

# ***In the House of Representatives, U. S.,***

*January 28, 2004.*

*Resolved*, That the bill from the Senate (S. 1920) entitled “An Act to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted”, do pass with the following

## **AMENDMENT:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CON-***  
2 ***TENTS.***

3 (a) *SHORT TITLE.*—*This Act may be cited as the*  
4 *“Bankruptcy Abuse Prevention and Consumer Protection*  
5 *Act of 2004”.*

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

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

### ***TITLE I—NEEDS-BASED BANKRUPTCY***

*Sec. 101. Conversion.*

*Sec. 102. Dismissal or conversion.*

*Sec. 103. Sense of Congress and study.*

*Sec. 104. Notice of alternatives.*

*Sec. 105. Debtor financial management training test program.*

*Sec. 106. Credit counseling.*

*Sec. 107. Schedules of reasonable and necessary expenses.*

### ***TITLE II—ENHANCED CONSUMER PROTECTION***

#### ***Subtitle A—Penalties for Abusive Creditor Practices***

*Sec. 201. Promotion of alternative dispute resolution.*

- Sec. 202. Effect of discharge.*
- Sec. 203. Discouraging abuse of reaffirmation agreement practices.*
- Sec. 204. Preservation of claims and defenses upon sale of predatory loans.*
- Sec. 205. GAO study and report on reaffirmation agreement process.*

*Subtitle B—Priority Child Support*

- Sec. 211. Definition of domestic support obligation.*
- Sec. 212. Priorities for claims for domestic support obligations.*
- Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.*
- Sec. 214. Exceptions to automatic stay in domestic support obligation proceedings.*
- Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support.*
- Sec. 216. Continued liability of property.*
- Sec. 217. Protection of domestic support claims against preferential transfer motions.*
- Sec. 218. Disposable income defined.*
- Sec. 219. Collection of child support.*
- Sec. 220. Nondischargeability of certain educational benefits and loans.*

*Subtitle C—Other Consumer Protections*

- Sec. 221. Amendments to discourage abusive bankruptcy filings.*
- Sec. 222. Sense of Congress.*
- Sec. 223. Additional amendments to title 11, United States Code.*
- Sec. 224. Protection of retirement savings in bankruptcy.*
- Sec. 225. Protection of education savings in bankruptcy.*
- Sec. 226. Definitions.*
- Sec. 227. Restrictions on debt relief agencies.*
- Sec. 228. Disclosures.*
- Sec. 229. Requirements for debt relief agencies.*
- Sec. 230. GAO study.*
- Sec. 231. Protection of personally identifiable information.*
- Sec. 232. Consumer privacy ombudsman.*
- Sec. 233. Prohibition on disclosure of name of minor children.*

**TITLE III—DISCOURAGING BANKRUPTCY ABUSE**

- Sec. 301. Reinforcement of the fresh start.*
- Sec. 302. Discouraging bad faith repeat filings.*
- Sec. 303. Curbing abusive filings.*
- Sec. 304. Debtor retention of personal property security.*
- Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.*
- Sec. 306. Giving secured creditors fair treatment in chapter 13.*
- Sec. 307. Domiciliary requirements for exemptions.*
- Sec. 308. Reduction of homestead exemption for fraud.*
- Sec. 309. Protecting secured creditors in chapter 13 cases.*
- Sec. 310. Limitation on luxury goods.*
- Sec. 311. Automatic stay.*
- Sec. 312. Extension of period between bankruptcy discharges.*
- Sec. 313. Definition of household goods and antiques.*
- Sec. 314. Debt incurred to pay nondischargeable debts.*
- Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.*

- Sec. 316. Dismissal for failure to timely file schedules or provide required information.*
- Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.*
- Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.*
- Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.*
- Sec. 320. Prompt relief from stay in individual cases.*
- Sec. 321. Chapter 11 cases filed by individuals.*
- Sec. 322. Limitations on homestead exemption.*
- Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.*
- Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.*
- Sec. 325. United States trustee program filing fee increase.*
- Sec. 326. Sharing of compensation.*
- Sec. 327. Fair valuation of collateral.*
- Sec. 328. Defaults based on nonmonetary obligations.*
- Sec. 329. Clarification of postpetition wages and benefits.*
- Sec. 330. Delay of discharge during pendency of certain proceedings.*

**TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY  
PROVISIONS**

*Subtitle A—General Business Bankruptcy Provisions*

- Sec. 401. Adequate protection for investors.*
- Sec. 402. Meetings of creditors and equity security holders.*
- Sec. 403. Protection of refinancing of security interest.*
- Sec. 404. Executory contracts and unexpired leases.*
- Sec. 405. Creditors and equity security holders committees.*
- Sec. 406. Amendment to section 546 of title 11, United States Code.*
- Sec. 407. Amendments to section 330(a) of title 11, United States Code.*
- Sec. 408. Postpetition disclosure and solicitation.*
- Sec. 409. Preferences.*
- Sec. 410. Venue of certain proceedings.*
- Sec. 411. Period for filing plan under chapter 11.*
- Sec. 412. Fees arising from certain ownership interests.*
- Sec. 413. Creditor representation at first meeting of creditors.*
- Sec. 414. Definition of disinterested person.*
- Sec. 415. Factors for compensation of professional persons.*
- Sec. 416. Appointment of elected trustee.*
- Sec. 417. Utility service.*
- Sec. 418. Bankruptcy fees.*
- Sec. 419. More complete information regarding assets of the estate.*

*Subtitle B—Small Business Bankruptcy Provisions*

- Sec. 431. Flexible rules for disclosure statement and plan.*
- Sec. 432. Definitions.*
- Sec. 433. Standard form disclosure statement and plan.*
- Sec. 434. Uniform national reporting requirements.*
- Sec. 435. Uniform reporting rules and forms for small business cases.*
- Sec. 436. Duties in small business cases.*
- Sec. 437. Plan filing and confirmation deadlines.*
- Sec. 438. Plan confirmation deadline.*
- Sec. 439. Duties of the United States trustee.*
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- Sec. 441. Serial filer provisions.*  
*Sec. 442. Expanded grounds for dismissal or conversion and appointment of trustee.*  
*Sec. 443. Study of operation of title 11, United States Code, with respect to small businesses.*  
*Sec. 444. Payment of interest.*  
*Sec. 445. Priority for administrative expenses.*  
*Sec. 446. Duties with respect to a debtor who is a plan administrator of an employee benefit plan.*  
*Sec. 447. Appointment of committee of retired employees.*

#### TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

- Sec. 501. Petition and proceedings related to petition.*  
*Sec. 502. Applicability of other sections to chapter 9.*

#### TITLE VI—BANKRUPTCY DATA

- Sec. 601. Improved bankruptcy statistics.*  
*Sec. 602. Uniform rules for the collection of bankruptcy data.*  
*Sec. 603. Audit procedures.*  
*Sec. 604. Sense of Congress regarding availability of bankruptcy data.*

#### TITLE VII—BANKRUPTCY TAX PROVISIONS

- Sec. 701. Treatment of certain liens.*  
*Sec. 702. Treatment of fuel tax claims.*  
*Sec. 703. Notice of request for a determination of taxes.*  
*Sec. 704. Rate of interest on tax claims.*  
*Sec. 705. Priority of tax claims.*  
*Sec. 706. Priority property taxes incurred.*  
*Sec. 707. No discharge of fraudulent taxes in chapter 13.*  
*Sec. 708. No discharge of fraudulent taxes in chapter 11.*  
*Sec. 709. Stay of tax proceedings limited to prepetition taxes.*  
*Sec. 710. Periodic payment of taxes in chapter 11 cases.*  
*Sec. 711. Avoidance of statutory tax liens prohibited.*  
*Sec. 712. Payment of taxes in the conduct of business.*  
*Sec. 713. Tardily filed priority tax claims.*  
*Sec. 714. Income tax returns prepared by tax authorities.*  
*Sec. 715. Discharge of the estate's liability for unpaid taxes.*  
*Sec. 716. Requirement to file tax returns to confirm chapter 13 plans.*  
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*Sec. 720. Dismissal for failure to timely file tax returns.*

#### TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

- Sec. 801. Amendment to add chapter 15 to title 11, United States Code.*  
*Sec. 802. Other amendments to titles 11 and 28, United States Code.*

#### TITLE IX—FINANCIAL CONTRACT PROVISIONS

- Sec. 901. Treatment of certain agreements by conservators or receivers of insured depository institutions.*  
*Sec. 902. Authority of the FDIC and NCUAB with respect to failed and failing institutions.*

- Sec. 903. Amendments relating to transfers of qualified financial contracts.*  
*Sec. 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts.*  
*Sec. 905. Clarifying amendment relating to master agreements.*  
*Sec. 906. Federal Deposit Insurance Corporation Improvement Act of 1991.*  
*Sec. 907. Bankruptcy law amendments.*  
*Sec. 908. Recordkeeping requirements.*  
*Sec. 909. Exemptions from contemporaneous execution requirement.*  
*Sec. 910. Damage measure.*  
*Sec. 911. SIPC stay.*

*TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN*

- Sec. 1001. Permanent reenactment of chapter 12.*  
*Sec. 1002. Debt limit increase.*  
*Sec. 1003. Certain claims owed to governmental units.*  
*Sec. 1004. Definition of family farmer.*  
*Sec. 1005. Elimination of requirement that family farmer and spouse receive over 50 percent of income from farming operation in year prior to bankruptcy.*  
*Sec. 1006. Prohibition of retroactive assessment of disposable income.*  
*Sec. 1007. Family fishermen.*

*TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS*

- Sec. 1101. Definitions.*  
*Sec. 1102. Disposal of patient records.*  
*Sec. 1103. Administrative expense claim for costs of closing a health care business and other administrative expenses.*  
*Sec. 1104. Appointment of ombudsman to act as patient advocate.*  
*Sec. 1105. Debtor in possession; duty of trustee to transfer patients.*  
*Sec. 1106. Exclusion from program participation not subject to automatic stay.*

*TITLE XII—TECHNICAL AMENDMENTS*

- Sec. 1201. Definitions.*  
*Sec. 1202. Adjustment of dollar amounts.*  
*Sec. 1203. Extension of time.*  
*Sec. 1204. Technical amendments.*  
*Sec. 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.*  
*Sec. 1206. Limitation on compensation of professional persons.*  
*Sec. 1207. Effect of conversion.*  
*Sec. 1208. Allowance of administrative expenses.*  
*Sec. 1209. Exceptions to discharge.*  
*Sec. 1210. Effect of discharge.*  
*Sec. 1211. Protection against discriminatory treatment.*  
*Sec. 1212. Property of the estate.*  
*Sec. 1213. Preferences.*  
*Sec. 1214. Postpetition transactions.*  
*Sec. 1215. Disposition of property of the estate.*  
*Sec. 1216. General provisions.*  
*Sec. 1217. Abandonment of railroad line.*  
*Sec. 1218. Contents of plan.*  
*Sec. 1219. Bankruptcy cases and proceedings.*

- Sec. 1220. *Knowing disregard of bankruptcy law or rule.*  
 Sec. 1221. *Transfers made by nonprofit charitable corporations.*  
 Sec. 1222. *Protection of valid purchase money security interests.*  
 Sec. 1223. *Bankruptcy Judgeships.*  
 Sec. 1224. *Compensating trustees.*  
 Sec. 1225. *Amendment to section 362 of title 11, United States Code.*  
 Sec. 1226. *Judicial education.*  
 Sec. 1227. *Reclamation.*  
 Sec. 1228. *Providing requested tax documents to the court.*  
 Sec. 1229. *Encouraging creditworthiness.*  
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 Sec. 1233. *Direct appeals of bankruptcy matters to courts of appeals.*  
 Sec. 1234. *Involuntary cases.*  
 Sec. 1235. *Federal election law fines and penalties as nondischargeable debt.*

#### TITLE XIII—CONSUMER CREDIT DISCLOSURE

- Sec. 1301. *Enhanced disclosures under an open end credit plan.*  
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 Sec. 1307. *Dual use debit card.*  
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 Sec. 1309. *Clarification of clear and conspicuous.*

#### TITLE XIV—PREVENTING CORPORATE BANKRUPTCY ABUSE

- Sec. 1401. *Employee wage and benefit priorities.*  
 Sec. 1402. *Fraudulent transfers and obligations.*  
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 Sec. 1404. *Effective date; application of amendments.*

#### TITLE XV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

- Sec. 1501. *Effective date; application of amendments.*  
 Sec. 1502. *Technical corrections.*

## 1 **TITLE I—NEEDS-BASED** 2 **BANKRUPTCY**

### 3 **SEC. 101. CONVERSION.**

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

1 **SEC. 102. DISMISSAL OR CONVERSION.**

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

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

6 **“§ 707. Dismissal of a case or conversion to a case  
7 under chapter 11 or 13”;**

8 and

9 (2) in subsection (b)—

10 (A) by inserting “(1)” after “(b)”;

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

13 (i) in the first sentence—

14 (I) by striking “but not at the re-  
15 quest or suggestion of” and inserting  
16 “trustee (or bankruptcy administrator,  
17 if any), or”;

18 (II) by inserting “, or, with the  
19 debtor’s consent, convert such a case to  
20 a case under chapter 11 or 13 of this  
21 title,” after “consumer debts”; and

22 (III) by striking “a substantial  
23 abuse” and inserting “an abuse”; and

24 (ii) by striking the next to last sen-  
25 tence; and

26 (C) by adding at the end the following:

