverage plan under section 1860F for—

''(A) in accordance with the provisions of this part, the costs of covered outpatient drugs provided under basic coverage to eligible medicare beneficiaries—

''(i) enrolled under such policy or plan and under this part; and

''(ii) entitled to such coverage; and

''(B) pursuant to paragraph (2), administering the basic coverage on behalf of beneficiaries described in subparagraph (A).

''(2) ADMINISTRATIVE FEE.—

''(A) PROCEDURES.—The procedures established pursuant to paragraph (1) shall provide for payment to the entity of an administrative fee for each prescription filled by the entity for an eligible medicare beneficiary enrolled in the policy or plan offered by such entity. Subject to paragraph (3), the entity shall not be at risk for providing basic coverage for a beneficiary.

''(B) AMOUNT.—The fee described in paragraph (1) shall be—

''(i) negotiated by the SPICE Board; and

''(ii) consistent with such fees paid under private sector pharmaceutical benefit contracts.

''(C) REDUCTION OF ADMINISTRATIVE COSTS.—The SPICE Board shall work with entities receiving payments under this section on ways to control the administrative costs associated with providing basic coverage under this part.

''(3) RISK CORRIDORS TIED TO PERFORMANCE MEASURES AND OTHER INCENTIVES FOR ENTITY PROVIDING MEDICARE DRUG PLAN FOR NONCOMPETITIVE AREAS.—In the case of payments to an entity with a contract to provide a Medicare Drug Plan for Noncompetitive Areas, the procedures established under paragraph (1) may include the use of—

''(A) risk corridors tied to performance measures that have been agreed to between the entity and the SPICE Board under the contract; and

''(B) any other incentives that the SPICE Board determines appropriate.

''(4) SECONDARY PAYER PROVISIONS.—The provisions of section 1862(b) shall apply to basic coverage provided under this part.

''(b) PAYMENT OF FINANCIAL ASSISTANCE TO ENTITIES FOR PROVISION OF STOP-LOSS COVERAGE.—

''(1) IN GENERAL.—The SPICE Board shall establish procedures for making financial assistance payments for stop-loss coverage to an entity offering a medicare supplemental policy, a Medicare+Choice plan, or a Medicare Drug Plan for Noncompetitive Areas on behalf of an eligible medicare beneficiary enrolled in such policy or plan and under this part.

''(2) AMOUNT OF FINANCIAL ASSISTANCE PAYMENT.—The amount of the financial assistance payments on behalf of an eligible medicare beneficiary for stop-loss coverage is equal to the amount determined for the beneficiary under section 1860K(c).

''(3) ENTITY PROVIDING STOP-LOSS COVERAGE AT RISK.—The entity providing stop-loss coverage, and not the SPICE Board, shall be at risk for the provision of such coverage.

''FINANCIAL ASSISTANCE TO OBTAIN SPICE PRESCRIPTION DRUG COVERAGE

''SEC. 1860K. (a) IN GENERAL.—The SPICE Board shall provide financial assistance, in accordance with this section, with respect to eligible medicare beneficiaries who have SPICE prescription drug coverage through enrollment in a medicare supplemental policy, a Medicare+Choice plan, a Medicare Drug Plan for Noncompetitive Areas, or a basic coverage plan under section 1860F.

''(b) ASSISTANCE FOR BASIC COVERAGE.—

''(1) IN GENERAL.—The amount of financial assistance with respect to an eligible medicare beneficiary for basic coverage is equal to the following percentage of the basic monthly premium determined under subsection (a) of section 1860H (without regard to any increase for late enrollment under subsection (b) of such section):

''(A) 100 PERCENT IF INCOME BELOW 150 PERCENT OF POVERTY.—In the case of an eligible medicare beneficiary who applies for enhanced financial assistance under subsection (d) and whose income (as determined under such subsection) does not exceed 150 percent of the poverty line, the percentage is 100 percent.

''(B) OTHER PERCENT IF INCOME BETWEEN 150 AND 175 PERCENT OF POVERTY.—In the case of an eligible medicare beneficiary who applies for enhanced financial assistance under subsection (d) and whose income (as determined under such subsection) is greater than 150 percent, but does not exceed 175 percent, of the poverty line, the SPICE Board shall specify the percentage consistent with the following rules:

''(i) RANGE.—The percentage may not exceed 100 percent nor be less than 25 percent.

''(ii) SLIDING SCALE.—The percentage may not be higher for eligible medicare beneficiaries whose income is higher.

''(C) 25 PERCENT FOR OTHER BENEFICIARIES.—In the case of any other eligible medicare beneficiary, the percentage is 25 percent.

''(2) FORM OF ASSISTANCE.—Financial assistance under this subsection shall be provided in the form of a reduction of the basic monthly premium pursuant to section 1860H(a)(2)(B)(ii).

''(c) ASSISTANCE FOR STOP-LOSS COVERAGE.—

''(1) AMOUNT.—

''(A) IN GENERAL.—The amount of financial assistance for stop-loss coverage with respect to an eligible medicare beneficiary enrolled under this part and in a medicare supplemental policy, a Medicare+Choice plan, or a Medicare Drug Plan for Noncompetitive Areas for stop-loss coverage is equal to the following percentage of the national average medigap stop-loss monthly premium for the region in which the beneficiary resides (as determined under paragraph (2)):

''(i) 100 PERCENT IF INCOME BELOW 150 PERCENT OF POVERTY.—In the case of an eligible medicare beneficiary described in subsection (b)(1)(A), the percentage is 100 percent.

''(ii) OTHER PERCENT IF INCOME BETWEEN 150 AND 175 PERCENT OF POVERTY.—In the case of an eligible medicare beneficiary described in subsection (b)(1)(B), the SPICE Board shall specify the percentage consistent with the rules described in clauses (i) and (ii) of such subsection.

''(iii) 25 PERCENT FOR OTHER BENEFICIARIES.—In the case of any other eligible medicare beneficiary, the percentage is 25 percent.

''(B) FORM OF ASSISTANCE.—Financial assistance under this subsection for beneficiaries shall be provided in the form of a payment to the entity offering the policy or plan in which the beneficiary is receiving stop-loss coverage pursuant to section 1860J(b).

''(2) ESTABLISHMENT OF NATIONAL AVERAGE MEDIGAP STOP-LOSS MONTHLY PREMIUM.—

''(A) IN GENERAL.—The SPICE Board shall, during September of each year (beginning in 2002), estimate a national average medigap stop-loss monthly premium for each region (as determined by the Board) of the total geographic area served by the programs under this part that will be applicable for the succeeding year.

''(B) DEFINITION OF NATIONAL AVERAGE MEDIGAP STOP-LOSS MONTHLY PREMIUM.—For purposes of subparagraph (A), the term 'national average medigap stop-loss monthly premium' means, with respect to a region, the average of the portion of the monthly premiums charged by medicare supplemental policies in that region for providing stop-loss coverage to beneficiaries enrolled under this part.

''(3) LIMITATIONS.—

''(A) FINANCIAL ASSISTANCE MAY NOT EXCEED PREMIUM.—In the case of financial assistance provided under this subsection with respect to stop-loss coverage provided under a policy or plan, the amount of the financial assistance may not exceed the amount of the portion of the premium charged for enrollment in the policy or plan that is related to the provision of stop-loss coverage.

''(B) ENTITY MUST REDUCE PREMIUM.—No financial assistance shall be made available with respect to stop-loss coverage provided by an entity to an eligible medicare beneficiary unless the entity provides assurances satisfactory to the SPICE Board that the entity shall reduce the amount otherwise charged the beneficiary for such coverage by an amount equal to the amount of such assistance.

''(d) APPLICATION FOR ENHANCED FINANCIAL ASSISTANCE.—

''(1) IN GENERAL.—The SPICE Board shall establish procedures under which a beneficiary who desires enhanced financial assistance under this section may voluntarily apply for an income determination.

''(2) REQUIREMENTS REGARDING INFORMATION.—

''(A) INFORMATION FROM BENEFICIARY.—The procedures established under paragraph (1) shall require the beneficiary to submit with the application for enhanced financial assistance such information that the SPICE Board determines necessary to make the income determination with respect to such beneficiary.

''(B) INFORMATION FROM OTHER GOVERNMENT AGENCIES.—Under the procedures established under paragraph (1), if an individual voluntarily applies for enhanced financial assistance under this section, the individual is deemed to have consented to the SPICE Board seeking and using income-related information from other Government agencies

in order to make the income determination with respect to such beneficiary.

''(C) RESTRICTION ON USE OF INFORMATION.—Information obtained under subparagraph (A) or (B) may be used by officers and employees of the SPICE Board only for the purposes of, and to the extent necessary in, carrying out their responsibilities under this part.

''(3) PERIODIC REDETERMINATIONS.—Such income determinations shall be valid for a period (of not less than 1 year) specified by the SPICE Board.

''(e) INCOME DETERMINATIONS.—The SPICE Board shall establish procedures for making income determinations under this section.

''(f) POVERTY LINE.—In this section, the term 'poverty line' means 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.

''EMPLOYER INCENTIVE PROGRAM FOR EMPLOYMENT-BASED RETIREE DRUG COVERAGE

''SEC. 1860L. (a) PROGRAM AUTHORITY.—The SPICE Board shall develop and implement a program under this section to be known as the 'Employer Incentive Program' that encourages employers and other sponsors of employment-based health care coverage to provide adequate prescription drug benefits to retired individuals by subsidizing, in part, the sponsor's cost of providing coverage under qualifying plans.

''(b) SPONSOR REQUIREMENTS.—In order to be eligible to receive an incentive payment under this section with respect to coverage of an individual under a qualified retiree prescription drug plan (as defined in subsection (e)(3)), a sponsor shall meet the following requirements:

''(1) ASSURANCES.—The sponsor shall—

''(A) annually attest, and provide such assurances as the SPICE Board may require, that the coverage offered by the sponsor is a qualified retiree prescription drug plan, and will remain such a plan for the duration of the sponsor's participation in the program under this section; and

''(B) guarantee that it will give notice to the SPICE Board and covered retirees—

''(i) at least 120 days before terminating its plan; and

''(ii) immediately upon determining that the actuarial value of the prescription drug benefit under the plan falls below the actuarial value of the basic coverage under the SPICE prescription drug coverage under this part.

''(2) BENEFICIARY INFORMATION.—The sponsor shall report to the SPICE Board, for each calendar quarter for which it seeks an incentive payment under this section, the names and social security numbers of all retirees (and their spouses and dependents) covered under such plan during such quarter and the dates (if less than the full quarter) during which each such individual was covered.

''(3) AUDITS.—The sponsor and the employment-based retiree health coverage plan seeking incentive payments under this section shall agree to maintain, and to afford the SPICE Board access to, such records as the SPICE Board may require for purposes of audits and other oversight activities necessary to ensure the adequacy of prescription drug coverage, the accuracy of incentive payments made, and such other matters as may be appropriate.

''(4) OTHER REQUIREMENTS.—The sponsor shall provide such other information, and comply with such other requirements, as the SPICE Board may find necessary to administer the program under this section.

''(c) INCENTIVE PAYMENTS.—

''(1) IN GENERAL.—A sponsor that meets the requirements of subsection (b) with respect to a quarter in a calendar year shall be entitled to have payment made by the SPICE Board on a quarterly basis (to the sponsor or, at the sponsor's direction, to the appropriate employment-based health plan) of an incentive payment, in the amount determined in paragraph (2), for each retired individual (or spouse) who—

''(A) was covered under the sponsor's qualified retiree prescription drug plan during such quarter; and

''(B) was eligible for, but was not enrolled in, the SPICE drug benefit program under this part.

''(2) AMOUNT OF INCENTIVE.—The payment under this section with respect to each individual described in paragraph (1) for a month shall be equal to 25 percent of the basic monthly premium amount payable by an eligible medicare beneficiary enrolled under this part, as set for the calendar year pursuant to section 1860H(a) and without application of and financial assistance for such premium under section 1860K(b).

''(3) PAYMENT DATE.—The incentive under this section with respect to a calendar quarter shall be payable as of the end of the next succeeding calendar quarter.

''(d) CIVIL MONEY PENALTIES.—A sponsor, health plan, or other entity that the SPICE Board determines has, directly or through its agent, provided information in connection with a request for an incentive payment under this section that the entity knew or should have known to be false shall be subject to a civil monetary penalty in an amount up to 3 times the total incentive amounts under subsection (c) that were paid (or would have been payable) on the basis of such information.

''(e) DEFINITIONS.—In this section:

''(1) EMPLOYMENT-BASED RETIREE HEALTH COVERAGE.—The term 'employment-based retiree health coverage' means health insurance coverage or other coverage of health care costs for retired individuals (or for such individuals and their spouses and dependents) based on their status as former employees or labor union members.

''(2) EMPLOYER.—The term 'employer' has the meaning given the term in section 3(5) of the Employee Retirement Income Security Act of 1974 (except that such term shall include only employers of 2 or more employees).