1           “(2)(A)(i) *In considering under paragraph (1) whether*  
2 *the granting of relief would be an abuse of the provisions*  
3 *of this chapter, the court shall presume abuse exists if the*  
4 *debtor’s current monthly income reduced by the amounts*  
5 *determined under clauses (ii), (iii), and (iv), and multi-*  
6 *plied by 60 is not less than the lesser of—*

7           “(I) *25 percent of the debtor’s nonpriority unse-*  
8 *cured claims in the case, or \$6,000, whichever is*  
9 *greater; or*

10           “(II) *\$10,000.*

11           “(ii)(I) *The debtor’s monthly expenses shall be the debt-*  
12 *or’s applicable monthly expense amounts specified under*  
13 *the National Standards and Local Standards, and the debt-*  
14 *or’s actual monthly expenses for the categories specified as*  
15 *Other Necessary Expenses issued by the Internal Revenue*  
16 *Service for the area in which the debtor resides, as in effect*  
17 *on the date of the order for relief, for the debtor, the depend-*  
18 *ents of the debtor, and the spouse of the debtor in a joint*  
19 *case, if the spouse is not otherwise a dependent. Notwith-*  
20 *standing any other provision of this clause, the monthly ex-*  
21 *penses of the debtor shall not include any payments for*  
22 *debts. In addition, the debtor’s monthly expenses shall in-*  
23 *clude the debtor’s reasonably necessary expenses incurred to*  
24 *maintain the safety of the debtor and the family of the debt-*  
25 *or from family violence as identified under section 309 of*



1 *the Family Violence Prevention and Services Act, or other*  
2 *applicable Federal law. The expenses included in the debt-*  
3 *or's monthly expenses described in the preceding sentence*  
4 *shall be kept confidential by the court. In addition, if it*  
5 *is demonstrated that it is reasonable and necessary, the*  
6 *debtor's monthly expenses may also include an additional*  
7 *allowance for food and clothing of up to 5 percent of the*  
8 *food and clothing categories as specified by the National*  
9 *Standards issued by the Internal Revenue Service.*

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

20       “(III) *In addition, for a debtor eligible for chapter 13,*  
21 *the debtor's monthly expenses may include the actual ad-*  
22 *ministrative expenses of administering a chapter 13 plan*  
23 *for the district in which the debtor resides, up to an amount*  
24 *of 10 percent of the projected plan payments, as determined*

1 *under schedules issued by the Executive Office for United*  
2 *States Trustees.*

3       “(IV) *In addition, the debtor’s monthly expenses may*  
4 *include the actual expenses for each dependent child less*  
5 *than 18 years of age, not to exceed \$1,500 per year per*  
6 *child, to attend a private or public elementary or secondary*  
7 *school if the debtor provides documentation of such expenses*  
8 *and a detailed explanation of why such expenses are reason-*  
9 *able and necessary, and why such expenses are not already*  
10 *accounted for in the National Standards, Local Standards,*  
11 *or Other Necessary Expenses referred to in subclause (I).*

12       “(V) *In addition, the debtor’s monthly expenses may*  
13 *include an allowance for housing and utilities, in excess of*  
14 *the allowance specified by the Local Standards for housing*  
15 *and utilities issued by the Internal Revenue Service, based*  
16 *on the actual expenses for home energy costs if the debtor*  
17 *provides documentation of such actual expenses and dem-*  
18 *onstrates that such actual expenses are reasonable and nec-*  
19 *essary.*

20       “(iii) *The debtor’s average monthly payments on ac-*  
21 *count of secured debts shall be calculated as the sum of—*

22               “(I) *the total of all amounts scheduled as con-*  
23 *tractually due to secured creditors in each month of*  
24 *the 60 months following the date of the petition; and*

1           “(II) any additional payments to secured credi-  
2           tors necessary for the debtor, in filing a plan under  
3           chapter 13 of this title, to maintain possession of the  
4           debtor’s primary residence, motor vehicle, or other  
5           property necessary for the support of the debtor and  
6           the debtor’s dependents, that serves as collateral for se-  
7           cured debts;

8           divided by 60.

9           “(iv) The debtor’s expenses for payment of all priority  
10          claims (including priority child support and alimony  
11          claims) shall be calculated as the total amount of debts enti-  
12          tled to priority, divided by 60.

13          “(B)(i) In any proceeding brought under this sub-  
14          section, the presumption of abuse may only be rebutted by  
15          demonstrating special circumstances that justify additional  
16          expenses or adjustments of current monthly income for  
17          which there is no reasonable alternative.

18          “(ii) In order to establish special circumstances, the  
19          debtor shall be required to itemize each additional expense  
20          or adjustment of income and to provide—

21                 “(I) documentation for such expense or adjust-  
22                 ment to income; and

23                 “(II) a detailed explanation of the special cir-  
24                 cumstances that make such expenses or adjustment to  
25                 income necessary and reasonable.

1       “(iii) *The debtor shall attest under oath to the accu-*  
2 *racy of any information provided to demonstrate that addi-*  
3 *tional expenses or adjustments to income are required.*

4       “(iv) *The presumption of abuse may only be rebutted*  
5 *if the additional expenses or adjustments to income referred*  
6 *to in clause (i) cause the product of the debtor’s current*  
7 *monthly income reduced by the amounts determined under*  
8 *clauses (ii), (iii), and (iv) of subparagraph (A) when multi-*  
9 *plied by 60 to be less than the lesser of—*

10               “(I) *25 percent of the debtor’s nonpriority unse-*  
11 *cured claims, or \$6,000, whichever is greater; or*

12               “(II) *\$10,000.*

13       “(C) *As part of the schedule of current income and*  
14 *expenditures required under section 521, the debtor shall in-*  
15 *clude a statement of the debtor’s current monthly income,*  
16 *and the calculations that determine whether a presumption*  
17 *arises under subparagraph (A)(i), that show how each such*  
18 *amount is calculated.*

19       “(3) *In considering under paragraph (1) whether the*  
20 *granting of relief would be an abuse of the provisions of*  
21 *this chapter in a case in which the presumption in subpara-*  
22 *graph (A)(i) of such paragraph does not arise or is rebutted,*  
23 *the court shall consider—*

24               “(A) *whether the debtor filed the petition in bad*  
25 *faith; or*

1           “(B) the totality of the circumstances (including  
2           whether the debtor seeks to reject a personal services  
3           contract and the financial need for such rejection as  
4           sought by the debtor) of the debtor’s financial situa-  
5           tion demonstrates abuse.

6           “(4)(A) The court, on its own initiative or on the mo-  
7           tion of a party in interest, in accordance with the proce-  
8           dures described in rule 9011 of the Federal Rules of Bank-  
9           ruptcy Procedure, may order the attorney for the debtor to  
10          reimburse the trustee for all reasonable costs in prosecuting  
11          a motion filed under section 707(b), including reasonable  
12          attorneys’ fees, if—

13                 “(i) a trustee files a motion for dismissal or con-  
14          version under this subsection; and

15                 “(ii) the court—

16                         “(I) grants such motion; and

17                         “(II) finds that the action of the attorney  
18                         for the debtor in filing under this chapter vio-  
19                         lated rule 9011 of the Federal Rules of Bank-  
20                         ruptcy Procedure.

21          “(B) If the court finds that the attorney for the debtor  
22          violated rule 9011 of the Federal Rules of Bankruptcy Pro-  
23          cedure, the court, on its own initiative or on the motion  
24          of a party in interest, in accordance with such procedures,  
25          may order—

1           “(i) the assessment of an appropriate civil pen-  
2           alty against the attorney for the debtor; and

3           “(ii) the payment of such civil penalty to the  
4           trustee, the United States trustee (or the bankruptcy  
5           administrator, if any).

6           “(C) The signature of an attorney on a petition, plead-  
7           ing, or written motion shall constitute a certification that  
8           the attorney has—

9           “(i) performed a reasonable investigation into  
10           the circumstances that gave rise to the petition, plead-  
11           ing, or written motion; and

12           “(ii) determined that the petition, pleading, or  
13           written motion—

14           “(I) is well grounded in fact; and

15           “(II) is warranted by existing law or a  
16           good faith argument for the extension, modifica-  
17           tion, or reversal of existing law and does not  
18           constitute an abuse under paragraph (1).

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

23           “(5)(A) Except as provided in subparagraph (B) and  
24           subject to paragraph (6), the court, on its own initiative  
25           or on the motion of a party in interest, in accordance with

1 *the procedures described in rule 9011 of the Federal Rules*  
2 *of Bankruptcy Procedure, may award a debtor all reason-*  
3 *able costs (including reasonable attorneys' fees) in con-*  
4 *testing a motion filed by a party in interest (other than*  
5 *a trustee or United States trustee (or bankruptcy adminis-*  
6 *trator, if any)) under this subsection if—*

7           “(i) *the court does not grant the motion; and*

8           “(ii) *the court finds that—*

9                   “(I) *the position of the party that filed the*  
10                   *motion violated rule 9011 of the Federal Rules of*  
11                   *Bankruptcy Procedure; or*

12                   “(II) *the attorney (if any) who filed the mo-*  
13                   *tion did not comply with the requirements of*  
14                   *clauses (i) and (ii) of paragraph (4)(C), and the*  
15                   *motion was made solely for the purpose of coerc-*  
16                   *ing a debtor into waiving a right guaranteed to*  
17                   *the debtor under this title.*

18           “(B) *A small business that has a claim of an aggregate*  
19 *amount less than \$1,000 shall not be subject to subpara-*  
20 *graph (A)(i)(I).*

21           “(C) *For purposes of this paragraph—*

22                   “(i) *the term ‘small business’ means an unincor-*  
23                   *porated business, partnership, corporation, associa-*  
24                   *tion, or organization that—*

1           “(I) has fewer than 25 full-time employees  
2           as determined on the date on which the motion  
3           is filed; and

4           “(II) is engaged in commercial or business  
5           activity; and

6           “(ii) the number of employees of a wholly owned  
7           subsidiary of a corporation includes the employees  
8           of—

9           “(I) a parent corporation; and

10           “(II) any other subsidiary corporation of  
11           the parent corporation.

12           “(6) Only the judge or United States trustee (or bank-  
13           ruptcy administrator, if any) may file a motion under sec-  
14           tion 707(b), if the current monthly income of the debtor,  
15           or in a joint case, the debtor and the debtor’s spouse, as  
16           of the date of the order for relief, when multiplied by 12,  
17           is equal to or less than—

18           “(A) in the case of a debtor in a household of 1  
19           person, the median family income of the applicable  
20           State for 1 earner;

21           “(B) in the case of a debtor in a household of 2,  
22           3, or 4 individuals, the highest median family income  
23           of the applicable State for a family of the same num-  
24           ber or fewer individuals; or



1           “(C) in the case of a debtor in a household ex-  
2           ceeding 4 individuals, the highest median family in-  
3           come of the applicable State for a family of 4 or fewer  
4           individuals, plus \$525 per month for each individual  
5           in excess of 4.

6           “(7)(A) No judge, United States trustee (or bankruptcy  
7           administrator, if any), trustee, or other party in interest  
8           may file a motion under paragraph (2) if the current  
9           monthly income of the debtor and the debtor’s spouse com-  
10          bined, as of the date of the order for relief when multiplied  
11          by 12, is equal to or less than—

12           “(i) in the case of a debtor in a household of 1  
13          person, the median family income of the applicable  
14          State for 1 earner;

15           “(ii) in the case of a debtor in a household of 2,  
16          3, or 4 individuals, the highest median family income  
17          of the applicable State for a family of the same num-  
18          ber or fewer individuals; or

19           “(iii) in the case of a debtor in a household ex-  
20          ceeding 4 individuals, the highest median family in-  
21          come of the applicable State for a family of 4 or fewer  
22          individuals, plus \$525 per month for each individual  
23          in excess of 4.

1       “(B) *In a case that is not a joint case, current monthly*  
 2 *income of the debtor’s spouse shall not be considered for pur-*  
 3 *poses of subparagraph (A) if—*

4               “(i)(I) *the debtor and the debtor’s spouse are sep-*  
 5 *arated under applicable nonbankruptcy law; or*

6               “(II) *the debtor and the debtor’s spouse are liv-*  
 7 *ing separate and apart, other than for the purpose of*  
 8 *evading subparagraph (A); and*

9               “(ii) *the debtor files a statement under penalty*  
 10 *of perjury—*

11                       “(I) *specifying that the debtor meets the re-*  
 12 *quirement of subclause (I) or (II) of clause (i);*  
 13 *and*

14                       “(II) *disclosing the aggregate, or best esti-*  
 15 *mate of the aggregate, amount of any cash or*  
 16 *money payments received from the debtor’s*  
 17 *spouse attributed to the debtor’s current monthly*  
 18 *income.”.*

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

22               “(10A) *‘current monthly income’—*

23                       “(A) *means the average monthly income*  
 24 *from all sources that the debtor receives (or in a*  
 25 *joint case the debtor and the debtor’s spouse re-*

1           *ceive) without regard to whether such income is*  
2           *taxable income, derived during the 6-month pe-*  
3           *riod ending on—*

4                     *“(i) the last day of the calendar month*  
5                     *immediately preceding the date of the com-*  
6                     *mencement of the case if the debtor files the*  
7                     *schedule of current income required by sec-*  
8                     *tion 521(a)(1)(B)(ii); or*

9                     *“(ii) the date on which current income*  
10                    *is determined by the court for purposes of*  
11                    *this title if the debtor does not file the sched-*  
12                    *ule of current income required by section*  
13                    *521(a)(1)(B)(ii); and*

14                    *“(B) includes any amount paid by any en-*  
15                    *tity other than the debtor (or in a joint case the*  
16                    *debtor and the debtor’s spouse), on a regular*  
17                    *basis for the household expenses of the debtor or*  
18                    *the debtor’s dependents (and in a joint case the*  
19                    *debtor’s spouse if not otherwise a dependent), but*  
20                    *excludes benefits received under the Social Secu-*  
21                    *rity Act, payments to victims of war crimes or*  
22                    *crimes against humanity on account of their sta-*  
23                    *tus as victims of such crimes, and payments to*  
24                    *victims of international terrorism (as defined in*  
25                    *section 2331 of title 18) or domestic terrorism*

1           *(as defined in section 2331 of title 18) on ac-*  
2           *count of their status as victims of such ter-*  
3           *rorism;”.*

4           *(c) UNITED STATES TRUSTEE AND BANKRUPTCY AD-*  
5           *MINISTRATOR DUTIES.—Section 704 of title 11, United*  
6           *States Code, is amended—*

7           *(1) by inserting “(a)” before “The trustee*  
8           *shall—”; and*

9           *(2) by adding at the end the following:*

10          *“(b)(1) With respect to a debtor who is an individual*  
11          *in a case under this chapter—*

12            *“(A) the United States trustee (or the bank-*  
13            *ruptcy administrator, if any) shall review all mate-*  
14            *rials filed by the debtor and, not later than 10 days*  
15            *after the date of the first meeting of creditors, file*  
16            *with the court a statement as to whether the debtor’s*  
17            *case would be presumed to be an abuse under section*  
18            *707(b); and*

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

22          *“(2) The United States trustee (or bankruptcy admin-*  
23          *istrator, if any) shall, not later than 30 days after the date*  
24          *of filing a statement under paragraph (1), either file a mo-*  
25          *tion to dismiss or convert under section 707(b) or file a*

1 *statement setting forth the reasons the United States trustee*  
2 *(or the bankruptcy administrator, if any) does not consider*  
3 *such a motion to be appropriate, if the United States trustee*  
4 *(or the bankruptcy administrator, if any) determines that*  
5 *the debtor's case should be presumed to be an abuse under*  
6 *section 707(b) and the product of the debtor's current*  
7 *monthly income, multiplied by 12 is not less than—*

8           “(A) *in the case of a debtor in a household of 1*  
9           *person, the median family income of the applicable*  
10           *State for 1 earner; or*

11           “(B) *in the case of a debtor in a household of 2*  
12           *or more individuals, the highest median family in-*  
13           *come of the applicable State for a family of the same*  
14           *number or fewer individuals.”.*

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

17           “(d) *In a case under chapter 7 of this title in which*  
18 *the debtor is an individual and in which the presumption*  
19 *of abuse arises under section 707(b), the clerk shall give*  
20 *written notice to all creditors not later than 10 days after*  
21 *the date of the filing of the petition that the presumption*  
22 *of abuse has arisen.”.*

23           (e) *NONLIMITATION OF INFORMATION.—Nothing in*  
24 *this title shall limit the ability of a creditor to provide in-*  
25 *formation to a judge (except for information communicated*

1 *ex parte*, unless otherwise permitted by applicable law),  
2 United States trustee (or bankruptcy administrator, if  
3 any), or trustee.

4 (f) *DISMISSAL FOR CERTAIN CRIMES.*—Section 707 of  
5 title 11, United States Code, is amended by adding at the  
6 end the following:

7 “(c)(1) In this subsection—

8 (A) the term ‘crime of violence’ has the meaning  
9 given such term in section 16 of title 18; and

10 (B) the term ‘drug trafficking crime’ has the  
11 meaning given such term in section 924(c)(2) of title  
12 18.

13 “(2) Except as provided in paragraph (3), after notice  
14 and a hearing, the court, on a motion by the victim of a  
15 crime of violence or a drug trafficking crime, may when  
16 it is in the best interest of the victim dismiss a voluntary  
17 case filed under this chapter by a debtor who is an indi-  
18 vidual if such individual was convicted of such crime.

19 “(3) The court may not dismiss a case under para-  
20 graph (2) if the debtor establishes by a preponderance of  
21 the evidence that the filing of a case under this chapter is  
22 necessary to satisfy a claim for a domestic support obliga-  
23 tion.”.

24 (g) *CONFIRMATION OF PLAN.*—Section 1325(a) of title  
25 11, United States Code, is amended—

1           (1) *in paragraph (5), by striking “and” at the*  
2           *end;*

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

5           (3) *by inserting after paragraph (6) the fol-*  
6           *lowing:*

7           “(7) *the action of the debtor in filing the petition*  
8           *was in good faith;”.*

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

12           (1) *in paragraph (1)(B), by inserting “to unse-*  
13           *cured creditors” after “to make payments”; and*

14           (2) *by striking paragraph (2) and inserting the*  
15           *following:*

16           “(2) *For purposes of this subsection, the term*  
17           *‘disposable income’ means current monthly income re-*  
18           *ceived by the debtor (other than child support pay-*  
19           *ments, foster care payments, or disability payments*  
20           *for a dependent child made in accordance with appli-*  
21           *cable nonbankruptcy law to the extent reasonably nec-*  
22           *essary to be expended for such child) less amounts*  
23           *reasonably necessary to be expended—*

24           “(A)(i) *for the maintenance or support of*  
25           *the debtor or a dependent of the debtor, or for a*

1           *domestic support obligation, that first becomes*  
2           *payable after the date the petition is filed; and*

3           “(i) *for charitable contributions (that meet*  
4           *the definition of ‘charitable contribution’ under*  
5           *section 548(d)(3) to a qualified religious or char-*  
6           *itable entity or organization (as defined in sec-*  
7           *tion 548(d)(4)) in an amount not to exceed 15*  
8           *percent of gross income of the debtor for the year*  
9           *in which the contributions are made; and*

10           “(B) *if the debtor is engaged in business, for*  
11           *the payment of expenditures necessary for the*  
12           *continuation, preservation, and operation of such*  
13           *business.*

14           “(3) *Amounts reasonably necessary to be ex-*  
15           *pended under paragraph (2) shall be determined in*  
16           *accordance with subparagraphs (A) and (B) of section*  
17           *707(b)(2), if the debtor has current monthly income,*  
18           *when multiplied by 12, greater than—*

19           “(A) *in the case of a debtor in a household*  
20           *of 1 person, the median family income of the ap-*  
21           *plicable State for 1 earner;*

22           “(B) *in the case of a debtor in a household*  
23           *of 2, 3, or 4 individuals, the highest median*  
24           *family income of the applicable State for a fam-*  
25           *ily of the same number or fewer individuals; or*



1           “(C) in the case of a debtor in a household  
 2           exceeding 4 individuals, the highest median fam-  
 3           ily income of the applicable State for a family  
 4           of 4 or fewer individuals, plus \$525 per month  
 5           for each individual in excess of 4.”.

6           (i) *SPECIAL ALLOWANCE FOR HEALTH INSURANCE.*—  
 7           Section 1329(a) of title 11, United States Code, is amend-  
 8           ed—

9           (1) in paragraph (2) by striking “or” at the end;  
 10           (2) in paragraph (3) by striking the period at  
 11           the end and inserting “; or”; and  
 12           (3) by adding at the end the following:

13           “(4) reduce amounts to be paid under the plan  
 14           by the actual amount expended by the debtor to pur-  
 15           chase health insurance for the debtor (and for any de-  
 16           pendent of the debtor if such dependent does not other-  
 17           wise have health insurance coverage) if the debtor doc-  
 18           uments the cost of such insurance and demonstrates  
 19           that—

20           “(A) such expenses are reasonable and nec-  
 21           essary;

22           “(B)(i) if the debtor previously paid for  
 23           health insurance, the amount is not materially  
 24           larger than the cost the debtor previously paid or

1           *the cost necessary to maintain the lapsed policy;*  
 2           *or*

3                   “(i) *if the debtor did not have health insur-*  
 4                   *ance, the amount is not materially larger than*  
 5                   *the reasonable cost that would be incurred by a*  
 6                   *debtor who purchases health insurance, who has*  
 7                   *similar income, expenses, age, and health status,*  
 8                   *and who lives in the same geographical location*  
 9                   *with the same number of dependents who do not*  
 10                   *otherwise have health insurance coverage; and*

11                   “(C) *the amount is not otherwise allowed*  
 12                   *for purposes of determining disposable income*  
 13                   *under section 1325(b) of this title;*

14           *and upon request of any party in interest, files proof*  
 15           *that a health insurance policy was purchased.”.*

16           (j) *ADJUSTMENT OF DOLLAR AMOUNTS.*—Section  
 17   104(b) of title 11, United States Code, is amended by strik-  
 18   ing “and 523(a)(2)(C)” each place it appears and inserting  
 19   “523(a)(2)(C), 707(b), and 1325(b)(3)”.

20           (k) *DEFINITION OF ‘MEDIAN FAMILY INCOME’.*—Sec-  
 21   tion 101 of title 11, United States Code, is amended by in-  
 22   serting after paragraph (39) the following:

23                   “(39A) *‘median family income’ means for any*  
 24                   *year—*

1           “(A) the median family income both cal-  
2           culated and reported by the Bureau of the Census  
3           in the then most recent year; and

4           “(B) if not so calculated and reported in the  
5           then current year, adjusted annually after such  
6           most recent year until the next year in which  
7           median family income is both calculated and re-  
8           ported by the Bureau of the Census, to reflect the  
9           percentage change in the Consumer Price Index  
10          for All Urban Consumers during the period of  
11          years occurring after such most recent year and  
12          before such current year;”.

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

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

17          **SEC. 103. SENSE OF CONGRESS AND STUDY.**

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

24          (b) *STUDY.*—

1           (1) *IN GENERAL.*—Not later than 2 years after  
2           the date of enactment of this Act, the Director of the  
3           Executive Office for United States Trustees shall sub-  
4           mit a report to the Committee on the Judiciary of the  
5           Senate and the Committee on the Judiciary of the  
6           House of Representatives containing the findings of  
7           the Director regarding the utilization of Internal Rev-  
8           enue Service standards for determining—

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

12                   (B) the impact that the application of such  
13                   standards has had on debtors and on the bank-  
14                   ruptcy courts.

15           (2) *RECOMMENDATION.*—The report under para-  
16           graph (1) may include recommendations for amend-  
17           ments to title 11, United States Code, that are con-  
18           sistent with the findings of the Director under para-  
19           graph (1).

20   **SEC. 104. NOTICE OF ALTERNATIVES.**

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

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

1 *the clerk shall give to such individual written notice con-*  
 2 *taining—*

3           “(1) a brief description of—

4                   “(A) chapters 7, 11, 12, and 13 and the  
 5                   *general purpose, benefits, and costs of proceeding*  
 6                   *under each of those chapters; and*

7                   “(B) *the types of services available from*  
 8                   *credit counseling agencies; and*

9           “(2) *statements specifying that—*

10                   “(A) *a person who knowingly and fraudu-*  
 11                   *lently conceals assets or makes a false oath or*  
 12                   *statement under penalty of perjury in connection*  
 13                   *with a case under this title shall be subject to*  
 14                   *fine, imprisonment, or both; and*

15                   “(B) *all information supplied by a debtor*  
 16                   *in connection with a case under this title is sub-*  
 17                   *ject to examination by the Attorney General.”.*

18 **SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING**

19                   **TEST PROGRAM.**

20           (a) *DEVELOPMENT OF FINANCIAL MANAGEMENT AND*  
 21 *TRAINING CURRICULUM AND MATERIALS.—The Director of*  
 22 *the Executive Office for United States Trustees (in this sec-*  
 23 *tion referred to as the “Director”)* shall consult with a wide  
 24 *range of individuals who are experts in the field of debtor*  
 25 *education, including trustees who serve in cases under chap-*

1 *ter 13 of title 11, United States Code, and who operate fi-*  
2 *ncial management education programs for debtors, and*  
3 *shall develop a financial management training curriculum*  
4 *and materials that can be used to educate debtors who are*  
5 *individuals on how to better manage their finances.*

6 (b) *TEST.*—

7 (1) *SELECTION OF DISTRICTS.*—*The Director*  
8 *shall select 6 judicial districts of the United States in*  
9 *which to test the effectiveness of the financial manage-*  
10 *ment training curriculum and materials developed*  
11 *under subsection (a).*

12 (2) *USE.*—*For an 18-month period beginning*  
13 *not later than 270 days after the date of the enact-*  
14 *ment of this Act, such curriculum and materials shall*  
15 *be, for the 6 judicial districts selected under para-*  
16 *graph (1), used as the instructional course concerning*  
17 *personal financial management for purposes of sec-*  
18 *tion 111 of title 11, United States Code.*

19 (c) *EVALUATION.*—

20 (1) *IN GENERAL.*—*During the 18-month period*  
21 *referred to in subsection (b), the Director shall evalu-*  
22 *ate the effectiveness of—*

23 (A) *the financial management training cur-*  
24 *riculum and materials developed under sub-*  
25 *section (a); and*

1           (B) a sample of existing consumer edu-  
2 cation programs such as those described in the  
3 *Report of the National Bankruptcy Review Com-*  
4 *mission (October 20, 1997) that are representa-*  
5 *tive of consumer education programs carried out*  
6 *by the credit industry, by trustees serving under*  
7 *chapter 13 of title 11, United States Code, and*  
8 *by consumer counseling groups.*

9           (2) *REPORT.*—Not later than 3 months after con-  
10 cluding such evaluation, the Director shall submit a  
11 report to the Speaker of the House of Representatives  
12 and the President pro tempore of the Senate, for refer-  
13 ral to the appropriate committees of the Congress,  
14 containing the findings of the Director regarding the  
15 effectiveness of such curriculum, such materials, and  
16 such programs and their costs.