''(3) QUALIFIED RETIREE PRESCRIPTION DRUG PLAN.—The term 'qualified retiree prescription drug plan' means health insurance coverage or other coverage of health care costs included in employment-based retiree health coverage that—

''(A) provides coverage of the cost of prescription drugs whose actuarial value (as defined by the SPICE Board) to each retired beneficiary equals or exceeds the actuarial value of the basic coverage provided to an individual enrolled in the SPICE drug benefit program under this part; and

''(B) does not deny, limit, or condition the coverage or provision of prescription drug benefits for retired individuals based on age or any health status-related factor described in section 2702(a)(1) of the Public Health Service Act.

''(4) SPONSOR.—The term 'sponsor' has the meaning given the term 'plan sponsor' in section 3(16)(B) of the Employer Retirement Income Security Act of 1974.

''SPICE BOARD

''SEC. 1860M. (a) ESTABLISHMENT.—There is established within the Department of Health and Human Services, a Seniors Prescription Insurance Coverage Equity Office, which shall be—

''(1) outside of the Centers for Medicare & Medicaid Services; and

''(2) run by a board to be known as the SPICE Board.

''(b) DUTIES.—

''(1) ADMINISTRATION OF SPICE DRUG BENEFIT PROGRAM.—

''(A) IN GENERAL.—The SPICE Board shall administer the SPICE drug benefit program under this part.

''(B) NONINTERFERENCE.—In carrying out its duty under subparagraph (A), the SPICE Board may not—

''(i) require a particular formulary or institute a price structure for the reimbursement of covered outpatient drugs;

''(ii) interfere in any way with negotiations between entities providing SPICE prescription drug coverage under part D and drug manufacturers, wholesalers, or other suppliers of covered outpatient drugs; and

''(iii) otherwise interfere with the competitive nature of providing such coverage through such entities.

''(2) ONGOING STUDIES.—The SPICE Board shall conduct ongoing studies of the following issues:

''(A) The administration of this part.

''(B) The provision of information about the program under the health insurance information, counseling, and assistance grants under section 4360 of the Omnibus Budget Reconciliation Act of 1990.

''(C) Ways in which drug utilization can be used to provide better overall care for eligible medicare beneficiaries.

''(D) Savings and potential savings in Federal health care programs which may occur, or can be attributed to, eligible medicare beneficiary access to, and utilization of, covered outpatient drugs.

''(E) Trends in premium increases and factors that contribute to changes in premiums.

''(F) Integration of the SPICE drug benefit program into a reformed medicare program.

''(G) The ability of eligible medicare beneficiaries to afford SPICE prescription drug coverage.

''(H) The impact of the program on the prescription drug benefits offered under group health plans.

''(I) The appropriateness of the levels of financial assistance provided under this part.

''(3) ANNUAL REPORT.—

''(A) IN GENERAL.—Not later than June 1 of each year (beginning with 2004), the SPICE Board shall submit an annual report to Congress on the program under this part.

''(B) INFORMATION ON STUDIES.—Such report shall include a detailed statement on the issues studied under paragraph (2).

''(C) RECOMMENDATIONS.—Such report shall include such recommendations for legislation and administrative actions as the SPICE Board considers appropriate.

''(4) PROVISION OF RECOMMENDATIONS AND INFORMATION TO SECRETARY.—The SPICE Board shall provide recommendations and necessary information regarding the SPICE drug benefit program to the Secretary in order for the Secretary to—

''(A) integrate such information with information regarding the other programs under this title; and

''(B) provide health insurance information, counseling, and assistance grants under section 4360 of the Omnibus Budget Reconciliation Act of 1990.

''(c) DEMONSTRATION PROJECT AUTHORITY.—

''(1) IN GENERAL.—Subject to paragraph (2), the SPICE Board shall have the authority to conduct demonstration projects for the purpose of demonstrating ways to improve the quality of services provided under the SPICE drug benefit program, including ways to reduce medical errors.

''(2) CONSULTATION WITH SECRETARY.—The SPICE Board shall consult with the Secretary before conducting any demonstration project.

''(d) MEMBERSHIP OF SPICE BOARD.—

''(1) NUMBER AND APPOINTMENT.—

''(A) IN GENERAL.—The SPICE Board shall be composed of 7 members appointed by the President, by and with the advice and consent of the Senate.

''(B) SPECIFIC REPRESENTATIVES.—In making appointments under subparagraph (A), the President shall ensure that the following groups are represented on the SPICE Board:

''(i) Consumers.

''(ii) Private health plan insurers (including insurers that offer fee-for-service and managed care plans) with expertise in the quality, scope, and marketing of health care services.

''(iii) Certified geriatric pharmacists.

''(iv) The Centers for Medicare & Medicaid Services.

''(v) State insurance commissioners.

''(C) SECRETARY OF HHS.—In addition to the 7 members appointed under subparagraph (A), the Secretary shall be a nonvoting, ex officio member of the SPICE Board.

''(2) DEADLINE FOR INITIAL APPOINTMENT.—The initial members of the SPICE Board shall be appointed by not later than 6 months after the date of enactment of this section.

''(3) TERMS.—

''(A) IN GENERAL.—The terms of the members of the SPICE Board shall be for 6 years, except that of the members first appointed—

''(i) three shall be appointed for terms of 6 years;

''(ii) two shall be appointed for terms of 4 years; and

''(iii) two shall be appointed for terms of 2 years.

''(B) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office.

''(4) CHAIRPERSON.—The President shall designate the chairperson of the SPICE Board, except that the representative from the Centers for Medicare & Medicaid Services may not be designated as chairperson.

''(e) OPERATION OF THE BOARD.—

''(1) MEETINGS.—The SPICE Board shall meet at the call of the chairperson or upon the written request of a majority of its members.

''(2) QUORUM.—A majority of the members of the SPICE Board shall constitute a quorum, but a lesser number of members may hold hearings.

''(f) POWERS OF THE SPICE BOARD.—

''(1) HEARINGS.—The SPICE Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the SPICE Board considers advisable to carry out the purposes of this part.

''(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request of the chairperson of the SPICE Board, the head of any Federal department or agency shall furnish such information to the SPICE Board as is necessary to carry out the functions of the SPICE Board under this part.

''(3) POSTAL SERVICES.—The SPICE Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(4) GIFTS.—The SPICE Board may accept, use, and dispose of gifts or donations of services or property.

''(g) BOARD PERSONNEL MATTERS.—

''(1) MEMBERS.—

''(A) COMPENSATION.—Each member of the SPICE Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the SPICE Board. All members of the SPICE Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

''(B) TRAVEL EXPENSES.—The members of the SPICE Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the SPICE Board.

''(C) REMOVAL.—The President may remove a member of the SPICE Board only for neglect of duty or malfeasance in office.

''(2) STAFF.—

''(A) IN GENERAL.—The chairperson of the SPICE Board may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the SPICE Board to perform its duties. The employment of an executive director shall be subject to confirmation by the SPICE Board.

''(B) COMPENSATION.—The chairperson of the SPICE Board may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

''(C) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the SPICE Board without further reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

''(D) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The chairperson of the SPICE Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

''SPICE PRESCRIPTION DRUG ACCOUNT IN THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

''SEC. 1860N. (a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1841 an account to be known as the 'SPICE Prescription Drug Account' (in this section referred to as the 'Account').

''(2) FUNDS.—The Account shall consist of such gifts and bequests as may be made as provided in section 201(i)(1), and such amounts as may be deposited in, or appropriated to, such fund as provided in this part.

''(3) SEPARATE FROM REST OF TRUST FUND.—Funds provided under this part to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund.

''(b) PAYMENTS FROM ACCOUNT.—

''(1) IN GENERAL.—The Managing Trustee shall pay from time to time from the Account such amounts as the SPICE Board certifies are necessary to make payments to operate the program under this part, including payments to entities under section 1860J, payments to sponsors under section 1860L, and payments with respect to administrative expenses under this part in accordance with section 201(g).

''(2) TREATMENT IN RELATION TO PART B PREMIUM.—Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1839.

''(c) APPROPRIATIONS TO COVER GOVERNMENT CONTRIBUTION.—There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Account an amount equal to the amount by which the benefits and administrative costs of providing the benefits under this part exceed the premiums collected under section 1860H(a)(4).''.

(b) CONFORMING AMENDMENTS TO FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND.—Section 1841 of the Social Security Act (42 U.S.C. 1395t) is amended—

(1) in the last sentence of subsection (a)—

(A) by striking ''and'' before ''such amounts''; and

(B) by inserting before the period the following: '', and such amounts as may be deposited in, or appropriated to, the SPICE Prescription Drug Account established by section 1860N''; and

(2) in subsection (g), by inserting after ''by this part,'' the following: ''the payments provided for under part D (in which case the payments shall be made from the SPICE Prescription Drug Account in the Trust Fund),''.

(c) ADDITIONAL CONFORMING CHANGES.—

(1) CONFORMING REFERENCES TO PREVIOUS PART D.—Any reference in law (in effect before the date of enactment of this Act) to part D of title XVIII of the Social Security Act is deemed a reference to part E of such title (as in effect after such date).

(2) SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this Act.

SEC. 3. SPICE PRESCRIPTION DRUG COVERAGE UNDER MEDICARE+CHOICE PLANS.

(a) SPECIAL RULES.—Section 1851 of the Social Security Act (42 U.S.C. 1395w–21) is amended by adding at the end the following new subsection:

''(j) RULES FOR PROVISION OF SPICE PRESCRIPTION DRUG COVERAGE.—

''(1) PLAN REQUIRED TO PROVIDE COVERAGE IF BENEFICIARY ENROLLED IN PART D.—

''(A) IN GENERAL.—In the case of an individual that is enrolled in a Medicare+Choice plan and enrolled under part D, the basic benefits required to be provided under section 1852(a)(1)(A) shall include SPICE prescription drug coverage (as defined in section 1860B(a)) under the terms and conditions for such coverage established under part D, including the terms and conditions described in section 1860I(c).

''(B) VOLUNTARY ENROLLMENT IN PART D.—An individual enrolled in a Medicare+Choice plan shall not be required to enroll under part D.

''(2) LIMITATION ON ENROLLEE LIABILITY.—In the case of an individual described in paragraph (1)(A), with respect to SPICE prescription drug coverage, a Medicare+Choice organization may not require that such individual pay a deductible or a coinsurance percentage that exceeds the deductible or coinsurance percentage applicable for such coverage pursuant to part D.

''(3) PREMIUM FOR STOP-LOSS COVERAGE.—

''(A) IN GENERAL.—Subject to subparagraph (B), a Medicare+Choice organization offering

a Medicare+Choice plan on behalf of an individual described in paragraph (1)(A) may require the individual to pay a premium for stop-loss coverage (as defined in section 1860B(c). Any such premium shall be considered to be part of the Medicare+Choice monthly basic premium (as defined in section 1854(b)(2)(A)) that the individual is responsible for.

''(B) ORGANIZATION REQUIRED TO REDUCE PREMIUM BY AMOUNT OF FINANCIAL ASSISTANCE.—A Medicare+Choice organization receiving a payment for financial assistance for stop-loss coverage on behalf of an individual described in paragraph (1)(A) pursuant to subsection (b) of section 1860J shall reduce any premium described in subparagraph (A) by the amount of such financial assistance.

''(4) PAYMENTS TO ORGANIZATION FOR SPICE PRESCRIPTION DRUG COVERAGE PURSUANT TO PART D RULES.—The SPICE Board (established under section 1860M) shall make payments to a Medicare+Choice organization offering a Medicare+Choice plan on behalf of an individual described in paragraph (1)(A) pursuant to the payment mechanisms described in subsections (a) and (b) of section 1860J. Such payments shall be coordinated with payments made to such organization under section 1853.

''(5) COORDINATED ENROLLMENT.—The Secretary shall work with the SPICE Board to coordinate enrollment under this part with enrollment under part D.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to items and services provided under a Medicare+Choice plan on or after January 1, 2003.

SEC. 4. MEDIGAP REVISIONS AND TRANSITION PROVISIONS.

(a) ESTABLISHMENT OF SPICE MEDIGAP POLICIES.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following new subsection:

''(v) SPICE MEDIGAP POLICIES.—

''(1) REVISION OF BENEFIT PACKAGES.—

''(A) IN GENERAL.—Notwithstanding subsection (p), the benefit packages established under such subsection shall be revised so that—

''(i) if the policyholder is enrolled under part D, basic coverage (as defined in section 1860B(b)) is available as part of each benefit package;

''(ii) each benefit package includes stop-loss coverage (as defined in section 1860B(c)) in the core group of basic benefits described in subsection (p)(2)(B);

''(iii) no benefit package (including each benefit package classified as 'H', 'I', or 'J' under the standards established by such subsection (p)(2), and the benefit package classified as 'J' with a high deductible feature described in subsection (p)(11)) includes prescription drug coverage other than the basic coverage required under clause (i) (if applicable), or the stop-loss coverage required under clause (ii); and

''(iv) except as revised under the preceding clauses or pursuant to subsection (p)(1)(E), the benefit packages are identical to the benefit packages that were available on the date of enactment of the Seniors Prescription Insurance Coverage Equity (SPICE) Act of 2001.