17 **SEC. 106. CREDIT COUNSELING.**

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

21           “(h)(1) Subject to paragraphs (2) and (3), and not-  
22 withstanding any other provision of this section, an indi-  
23 vidual may not be a debtor under this title unless such indi-  
24 vidual has, during the 180-day period preceding the date  
25 of filing of the petition by such individual, received from

1 *an approved nonprofit budget and credit counseling agency*  
2 *described in section 111(a) an individual or group briefing*  
3 *(including a briefing conducted by telephone or on the*  
4 *Internet) that outlined the opportunities for available credit*  
5 *counseling and assisted such individual in performing a re-*  
6 *lated budget analysis.*

7       “(2)(A) Paragraph (1) shall not apply with respect to  
8 a debtor who resides in a district for which the United  
9 States trustee (or the bankruptcy administrator, if any) de-  
10 termines that the approved nonprofit budget and credit  
11 counseling agencies for such district are not reasonably able  
12 to provide adequate services to the additional individuals  
13 who would otherwise seek credit counseling from such agen-  
14 cies by reason of the requirements of paragraph (1).

15       “(B) The United States trustee (or the bankruptcy ad-  
16 ministrator, if any) who makes a determination described  
17 in subparagraph (A) shall review such determination not  
18 later than 1 year after the date of such determination, and  
19 not less frequently than annually thereafter. Notwith-  
20 standing the preceding sentence, a nonprofit budget and  
21 credit counseling agency may be disapproved by the United  
22 States trustee (or the bankruptcy administrator, if any) at  
23 any time.



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

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

6               “(ii) states that the debtor requested credit coun-  
7 seling services from an approved nonprofit budget  
8 and credit counseling agency, but was unable to ob-  
9 tain the services referred to in paragraph (1) during  
10 the 5-day period beginning on the date on which the  
11 debtor made that request; and

12               “(iii) is satisfactory to the court.

13       “(B) With respect to a debtor, an exemption under sub-  
14 paragraph (A) shall cease to apply to that debtor on the  
15 date on which the debtor meets the requirements of para-  
16 graph (1), but in no case may the exemption apply to that  
17 debtor after the date that is 30 days after the debtor files  
18 a petition, except that the court, for cause, may order an  
19 additional 15 days.”.

20       (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title  
21 11, United States Code, is amended—

22               (1) in paragraph (9), by striking “or” at the  
23 end;

24               (2) in paragraph (10), by striking the period  
25 and inserting “; or”; and

1           (3) by adding at the end the following:

2           “(11) after filing the petition, the debtor failed  
3 to complete an instructional course concerning per-  
4 sonal financial management described in section 111,  
5 except that this paragraph shall not apply with re-  
6 spect to a debtor who resides in a district for which  
7 the United States trustee (or the bankruptcy adminis-  
8 trator, if any) determines that the approved instruc-  
9 tional courses are not adequate to service the addi-  
10 tional individuals who would otherwise be required to  
11 complete such instructional courses under this section  
12 (The United States trustee (or the bankruptcy admin-  
13 istrator, if any) who makes a determination described  
14 in this paragraph shall review such determination  
15 not later than 1 year after the date of such deter-  
16 mination, and not less frequently than annually  
17 thereafter).”.

18       (c) *CHAPTER 13 DISCHARGE.*—Section 1328 of title  
19 11, United States Code, is amended by adding at the end  
20 the following:

21       “(g)(1) The court shall not grant a discharge under  
22 this section to a debtor unless after filing a petition the  
23 debtor has completed an instructional course concerning  
24 personal financial management described in section 111.

1       “(2) Paragraph (1) shall not apply with respect to a  
2 debtor who resides in a district for which the United States  
3 trustee (or the bankruptcy administrator, if any) deter-  
4 mines that the approved instructional courses are not ade-  
5 quate to service the additional individuals who would other-  
6 wise be required to complete such instructional course by  
7 reason of the requirements of paragraph (1).

8       “(3) The United States trustee (or the bankruptcy ad-  
9 ministrator, if any) who makes a determination described  
10 in paragraph (2) shall review such determination not later  
11 than 1 year after the date of such determination, and not  
12 less frequently than annually thereafter.”.

13       (d) *DEBTOR’S DUTIES.*—Section 521 of title 11,  
14 United States Code, is amended—

15             (1) by inserting “(a)” before “The debtor shall—  
16       ”; and

17             (2) by adding at the end the following:

18       “(b) In addition to the requirements under subsection  
19 (a), a debtor who is an individual shall file with the court—

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

24             “(2) a copy of the debt repayment plan, if any,  
25 developed under section 109(h) through the approved

1        *nonprofit budget and credit counseling agency re-*  
 2        *ferred to in paragraph (1).”.*

3        *(e) GENERAL PROVISIONS.—*

4                *(1) IN GENERAL.—Chapter 1 of title 11, United*  
 5        *States Code, is amended by adding at the end the fol-*  
 6        *lowing:*

7        ***“§ 111. Nonprofit budget and credit counseling agen-***  
 8                        ***cies; financial management instructional***  
 9                        ***courses***

10        *“(a) The clerk shall maintain a publicly available list*  
 11        *of—*

12                *“(1) nonprofit budget and credit counseling*  
 13        *agencies that provide 1 or more services described in*  
 14        *section 109(h) currently approved by the United*  
 15        *States trustee (or the bankruptcy administrator, if*  
 16        *any); and*

17                *“(2) instructional courses concerning personal fi-*  
 18        *nancial management currently approved by the*  
 19        *United States trustee (or the bankruptcy adminis-*  
 20        *trator, if any), as applicable.*

21        *“(b) The United States trustee (or bankruptcy admin-*  
 22        *istrator, if any) shall only approve a nonprofit budget and*  
 23        *credit counseling agency or an instructional course con-*  
 24        *cerning personal financial management as follows:*

1           “(1) *The United States trustee (or bankruptcy*  
2 *administrator, if any) shall have thoroughly reviewed*  
3 *the qualifications of the nonprofit budget and credit*  
4 *counseling agency or of the provider of the instruc-*  
5 *tional course under the standards set forth in this sec-*  
6 *tion, and the services or instructional courses that*  
7 *will be offered by such agency or such provider, and*  
8 *may require such agency or such provider that has*  
9 *sought approval to provide information with respect*  
10 *to such review.*

11           “(2) *The United States trustee (or bankruptcy*  
12 *administrator, if any) shall have determined that*  
13 *such agency or such instructional course fully satisfies*  
14 *the applicable standards set forth in this section.*

15           “(3) *If a nonprofit budget and credit counseling*  
16 *agency or instructional course did not appear on the*  
17 *approved list for the district under subsection (a) im-*  
18 *mediately before approval under this section, ap-*  
19 *proval under this subsection of such agency or such*  
20 *instructional course shall be for a probationary pe-*  
21 *riod not to exceed 6 months.*

22           “(4) *At the conclusion of the applicable proba-*  
23 *tionary period under paragraph (3), the United*  
24 *States trustee (or bankruptcy administrator, if any)*  
25 *may only approve for an additional 1-year period,*

1       *and for successive 1-year periods thereafter, an agency*  
2       *or instructional course that has demonstrated during*  
3       *the probationary or applicable subsequent period of*  
4       *approval that such agency or instructional course—*

5               *“(A) has met the standards set forth under*  
6               *this section during such period; and*

7               *“(B) can satisfy such standards in the fu-*  
8               *ture.*

9               *“(5) Not later than 30 days after any final deci-*  
10              *sion under paragraph (4), an interested person may*  
11              *seek judicial review of such decision in the appro-*  
12              *priate district court of the United States.*

13              *“(c)(1) The United States trustee (or the bankruptcy*  
14              *administrator, if any) shall only approve a nonprofit budg-*  
15              *et and credit counseling agency that demonstrates that it*  
16              *will provide qualified counselors, maintain adequate provi-*  
17              *sion for safekeeping and payment of client funds, provide*  
18              *adequate counseling with respect to client credit problems,*  
19              *and deal responsibly and effectively with other matters re-*  
20              *lating to the quality, effectiveness, and financial security*  
21              *of the services it provides.*

22              *“(2) To be approved by the United States trustee (or*  
23              *the bankruptcy administrator, if any), a nonprofit budget*  
24              *and credit counseling agency shall, at a minimum—*

1           “(A) have a board of directors the majority of  
2           which—

3                   “(i) are not employed by such agency; and

4                   “(ii) will not directly or indirectly benefit  
5           financially from the outcome of the counseling  
6           services provided by such agency;

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

10           “(C) provide for safekeeping and payment of cli-  
11           ent funds, including an annual audit of the trust ac-  
12           counts and appropriate employee bonding;

13           “(D) provide full disclosures to a client, includ-  
14           ing funding sources, counselor qualifications, possible  
15           impact on credit reports, and any costs of such pro-  
16           gram that will be paid by such client and how such  
17           costs will be paid;

18           “(E) provide adequate counseling with respect to  
19           a client’s credit problems that includes an analysis of  
20           such client’s current financial condition, factors that  
21           caused such financial condition, and how such client  
22           can develop a plan to respond to the problems without  
23           incurring negative amortization of debt;

24           “(F) provide trained counselors who receive no  
25           commissions or bonuses based on the outcome of the

1       *counseling services provided by such agency, and who*  
2       *have adequate experience, and have been adequately*  
3       *trained to provide counseling services to individuals*  
4       *in financial difficulty, including the matters de-*  
5       *scribed in subparagraph (E);*

6               *“(G) demonstrate adequate experience and back-*  
7       *ground in providing credit counseling; and*

8               *“(H) have adequate financial resources to pro-*  
9       *vide continuing support services for budgeting plans*  
10       *over the life of any repayment plan.*

11       *“(d) The United States trustee (or the bankruptcy ad-*  
12       *ministrator, if any) shall only approve an instructional*  
13       *course concerning personal financial management—*

14               *“(1) for an initial probationary period under*  
15       *subsection (b)(3) if the course will provide at a min-*  
16       *imum—*

17               *“(A) trained personnel with adequate expe-*  
18       *rience and training in providing effective in-*  
19       *struction and services;*

20               *“(B) learning materials and teaching meth-*  
21       *odologies designed to assist debtors in under-*  
22       *standing personal financial management and*  
23       *that are consistent with stated objectives directly*  
24       *related to the goals of such instructional course;*



1           “(C) adequate facilities situated in reason-  
2           ably convenient locations at which such instruc-  
3           tional course is offered, except that such facilities  
4           may include the provision of such instructional  
5           course by telephone or through the Internet, if  
6           such instructional course is effective; and

7           “(D) the preparation and retention of rea-  
8           sonable records (which shall include the debtor’s  
9           bankruptcy case number) to permit evaluation of  
10          the effectiveness of such instructional course, in-  
11          cluding any evaluation of satisfaction of instruc-  
12          tional course requirements for each debtor at-  
13          tending such instructional course, which shall be  
14          available for inspection and evaluation by the  
15          Executive Office for United States Trustees, the  
16          United States trustee (or the bankruptcy admin-  
17          istrator, if any), or the chief bankruptcy judge  
18          for the district in which such instructional  
19          course is offered; and

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

23                 “(A) has been effective in assisting a sub-  
24                 stantial number of debtors to understand per-  
25                 sonal financial management; and

1           “(B) is otherwise likely to increase substan-  
2           tially the debtor’s understanding of personal fi-  
3           nancial management.

4           “(e) The district court may, at any time, investigate  
5           the qualifications of a nonprofit budget and credit coun-  
6           seling agency referred to in subsection (a), and request pro-  
7           duction of documents to ensure the integrity and effective-  
8           ness of such agency. The district court may, at any time,  
9           remove from the approved list under subsection (a) a non-  
10          profit budget and credit counseling agency upon finding  
11          such agency does not meet the qualifications of subsection  
12          (b).

13          “(f) The United States trustee (or the bankruptcy ad-  
14          ministrators, if any) shall notify the clerk that a nonprofit  
15          budget and credit counseling agency or an instructional  
16          course is no longer approved, in which case the clerk shall  
17          remove it from the list maintained under subsection (a).

18          “(g)(1) No nonprofit budget and credit counseling  
19          agency may provide to a credit reporting agency informa-  
20          tion concerning whether a debtor has received or sought in-  
21          struction concerning personal financial management from  
22          such agency.

23          “(2) A nonprofit budget and credit counseling agency  
24          that willfully or negligently fails to comply with any re-

1 *quirement under this title with respect to a debtor shall be*  
 2 *liable for damages in an amount equal to the sum of—*

3           “(A) *any actual damages sustained by the debtor*  
 4           *as a result of the violation; and*

5           “(B) *any court costs or reasonable attorneys’ fees*  
 6           *(as determined by the court) incurred in an action to*  
 7           *recover those damages.”.*

8           (2) *CLERICAL AMENDMENT.—The table of sec-*  
 9           *tions for chapter 1 of title 11, United States Code, is*  
 10           *amended by adding at the end the following:*

*“111. Nonprofit budget and credit counseling agencies; financial management in-*  
*structional courses.”.*

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

13           “(i) *If a case commenced under chapter 7, 11, or 13*  
 14           *is dismissed due to the creation of a debt repayment plan,*  
 15           *for purposes of subsection (c)(3), any subsequent case com-*  
 16           *menced by the debtor under any such chapter shall not be*  
 17           *presumed to be filed not in good faith.*

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

21           **SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY**  
 22   **EXPENSES.**

23           *For purposes of section 707(b) of title 11, United*  
 24           *States Code, as amended by this Act, the Director of the*

1 *Executive Office for United States Trustees shall, not later*  
 2 *than 180 days after the date of enactment of this Act, issue*  
 3 *schedules of reasonable and necessary administrative ex-*  
 4 *penses of administering a chapter 13 plan for each judicial*  
 5 *district of the United States.*

6 ***TITLE II—ENHANCED***  
 7 ***CONSUMER PROTECTION***  
 8 ***Subtitle A—Penalties for Abusive***  
 9 ***Creditor Practices***

10 ***SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLU-***  
 11 ***TION.***

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

15 *“(k)(1) The court, on the motion of the debtor and after*  
 16 *a hearing, may reduce a claim filed under this section based*  
 17 *in whole on an unsecured consumer debt by not more than*  
 18 *20 percent of the claim, if—*

19 *“(A) the claim was filed by a creditor who un-*  
 20 *reasonably refused to negotiate a reasonable alter-*  
 21 *native repayment schedule proposed on behalf of the*  
 22 *debtor by an approved nonprofit budget and credit*  
 23 *counseling agency described in section 111;*

24 *“(B) the offer of the debtor under subparagraph*  
 25 *(A)—*

1           “(i) was made at least 60 days before the  
2           date of the filing of the petition; and

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

7           “(C) no part of the debt under the alternative re-  
8           payment schedule is nondischargeable.

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

11           “(A) the creditor unreasonably refused to con-  
12           sider the debtor’s proposal; and

13           “(B) the proposed alternative repayment sched-  
14           ule was made prior to expiration of the 60-day period  
15           specified in paragraph (1)(B)(i).”.

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

19           “(h) The trustee may not avoid a transfer if such  
20           transfer was made as a part of an alternative repayment  
21           schedule between the debtor and any creditor of the debtor  
22           created by an approved nonprofit budget and credit coun-  
23           seling agency.”.

1 **SEC. 202. EFFECT OF DISCHARGE.**

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

4 *“(i) The willful failure of a creditor to credit payments*  
5 *received under a plan confirmed under this title, unless the*  
6 *order confirming the plan is revoked, the plan is in default,*  
7 *or the creditor has not received payments required to be*  
8 *made under the plan in the manner required by the plan*  
9 *(including crediting the amounts required under the plan),*  
10 *shall constitute a violation of an injunction under sub-*  
11 *section (a)(2) if the act of the creditor to collect and failure*  
12 *to credit payments in the manner required by the plan*  
13 *caused material injury to the debtor.*

14 *“(j) Subsection (a)(2) does not operate as an injunc-*  
15 *tion against an act by a creditor that is the holder of a*  
16 *secured claim, if—*

17 *“(1) such creditor retains a security interest in*  
18 *real property that is the principal residence of the*  
19 *debtor;*

20 *“(2) such act is in the ordinary course of busi-*  
21 *ness between the creditor and the debtor; and*

22 *“(3) such act is limited to seeking or obtaining*  
23 *periodic payments associated with a valid security*  
24 *interest in lieu of pursuit of in rem relief to enforce*  
25 *the lien.”.*

1 **SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION**  
2 **AGREEMENT PRACTICES.**

3 (a) *IN GENERAL.*—Section 524 of title 11, United  
4 States Code, as amended section 202, is amended—

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

7 “(2) the debtor received the disclosures described  
8 in subsection (k) at or before the time at which the  
9 debtor signed the agreement;” and

10 (2) by adding at the end the following:

11 “(k)(1) The disclosures required under subsection  
12 (c)(2) shall consist of the disclosure statement described in  
13 paragraph (3), completed as required in that paragraph,  
14 together with the agreement specified in subsection (c),  
15 statement, declaration, motion and order described, respec-  
16 tively, in paragraphs (4) through (8), and shall be the only  
17 disclosures required in connection with entering into such  
18 agreement.

19 “(2) Disclosures made under paragraph (1) shall be  
20 made clearly and conspicuously and in writing. The terms  
21 ‘Amount Reaffirmed’ and ‘Annual Percentage Rate’ shall  
22 be disclosed more conspicuously than other terms, data or  
23 information provided in connection with this disclosure, ex-  
24 cept that the phrases ‘Before agreeing to reaffirm a debt,  
25 review these important disclosures’ and ‘Summary of Reaf-  
26 firmation Agreement’ may be equally conspicuous. Disclo-

1 *sure may be made in a different order and may use termi-*  
2 *nology different from that set forth in paragraphs (2)*  
3 *through (8), except that the terms ‘Amount Reaffirmed’ and*  
4 *‘Annual Percentage Rate’ must be used where indicated.*

5       *“(3) The disclosure statement required under this*  
6 *paragraph shall consist of the following:*

7           *“(A) The statement: ‘Part A: Before agreeing to*  
8 *reaffirm a debt, review these important disclosures:’;*

9           *“(B) Under the heading ‘Summary of Reaffir-*  
10 *mation Agreement’, the statement: ‘This Summary is*  
11 *made pursuant to the requirements of the Bankruptcy*  
12 *Code’;*

13           *“(C) The ‘Amount Reaffirmed’, using that term,*  
14 *which shall be—*

15           *“(i) the total amount of debt that the debtor*  
16 *agrees to reaffirm by entering into an agreement*  
17 *of the kind specified in subsection (c), and*

18           *“(ii) the total of any fees and costs accrued*  
19 *as of the date of the disclosure statement, related*  
20 *to such total amount.*

21           *“(D) In conjunction with the disclosure of the*  
22 *‘Amount Reaffirmed’, the statements—*

23           *“(i) ‘The amount of debt you have agreed to*  
24 *reaffirm’; and*



1           “(ii) *Your credit agreement may obligate*  
2           *you to pay additional amounts which may come*  
3           *due after the date of this disclosure. Consult your*  
4           *credit agreement.*’.

5           “(E) *The ‘Annual Percentage Rate’, using that*  
6           *term, which shall be disclosed as—*

7           “(i) *if, at the time the petition is filed, the*  
8           *debt is an extension of credit under an open end*  
9           *credit plan, as the terms ‘credit’ and ‘open end*  
10           *credit plan’ are defined in section 103 of the*  
11           *Truth in Lending Act, then—*

12           “(I) *the annual percentage rate deter-*  
13           *mined under paragraphs (5) and (6) of sec-*  
14           *tion 127(b) of the Truth in Lending Act, as*  
15           *applicable, as disclosed to the debtor in the*  
16           *most recent periodic statement prior to en-*  
17           *tering into an agreement of the kind speci-*  
18           *fied in subsection (c) or, if no such periodic*  
19           *statement has been given to the debtor dur-*  
20           *ing the prior 6 months, the annual percent-*  
21           *age rate as it would have been so disclosed*  
22           *at the time the disclosure statement is given*  
23           *to the debtor, or to the extent this annual*  
24           *percentage rate is not readily available or*  
25           *not applicable, then*

1           “(II) the simple interest rate applica-  
2           ble to the amount reaffirmed as of the date  
3           the disclosure statement is given to the debt-  
4           or, or if different simple interest rates apply  
5           to different balances, the simple interest rate  
6           applicable to each such balance, identifying  
7           the amount of each such balance included in  
8           the amount reaffirmed, or

9           “(III) if the entity making the disclo-  
10          sure elects, to disclose the annual percentage  
11          rate under subclause (I) and the simple in-  
12          terest rate under subclause (II);

13          “(ii) if, at the time the petition is filed, the  
14          debt is an extension of credit other than under  
15          an open end credit plan, as the terms ‘credit’  
16          and ‘open end credit plan’ are defined in section  
17          103 of the Truth in Lending Act, then—

18                 “(I) the annual percentage rate under  
19                 section 128(a)(4) of the Truth in Lending  
20                 Act, as disclosed to the debtor in the most  
21                 recent disclosure statement given to the  
22                 debtor prior to the entering into an agree-  
23                 ment of the kind specified in subsection (c)  
24                 with respect to the debt, or, if no such dis-  
25                 closure statement was given to the debtor,

1            *the annual percentage rate as it would have*  
2            *been so disclosed at the time the disclosure*  
3            *statement is given to the debtor, or to the*  
4            *extent this annual percentage rate is not*  
5            *readily available or not applicable, then*

6            *“(II) the simple interest rate applica-*  
7            *ble to the amount reaffirmed as of the date*  
8            *the disclosure statement is given to the debt-*  
9            *or, or if different simple interest rates apply*  
10           *to different balances, the simple interest rate*  
11           *applicable to each such balance, identifying*  
12           *the amount of such balance included in the*  
13           *amount reaffirmed, or*

14           *“(III) if the entity making the disclo-*  
15           *sure elects, to disclose the annual percentage*  
16           *rate under (I) and the simple interest rate*  
17           *under (II).*

18           *“(F) If the underlying debt transaction was dis-*  
19           *closed as a variable rate transaction on the most re-*  
20           *cent disclosure given under the Truth in Lending Act,*  
21           *by stating ‘The interest rate on your loan may be a*  
22           *variable interest rate which changes from time to*  
23           *time, so that the annual percentage rate disclosed here*  
24           *may be higher or lower.’.*

1           “(G) If the debt is secured by a security interest  
2           which has not been waived in whole or in part or de-  
3           termined to be void by a final order of the court at  
4           the time of the disclosure, by disclosing that a secu-  
5           rity interest or lien in goods or property is asserted  
6           over some or all of the debts the debtor is reaffirming  
7           and listing the items and their original purchase  
8           price that are subject to the asserted security interest,  
9           or if not a purchase-money security interest then list-  
10          ing by items or types and the original amount of the  
11          loan.

12           “(H) At the election of the creditor, a statement  
13          of the repayment schedule using 1 or a combination  
14          of the following—

15                   “(i) by making the statement: ‘Your first  
16                   payment in the amount of \$\_\_\_\_\_ is due on  
17                   \_\_\_\_\_ but the future payment amount may be  
18                   different. Consult your reaffirmation agreement  
19                   or credit agreement, as applicable.’, and stating  
20                   the amount of the first payment and the due  
21                   date of that payment in the places provided;

22                   “(ii) by making the statement: ‘Your pay-  
23                   ment schedule will be:’, and describing the repay-  
24                   ment schedule with the number, amount, and due  
25                   dates or period of payments scheduled to repay

1           *the debts reaffirmed to the extent then known by*  
2           *the disclosing party; or*

3           “(iii) *by describing the debtor’s repayment*  
4           *obligations with reasonable specificity to the ex-*  
5           *tent then known by the disclosing party.*

6           “(I) *The following statement: ‘Note: When this*  
7           *disclosure refers to what a creditor “may” do, it does*  
8           *not use the word “may” to give the creditor specific*  
9           *permission. The word “may” is used to tell you what*  
10           *might occur if the law permits the creditor to take the*  
11           *action. If you have questions about your reaffirming*  
12           *a debt or what the law requires, consult with the at-*  
13           *torney who helped you negotiate this agreement re-*  
14           *affirming a debt. If you don’t have an attorney help-*  
15           *ing you, the judge will explain the effect of your re-*  
16           *affirming a debt when the hearing on the reaffirma-*  
17           *tion agreement is held.’*

18           “(J)(i) *The following additional statements:*

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

24           “*‘1. Read the disclosures in this Part A care-*  
25           *fully. Consider the decision to reaffirm carefully.*

1       *Then, if you want to reaffirm, sign the reaffirmation*  
2       *agreement in Part B (or you may use a separate*  
3       *agreement you and your creditor agree on).*

4             *“2. Complete and sign Part D and be sure you*  
5       *can afford to make the payments you are agreeing to*  
6       *make and have received a copy of the disclosure state-*  
7       *ment and a completed and signed reaffirmation*  
8       *agreement.*

9             *“3. If you were represented by an attorney dur-*  
10       *ing the negotiation of your reaffirmation agreement,*  
11       *the attorney must have signed the certification in*  
12       *Part C.*

13            *“4. If you were not represented by an attorney*  
14       *during the negotiation of your reaffirmation agree-*  
15       *ment, you must have completed and signed Part E.*

16            *“5. The original of this disclosure must be filed*  
17       *with the court by you or your creditor. If a separate*  
18       *reaffirmation agreement (other than the one in Part*  
19       *B) has been signed, it must be attached.*

20            *“6. If you were represented by an attorney dur-*  
21       *ing the negotiation of your reaffirmation agreement,*  
22       *your reaffirmation agreement becomes effective upon*  
23       *filing with the court unless the reaffirmation is pre-*  
24       *sumed to be an undue hardship as explained in Part*  
25       *D.*

1           “7. If you were not represented by an attorney  
2 during the negotiation of your reaffirmation agree-  
3 ment, it will not be effective unless the court approves  
4 it. The court will notify you of the hearing on your  
5 reaffirmation agreement. You must attend this hear-  
6 ing in bankruptcy court where the judge will review  
7 your reaffirmation agreement. The bankruptcy court  
8 must approve your reaffirmation agreement as con-  
9 sistent with your best interests, except that no court  
10 approval is required if your reaffirmation agreement  
11 is for a consumer debt secured by a mortgage, deed  
12 of trust, security deed, or other lien on your real  
13 property, like your home.