''(B) ADMINISTRATION OF BENEFITS.—Pursuant to section 1860A(a)(3), an issuer of a medicare supplemental policy revised under such subparagraph may directly administer the prescription drug benefits required under the policy or may contract with an entity that meets the applicable requirements under part D to administer such benefits.

''(C) MANNER OF REVISION.—The benefit packages revised under this section shall be revised in the manner described in subparagraph (E) of subsection (p)(1), except that for purposes of subparagraph (C) of such subsection, the standards established under this subsection shall take effect not later than January 1, 2003.

''(2) GUARANTEED ISSUANCE AND RENEWAL OF NEW POLICIES.—The provisions of subsections (q) and (s) shall apply to medicare supplemental policies revised under this subsection in the same manner as such provisions apply to medicare supplemental policies issued under the standards established under subsection (p).

''(3) OPPORTUNITY OF CURRENT POLICYHOLDERS TO PURCHASE REVISED POLICIES.—

''(A) IN GENERAL.—No medicare supplemental policy of an issuer with a benefit package that is revised under paragraph (1) shall be deemed to meet the standards in subsection (c) unless the issuer—

''(i) provides written notice during the 60-day period immediately preceding the period established under section 1860C(c), to each policyholder or certificate holder of a medicare supplemental policy issued by that issuer (at the most recent available address) of the offer described in clause (ii) and of the fact that, so long as they retain coverage under such policy, they are unable to obtain SPICE prescription drug coverage (as defined in section 1860B(a)) under part D; and

''(ii) offers the policyholder or certificate holder under the terms described in subparagraph (B), during at least the period established under subsection (c) of section 1860C, institution of coverage effective for the period described in subsection (d) of such section, a medicare supplemental policy with the benefit package that has been revised under paragraph (1) of this subsection that the Secretary determines is most comparable to the policy in which the individual is enrolled.

''(B) TERMS OF OFFER DESCRIBED.—The terms described under this subparagraph are terms which do not—

''(i) deny or condition the issuance or effectiveness of a medicare supplemental policy described in subparagraph (A)(ii) that is offered and is available for issuance to new enrollees by such issuer;

''(ii) discriminate in the pricing of such policy because of health status, claims experience, receipt of health care, or medical condition; or

''(iii) impose an exclusion of benefits based on a preexisting condition under such policy.

''(4) OPPORTUNITY OF OTHER ELIGIBLE INDIVIDUALS TO PURCHASE REVISED POLICIES.—No medicare supplemental policy of an issuer with a benefit package that is revised under paragraph (1) shall be deemed to meet the standards in subsection (c) unless, during at least the period established under section 1860C(c), the issuer permits each eligible medicare beneficiary (as defined in section 1860A(d), but who is not described in paragraph (3)) to purchase any medicare supplemental policy that has been revised under paragraph (1) with institution of coverage effective for the period described in section 1860C(d) under the terms of the offer described in paragraph (3)(B).

''(5) GRANDFATHERING OF CURRENT POLICYHOLDERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no person may sell, issue, or renew a medicare supplemental policy with a benefit package that has not been revised under this subsection on or after January 1, 2003.

''(B) GRANDFATHERING.—Each policyholder or certificate holder of a medicare supplemental policy as of December 31, 2002, may continue to receive benefits under such policy and may renew such policy as if this subsection had not been enacted, except that such beneficiary shall not be eligible to enroll for SPICE prescription drug coverage (as defined in section 1860B(a)) under part D during the period in which such policy is in effect.

''(6) PENALTIES.—Each penalty under this section shall apply with respect to policies revised under this subsection as if such policies were issued under the standards established under subsection (p), including the penalties under subsections (a), (d), (p)(8), (p)(9), (q)(5), (r)(6)(A), (s)(4), and (t)(2)(D).''.

(b) NAIC STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services (in this subsection referred to as the ''Secretary'') shall contract with the National Association of Insurance Commissioners (in this subsection referred to as the ''NAIC'') to conduct a study—

(A) to determine whether the portion of the benefit packages revised under section 1882(v) of the Social Security Act (as added by subsection (a)) relating to parts A and B of the medicare program should be revised as a result of the establishment of SPICE prescription drug coverage (as defined in section 1860B(a) of such Act, as added by section 2) and whether the total number of such benefit packages should be reduced;

(B) to identify methods to ensure that any financial assistance paid to issuers of medicare supplemental policies on behalf of enrollees for providing stop-loss coverage (as defined in section 1860B(c) of the Social Security Act, as added by section 2) made available under the benefit packages revised under section 1882(v) of such Act (as so added) is not used to subsidize any other benefits, including the benefits relating to parts A and B of the medicare program; and

(C) to assess the practicality and viability of establishing a medicare supplemental policy that only provides SPICE prescription drug coverage (as so defined).

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the NAIC shall submit to Congress and the Secretary a report on the study conducted under paragraph (1) together with such recommendations as the NAIC determines appropriate.

SEC. 5. PROVISION OF INFORMATION ON SPICE DRUG BENEFIT PROGRAM UNDER HEALTH INSURANCE INFORMATION, COUNSELING, AND ASSISTANCE GRANTS.

Section 4360(b)(2)(A)(ii) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1395b–4(b)(2)(A)(ii)) is amended by striking ''and information'' and inserting '', information regarding the SPICE drug benefit program under part D of title XVIII of the Social Security Act, and information''.

SEC. 6. PERSONAL DIGITAL ACCESS TECHNOLOGY DEMONSTRATION PROJECT.

(a) DEMONSTRATION PROJECT.—

(1) IN GENERAL.—The SPICE Board (established under section 1860M of the Social Security Act (as added by section 2)) shall conduct a demonstration project for the purpose of increasing the use of Personal Digital Access Technology in prescribing covered outpatient drugs (as defined in section 1860B(e) (as so added)) for eligible medicare beneficiaries receiving SPICE prescription drug coverage under part D of title XVIII of such Act (as so added).

(2) ASPECTS OF PROJECT.—The demonstration project shall address ways in which the use of Personal Digital Access Technology can be used to—

(A) avoid adverse drug reactions among such beneficiaries, including problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse and misuse;

(B) transmit information about the coverage of covered outpatient drugs under the policy or plan in which such a beneficiary is receiving SPICE prescription drug coverage to prescribing physicians;

(C) increase the use of generic drugs by such beneficiaries; and

(D) increase the compliance of entities offering policies or plans that provide SPICE prescription drug coverage with the requirements under part D of title XVIII of the Social Security Act (as added by section 2).

(3) INCLUSION OF PROVIDERS.—In conducting the demonstration project, the SPICE Board shall include—

(A) physicians;

(B) pharmacists;

(C) entities that offer policies or plans that provide SPICE prescription drug coverage; and

(D) any entity (including a pharmacy benefits management company) that contracts with an entity described in subparagraph (C) to provide benefits under such policies or plans.

(4) DURATION OF PROJECTS.—The demonstration project shall be conducted over a 3-year period.

(b) REPORTS TO CONGRESS.—

(1) IN GENERAL.—

(A) INITIAL REPORT.—Not later than 18 months after the SPICE Board implements the demonstration project, the SPICE Board shall submit to Congress an initial report on the demonstration project.

(B) FINAL REPORT.—Not later that 6 months after the conclusion of the project, the SPICE Board shall submit to Congress a final report on the demonstration project.

(2) CONTENTS OF REPORTS.—The reports described in paragraph (1) shall include the following:

(A) A detailed description of the demonstration project.

(B) An evaluation of the demonstration project.

(C) Recommendations for legislation that the SPICE Board determines to be appropriate as a result of the demonstration project.

(D) Any other information regarding the demonstration project that the SPICE Board determines to be appropriate.

(c) FUNDING.—Expenditures made for carrying out the demonstration project shall be made from funds otherwise appropriated to the Secretary of Health and Human Services.

Ms. SNOWE. Mr. President, I am pleased to join with my friend and colleague, Senator RON WYDEN, in the introduction of the Seniors Prescription Insurance Coverage Equity Act of 2001, or ''SPICE.'' I want to thank him for his enthusiasm about and his commitment to this joint venture.

It was just about two years ago now that Senator WYDEN and I introduced this bill for the first time. SPICE 2001 is the product of almost three years of work and development. Since 1999, when we first tackled this issue, there has been much discussion about how to design a prescription drug coverage plan that is both comprehensive and affordable, that provides choice but guarantees availability of basic coverage. And, perhaps most importantly, one that is workable for seniors, the Medicare program and one that private providers will offer. We believe we have struck this balance in SPICE 2001.

I believe that this bill is a benchmark for the Senate's consideration of a comprehensive out-patient prescription drug program under Medicare. I offer this bill today, with my friend Senator WYDEN because it is the product of a three year collaborative effort to provide our Nation's seniors with prescription drug coverage, and I offer it with the hopes that it will be considered as part of a broader reform when the Senate takes one up.

Americans age 65 and older are only 12 percent of the population but account for over 40 percent of all drug spending. Which isn't surprising considering that over the past five years, per capita drug spending for the Medicare population has approximately doubled, reaching an estimated $1,756 this year.

This comes at a time where fewer retirees have health coverage from their former employers than ever before. In 1998, an estimated 66 percent of large employers offered retiree health coverage, fewer than 40 percent did so in 2000. At a time when fewer and fewer of our seniors have retiree health care coverage from their former employers, and when the cost of prescription drugs are skyrocketing, no one can argue that it isn't essential we ensure that Medicare beneficiaries have comprehensive coverage for outpatient prescription drugs. And, this is a problem, I might add, which will only grow when the 77 million Baby Boomers begin to enter Medicare in 2011.

For the past several years, Senator WYDEN and I have been united in our belief that we owe it to our seniors to develop the best and most practical solution. SPICE 2001 represents a straightforward, comprehensive, and responsible approach that should appeal to anyone who believes that seniors need prescription drug coverage.

To accomplish these goals we have built upon the model of the first SPICE bill and added components that have continued to be part of the larger debate on this issue—that of public programs versus private competition. As a result, SPICE 2001 now creates a partnership between the Federal Government and private insurers to share the cost, and the risk, of offering outpatient prescription drug coverage for our senior population.

Specifically, SPICE 2001 creates a prescription drug coverage program for all Medicare beneficiaries enrolled in both Part A and Part B, and who choose to enroll. SPICE offers a premium subsidy of at least 25 percent to all enrollees. To provide extra assistance to those who need it most, there is a 100 percent premium subsidy for those whose income is at or under 150 percent of poverty, $12,885 for a single person and $17,415 for a couple. Those whose income is between 150 percent and 175 percent of poverty, $15,033 for an individual and $20,318 for a couple, will receive a subsidy based on a sliding scale down to 25 percent of the cost of the premium.

SPICE 2001 offers two choices in the coverage so they can pick a plan to best serve their needs. One option is basic coverage, with a $350 deductible and a 25 percent coinsurance requirement. This can be purchased with a Stop-loss plan of $3,000 or separately.

The second option is stop-loss coverage. While only 17 percent of beneficiaries have costs above $3,000, they account for almost 54 percent of all spending on prescription drugs. This coverage is provided completely through the private insurer. According to CBO's January 2001 baseline projections, 83 percent of those enrolled in Medicare fee for service plans pay less than $3,000 for their drugs. For these seniors, they might only want to purchase the basic coverage. Those who need more than just the basic coverage can buy them both. For those who can manage their spending and only want to protect themselves from catastrophic expenses, they can purchase stop-loss coverage.

And, importantly, all SPICE enrollees receive the benefit of the negotiated discount on the cost of their prescription drugs, starting with their first prescription.

Choice is one of the cornerstones of this program. Seniors will not only have the choice of their level of coverage but will be able to choose from a variety to have their care delivered. SPICE can be run through Medigap, Medicare+Choice plans, or private entities. In areas where there are no insurers, the SPICE Board will have the authority to negotiate with entities to bring them into the market.

One of the perennial arguments against government sponsored or assisted prescription drug coverage for our retirees has been that if we did it, employers wouldn't. We already know that fewer employers are offering retiree health benefits than just 12 years ago, this is a trend we hope to discourage. This is why the SPICE Board is authorized to provide the 25 percent premium subsidy as an incentive to employers who provide prescription drug coverage for their retirees. It is critical we encourage employers to continue to offer this type of coverage and we acknowledge that in this bill.

According to a 1998 Wall Street Journal poll, 80 percent of retirees use a prescription drug every day. The average Medicare beneficiary fills a prescription 18 times a year. It is long past time that we ensure that these prescriptions are covered.

SPICE 2001 offers something for everyone interested in providing our seniors with prescription drug coverage. It is a program that can be incorporated in existing health plans, will be run through a government Board whose sole purpose is ensuring that this program runs well, and will foster competition and allow for choice in both coverage and providers.