14           “Your right to rescind (cancel) your reaffirmation  
15 agreement. You may rescind (cancel) your reaffirmation  
16 agreement at any time before the bankruptcy court enters  
17 a discharge order, or before the expiration of the 60-day  
18 period that begins on the date your reaffirmation agreement  
19 is filed with the court, whichever occurs later. To rescind  
20 (cancel) your reaffirmation agreement, you must notify the  
21 creditor that your reaffirmation agreement is rescinded (or  
22 canceled).

23           “What are your obligations if you reaffirm the debt?  
24 A reaffirmed debt remains your personal legal obligation.  
25 It is not discharged in your bankruptcy case. That means

1 *that if you default on your reaffirmed debt after your bank-*  
2 *ruptcy case is over, your creditor may be able to take your*  
3 *property or your wages. Otherwise, your obligations will*  
4 *be determined by the reaffirmation agreement which may*  
5 *have changed the terms of the original agreement. For ex-*  
6 *ample, if you are reaffirming an open end credit agreement,*  
7 *the creditor may be permitted by that agreement or applica-*  
8 *ble law to change the terms of that agreement in the future*  
9 *under certain conditions.*

10       *“Are you required to enter into a reaffirmation agree-*  
11 *ment by any law? No, you are not required to reaffirm a*  
12 *debt by any law. Only agree to reaffirm a debt if it is in*  
13 *your best interest. Be sure you can afford the payments you*  
14 *agree to make.*

15       *“What if your creditor has a security interest or lien?*  
16 *Your bankruptcy discharge does not eliminate any lien on*  
17 *your property. A “lien” is often referred to as a security*  
18 *interest, deed of trust, mortgage or security deed. Even if*  
19 *you do not reaffirm and your personal liability on the debt*  
20 *is discharged, because of the lien your creditor may still*  
21 *have the right to take the security property if you do not*  
22 *pay the debt or default on it. If the lien is on an item of*  
23 *personal property that is exempt under your State’s law*  
24 *or that the trustee has abandoned, you may be able to re-*  
25 *deem the item rather than reaffirm the debt. To redeem,*





1           “(A) *The following certification:*

2           “*Part C: Certification by Debtor’s Attorney (If Any).*

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

9           “*Signature of Debtor’s Attorney:           Date:*’.

10           “(B) *If a presumption of undue hardship has*  
11 *been established with respect to such agreement, such*  
12 *certification shall state that in the opinion of the at-*  
13 *torney, the debtor is able to make the payment.*

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

16           “(6)(A) *The statement in support of such agreement,*  
17 *which the debtor shall sign and date prior to filing with*  
18 *the court, shall consist of the following:*

19           “*Part D: Debtor’s Statement in Support of Reaffir-*  
20 *mation Agreement.*

21           “*1. I believe this reaffirmation agreement will not im-*  
22 *pose an undue hardship on my dependents or me. I can*  
23 *afford to make the payments on the reaffirmed debt because*  
24 *my monthly income (take home pay plus any other income*  
25 *received) is \$\_\_\_\_\_, and my actual current monthly ex-*

1 *penses including monthly payments on post-bankruptcy*  
2 *debt and other reaffirmation agreements total \$\_\_\_\_\_,*  
3 *leaving \$\_\_\_\_\_ to make the required payments on this re-*  
4 *affirmed debt. I understand that if my income less my*  
5 *monthly expenses does not leave enough to make the pay-*  
6 *ments, this reaffirmation agreement is presumed to be an*  
7 *undue hardship on me and must be reviewed by the court.*  
8 *However, this presumption may be overcome if I explain*  
9 *to the satisfaction of the court how I can afford to make*  
10 *the payments here: \_\_\_\_\_.*

11        “*2. I received a copy of the Reaffirmation Disclosure*  
12 *Statement in Part A and a completed and signed reaffirma-*  
13 *tion agreement.’.*

14        “*(B) Where the debtor is represented by an attorney*  
15 *and is reaffirming a debt owed to a creditor defined in sec-*  
16 *tion 19(b)(1)(A)(iv) of the Federal Reserve Act, the state-*  
17 *ment of support of the reaffirmation agreement, which the*  
18 *debtor shall sign and date prior to filing with the court,*  
19 *shall consist of the following:*

20        “*I believe this reaffirmation agreement is in my fi-*  
21 *nancial interest. I can afford to make the payments on the*  
22 *reaffirmed debt. I received a copy of the Reaffirmation Dis-*  
23 *closure Statement in Part A and a completed and signed*  
24 *reaffirmation agreement.’.*

1       “(7) *The motion that may be used if approval of such*  
2 *agreement by the court is required in order for it to be effec-*  
3 *tive, shall be signed and dated by the movant and shall*  
4 *consist of the following:*

5       “*‘Part E: Motion for Court Approval (To be completed*  
6 *only if the debtor is not represented by an attorney.)*. I (we),  
7 *the debtor(s), affirm the following to be true and correct:*

8       “*‘I am not represented by an attorney in connection*  
9 *with this reaffirmation agreement.*

10       “*‘I believe this reaffirmation agreement is in my best*  
11 *interest based on the income and expenses I have disclosed*  
12 *in my Statement in Support of this reaffirmation agree-*  
13 *ment, and because (provide any additional relevant reasons*  
14 *the court should consider):*

15       “*‘Therefore, I ask the court for an order approving this*  
16 *reaffirmation agreement.’.*

17       “(8) *The court order, which may be used to approve*  
18 *such agreement, shall consist of the following:*

19       “*‘Court Order: The court grants the debtor’s motion*  
20 *and approves the reaffirmation agreement described above.’.*

21       “(l) *Notwithstanding any other provision of this title*  
22 *the following shall apply:*

23               “(1) *A creditor may accept payments from a*  
24 *debtor before and after the filing of an agreement of*  
25 *the kind specified in subsection (c) with the court.*

1           “(2) A creditor may accept payments from a  
2           debtor under such agreement that the creditor believes  
3           in good faith to be effective.

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

7           “(m)(1) Until 60 days after an agreement of the kind  
8           specified in subsection (c) is filed with the court (or such  
9           additional period as the court, after notice and a hearing  
10          and for cause, orders before the expiration of such period),  
11          it shall be presumed that such agreement is an undue hard-  
12          ship on the debtor if the debtor’s monthly income less the  
13          debtor’s monthly expenses as shown on the debtor’s com-  
14          pleted and signed statement in support of such agreement  
15          required under subsection (k)(6)(A) is less than the sched-  
16          uled payments on the reaffirmed debt. This presumption  
17          shall be reviewed by the court. The presumption may be  
18          rebutted in writing by the debtor if the statement includes  
19          an explanation that identifies additional sources of funds  
20          to make the payments as agreed upon under the terms of  
21          such agreement. If the presumption is not rebutted to the  
22          satisfaction of the court, the court may disapprove such  
23          agreement. No agreement shall be disapproved without no-  
24          tice and a hearing to the debtor and creditor, and such

1 *hearing shall be concluded before the entry of the debtor's*  
2 *discharge.*

3       “(2) *This subsection does not apply to reaffirmation*  
4 *agreements where the creditor is a credit union, as defined*  
5 *in section 19(b)(1)(A)(iv) of the Federal Reserve Act.”.*

6       **(b) LAW ENFORCEMENT.—**

7           **(1) IN GENERAL.—***Chapter 9 of title 18, United*  
8 *States Code, is amended by adding at the end the fol-*  
9 *lowing:*

10 **“§158. Designation of United States attorneys and**  
11 **agents of the Federal Bureau of Investiga-**  
12 **tion to address abusive reaffirmations of**  
13 **debt and materially fraudulent state-**  
14 **ments in bankruptcy schedules**

15       “(a) *IN GENERAL.—The Attorney General of the*  
16 *United States shall designate the individuals described in*  
17 *subsection (b) to have primary responsibility in carrying*  
18 *out enforcement activities in addressing violations of sec-*  
19 *tion 152 or 157 relating to abusive reaffirmations of debt.*  
20 *In addition to addressing the violations referred to in the*  
21 *preceding sentence, the individuals described under sub-*  
22 *section (b) shall address violations of section 152 or 157*  
23 *relating to materially fraudulent statements in bankruptcy*  
24 *schedules that are intentionally false or intentionally mis-*  
25 *leading.*

1       “(b) *UNITED STATES ATTORNEYS AND AGENTS OF*  
 2 *THE FEDERAL BUREAU OF INVESTIGATION.*—*The individ-*  
 3 *uals referred to in subsection (a) are—*

4               “(1) *the United States attorney for each judicial*  
 5 *district of the United States; and*

6               “(2) *an agent of the Federal Bureau of Inves-*  
 7 *tigation for each field office of the Federal Bureau of*  
 8 *Investigation.*

9       “(c) *BANKRUPTCY INVESTIGATIONS.*—*Each United*  
 10 *States attorney designated under this section shall, in addi-*  
 11 *tion to any other responsibilities, have primary responsi-*  
 12 *bility for carrying out the duties of a United States attor-*  
 13 *ney under section 3057.*

14       “(d) *BANKRUPTCY PROCEDURES.*—*The bankruptcy*  
 15 *courts shall establish procedures for referring any case that*  
 16 *may contain a materially fraudulent statement in a bank-*  
 17 *ruptcy schedule to the individuals designated under this sec-*  
 18 *tion.”.*

19               (2) *CLERICAL AMENDMENT.*—*The table of sec-*  
 20 *tions for chapter 9 of title 18, United States Code, is*  
 21 *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.”.*

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

3 *Section 363 of title 11, United States Code, is amend-*  
4 *ed—*

5 *(1) by redesignating subsection (o) as subsection*  
6 *(p), and*

7 *(2) by inserting after subsection (n) the fol-*  
8 *lowing:*

9 *“(o) Notwithstanding subsection (f), if a person pur-*  
10 *chases any interest in a consumer credit transaction that*  
11 *is subject to the Truth in Lending Act or any interest in*  
12 *a consumer credit contract (as defined in section 433.1 of*  
13 *title 16 of the Code of Federal Regulations (January 1,*  
14 *2003), as amended from time to time), and if such interest*  
15 *is purchased through a sale under this section, then such*  
16 *person shall remain subject to all claims and defenses that*  
17 *are related to such consumer credit transaction or such con-*  
18 *sumer credit contract, to the same extent as such person*  
19 *would be subject to such claims and defenses of the consumer*  
20 *had such interest been purchased at a sale not under this*  
21 *section.”.*

22 **SEC. 205. GAO STUDY AND REPORT ON REAFFIRMATION**  
23 **AGREEMENT PROCESS.**

24 *(a) STUDY.—The Comptroller General of the United*  
25 *States shall conduct a study of the reaffirmation agreement*  
26 *process that occurs under title 11 of the United States Code,*



1 *to determine the overall treatment of consumers within the*  
 2 *context of such process, and shall include in such study con-*  
 3 *sideration of—*

4           (1) *the policies and activities of creditors with*  
 5 *respect to reaffirmation agreements; and*

6           (2) *whether consumers are fully, fairly, and con-*  
 7 *sistently informed of their rights pursuant to such*  
 8 *title.*

9           (b) *REPORT TO THE CONGRESS.—Not later than 18*  
 10 *months after the date of the enactment of this Act, the*  
 11 *Comptroller General shall submit to the President pro tem-*  
 12 *pore of the Senate and the Speaker of the House of Rep-*  
 13 *resentatives a report on the results of the study conducted*  
 14 *under subsection (a), together with recommendations for*  
 15 *legislation (if any) to address any abusive or coercive tac-*  
 16 *tics found in connection with the reaffirmation agreement*  
 17 *process that occurs under title 11 of the United States Code.*

18 ***Subtitle B—Priority Child Support***

19 ***SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGA-***  
 20 ***TION.***

21           *Section 101 of title 11, United States Code, is amend-*  
 22 *ed—*

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

24           (2) *by inserting after paragraph (14) the fol-*  
 25 *lowing:*

1           “(14A) ‘domestic support obligation’ means a  
2           debt that accrues before or after the date of the order  
3           for relief in a case under this title, including interest  
4           that accrues on that debt as provided under applica-  
5           ble nonbankruptcy law notwithstanding any other  
6           provision of this title, that is—

7                   “(A) owed to or recoverable by—

8                           “(i) a spouse, former spouse, or child of  
9                           the debtor or such child’s parent, legal  
10                          guardian, or responsible relative; or

11                          “(ii) a governmental unit;

12                   “(B) in the nature of alimony, mainte-  
13                   nance, or support (including assistance provided  
14                   by a governmental unit) of such spouse, former  
15                   spouse, or child of the debtor or such child’s par-  
16                   ent, without regard to whether such debt is ex-  
17                   pressly so designated;

18                   “(C) established or subject to establishment  
19                   before or after the date of the order for relief in  
20                   a case under this title, by reason of applicable  
21                   provisions of—

22                           “(i) a separation agreement, divorce  
23                           decree, or property settlement agreement;

24                           “(ii) an order of a court of record; or

1                   “(iii) a determination made in accord-  
2                   ance with applicable nonbankruptcy law by  
3                   a governmental unit; and

4                   “(D) not assigned to a nongovernmental en-  
5                   tity, unless that obligation is assigned volun-  
6                   tarily by the spouse, former spouse, child of the  
7                   debtor, or such child’s parent, legal guardian, or  
8                   responsible relative for the purpose of collecting  
9                   the debt;”.