By Mr. DOMENICI (for himself, Mr. INOUYE, Mr. CAMPBELL, Mr. BINGAMAN, Mr. BAUCUS, Mr. CRAPO, Mr. ALLARD, Mr. JOHNSON, and Mr. KYL):

S. 1186. A bill to provide a budgetary mechanism to ensure that funds will be available to satisfy the Federal Government's responsibilities with respect to negotiated settlements of disputes related to Indian water rights claims and Indian land claims; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

Mr. DOMENICI. Mr. President, both as chairman and now as the ranking member on the Budget Committee, I have been working over the last year with the Western Governors' Association, the Western Regional Council, the Native American Rights Fund, the Western States Water Council, as well as several Indian tribes to correct what I believe to be a flaw in the Budget Enforcement Act as it relates to the Federal funding of Indian land and water settlements.

I, along with a group of bipartisan Senators, including the chairman and ranking member of the Indian Affairs Committee are introducing today legislation that will help Congress fulfill its commitment to authorized Indian land and water settlements.

In FY 2002, the President's request for Indian land and water settlements funding was $61 million. This represents an increase from fiscal year 2001 of $23 million. The increase is due to the authorization of several large settlements in California, Colorado, Michigan, New Mexico, and Utah.

I am pleased to report that the full request was included in both the Senate and House passed budget resolutions. In turn, the request was fully appropriated in both the House and Senate versions of the fiscal year 2002 Interior appropriations bill. This is a tremendous first step in making sure the Congress fulfills its obligation regarding these settlements. But it is only the first step.

In the near future, there are, at least, three additional large settlements likely to come before Congress. The States involved in these settlements are Arizona, Idaho, and Montana. Under current budgetary treatment these settlements will be difficult to fund without taking critical resources from other Bureau of Indian Affairs programs.

Currently, once the settlements have been agreed to by the parties involved, the settlements come to Congress for authorization and appropriation. When all appropriations have been distributed the Indians give up any future claims to the land or the water.

Appropriations for these settlements are usually spread over 3–10 years depending on the size of the settlement. The payout in one year for an individual settlement does not usually exceed $30 million.

I feel, however, that the current budget mechanisms have unfairly treated the handling of Indian land and water settlements in relation to other federally funded Indian programs.

The problem with the current status is that, due to the statutory discretionary caps, the perception exists that there is not enough money in BIA's budget to spend on settlements without taking money from other programs in their budget, such as Indian school construction, education, community development.

The legislation I am introducing today, the Fiscal Integrity of Indian Settlements Protection Act of 2001, provides for a cap adjustment similar to the one that deals with U.N. arrearages. It would be for authorized Indian land and water settlements and would set a ceiling on what could be spent in one year. Under this proposal, the settlements would still have to be authorized and appropriated, but it would hold the BIA budget harmless for the cost of the settlements.

Let me be clear, if these claims are not settled, the US government still can be held liable in court. Claims that go through the court process are authoritatively paid out of the Claims and Judgement Fund. In most cases, negotiated settlements provide more water to the tribes and a less expensive bill to the Federal Government.

Frankly, this simple cap adjustment for authorized and appropriated monies for settlements provides a win-win situation for all parties involved.

We have made good progress toward funding our Indian responsibilities these past few years. This legislation is a very important step.

I, along with Senators INOUYE, CAMPBELL, ALLARD, BAUCUS, BINGAMAN, CRAPO, JOHNSON, and KYL, urge my colleagues to support this bill and future funding of Indian land and water settlements.

I ask unanimous consent that a letter from the Ad Hoc Group on Indian Water Rights be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AD HOC GROUP ON
INDIAN WATER RIGHTS,
June 27, 2001.

Members of the United States Senate,
Washington, DC.

DEAR SENATOR: We write to urge your support and co-sponsorship of proposed legislation to be introduced shortly entitled the ''Fiscal Integrity of Indian Settlements Protection Act of 2001''. A ''Dear Colleague'' letter by Senators Domenici, Bingaman, Crapo, Inouye, Kyl, and Campbell was sent to your office on May 23, 2001, describing the bill.

Across the country, numerous negotiations are on-going to settle complex Indian land and water claims. Funding for these settlements is one of the biggest hurdles to overcome. This legislation is important so that Indian land and water right settlements can be completed in a timely manner, consistent with the federal government's responsibility and liability associated with them, and without taking scarce resources from other critical programs within the Department of the Interior.

Three settlements were approved by the last Congress and others are expected to be submitted to this Congress. Under current budgetary policy, funding of land and water right settlements must be offset by a corresponding reduction in some other discretionary component of the Interior Department's budget. It is difficult for the Administration, the states and the tribes to negotiate settlements knowing that they may not be funded because funding can occur only at the expense of some other tribe or essential Interior Department program.

We believe that the funding of land and water right settlements is an important obligation of the United States government. The obligation is analogous to, and no less serious than, the obligation of the United States to pay judgments which are rendered against it. We urge that steps be taken to change current budgetary policy to ensure that any land or water settlement, once authorized by the Congress and approved by the President, will be funded. If such a change is not made, these claims will likely be relegated to litigation, an outcome that should not be acceptable to the Administration, the Congress, the tribes or the states.

The members of the Ad Hoc Group on Indian Water Rights have consistently supported the negotiated settlement of Indian land and water right disputes, and have been actively engaged in drawing more awareness to the important issues associated with settlement of land and water right claims. We believe that unless the current budgetary processes for land and water settlements are changed, funding will continue to be a barrier to finalizing these settlements.

Again, we urge you to cosponsor the ''Fiscal Integrity of Indian Settlements Protection Act of 2001'' and support its passage to ensure congressional funding for Native American land and water rights settlements once they have been formally executed by the parties and authorized by Congress.

Sincerely,

JANE DEE HULL,
Co-Lead Governor on Indian Water Right Settlements, Western Governors' Association.
JOHN KUTZHABER,
Co-Lead Governor on Indian Water Right Settlements, Western Governors' Association.
KIT KIMBALL,
Director, Western Regional Council.
JOHN ECHOHAWK,
Executive Director, Native American Rights Fund.
MICHAEL BROPHY,
Chairman, Western States Water Council.

By Mr. ROCKEFELLER (for himself and Mr. CLELAND):

S. 1188. A bill to amend title 38, United States Code, to enhance the authority of the Secretary of Veterans Affairs to recruit and retain qualified nurses for the Veterans Health Administration, and for other purposes, to the Committee on Veterans' Affairs.

Mr. ROCKEFELLER. Mr. President, I am proud to introduce today with Senators CLELAND and SPECTER the Department of Veterans Affairs Nurse Recruitment and Retention Enhancement Act of 2001.

On June 14, 2001, the Committee on Veterans' Affairs held a hearing to explore reasons for the imminent shortage of professional nurses in the United

States, and how this shortage will affect health care for veterans served by Department of Veterans Affairs' health care facilities.

Working conditions for nurses, never easy, have become even more challenging in recent years. Managed care principles lead hospitals to admit only the very sickest of patients with the most complex health care needs. As the pool of highly trained nurses shrinks, many health care providers rely heavily upon mandatory staff overtime to meet staffing needs. Several registered nurses, including Sandra McMeans from my state of West Virginia, testified before the committee that unpredictable and dangerously long working hours lead to nurses' fatigue and frustration, and patient care suffers.

The legislation we introduce today includes a requirement that VA produce a policy on staffing standards. Such a policy shall be developed in consultation with the VA Under Secretary for Health, the Director of VA's National Center for Patient Safety, and VA's Chief Nurse. While we leave it up to VA to develop the standards, the policy must consider the numbers and skill mix required of staff in specific medical settings, such as critical care and long-term care.

Because mandatory overtime was frequently cited at the committee's June hearing as being of serious concern, the legislation includes a requirement that the Secretary report to the Committee on Veterans' Affairs on the use of overtime by licensed nursing staff and nursing assistants in each facility. This is a critical first step to determining what can be done to reduce the amount of mandatory overtime. We will continue to monitor this issue with rigor and pledge to work to reduce the burdens borne by our nurses.

In terms of providing sufficient pay, our legislation mandates that VA provide Saturday premium pay to certain health professionals. These group of professionals include licensed practical nurses, LPN's, certified or registered respiratory therapists, licensed physical therapists, licensed vocational nurses, pharmacists, and occupational therapists. This group of workers are known as ''hybrids'' as they straddle two different personnel authorities, titles 38 and 5 of the United States Code. Hybrid status allows for the direct hiring and a more flexible compensation system.

This is an issue of equity, especially for LPN's who work alongside other nurses on Saturday. While registered nurses, RN's are mandated to receive Saturday premium pay, they may be working alongside an LPN who is not. Factoring in the looming nurse shortage, we should be doing all we can to improve VA's ability to recruit and retain these caregivers.

Currently, hospital directors have the discretion to provide Saturday premium pay. Of the 17,000 hybrid employees, 8,000 are not receiving the pay premium.

In my own State of West Virginia, many LPN's are not receiving Saturday premium pay. Deborah Dixon is an LPN at the VA Medical Center in Huntington, WV. She works nights 6 days in a row, has 2 days off, works nights 5 days, then has 1 day off, then works 4 nights and has 3 days off. As a result, she has off every third weekend. She says that ''LPN's deserve Saturday premium pay. It feels like discrimination. It makes me wonder why LPN's are not being respected.

I believe this change in law will make pay more consistent and fair for our health care workers.

Programs initiated within VA to improve conditions for nurses and patients have focused on issues other than staffing ratios, pay, and hours. A highly praised scholarship program that I spearheaded allows VA nurses to pursue degrees and training in return for their service, thus encouraging professional development and improving the quality of health care. Included within the legislation we introduced today are modifications to the existing scholarship and debt reduction programs. These changes are intended to improve the programs by providing additional flexibility to recipients.

In the Upper Midwest, the special skills of nurses and nurse practitioners are being recognized in clinics that provide supportive care close to the veterans who need it. The legislation before us seeks to encourage more nurse-managed clinics and also includes a requirement that VA evaluate these clinics.

There are various other provisions included in the bill. One provision requires that VA nurses enrolled in the Federal Employee Retirement System have the same ability to include unused sick leave as part of the retirement year calculation that VA nurses enrolled in the Civilian Retirement System have. The legislation also would amend the treatment of part-time service performed by certain title 38 employees prior to April 7, 1986, for purposes of retirement credit. Currently, part-time service performed by title 5 employees prior to April 7, 1986, is treated as full-time service; however, title 38 employees' part-time services prior to April 7, 1986, is counted as part-time service and therefore results in lower annuities for these employees. Retired nurses, such as Tonya Rich from Morgantown, WV, who has contacted me, stress the inequity of the situation. In order to rectify this, our legislation exempts registered nurses, physician assistants, and expanded-function dental auxiliaries from the requirement that part-time service performed prior to April 7, 1986, be prorated when calculating retirement annuities.

This bill is a good start, but clearly, we must remain vigilant. Although the nursing crisis has not yet reached its projected peak, the shortage is already endangering patient safety in the areas of critical and long-term care, where demands on nurses are greatest. We must encourage higher enrollment in nursing schools, improve the work environment, and offer nurses opportunities to develop as respected professionals, while taking steps to ensure safe staffing levels in the short-term.

We do not have the luxury of reflecting upon this problem at length; we must act now. Fortunately, we have as allies hardworking nurses who are dedicated to helping us find ways to improve working conditions and to recruit more young people to the field.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1188

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Department of Veterans Affairs Nurse Recruitment and Retention Enhancement Act of 2001''.

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

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made

to a section or other provision of title 38, United States Code.

TITLE I—ENHANCEMENT OF RECRUITMENT AUTHORITIES

SEC. 101. ENHANCEMENT OF EMPLOYEE INCENTIVE SCHOLARSHIP PROGRAM.

(a) PERMANENT AUTHORITY.—(1) Section 7676 is repealed.

(2) The table of sections at the beginning of chapter 76 is amended by striking the item relating to section 7676.

(b) MINIMUM PERIOD OF DEPARTMENT EMPLOYMENT FOR ELIGIBILITY.—Section 7672(b) is amended by striking ''2 years'' and inserting ''one year''.

(c) SCHOLARSHIP AMOUNT.—Subsection (b) of section 7673 is amended—

(1) in paragraph (1), by striking ''for any one year'' and inserting ''for the equivalent of one year of full-time coursework''; and

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

''(2) in the case of a participant in the Program who is a part-time student, shall bear the same ratio to the amount that would be paid under paragraph (1) if the participant were a full-time student in the course of education or training being pursued by the participant as the coursework carried by the student bears to full-time coursework in that course of education or training.''.

(d) LIMITATION ON PAYMENT.—Subsection (c) of section 7673 is amended to read as follows:

''(c) LIMITATIONS ON PERIOD OF PAYMENT.—(1) The maximum number of school years for which a scholarship may be paid under subsection (a) to a participant in the Program shall be six school years.

''(2) A participant in the Program may not receive a scholarship under subsection (a) for more than the equivalent of three years of full-time coursework.''.

(e) FULL-TIME COURSEWORK.—Section 7673 is further amended by adding at the end the following new subsection:

''(e) FULL-TIME COURSEWORK.—For purposes of this section, full-time coursework shall consist of the following:

''(1) In the case of undergraduate coursework, 30 semester hours per undergraduate school year.

''(2) In the case of graduate coursework, 18 semester hours per graduate school year.''.

(f) ANNUAL ADJUSTMENT OF MAXIMUM SCHOLARSHIP AMOUNT.—Section 7631 is amended—

(1) in subsection (a)(1), by striking ''and the maximum Selected Reserve member stipend amount'' and inserting ''the maximum Selected Reserve member stipend amount, the maximum employee incentive scholarship amount,''; and

(2) in subsection (b)—

(A) by redesignating paragraph (4) as paragraph (6); and

(B) by inserting after paragraph (3) the following new paragraph (4):

''(4) The term 'maximum employee incentive scholarship amount' means the maximum amount of the scholarship payable to a participant in the Department of Veterans Affairs Employee Incentive Scholarship Program under subchapter VI of this chapter, as specified in section 7673(b)(1) of this title and as previously adjusted (if at all) in accordance with this section.''.

SEC. 102. ENHANCEMENT OF EDUCATION DEBT REDUCTION PROGRAM.

(a) PERMANENT AUTHORITY.—(1) Section 7684 is repealed.

(2) The table of sections at the beginning of chapter 76 is amended by striking the item relating to section 7684.

(b) ELIGIBLE INDIVIDUALS.—Subsection (a)(1) of section 7682 is amended—

(1) by striking ''under an appointment under section 7402(b) of this title in a position'' and inserting ''in a position (as determined by the Secretary) providing direct-patient care services or services incident to direct-patient care services''; and

(2) by striking ''(as determined by the Secretary)'' and inserting ''(as so determined)''.

(c) MAXIMUM DEBT REDUCTION AMOUNT.—Section 7683(d)(1) is amended—

(1) by striking ''for a year''; and

(2) by striking ''exceed—'' and all that follows through the end of the paragraph and inserting ''exceed $44,000 over a total of five years of participation in the Program, of which not more than $10,000 of such payments may be made in each of the fourth and fifth years of participation in the Program.''.

(d) ANNUAL ADJUSTMENT OF MAXIMUM DEBT REDUCTION PAYMENTS AMOUNT.—(1) Section 7631, as amended by section 101(f) of this Act, is further amended—

(A) in subsection (a)(1), by inserting before the period at the end of the first sentence the following: ''and the maximum education debt reduction payments amount''; and

(B) in subsection (b), by inserting after paragraph (4) the following new paragraph (5):

''(5) The term 'maximum education debt reduction payments amount' means the maximum amount of education debt reduction payments payable to a participant in the Department of Veterans Affairs Education Debt Reduction Program under subchapter VII of this chapter, as specified in section 7683(d)(1) of this title and as previously adjusted (if at all) in accordance with this section.''.

(2) Notwithstanding section 7631(a)(1) of title 38, United States Code, as amended by paragraph (1), the Secretary of Veterans Affairs shall not increase the maximum education debt reduction payments amount under that section in calendar year 2002.

(e) TEMPORARY EXPANSION OF INDIVIDUALS ELIGIBLE FOR PARTICIPATION IN PROGRAM.—(1) Notwithstanding section 7682(c) of title 38, United States Code, the Secretary of Veterans Affairs may treat a covered individual as being a recently appointed employee in the Veterans Health Administration under section 7682(a) of that title for purposes of eligibility in the Education Debt Reduction Program if the Secretary determines that the participation of the individual in the Program under this subsection would further the purposes of the Program.

(2) For purposes of this subsection, a covered individual is any individual otherwise described by section 7682(a) of title 38, United States Code, as in effect on the day before the date of the enactment of this Act, who—

(A) was appointed as an employee in a position described in paragraph (1) of that section, as so in effect, between January 1, 1999, and September 30, 2000; and

(B) is an employee in such position, or in another position described in paragraph (1) of that section, as so in effect, at the time of application for treatment as a covered individual under this subsection.

(3) The Secretary shall make determinations regarding the exercise of the authority in this subsection on a case-by-case basis.

(4) The Secretary may not exercise the authority in this subsection after December 31, 2001. The expiration of the authority in this subsection shall not affect the treatment of an individual under this subsection before that date as a covered individual for purposes of eligibility in the Education Debt Reduction Program.

(5) In this subsection, the term ''Education Debt Reduction Program'' means the Department of Veterans Affairs Education Debt Reduction Program under subchapter VII of chapter 76 of title 38, United States Code.

SEC. 103. REPORT ON REQUESTS FOR WAIVERS OF PAY REDUCTIONS FOR REEMPLOYED ANNUITANTS TO FILL NURSE POSITIONS.

(a) REPORT.—Not later than November 30 of each of 2001 and 2002, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report describing each request of the Secretary, during the fiscal year preceding such report, to the Director of the Office of Personnel Management for the following:

(1) A waiver under subsection (i)(1)(A) of section 8344 of title 5, United States Code, of the provisions of such section in order to meet requirements of the Department of Veterans Affairs for appointments to nurse positions in the Veterans Health Administration.

(2) A waiver under subsection (f)(1)(A) of section 8468 of title 5, United States Code, of the provisions of such section in order to meet requirements of the Department for appointments to such positions.

(3) A grant of authority under subsection (i)(1)(B) of section 8344 of title 5, United States Code, for the waiver of the provisions of such section in order to meet requirements of the Department for appointments to such positions.

(4) A grant of authority under subsection (f)(1)(B) of section 8468 of title 5, United States Code, for the waiver of the provisions of such section in order to meet requirements of the Department for appointments to such positions.

(b) INFORMATION ON RESPONSES TO REQUESTS.—The report under subsection (a) shall specify for each request covered by the report—

(1) the response of the Director to such request; and

(2) if such request was granted, whether or not the waiver or authority, as the case may be, assisted the Secretary in meeting requirements of the Department for appointments to nurse positions in the Veterans Health Administration.

TITLE II—ENHANCEMENT OF RETENTION AUTHORITIES

SEC. 201. ADDITIONAL PAY FOR SATURDAY TOURS OF DUTY FOR ADDITIONAL HEALTH CARE PROFESSIONAL IN THE VETERANS HEALTH ADMINISTRATION.

(a) IN GENERAL.—Section 7454(b) is amended—

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

(2) by adding at the end the following new paragraph:

''(2) Health care professionals employed in positions referred to in paragraph (1) shall be entitled to additional pay on the same basis as provided for nurses in section 7453(c) of this title.''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to pay periods beginning on or after that date.

SEC. 202. UNUSED SICK LEAVE INCLUDED IN ANNUITY COMPUTATION OF REGISTERED NURSES WITH THE VETERANS HEALTH ADMINISTRATION.

(a) ANNUITY COMPUTATION.—Section 8415 of title 5, United States Code, is amended by adding at the end the following:

''(i) In computing an annuity under this subchapter, the total service of an employee who retires from the position of a registered nurse with the Veterans Health Administration on an immediate annuity, or dies while employed in that position leaving any survivor entitled to an annuity, includes the days of unused sick leave to the credit of that employee under a formal leave system, except that such days shall not be counted in

determining average pay or annuity eligibility under this subchapter.''.

(b) DEPOSIT NOT REQUIRED.—Section 8422(d) of title 5, United States Code, is amended—

(1) by inserting ''(1)'' before ''Under such regulations''; and

(2) by adding at the end the following:

''(2) Deposit may not be required for days of unused sick leave credited under section 8415(i).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 60 days after the date of the enactment of this Act, and shall apply to individuals who separate from service on or after that effective date.

SEC. 203. EVALUATION OF DEPARTMENT OF VETERANS AFFAIRS NURSE MANAGED CLINICS.

(a) EVALUATION.—The Secretary of Veterans Affairs shall carry out an evaluation of the efficacy of the nurse managed health care clinics of the Department of Veterans Affairs. The Secretary shall complete the evaluation not later than 18 months after the date of the enactment of this Act.

(b) CLINICS TO BE EVALUATED.—(1) In carrying out the evaluation under subsection (a), the Secretary consider nurse managed health care clinics, including primary care clinics and geriatric care clinics, located in three different Veterans Integrated Service Networks (VISNs) of the Department.

(2) If there are not nurse managed health care clinics located in three different Veterans Integrated Service Networks as of the commencement of the evaluation, the Secretary shall—

(A) establish nurse managed health care clinics in additional Veterans Integrated Services Networks such that there are nurse managed health care clinics in three different Veterans Integrated Service Networks for purposes of the evaluation; and

(B) include such clinics, as so established, in the evaluation.

(c) MATTERS TO BE EVALUATED.—In carrying out the evaluation under subsection (a), the Secretary shall address the following:

(1) Patient satisfaction.

(2) Provider experiences.

(2) Cost of care.

(4) Access to care, including waiting time for care.

(5) The functional status of patients receiving care.

(6) Any other matters the Secretary considers appropriate.

(d) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the evaluation carried out under subsection (a). The report shall address the matters specified in subsection (c) and include any other information, and any recommendations, that the Secretary considers appropriate.

SEC. 204. STAFFING LEVELS FOR OPERATIONS OF MEDICAL FACILITIES.

(a) IN GENERAL.—Section 8110(a) is amended—

(1) in paragraph (1), by inserting after ''complete care of patients,'' in the fifth sentence the following: ''and in a manner consistent with the policies of the Secretary on overtime,''; and

(2) in paragraph (2)—

(A) by inserting '', including the staffing required to maintain such capacities,'' after ''all Department medical facilities'';

(B) by striking ''and to minimize'' and inserting '', to minimize''; and

(C) by inserting before the period the following: '', and to ensure that eligible veterans are provided such care and services in an appropriate manner''.

(b) NATIONWIDE POLICY ON STAFFING.—Paragraph (3) of that section is amended—

(1) in subparagraph (A), by inserting ''the adequacy of staff levels for compliance with the policy established under subparagraph (C),'' after ''regarding''; and

(2) by inserting after subparagraph (B) the following new subparagraph:

''(C) The Secretary shall, in consultation with the Under Secretary for Health, establish a nationwide policy on the staffing of Department medical facilities in order to ensure that such facilities have adequate staff for the provision to veterans of appropriate, high-quality care and services. The policy shall take into account the staffing levels and mixture of staff skills required for the range of care and services provided veterans in Department facilities.''.

SEC. 205. ANNUAL REPORT ON USE OF AUTHORITIES TO ENHANCE RETENTION OF EXPERIENCED NURSES.

(a) ANNUAL REPORT.—(1) Subchapter II of chapter 73 is amended by adding at the end the following new section:

''§ 7324. Annual report on use of authorities to enhance retention of experienced nurses

''(a) ANNUAL REPORT.—Not later than January 31 each year, the Secretary, acting through the Under Secretary for Health, shall submit to Congress a report on the use during the preceding year of authorities for purposes of retaining experienced nurses in the Veterans Health Administration, as follows:

''(1) The authorities under chapter 76 of this title.

''(2) The authority under VA Directive 5102.1, relating to the Department of Veterans Affairs nurse qualification standard, dated November 10, 1999, or any successor directive.

''(3) Any other authorities available to the Secretary for those purposes.

''(b) REPORT ELEMENTS.—Each report under subsection (a) shall specify for the period covered by such report, for each Department medical facility and for each Veterans Integrated Service Network, the following:

''(1) The number of waivers requested under the authority referred to in subsection (a)(2), and the number of waivers granted under that authority, to promote to the Nurse II grade or Nurse III grade under the Nurse Schedule under section 7404(b)(1) of this title any nurse who has not completed a bachelors of science in nursing in a recognized school of nursing, set forth by age, race, and years of experience of the individuals subject to such waiver requests and waivers, as the case may be.

''(2) The programs carried out to facilitate the use of nursing education programs by experienced nurses, including programs for flexible scheduling, scholarships, salary replacement pay, and on-site classes.''.

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7323 the following new item:

''7324. Annual report on use of authorities to enhance retention of experienced nurses.''.

(b) INITIAL REPORT.—The initial report required under section 7324 of title 38, United States Code, as added by subsection (a), shall be submitted in 2002.

SEC. 206. REPORT ON MANDATORY OVERTIME FOR NURSES AND NURSE ASSISTANTS IN DEPARTMENT OF VETERANS AFFAIRS FACILITIES.

(a) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the mandatory overtime required of licensed nurses and nurse assistants providing direct patient care at Department of Veterans Affairs medical facilities during 2001.

(b) MANDATORY OVERTIME.—For purposes of the report under subsection (a), mandatory overtime shall consist of any period in which a nurse or nurse assistant is mandated or otherwise required, whether directly or indirectly, to work or be in on-duty status in excess of—

(1) a scheduled workshift or duty period;

(2) 12 hours in any 24-hour period; or

(3) 80 hours in any period of 14 consecutive days.

(c) ELEMENTS.—The report under subsection (a) shall include the following:

(1) A description of the amount of mandatory overtime described in that subsection at each Department medical facility during the period covered by the report.