10 **SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**  
11 **PORT OBLIGATIONS.**

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

14                   (1) by striking paragraph (7);

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

17                   (3) in paragraph (2), as so redesignated, by  
18 striking “First” and inserting “Second”;

19                   (4) in paragraph (3), as so redesignated, by  
20 striking “Second” and inserting “Third”;

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

22                           (A) by striking “Third” and inserting  
23 “Fourth”; and

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

1           (6) in paragraph (5), as so redesignated, by  
2           striking “Fourth” and inserting “Fifth”;

3           (7) in paragraph (6), as so redesignated, by  
4           striking “Fifth” and inserting “Sixth”;

5           (8) in paragraph (7), as so redesignated, by  
6           striking “Sixth” and inserting “Seventh”; and

7           (9) by inserting before paragraph (2), as so re-  
8           designated, the following:

9           “(1) First:

10           “(A) Allowed unsecured claims for domestic  
11           support obligations that, as of the date of the fil-  
12           ing of the petition in a case under this title, are  
13           owed to or recoverable by a spouse, former  
14           spouse, or child of the debtor, or such child’s par-  
15           ent, legal guardian, or responsible relative, with-  
16           out regard to whether the claim is filed by such  
17           person or is filed by a governmental unit on be-  
18           half of such person, on the condition that funds  
19           received under this paragraph by a governmental  
20           unit under this title after the date of the filing  
21           of the petition shall be applied and distributed  
22           in accordance with applicable nonbankruptcy  
23           law.

24           “(B) Subject to claims under subparagraph  
25           (A), allowed unsecured claims for domestic sup-

1            *port obligations that, as of the date of the filing*  
2            *of the petition, are assigned by a spouse, former*  
3            *spouse, child of the debtor, or such child’s parent,*  
4            *legal guardian, or responsible relative to a gov-*  
5            *ernmental unit (unless such obligation is as-*  
6            *signed voluntarily by the spouse, former spouse,*  
7            *child, parent, legal guardian, or responsible rel-*  
8            *ative of the child for the purpose of collecting the*  
9            *debt) or are owed directly to or recoverable by a*  
10           *governmental unit under applicable nonbank-*  
11           *ruptcy law, on the condition that funds received*  
12           *under this paragraph by a governmental unit*  
13           *under this title after the date of the filing of the*  
14           *petition be applied and distributed in accord-*  
15           *ance with applicable nonbankruptcy law.*

16           *“(C) If a trustee is appointed or elected*  
17           *under section 701, 702, 703, 1104, 1202, or*  
18           *1302, the administrative expenses of the trustee*  
19           *allowed under paragraphs (1)(A), (2), and (6) of*  
20           *section 503(b) shall be paid before payment of*  
21           *claims under subparagraphs (A) and (B), to the*  
22           *extent that the trustee administers assets that are*  
23           *otherwise available for the payment of such*  
24           *claims.”.*

1 **SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND**  
2 **DISCHARGE IN CASES INVOLVING DOMESTIC**  
3 **SUPPORT OBLIGATIONS.**

4 *Title 11, United States Code, is amended—*

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

7 *“(14) If the debtor is required by a judicial or*  
8 *administrative order, or by statute, to pay a domestic*  
9 *support obligation, the debtor has paid all amounts*  
10 *payable under such order or such statute for such ob-*  
11 *ligation that first become payable after the date of the*  
12 *filing of the petition.”;*

13 *(2) in section 1208(c)—*

14 *(A) in paragraph (8), by striking “or” at*  
15 *the end;*

16 *(B) in paragraph (9), by striking the period*  
17 *at the end and inserting “; and”; and*

18 *(C) by adding at the end the following:*

19 *“(10) failure of the debtor to pay any domestic*  
20 *support obligation that first becomes payable after the*  
21 *date of the filing of the petition.”;*

22 *(3) in section 1222(a)—*

23 *(A) in paragraph (2), by striking “and” at*  
24 *the end;*

25 *(B) in paragraph (3), by striking the period*  
26 *at the end and inserting “; and”; and*

1                   (C) by adding at the end the following:

2                   “(4) notwithstanding any other provision of this  
3 section, a plan may provide for less than full pay-  
4 ment of all amounts owed for a claim entitled to pri-  
5 ority under section 507(a)(1)(B) only if the plan pro-  
6 vides that all of the debtor’s projected disposable in-  
7 come for a 5-year period beginning on the date that  
8 the first payment is due under the plan will be ap-  
9 plied to make payments under the plan.”;

10                  (4) in section 1222(b)—

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

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

15                   “(11) provide for the payment of interest accru-  
16 ing after the date of the filing of the petition on unse-  
17 cured claims that are nondischargeable under section  
18 1228(a), except that such interest may be paid only  
19 to the extent that the debtor has disposable income  
20 available to pay such interest after making provision  
21 for full payment of all allowed claims;”;

22                  (5) in section 1225(a)—

23                   (A) in paragraph (5), by striking “and” at  
24 the end;

1           (B) in paragraph (6), by striking the period  
2           at the end and inserting “; and”; and

3           (C) by adding at the end the following:

4           “(7) the debtor has paid all amounts that are re-  
5           quired to be paid under a domestic support obligation  
6           and that first become payable after the date of the fil-  
7           ing of the petition if the debtor is required by a judi-  
8           cial or administrative order, or by statute, to pay  
9           such domestic support obligation.”;

10          (6) in section 1228(a), in the matter preceding  
11          paragraph (1), by inserting “, and in the case of a  
12          debtor who is required by a judicial or administrative  
13          order, or by statute, to pay a domestic support obliga-  
14          tion, after such debtor certifies that all amounts pay-  
15          able under such order or such statute that are due on  
16          or before the date of the certification (including  
17          amounts due before the petition was filed, but only to  
18          the extent provided for by the plan) have been paid”  
19          after “completion by the debtor of all payments under  
20          the plan”;

21          (7) in section 1307(c)—

22                (A) in paragraph (9), by striking “or” at  
23                the end;

24                (B) in paragraph (10), by striking the pe-  
25                riod at the end and inserting “; or”; and



1           (C) by adding at the end the following:

2           “(11) failure of the debtor to pay any domestic  
3 support obligation that first becomes payable after the  
4 date of the filing of the petition.”;

5           (8) in section 1322(a)—

6           (A) in paragraph (2), by striking “and” at  
7 the end;

8           (B) in paragraph (3), by striking the period  
9 at the end and inserting “; and”; and

10          (C) by adding at the end the following:

11          “(4) notwithstanding any other provision of this  
12 section, a plan may provide for less than full pay-  
13 ment of all amounts owed for a claim entitled to pri-  
14 ority under section 507(a)(1)(B) only if the plan pro-  
15 vides that all of the debtor’s projected disposable in-  
16 come for a 5-year period beginning on the date that  
17 the first payment is due under the plan will be ap-  
18 plied to make payments under the plan.”;

19          (9) in section 1322(b)—

20          (A) in paragraph (9), by striking “; and”  
21 and inserting a semicolon;

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

24          (C) inserting after paragraph (9) the fol-  
25 lowing:

1           “(10) provide for the payment of interest accru-  
2           ing after the date of the filing of the petition on unse-  
3           cured claims that are nondischargeable under section  
4           1328(a), except that such interest may be paid only  
5           to the extent that the debtor has disposable income  
6           available to pay such interest after making provision  
7           for full payment of all allowed claims; and”;

8           (10) in section 1325(a), as amended by section  
9           102, by inserting after paragraph (7) the following:

10           “(8) the debtor has paid all amounts that are re-  
11           quired to be paid under a domestic support obligation  
12           and that first become payable after the date of the fil-  
13           ing of the petition if the debtor is required by a judi-  
14           cial or administrative order, or by statute, to pay  
15           such domestic support obligation; and”;

16           (11) in section 1328(a), in the matter preceding  
17           paragraph (1), by inserting “, and in the case of a  
18           debtor who is required by a judicial or administrative  
19           order, or by statute, to pay a domestic support obliga-  
20           tion, after such debtor certifies that all amounts pay-  
21           able under such order or such statute that are due on  
22           or before the date of the certification (including  
23           amounts due before the petition was filed, but only to  
24           the extent provided for by the plan) have been paid”

1       *after “completion by the debtor of all payments under*  
2       *the plan”.*

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

5       *Section 362(b) of title 11, United States Code, is*  
6       *amended by striking paragraph (2) and inserting the fol-*  
7       *lowing:*

8                   “(2) under subsection (a)—

9                                   “(A) of the commencement or continuation  
10                                   of a civil action or proceeding—

11   “(i) for the establishment of paternity;

12   “(ii) for the establishment or modifica-  
13   tion of an order for domestic support obli-  
14   gations;

15   “(iii) concerning child custody or visi-  
16   tation;

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

21   “(v) regarding domestic violence;

22   “(B) of the collection of a domestic support  
23   obligation from property that is not property of  
24   the estate;

1           “(C) *with respect to the withholding of in-*  
 2           *come that is property of the estate or property of*  
 3           *the debtor for payment of a domestic support ob-*  
 4           *ligation under a judicial or administrative order*  
 5           *or a statute;*

6           “(D) *of the withholding, suspension, or re-*  
 7           *striction of a driver’s license, a professional or*  
 8           *occupational license, or a recreational license,*  
 9           *under State law, as specified in section*  
 10          *466(a)(16) of the Social Security Act;*

11          “(E) *of the reporting of overdue support*  
 12          *owed by a parent to any consumer reporting*  
 13          *agency as specified in section 466(a)(7) of the*  
 14          *Social Security Act;*

15          “(F) *of the interception of a tax refund, as*  
 16          *specified in sections 464 and 466(a)(3) of the So-*  
 17          *cial Security Act or under an analogous State*  
 18          *law; or*

19          “(G) *of the enforcement of a medical obliga-*  
 20          *tion, as specified under title IV of the Social Se-*  
 21          *curity Act;”.*

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

24          *Section 523 of title 11, United States Code, is amend-*  
 25    *ed—*

1           (1) *in subsection (a)—*

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

4                   “*(5) for a domestic support obligation;*”; and

5                   (B) *by striking paragraph (18);*

6           (2) *in subsection (c), by striking “(6), or (15)”*  
7 *each place it appears and inserting “or (6)”;* and

8           (3) *in paragraph (15), as added by Public Law*  
9 *103–394 (108 Stat. 4133)—*

10                   (A) *by inserting “to a spouse, former*  
11 *spouse, or child of the debtor and” before “not of*  
12 *the kind”;*

13                   (B) *by inserting “or” after “court of*  
14 *record,”;* and

15                   (C) *by striking “unless—” and all that fol-*  
16 *lows through the end of the paragraph and in-*  
17 *serting a semicolon.*

18 **SEC. 216. CONTINUED LIABILITY OF PROPERTY.**

19           Section 522 of title 11, United States Code, is amend-  
20 *ed—*

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

23                   “*(1) a debt of a kind specified in paragraph (1)*  
24 *or (5) of section 523(a) (in which case, notwith-*  
25 *standing any provision of applicable nonbankruptcy*

1       *law to the contrary, such property shall be liable for*  
 2       *a debt of a kind specified in section 523(a)(5));”;*

3               (2) *in subsection (f)(1)(A), by striking the dash*  
 4       *and all that follows through the end of the subpara-*  
 5       *graph and inserting “of a kind that is specified in*  
 6       *section 523(a)(5); or”;* and

7               (3) *in subsection (g)(2), by striking “subsection*  
 8       *(f)(2)” and inserting “subsection (f)(1)(B)”.*

9       **SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS**  
 10                               **AGAINST PREFERENTIAL TRANSFER MO-**  
 11                               **TIONS.**

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

14               “(7) *to the extent such transfer was a bona fide*  
 15       *payment of a debt for a domestic support obliga-*  
 16       *tion;”.*

17       **SEC. 218. DISPOSABLE INCOME DEFINED.**

18       *Section 1225(b)(2)(A) of title 11, United States Code,*  
 19       *is amended by inserting “or for a domestic support obliga-*  
 20       *tion that first becomes payable after the date of the filing*  
 21       *of the petition” after “dependent of the debtor”.*

22       **SEC. 219. COLLECTION OF CHILD SUPPORT.**

23               (a) *DUTIES OF TRUSTEE UNDER CHAPTER 7.—Sec-*  
 24       *tion 704 of title 11, United States Code, as amended by*  
 25       *section 102, is amended—*

1           (1) *in subsection (a)—*

2                   (A) *in paragraph (8), by striking “and” at*  
3           *the end;*

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

6                   (C) *by adding at the end the following:*

7                   “(10) *if with respect to the debtor there is a*  
8           *claim for a domestic support obligation, provide the*  
9           *applicable notice specified in subsection (c); and”;*  
10          *and*

11                  (2) *by adding at the end the following:*

12                  “(c)(1) *In a case described in subsection (a)(10) to*  
13          *which subsection (a)(10) applies, the trustee shall—*

14                          “(A)(i) *provide written notice to the holder of the*  
15                          *claim described in subsection (a)(10) of such claim*  
16                          *and of the right of such holder to use the services of*  
17                          *the State child support enforcement agency established*  
18                          *under sections 464 and 466 of the Social Security Act*  
19                          *for the State in which such holder resides, for assist-*  
20                          *ance in collecting child support during and after the*  
21                          *case under this title;*

22                          “(ii) *include in the notice provided under clause*  
23                          *(i) the address and telephone number of such State*  
24                          *child support enforcement agency; and*

1           “(iii) include in the notice provided under clause  
2           (i) an explanation of the rights of such holder to pay-  
3           ment of such claim under this chapter;

4           “(B)(i) provide written notice to such State child  
5           support enforcement agency of such claim; and

6           “(ii) include in the notice provided under clause  
7           (i) the name, address, and telephone number of such  
8           holder; and

9           “(C) at such time as the debtor is granted a dis-  
10          charge under section 727, provide written notice to  
11          such holder and to such State child support enforce-  
12          ment agency of—

13                 “(i) the granting of the discharge;

14                 “(ii) the last recent known address of the  
15          debtor;

16                 “(iii) the last recent known name and ad-  
17          dress of the debtor’s employer; and

18                 “(iv) the name of each creditor that holds a  
19          claim that—

20                         “(I) is not discharged under paragraph  
21                         (2), (4), or (14A) of section 523(a); or

22                         “(II) was reaffirmed by the debtor  
23                         under section 524(c).