(2) A description of the mechanisms employed by the Secretary to monitor overtime of the nurses and nurse assistants referred to in that subsection.

(3) An assessment of the effects of the mandatory overtime of such nurses and nurse assistants on patient care, including its contribution to medical errors.

(4) Recommendations regarding mechanisms for preventing requirements for amounts of mandatory overtime in other than emergency situations by such nurses and nurse assistants.

(5) Any other matters that the Secretary considers appropriate.

TITLE III—OTHER MATTERS

SEC. 301. ORGANIZATIONAL RESPONSIBILITY OF THE DIRECTOR OF THE NURSING SERVICE.

Section 7306(a)(5) is amended by inserting '', and report directly to,'' after ''responsible to''.

SEC. 302. COMPUTATION OF ANNUITY FOR PART-TIME SERVICE PERFORMED BY CERTAIN HEALTH-CARE PROFESSIONALS BEFORE APRIL 7, 1986.

Section 7426 is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

''(c) The provisions of subsection (b) shall not apply to the part-time service before April 7, 1986, of a registered nurse, physician assistant, or expanded-function dental auxiliary. In computing the annuity under the applicable provision of law specified in that subsection of an individual covered by the preceding sentence, the service described in that sentence shall be credited as full-time service.''.

SEC. 303. MODIFICATION OF NURSE LOCALITY PAY AUTHORITIES.

Section 7451 is amended—

(1) in subsection (d)(3)—

(A) in subparagraph (A), by striking ''beginning rates of'' each time it appears;

(B) in subparagraph (B), by striking ''beginning rates of''; and

(C) in subparagraph (C)(i), by striking ''beginning rates of'' each time it appears;

(2) in subsection (d)(4)—

(A) by striking ''or at any other time that an adjustment in rates of pay is scheduled to take place under this subsection'' in the first sentence; and

(B) by striking the second sentence; and

(3) in subsection (e)(4)—

(A) in subparagraph (A), by striking ''grade in a'';

(B) in subparagraph (B)—

(i) by striking ''grade of a''; and

(ii) by striking ''that grade'' and inserting ''that position''; and

(C) in subparagraph (D), by striking ''grade of a''.

SEC. 304. TECHNICAL AMENDMENTS.

Section 7631(b) is amended by striking ''this subsection'' each place it appears and inserting ''this section''.

By Mr. HOLLINGS (for himself, Mr. INOUYE, and Mr. DORGAN):

S. 1189. A bill to require the Federal Communications Commission to amend its daily newspaper cross-ownership rules, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, I rise to introduce legislation, the Media Ownership Act of 2001, designed to rectify the increasing trend toward consolidation and away from a vibrant exchange of news and information in today's media marketplace. I am joined in this effort by my colleagues, Senators INOUYE and DORGAN, who for years have demonstrated their tireless pursuit of the public interest in the sensible regulation of media ownership.

This legislation is necessary to stem the tide toward concentration in the broadcast and newspaper industries and force a thorough and reasoned examination of the claims that further consolidation will serve the public interest. While the phrase ''public interest'' may have a vague ring to it, its meaning should be quite clear to the five members of the Federal Communications Commission, which itself observed just a few months ago that it has both ''the duty and authority under the Communications Act to promote diversity and competition among media voices.''

Notwithstanding that duty, it has come to my attention that the FCC is planning a Notice of Proposed Rulemaking to relax or eliminate the newspaper-broadcast cross ownership rule. In addition, I understand that the FCC may consider revising, among other media ownership restrictions, the 35 percent national broadcast ownership cap later this year. I do not believe that those rules should be changed at this time. Others disagree. This legislation will enhance our debate on these issues.

Locally relevant, independent programmers and distributors of media content are critically important energizers of civic discourse in this country. Indeed, that independence, localism and diversity are what separate our nation from countries where information is not allowed to flow freely. Accordingly, any proceeding to revisit existing ownership rules involving broadcast, print, or cable television must examine the potential impact that undue influence over local and national media outlets may have on our democracy.

Because Congress understood the difficulty the Commission faces in quantifying democratic values such as localism and diversity, it gave the Commission the explicit and implicit statutory authority and responsibility to establish and maintain ownership caps in the media industry. Pursuant to that authority, the FCC has imposed limits on the ownership of broadcast and cable television properties, and on the cross-ownership within a market between broadcast and cable television stations, broadcast television and radio stations, and broadcast television and radio stations and newspapers.

These ownership restrictions are based on factors outside the bounds of a traditional competitive analysis, and carry with them the authority to prevent consolidation before it rises to the level necessary to trigger antitrust intervention. for example, in light of the importance of promoting localism and diversity, a higher importance must be ascribed to preserving the balance of power between the networks and local stations than would otherwise be expected under traditional competition analysis.

The reasons for this are simple, diversity in ownership promotes competition. Diversity in ownership creates opportunities for smaller companies, and local businessmen and women. Diversity in ownership allows creative programming and controversial points of views to find an outlet. Diversity in ownership promotes choices for advertisers. And diversity in ownership and the related restriction on national ownership groups preserves localism. And what in turn does this mean? Millions of Americans regularly receive their local news by watching their local broadcast stations or reading their daily newspaper. For these citizens, localism still matters.

The proponents of increased consolidation, however, claim that the transformed media landscape demands a deregulatory response. In my view, the burden should rest on those who wish to change the rules of the game to justify those changes. If localism and diversity can be preserved in a consolidated marketplace, prove it. Arguments alone are not persuasive.

Prior to the 1996 Telecommunications Act, the top radio station group owned 39 stations and generated annual revenues of $495 million. Today, the top group owns over 1100 stations and generates revenues of almost $3.2 billion annually. This consolidation directly undercut diversity and localism in the radio marketplace. A year before Congress passed the Telecommunications Act, the FCC lifted the rules that prohibited broadcast networks from owning and creating their own television programming. This sanctioned consolidation freed the networks to seek economic stakes in, and ownership of, television programs. As the Washington Post reported last fall in an article entitled, ''Even Hits can Miss in TV's New Economy'', ''Just as supermarket might reserve its best shelf space for its house brands, the networks have begun to favor their in house programs over shows created by others, which are often less profitable in the long term.'' So we see what deregulation has brought us with radio and the market for television programming. Similar consolidation among other major media outlets should only be allowed after a thorough analysis that justifies permitting such concentration.

The legislation that we introduce today addresses the FCC's lack of enforcement of the newspaper-broadcast cross ownership rule. The FCC's jurisdiction over newspaper broadcast ownership combinations arises from its authority to oversee broadcast communications licenses. In practice, the FCC has applied the rule only when there is a transfer or renewal of a broadcast license. So, if a broadcast station owner acquires a newspaper in the same market, there is no FCC review of the cross ownership until the station's license is up for renewal. If a newspaper owner acquires a broadcast station, however, the rule is immediately triggered because the FCC has to approve the transfer of the station's broadcast license for the transaction to go forward. When the rule was adopted, television broadcast licenses were renewed every three years. Accordingly, even when the FCC did not immediately enforce the rule, the combined entity was aware it would have to come into compliance, either by requesting a waiver, or divesting either the station or newspaper, within a short period of time.

Today, however, broadcast station licenses are only renewed every eight years, thereby creating a significant loophole in the cross ownership rule, if it is only enforced by the Commission at the time of license renewals. Our bill would require the FCC to review immediately existing cross ownership combinations. The legislation requires a broadcast licensee to inform the FCC when it acquires a newspaper that would place the license in violation of the newspaper-broadcast cross ownership rule. Upon receipt of this information, the FCC could take a range of action under the legislation, including forcing divestiture, or granting a waiver to allow the combination to go forward.

In addition, our legislation steps up a process whereby we in Congress can scrutinize any alternative that the Commission devises to replace the current media ownership rules, and compare the efficacy of a new cap or ownership measurement system against the current rules, to determine whether a new measurement provides a better mechanism to promote diversity and localism. Accordingly, our bill requires the FCC to provide to the House and Senate Commerce Committees, any proposed media ownership rule changes eighteen months before they become effective. These proposals must be transmitted to the Commerce committees along with clear and ample explanation of how the new formulations will better meet the Commission's public interest obligation to promote competition, diversity, and localism.

The legislation we are introducing takes two important steps. First, it forces the FCC to enforce the current version of the FCC's newspaper-broadcast cross ownership rule. Second, it provides a check on those who might otherwise move quickly to repeal other media ownership limits without regard

to the impact of the consequent consolidation on diversity, localism, and competition in the media marketplace.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1189

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

SECTION 1. FCC DAILY NEWSPAPER CROSS-OWNERSHIP RULE.

(a) IMMEDIATE REVIEW.—

(1) IN GENERAL.—The Federal Communications Commission shall modify section 73.3555(d) of its regulations (47 C.F.R. 73.3555(d)) to provide for the immediate review of a license for any AM, FM, or TV broadcast station held by any party (including all parties under common control) that acquires direct or indirect ownership, operation, or control of a daily newspaper.

(2) NOTICE TO COMMISSION.—The modification under paragraph (1) shall require that any licensee covered by that paragraph notify the Committee of the acquisition of the ownership, operation, or control of a daily newspaper upon the acquisition of such ownership, operation, or control.

(b) REMEDIAL ACTION.—The Commission shall further modify section 73.3555(d) of its regulations (47 C.F.R. 73.3555(d)) to require modification or revocation of the license, or divestiture of such ownership, operation, or control of the daily newspaper, unless the Commission determines that direct or indirect ownership, operation, or control of the daily newspaper by that party will not cause a result described in paragraph (1), (2), or (3) of that section.

(c) 6-MONTH DEADLINE FOR COMPLIANCE.—Under the regulations as modified under subsection (b), if the Commission does not make a determination described in subsection (b), the Commission shall require the modification, revocation, or divestiture to be completed not later than the earlier of—

(1) the date that is 180 days after the date on which the Commission issues the order requiring the modification, revocation, or divestiture; or

(2) the date by which the Commission's regulations require the license to be renewed.

(d) APPLICATION TO EXISTING ARRANGEMENTS.—

(1) IN GENERAL.—In applying its regulations, as modified pursuant to this section, to any license for an AM, FM, or TV broadcast station that is held on the date of the enactment of this Act by a party that also, as of that date, has direct or indirect ownership, operation, or control of a daily newspaper, the Commission—

(A) may grant a permanent or temporary waiver from the modification, revocation, or divestiture requirements of the modified regulation if the Commission determines that the waiver is consistent with the principles of competition, diversity, and localism in the public interest; and

(B) shall not apply the modified regulation so as to require modification, revocation, or divestiture in circumstances in which section 73.3555(d) of the Commission's regulations (47 C.F.R. 73.3555(d)) does not apply because of Note 4 to that section.

(2) NOTICE TO COMMISSION.—A licensee of a license described by paragraph (1) shall notify the Commission not later than 30 days after the date of the enactment of this Act that the license is covered by paragraph (1).

SEC. 2. REVIEW BASED ON TRANSACTIONS.

The Federal Communications Commission shall further modify section 73.3555 of its regulations (47 C.F.R. 73.3555) so that the Commission will determine compliance with section 73.3555(d) of its regulations, as modified by the Commission pursuant to section 1 of this Act, whenever a party (including all parties under common control)—

(1) that holds a license for an AM, FM, or TV broadcast station acquires direct or indirect ownership, operation, or control of a daily newspaper; or

(2) that directly or indirectly owns, operates, or controls a daily newspaper acquires a license for an AM, FM, or TV broadcast station.

SEC. 3. FCC TO JUSTIFY REPEAL OR MODIFICATION OF REGULATIONS UNDER REGULATORY REFORM.

Section 11 of the Communications Act of 1934 (47 U.S.C. 161) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection (b):

''(b) RELAXATION OR ELIMINATION OF MEDIA OWNERSHIP RULES.—If, as a result of a review under subsection (a)(1), the Commission makes a determination under subsection (a)(2) with respect to its regulations governing multiple ownership (47 C.F.R. 73.3555), then not less than 18 months before the proposed repeal or modification under subsection (c) is to take effect, the Commission shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Commerce of the House of Representatives—

''(1) a statement of the proposed repeal or modification; and

''(2) an explanation of the basis for its determination, including an explanation of how the proposed repeal or modification is expected to promote competition, diversity, and localism in the public interest.''.

SEC. 4. DEADLINE FOR MODIFICATION OF REGULATIONS.

The Federal Communications Commission shall complete the modifications of its regulations required by sections 1 and 2 of this Act not later than 1 year after the date of the enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 135—HONORING DRS. ARVID CARLSSON, PAUL GREENGARD, AND ERIC R. KANDEL FOR BEING AWARDED THE NOBEL PRIZE IN PHYSIOLOGY OR MEDICINE FOR 2000, AND FOR OTHER PURPOSES

Mr. BIDEN submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 135

Whereas on October 9, 2000, the Nobel Assembly at the Karolinska Institute awarded the Nobel Prize in Physiology or Medicine for 2000 to Drs. Arvid Carlsson, Paul Greengard, and Eric R. Kandel for their pioneering discoveries in the field of neuroscience;

Whereas these discoveries have been crucial in achieving a fuller understanding of the normal function of the brain and the mechanisms by which brain cells communicate with each other at the molecular level to create moods and memories in individuals;

Whereas the World Health Organization has found that 4 of the 10 leading causes of disability for persons age 5 and older are mental disorders;

Whereas schizophrenia, depression, bipolar disorder, Alzheimer's disease, and other mental disorders affect nearly 1 in 5 people in the United States each year;

Whereas the work of Drs. Carlsson, Greengard, and Kandel has laid a foundation for the development of drugs and other treatments for mental illnesses and neurological disorders that promise to be more effective and to have fewer or less acute side effects; and

Whereas the National Institutes of Health contributed to advances in the field of neuroscience by providing grants and research support to Drs. Carlsson, Greengard, and Kandel for a period exceeding 30 years: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes and honors Drs. Arvid Carlsson, Paul Greengard, and Eric R. Kandel for their cumulative achievements in advancing scientific understanding in the field of neuroscience;

(2) expresses support for the ongoing efforts of the National Institutes of Health to fund and assist researchers in developing treatments for mental illnesses and neurological disorders;

(3) expresses support for the ongoing efforts of the American College of Neuropsychopharmacology, a scientific society whose principal functions are to further research and education in neuropsychopharmacology and related fields, and to encourage scientists to enter research careers in fields related to the treatment of diseases of the nervous system including psychiatric, neurological, behavioral, and addictive disorders; and

(4) expresses support for efforts to promote mental health for all people in the United States through advances in science and overcoming societal attitudes, fears, and misunderstandings concerning mental illness.

SENATE CONCURRENT RESOLUTION 60—EXPRESSING THE SENSE OF THE CONGRESS THAT THE CONTINUED PARTICIPATION OF THE RUSSIAN FEDERATION IN MEETINGS OF THE GROUP OF EIGHT COUNTRIES MUST BE CONDITIONED ON THE RUSSIAN FEDERATION'S VOLUNTARY ACCEPTANCE AND ADHERENCE TO THE NORMS AND STANDARDS OF DEMOCRACY

Mr. HELMS (for himself, Mr. SMITH of Oregon, Mr. LOTT, and Mr. ALLEN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 60

Whereas the Group of Seven (G–7) was established as a forum of the heads of state or heads of government of the world's largest, industrialized democracies to meet annually in a summit meeting;

Whereas those countries which are members of the Group of Seven are pluralistic societies, with democratic political institutions and practices committed to the promotion of universally recognized standards of human rights, individual liberties, and rule of law;

Whereas, in 1991 and subsequent years, the G-7 invited the Russian Federation to a postsummit dialogue, and in 1998 the G-7 formally invited the Russian Federation to participate in an annual gathering that thereafter became known as the Group of Eight (G–8);

Whereas the invitation to then President Yeltsin of the Russian Federation to participate in these annual summits was to reinforce his commitment to democratization and economic liberalization, recognizing the fact that the Russian Federation's economy was not of the size and character of those of the G–7 economies and that its government's commitment to democratic principles was uncertain;

Whereas free news media are fundamental to the functioning of a democratic society and essential for the protection of individual liberties and such freedoms can exist only in an environment that is free of state control of the news media, that is free of any form of state censorship or official coercion of any kind, and that is protected and guaranteed by the rule of law;

Whereas the Government of the Russian Federation has undertaken a series of actions hostile and destructive toward independently operated media enterprises and journalists, particularly those news outlets and journalists that have been critical of government policies and government actions;

Whereas the Government of the Russian Federation continues its indiscriminate war against the people of Chechnya, a war in which Russian forces have caused the deaths of countless thousands of innocent civilians, caused the displacement of well over 400,000 innocent individuals, forcibly relocated refugee populations, and have committed widespread atrocities, including summary executions, torture, and rape;

Whereas the Department of State's Annual Report on International Religious Freedom 2000 concluded that the Government of the Russian Federation ''does not always respect [its Constitution's] provision for equality of religions, and some local authorities imposed restrictions on some religious minority groups'';

Whereas the continued participation of the Government of the Russian Federation in the Group of Eight must be conditioned on the former's acceptance of and adherence to the norms and standards of democracy; and

Whereas the next summit meeting of the G–8 countries will take place from July 20 to July 23, 2002 in Genoa, Italy: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the President should use the Genoa summit meeting of the G–8 to condition future G–8 meetings upon a clear and unambiguous demonstration of commitment by the Government of the Russian Federation to adhere to the norms and standards of democracy and fundamental human rights, and that this must include—

(A) an immediate end to Russian military operations in Chechnya and the initiation of genuine negotiations for a just and peaceful resolution of the conflict in that region with the democratically elected Government of Chechnya led by Aslan Maskhadov;

(B) granting international missions immediate and full and unimpeded access into Chechnya and surrounding regions so that they can provide humanitarian assistance and investigate alleged atrocities and war crimes;

(C) respect for the existence of a free, unfettered, and independent media and the free exchange of ideas and views, including the freedom of journalists to publish opinions and news reports without fear of censorship or punishment, the right of people to receive news without government interference and harassment, and opportunities for private ownership of media enterprises;

(D) freedom of all religious groups to practice their faith in the Russian Federation, without government interference on the rights and the peaceful activities of such religious organizations; and

(E) equal treatment and respect for the human rights of all citizens of the Russian Federation;

(2) the President and the Secretary of State should take all necessary steps to suspend the participation of the Russian Federation in meetings of the G–8 countries after the Genoa summit meeting should the Government of the Russian Federation fail to adhere to the norms and standards described in paragraph (1); and

(3) the President and Secretary of State are requested to convey to appropriate officials of the Government of the Russian Federation, including the President, the Prime Minister, and the Minister of Foreign Affairs, and appropriate officials of the G–7 countries this expression of the views of Congress.

AMENDMENTS SUBMITTED AND PROPOSED

SA 981. Mr. JOHNSON submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table.

SA 982. Mr. JOHNSON submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 983. Mr. SARBANES submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 984. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 985. Mr. HUTCHINSON submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 986. Mr. STEVENS submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 987. Ms. STABENOW (for herself, Mr. FITZGERALD, Mr. LEVIN, Mr. DURBIN, Mr. DAYTON, Mr. FEINGOLD, Mr. SCHUMER, Mr. KOHL, Mr. WELLSTONE, Mrs. CLINTON, Mr. BAYH, and Mr. VOINOVICH) proposed an amendment to the bill H.R. 2311, supra.

SA 988. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 989. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 990. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 991. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 992. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 993. Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 994. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 995. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 996. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 997. Mr. CONRAD (for himself, Mr. DORGAN, and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 998. Mr. ALLARD submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 999. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 1000. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 1001. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 1002. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 1003. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 1004. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 1005. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 1006. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 1007. Mr. CHAFEE submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 1008. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

SA 1009. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill H.R. 2311, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 981. Mr. JOHNSON submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, line 18, after ''expended'' insert '', of which $2,000,000 shall be made available to the James River Water Development District, South Dakota, for completion of an environmental impact statement for the channel restoration and improvement project authorized by section 401(b) of the Water Resources Development Act of 1986 (100 Stat. 4128)''.

SA 982. Mr. JOHNSON submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending

September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 13, line 7, after ''expended,'', insert the following: ''of which $16,500,000 shall be available for the Mid-Dakota Rural Water Project;''.

SA 983. Mr. SARBANES submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, line 18, before the period, insert the following: '', *Provided*, that using $100,000 of the funds provided herein for the States of Maryland, Virginia, Pennsylvania and the District of Columbia, the Secretary of the Army, acting through the Chief of Engineers, is directed to conduct a Chesapeake Bay shoreline erosion study, including an examination of management measures that could be undertaken to address the sediments behind the dams on the lower Susquehanna River.''

SA 984. Mr. DORGAN submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 28, before the period on line 10, insert the following: ''*Provided further*, within the amount herein appropriated, Western Area Power Administration is directed to conduct a technical analysis of the costs and feasibility of transmission expansion methods and technologies. WAPA shall publish a study by July 31, 2002 that contains recommendations of the most cost-effective methods and technologies to enhance electricity transmission from lignite and wind energy: *Provided further*, That these funds shall be non-reimbursable: *Provided further*, That these funds shall be available until expended.''

SA 985. Mr. HUTCHINSON submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 3, line 3, after ''expended,'', insert the following: ''of which not less than $50,000 shall be used to carry out small flood control projects under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s) for Bono, Arkansas;''.

SA 986. Mr. STEVENS submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. . NOME HARBOR TECHNICAL CORRECTIONS.

Section 101(a)(1) of Public Law 106–53 (the Water Resources Development Act of 1999) is amended by—

(A) striking ''$25,651,000'' and inserting in its place ''$39,000,000''; and

(B) striking ''$20,192,000'' and inserting in its place ''$33,541,000''.

SA 987. Ms. STABENOW (for herself, Mr. FITZGERALD, Mr. LEVIN, Mr. DURBIN, Mr. DAYTON, Mr. FEINGOLD, Mr. SCHUMER, Mr. KOHL, Mr. WELLSTONE, Mrs. CLINTON, Mr. BAYH, and Mr. VOINOVICH) proposed an amendment to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes, as follows:

On page 2, line 18, before the period, insert the following: '', of which such sums as are necessary shall be used by the Secretary of the Army to conduct and submit to Congress a study that examines the known and potential environmental effects of oil and gas drilling activity in the Great Lakes (including effects on the shorelines and water of the Great Lakes): *Provided*, That during the fiscal year for which this Act makes funds available and during each subsequent fiscal year, no Federal or State permit or lease shall be issued for oil and gas slant, directional, or offshore drilling in or under 1 or more of the Great Lakes (including in or under any river flowing into or out of the lake)''.

SA 988. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 8, line 7, before the colon, insert the following: '', and of which not more than $6,173,000 shall be made available for the Apalachicola, Chattahoochee, and Flint Rivers, Georgia, Florida, and Alabama (of which none of the funds shall be used for dredging in the State of Florida)''.

SA 989. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 8, line 24, before the period, insert the following: '': *Provided further*, That the amounts made available under this heading for the Apalachicola, Chattahoochee, and Flint Rivers, Georgia, Florida, and Alabama (other than amounts made available for specific hydrologic reconnections and slough restorations), shall be expended only for activities at or north of the Jim Woodruff Lock and Dam''.

SA 990. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 11, between lines 16 and 17, insert the following:

SEC. . HABITAT OF ENDANGERED AND THREATENED SPECIES OR SPORTFISH.

None of the funds made available by this Act may be used to disrupt the critical habitat of endangered species or threatened species (as those terms are defined in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532)) or the habitat of sportfish.

SA 991. Mr. GRAHAM submitted an amendment intended to the proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 11, between lines 16 and 17, insert the following:

SEC. . DEPOSIT OF DREDGED MATERIAL ON WETLAND.

None of the funds made available by this Act may be used to deposit dredged material on wetland subject to a permit issued under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344).

SA 992. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 7, line 25, strike ''$1,833,263,000'' and insert ''$1,633,263,000''.

On page 8, line 7, before the colon, insert the following: '', and of which not more than $6,173,000 shall be made available for the Apalachicola, Chattahoochee, and Flint Rivers, Georgia, Florida, and Alabama (of which none of the funds shall be used for dredging in the State of Florida)''.

SA 993. Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 3, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 8, at the end of line 24, before the period, insert: '': *Provided further*, That $500,000 of the funds appropriated herein shall be available for the conduct of activities related to the selection, by the Secretary of the Army in cooperation with the Environmental Protection Agency, of a permanent disposal site for environmentally sound dredged material from navigational dredging projects in the State of Rhode Island.''

SA 994. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 3, after line 24, add the following: ''Project at the University of New Hampshire authorized under section 8(b) of the Water Resources Development Act of 1988 (33 U.S.C. 2314(b)), $1,000,000:''.

SA 995. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table: as follows:

On page 2, line 18, before the period, insert the following: '', of which not less than $300,000 shall be used for study and design of the project at Seabrook Harbor, New Hampshire, under the Act of August 13, 1946 (33 U.S.C. 426e et seq.)''.

SA 996. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table: as follows:

On page 8, line 7, before the colon, insert the following: '', and of which not less than $400,000 shall be used to carry our maintenance dredging of the Sagamore Creek Channel, New Hampshire''.

SA 997. Mr. CONRAD (for himself, Mr. DORGAN, and Mr. BAUCUS) submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 28, before the period on line 10, insert the following: '': *Provided further*, That of the amount herein appropriated, not less than $200,000 shall be provided for corridor review and environmental review required for construction of a 230 kv transmission line between Belfield and Hettinger, North Dakota''.

SA 998 Mr. ALLARD submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other proposed; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ (a) RESCISSIONS.—There is rescinded an amount equal to 1 percent of the discretionary budget authority provided (or obligation limit imposed) for fiscal year 2002 in this Act for each department, agency, instrumentality, or entity of the Federal Government funded in this Act: *Provided*, That this reduction percentage shall be applied on a pro rata basis to each program, project, and activity subject to the rescission.

(b) DEBT REDUCTION.—The amount rescinded pursuant to this section shall be deposited into the account established under section 3113(d) of title 31, United States Code, to reduce the public debt.

(c) REPORT.—The Director of the Office of Management and Budget shall include in the President's budget submitted for fiscal year 2003 a report specifying the reductions made to each account pursuant to this section.

SA 999. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 11, between lines 16 and 17, insert the following:

SEC. 1___. APALACHICOLA, CHATTAHOOCHEE, AND FLINT RIVERS, GEORGIA, FLORIDA, AND ALABAMA.

(a) FINDING.—Congress finds that the disposal of dredged material from the Federal navigation channel in the Apalachicola River by placement inside the riverine ecosystem using within-bank or floodplain disposal sites is not consistent with the protection of the environment as required under the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies issued on March 10, 1983, by the Water Resources Council established under title I of the Water Resources Planning Act (42 U.S.C. 1962a et seq.).

(b) PROJECT MODIFICATION.—The project for navigation, Apalachicola, Chattahoochee, and Flint Rivers, Georgia, Florida, and Alabama, authorized by section 2 of the Act of March 2, 1945 (59 Stat. 17), and modified by the first section of the Act of July 24, 1946 (60 Stat. 635, chapter 595), is modified to direct the Secretary to transport dredged material to environmentally acceptable disposal sites approved by the States of Georgia, Florida, and Alabama and within the boundaries of the States, in lieu of using within-bank or floodplain disposal sites.

SA 1000. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 8, line 7, before the colon, insert the following: '', and of which not less than $8,173,000 shall be made available for the Apalachicola, Chattahoochee, and Flint Rivers, Georgia, Florida, and Alabama (of which not less than $500,000 shall be used to restore the historic hydrologic connection between the Apalachicola River and Virginia Cut that has been affected by the project for navigation, Apalachicola, Chattahoochee, and Flint Rivers, Georgia, Florida, and Alabama, authorized by section 2 of the Act of March 2, 1945 (59 Stat. 17), and modified by the first section of the Act of July 24, 1946 (60 Stat. 635, chapter 595))''.

SA 1001. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 11, between lines 16 and 17, insert the following:

SEC. 1___. APALACHICOLA, CHATTAHOOCHEE, AND FLINT RIVERS, GEORGIA, FLORIDA, AND ALABAMA.

(a) FINDING.—Congress finds that the disposal of dredged material from the Federal navigation channel in the Apalachicola River by placement inside the riverine ecosystem using within-bank or floodplain disposal sites is not consistent with the protection of the environment as required under the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies issued on March 10, 1983, by the Water Resources Council established under title I of the Water Resources Planning Act (42 U.S.C. 1962a et seq.).

(b) PROJECT MODIFICATION.—The project for navigation, Apalachicola, Chattahoochee, and Flint Rivers, Georgia, Florida, and Alabama, authorized by section 2 of the Act of March 2, 1945 (59 Stat. 17), and modified by the first section of the Act of July 24, 1946 (60 Stat. 635, chapter 595), is modified to direct the Secretary to transport dredged material from the Apalachicola River to environmentally acceptable disposal sites approved by the States of Georgia, Florida, and Alabama and within the boundaries of the States, in lieu of using within-bank or floodplain disposal sites.

SA 1002. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 11, between lines 16 and 17, insert the following:

SEC. ___. IMPACT OF NAVIGATIONAL DREDGING ON LOCAL ECONOMIES OF FLORIDA.

None of the funds made available by this Act may be used to conduct navigational dredging until the Secretary of the Army—

(1) completes a cost-benefit analysis of the impact of navigational dredging on the economies of local areas in the State of Florida, including oyster harvesting, tupelo honey production, shrimp production, blue crab production, commercial sportfishing, and recreational activities; and

(2) submits to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the analysis.

SA 1003. Mr. GRAHAM submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 11, between lines 16 and 17, insert the following:

SEC. . CUMULATIVE IMPACT OF NAVIGATIONAL DREDGING ON WILDLIFE AND HABITAT.

None of the funds made available by this Act may be used to conduct navigational dredging until the Secretary of the Army—

(1) completes an assessment of the cumulative impact of navigational dredging on wildlife and habitat; and

(2) submits to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the assessment.

SA 1004. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 12, line 20, after ''expended,'' insert ''of which $4,000,000 shall be available for the West River/Lyman-Jones Rural Water System to provide rural, municipal, and industrial drinking water for Philip, South Dakota, in accordance with the Mni Wiconi Project Act of 1988 (102 Stat. 2566; 108 Stat. 4539),''.

SA 1005. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 33, after line 25, add the following:

SEC. 312. (a) IN GENERAL.—The Secretary of Energy shall provide for the management of environmental matters (including planning and budgetary activities) with respect to the Paducah Gaseous Diffusion Plant, Kentucky, through the Assistant Secretary of Energy for Environmental Management.

(b) PARTICULAR REQUIREMENTS.—(1) In meeting the requirement in subsection (a), the Secretary shall provide for direct communication between the Assistant Secretary of Energy for Environmental Management and the head of the Paducah Gaseous Diffusion Plant on the matters covered by that subsection.

(2) The Assistant Secretary shall carry out activities under this section in direct consultation with the head of the Paducah Gaseous Diffusion Plant.

SA 1006. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 7, line 6, before the period, insert the following: '': *Provided further*, That, with respect to the environmental infrastructure project in Lebanon, New Hampshire, for which funds are made available under this heading, the non-Federal interest shall receive credit toward the non-Federal share of the cost of the project for work performed before the date of execution of the project cooperation agreement, if the Secretary determines the work is integral to the project.''

SA 1007. Mr. CHAFEE submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table; as follows:

On page 3, line 3, strike ''$1,570,798,000, to remain available until expended'' and insert ''$1,572,798,000, to remain available until expended, of which $2,000,000 shall be derived from a transfer from amounts made available under the heading ''GENERAL EXPENSES''; and of which $2,000,000 shall be available to carry out the Estuary Restoration Act of 2000 (33 U.S.C. 2901 et seq.) after the first meeting of the Estuary Habitat Restoration Council''.

SA 1008. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table, as follows:

At the appropriate place, insert the following: ''of which $500,000 shall be made available to assist the State of Oregon with design activities related to installation of electric irrigation water pumps at the Savage Rapids Dam on the Rogue River, Oregon, using authority provided by Public Law 92–199.''

SA 1009. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill H.R. 2311, making appropriations for energy and water development for the fiscal year ending September 30, 2002, and for other purposes; which was ordered to lie on the table, as follows:

At the appropriate place, insert the following: ''of which $500,000 shall be made available to conduct planning, technical, design, feasibility and other analyses under authority provided by Public Law 92–199 to evaluate the feasibility of installation of electric irrigation water pumping facilities at the Savage Rapids Dam on the Rogue River, Oregon.''

NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. HARKIN. Mr. President, I would like to announce that the Committee on Agriculture, Nutrition, and Forestry will meet on July 17, 2001, in SR–328A at 9 a.m. The purpose of this hearing will be to discuss the next Federal farm bill.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. HARKIN. Mr. President, I would like to announce that the Committee on Agriculture, Nutrition, and Forestry will meet on July 19, 2001, in SR–328A at 9 a.m. The purpose of this hearing will be to discuss the nutrition title of the next Federal farm bill.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, would like to announce that the Committee on Indian Affairs will meet on July 18, 2001, at 9:30 a.m., in room 485 Russell Senate Building to conduct a hearing on ''Indian Tribal Good Governance Practices As They Relate to Tribal Economic Development.''

Those wishing additional information may contact committee staff at 202/224–2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on July 19, 2001, at 10 a.m., in room 485 Russell Senate Building to conduct a business meeting on pending committee business.

Those wishing additional information may contact committee staff at 202/224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Tuesday, July 17, 2001. The purpose of this hearing will be to discuss the next Federal farm bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, July 17, 2001, at 9:30 a.m., in open session to continue to receive testimony on ballistic missile defense programs and policies, in review of the Defense authorization request for fiscal year 2002.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, July 17, 2001, at 9:30 a.m., on media concentration.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, July 17, 2001, at 12 p.m., on pending committee business in S–216 of the Capitol.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, July 17, at 9:30 a.m., to conduct a hearing. The committee will receive testimony on legislative proposals related to reducing the demand for petroleum products in the light duty vehicle sector including titles III and XII of S. 597, the Comprehensive and Balanced Energy Policy Act of 2001; title VII of S. 388, the National Energy Security Act of 2001; S. 883, the Energy Independence Act of 2001; S. 1053, Hydrogen Future Act of 2001; and S. 1006, Renewable Fuels for Energy Security Act of 2001.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session during the session of the Senate on Tuesday, July 17, 2001.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a nominations hearing on Tuesday, July 17, 2001, at 10 a.m., in Dirksen 226.

Panel I: Senator TIM HUTCHINSON of Arkansas, Senator BLANCHE LINCOLN of Arkansas, Representative JAMES SENSENBRENNER, Jr. of Wisconsin, Representative JOHN CONYERS of Michigan.

Panel II: ASA HUTCHINSON, of Arkansas, to be Administrator of Drug Enforcement.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON NATIONAL PARKS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Subcommittee on national Parks of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, July 17, at 2:30 p.m., to conduct a hearing. The subcommittee will receive testimony on S. 281, to authorize the design and construction of a temporary education center at the Vietnam Veterans Memorial; S. 386 and H.R. 146, to authorize the Secretary of the Interior to study the suitability and feasibility of designating the Great Falls Historic District in Paterson, NJ, as a unit of the National Park System, and for other purposes; S. 513 and H.R. 182, to amend the Wild and Scenic Rivers Act to designate a segment of the Eightmile River in the State of Connecticut for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes; S. 921 and H.R. 1000, to adjust the boundary of the William Howard Taft National Historic Site in the State of Ohio, to authorize an exchange of land in connection with the historic site, and for other purposes; S. 1097, to authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of the Great Smoky Mountains National Park; and H.R. 1668, to authorize the Adams Memorial Foundation to establish a commemorative work on Federal land in the District of Columbia and its environs to honor former President John Adams and his legacy.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, RESTRUCTURING AND THE DISTRICT OF COLUMBIA

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs' Subcommittee on Oversight of Government Management, Restructuring and the District of Columbia be authorized to meet on Tuesday, July 17, 2001, at 2:30 p.m., for a hearing to examine ''Expanding Flexible Personnel Systems Governmentwide.''

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Madam President, I ask unanimous consent that Lauren Banks, who is a member of Senator HARKIN's staff, be granted the privilege of the floor during the Senate's consideration of the bankruptcy bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDERS FOR WEDNESDAY, JULY 18, 2001

Mr. DASCHLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m., Wednesday, July 18. I further ask unanimous consent that on Wednesday, immediately following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, there be a period for morning business until 10:30 a.m., with Senators permitted to speak for up to 10 minutes each, with the following exceptions: Senator LOTT, or his designee, 9:30 a.m. to 10:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DASCHLE. Mr. President, on Wednesday, the Senate will convene at 9:30 a.m. with 1 hour of morning business under the control of Senator LOTT, or his designee, for memorials on the 1-year anniversary of the death of Senator Paul Coverdell. At 10:30 a.m., the Senate will resume consideration of the Energy and Water Development Appropriations Act. Rollcall votes on amendments to the Energy and Water Development Appropriations Act are expected throughout the day on Wednesday.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DASCHLE. Mr. President, if there is no other business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:36 p.m., adjourned until Wednesday, July 18, 2001, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate July 17, 2001:

SOCIAL SECURITY ADMINISTRATION

JO ANNE BARNHART, OF DELAWARE, TO BE COMMISSIONER OF SOCIAL SECURITY FOR THE TERM EXPIRING JANUARY 19, 2007, VICE KENNETH S. APFEL, TERM EXPIRED.

DEPARTMENT OF STATE

DANIEL R. COATS, OF INDIANA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE FEDERAL REPUBLIC OF GERMANY.

MARIE T. HUHTALA, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO MALAYSIA.

DEPARTMENT OF VETERANS AFFAIRS

JOHN A. GAUSS, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF VETERANS AFFAIRS (INFORMATION AND TECHNOLOGY), VICE DAVID E. LEWIS, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601 AND TO BE APPOINTED AS CHIEF OF STAFF, UNITED STATES AIR FORCE UNDER THE PROVISIONS OF TITLE 10, U.S.C., SECTION 8033:

To be general

GEN. JOHN P. JUMPER, 0000

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. MARYLIN J. MUZNY, 0000

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. THOMAS W. ERES, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. JOHN B. SYLVESTER, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 5046:

To be brigadier general

COL. KEVIN M. SANDKUHLER, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. JAMES C. DAWSON JR., 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

VICE ADM. WALTER F. DORAN, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

VICE ADM. TIMOTHY J. KEATING, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

VICE ADM. MICHAEL G. MULLEN, 0000