24          “(2)(A) The holder of a claim described in subsection  
25 (a)(10) or the State child support enforcement agency of



1 *the State in which such holder resides may request from*  
 2 *a creditor described in paragraph (1)(C)(iv) the last known*  
 3 *address of the debtor.*

4       “(B) Notwithstanding any other provision of law, a  
 5 creditor that makes a disclosure of a last known address  
 6 of a debtor in connection with a request made under sub-  
 7 paragraph (A) shall not be liable by reason of making such  
 8 disclosure.”.

9       (b) *DUTIES OF TRUSTEE UNDER CHAPTER 11.*—Sec-  
 10 *tion 1106 of title 11, United States Code, is amended—*

11           (1) *in subsection (a)—*

12               (A) *in paragraph (6), by striking “and” at*  
 13 *the end;*

14               (B) *in paragraph (7), by striking the period*  
 15 *and inserting “; and”; and*

16               (C) *by adding at the end the following:*

17                   “(8) *if with respect to the debtor there is a claim*  
 18 *for a domestic support obligation, provide the appli-*  
 19 *cable notice specified in subsection (c).”;* and

20           (2) *by adding at the end the following:*

21               “(c)(1) *In a case described in subsection (a)(8) to*  
 22 *which subsection (a)(8) applies, the trustee shall—*

23                   “(A)(i) *provide written notice to the holder of the*  
 24 *claim described in subsection (a)(8) of such claim and*  
 25 *of the right of such holder to use the services of the*

1     *State child support enforcement agency established*  
2     *under sections 464 and 466 of the Social Security Act*  
3     *for the State in which such holder resides, for assist-*  
4     *ance in collecting child support during and after the*  
5     *case under this title; and*

6             *“(i) include in the notice required by clause (i)*  
7     *the address and telephone number of such State child*  
8     *support enforcement agency;*

9             *“(B)(i) provide written notice to such State child*  
10    *support enforcement agency of such claim; and*

11            *“(ii) include in the notice required by clause (i)*  
12    *the name, address, and telephone number of such*  
13    *holder; and*

14            *“(C) at such time as the debtor is granted a dis-*  
15    *charge under section 1141, provide written notice to*  
16    *such holder and to such State child support enforce-*  
17    *ment agency of—*

18            *“(i) the granting of the discharge;*

19            *“(ii) the last recent known address of the*  
20    *debtor;*

21            *“(iii) the last recent known name and ad-*  
22    *dress of the debtor’s employer; and*

23            *“(iv) the name of each creditor that holds a*  
24    *claim that—*

1                   “(I) is not discharged under paragraph  
2                   (2), (4), or (14A) of section 523(a); or

3                   “(II) was reaffirmed by the debtor  
4                   under section 524(c).

5           “(2)(A) The holder of a claim described in subsection  
6 (a)(8) or the State child enforcement support agency of the  
7 State in which such holder resides may request from a cred-  
8 itor described in paragraph (1)(C)(iv) the last known ad-  
9 dress of the debtor.

10           “(B) Notwithstanding any other provision of law, a  
11 creditor that makes a disclosure of a last known address  
12 of a debtor in connection with a request made under sub-  
13 paragraph (A) shall not be liable by reason of making such  
14 disclosure.”.

15           (c) *DUTIES OF TRUSTEE UNDER CHAPTER 12.*—Sec-  
16 tion 1202 of title 11, United States Code, is amended—

17                   (1) in subsection (b)—

18                           (A) in paragraph (4), by striking “and” at  
19                   the end;

20                           (B) in paragraph (5), by striking the period  
21                   and inserting “; and”; and

22                           (C) by adding at the end the following:

23                           “(6) if with respect to the debtor there is a claim  
24                   for a domestic support obligation, provide the appli-  
25                   cable notice specified in subsection (c).”; and

1           (2) *by adding at the end the following:*

2           “(c)(1) *In a case described in subsection (b)(6) to*  
3 *which subsection (b)(6) applies, the trustee shall—*

4           “(A)(i) *provide written notice to the holder of the*  
5 *claim described in subsection (b)(6) of such claim and*  
6 *of the right of such holder to use the services of the*  
7 *State child support enforcement agency established*  
8 *under sections 464 and 466 of the Social Security Act*  
9 *for the State in which such holder resides, for assist-*  
10 *ance in collecting child support during and after the*  
11 *case under this title; and*

12           “(i) *include in the notice provided under clause*  
13 *(i) the address and telephone number of such State*  
14 *child support enforcement agency;*

15           “(B)(i) *provide written notice to such State child*  
16 *support enforcement agency of such claim; and*

17           “(ii) *include in the notice provided under clause*  
18 *(i) the name, address, and telephone number of such*  
19 *holder; and*

20           “(C) *at such time as the debtor is granted a dis-*  
21 *charge under section 1228, provide written notice to*  
22 *such holder and to such State child support enforce-*  
23 *ment agency of—*

24           “(i) *the granting of the discharge;*

1           “(i) the last recent known address of the  
2           debtor;

3           “(iii) the last recent known name and ad-  
4           dress of the debtor’s employer; and

5           “(iv) the name of each creditor that holds a  
6           claim that—

7                   “(I) is not discharged under paragraph  
8                   (2), (4), or (14A) of section 523(a); or

9                   “(II) was reaffirmed by the debtor  
10                  under section 524(c).

11           “(2)(A) The holder of a claim described in subsection  
12 (b)(6) or the State child support enforcement agency of the  
13 State in which such holder resides may request from a cred-  
14 itor described in paragraph (1)(C)(iv) the last known ad-  
15 dress of the debtor.

16           “(B) Notwithstanding any other provision of law, a  
17 creditor that makes a disclosure of a last known address  
18 of a debtor in connection with a request made under sub-  
19 paragraph (A) shall not be liable by reason of making that  
20 disclosure.”.

21           (d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—Sec-  
22 tion 1302 of title 11, United States Code, is amended—

23                   (1) in subsection (b)—

24                           (A) in paragraph (4), by striking “and” at  
25                   the end;

1           (B) in paragraph (5), by striking the period  
2           and inserting “; and”; and

3           (C) by adding at the end the following:

4           “(6) if with respect to the debtor there is a claim  
5           for a domestic support obligation, provide the appli-  
6           cable notice specified in subsection (d).”; and

7           (2) by adding at the end the following:

8           “(d)(1) In a case described in subsection (b)(6) to  
9           which subsection (b)(6) applies, the trustee shall—

10           “(A)(i) provide written notice to the holder of the  
11           claim described in subsection (b)(6) of such claim and  
12           of the right of such holder to use the services of the  
13           State child support enforcement agency established  
14           under sections 464 and 466 of the Social Security Act  
15           for the State in which such holder resides, for assist-  
16           ance in collecting child support during and after the  
17           case under this title; and

18           “(i) include in the notice provided under clause  
19           (i) the address and telephone number of such State  
20           child support enforcement agency;

21           “(B)(i) provide written notice to such State child  
22           support enforcement agency of such claim; and

23           “(ii) include in the notice provided under clause  
24           (i) the name, address, and telephone number of such  
25           holder; and

1           “(C) at such time as the debtor is granted a dis-  
2           charge under section 1328, provide written notice to  
3           such holder and to such State child support enforce-  
4           ment agency of—

5                     “(i) the granting of the discharge;

6                     “(ii) the last recent known address of the  
7           debtor;

8                     “(iii) the last recent known name and ad-  
9           dress of the debtor’s employer; and

10                    “(iv) the name of each creditor that holds a  
11           claim that—

12                             “(I) is not discharged under paragraph  
13                             (2) or (4) of section 523(a); or

14                             “(II) was reaffirmed by the debtor  
15                             under section 524(c).

16           “(2)(A) The holder of a claim described in subsection  
17           (b)(6) or the State child support enforcement agency of the  
18           State in which such holder resides may request from a cred-  
19           itor described in paragraph (1)(C)(iv) the last known ad-  
20           dress of the debtor.

21           “(B) Notwithstanding any other provision of law, a  
22           creditor that makes a disclosure of a last known address  
23           of a debtor in connection with a request made under sub-  
24           paragraph (A) shall not be liable by reason of making that  
25           disclosure.”.

1 **SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDU-**  
 2 **CATIONAL BENEFITS AND LOANS.**

3 *Section 523(a) of title 11, United States Code, is*  
 4 *amended by striking paragraph (8) and inserting the fol-*  
 5 *lowing:*

6 “(8) *unless excepting such debt from discharge*  
 7 *under this paragraph would impose an undue hard-*  
 8 *ship on the debtor and the debtor’s dependents, for—*

9 “(A)(i) *an educational benefit overpayment*  
 10 *or loan made, insured, or guaranteed by a gov-*  
 11 *ernmental unit, or made under any program*  
 12 *funded in whole or in part by a governmental*  
 13 *unit or nonprofit institution; or*

14 “(ii) *an obligation to repay funds received*  
 15 *as an educational benefit, scholarship, or sti-*  
 16 *pend; or*

17 “(B) *any other educational loan that is a*  
 18 *qualified education loan, as defined in section*  
 19 *221(d)(1) of the Internal Revenue Code of 1986,*  
 20 *incurred by a debtor who is an individual;”.*

21 ***Subtitle C—Other Consumer***  
 22 ***Protections***

23 **SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANK-**  
 24 **RUPTCY FILINGS.**

25 *Section 110 of title 11, United States Code, is amend-*  
 26 *ed—*



1           (1) *in subsection (a)(1), by striking “or an em-*  
2           *ployee of an attorney” and inserting “for the debtor*  
3           *or an employee of such attorney under the direct su-*  
4           *pervision of such attorney”;*

5           (2) *in subsection (b)—*

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

11                   *“(A) sign the document for filing; and*

12                   *“(B) print on the document the name and ad-*  
13                   *dress of that officer, principal, responsible person, or*  
14                   *partner.”; and*

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

17                   “(2)(A) *Before preparing any document for filing or*  
18                   *accepting any fees from a debtor, the bankruptcy petition*  
19                   *preparer shall provide to the debtor a written notice which*  
20                   *shall be on an official form prescribed by the Judicial Con-*  
21                   *ference of the United States in accordance with rule 9009*  
22                   *of the Federal Rules of Bankruptcy Procedure.*

23                   “(B) *The notice under subparagraph (A)—*

1           “(i) shall inform the debtor in simple language  
2           that a bankruptcy petition preparer is not an attor-  
3           ney and may not practice law or give legal advice;

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

9           “(iii) shall—

10           “(I) be signed by the debtor and, under pen-  
11           alty of perjury, by the bankruptcy petition pre-  
12           parer; and

13           “(II) be filed with any document for fil-  
14           ing.”;

15           (3) in subsection (c)—

16           (A) in paragraph (2)—

17           (i) by striking “(2) For purposes” and  
18           inserting “(2)(A) Subject to subparagraph  
19           (B), for purposes”; and

20           (ii) by adding at the end the following:

21           “(B) If a bankruptcy petition preparer is not an indi-  
22           vidual, the identifying number of the bankruptcy petition  
23           preparer shall be the Social Security account number of the  
24           officer, principal, responsible person, or partner of the  
25           bankruptcy petition preparer.”; and

1                   (B) by striking paragraph (3);

2                   (4) in subsection (d)—

3                   (A) by striking “(d)(1)” and inserting

4                   “(d)”; and

5                   (B) by striking paragraph (2);

6                   (5) in subsection (e)—

7                   (A) by striking paragraph (2); and

8                   (B) by adding at the end the following:

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

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

14                  “(i) whether—

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

16                         “(II) commencing a case under chapter 7,  
17 11, 12, or 13 is appropriate;

18                  “(ii) whether the debtor’s debts will be discharged  
19 in a case under this title;

20                  “(iii) whether the debtor will be able to retain  
21 the debtor’s home, car, or other property after com-  
22 mencing a case under this title;

23                  “(iv) concerning—

24                         “(I) the tax consequences of a case brought  
25 under this title; or

1                   “(II) the dischargeability of tax claims;

2                   “(v) whether the debtor may or should promise  
3 to repay debts to a creditor or enter into a reaffirma-  
4 tion agreement with a creditor to reaffirm a debt;

5                   “(vi) concerning how to characterize the nature  
6 of the debtor’s interests in property or the debtor’s  
7 debts; or

8                   “(vii) concerning bankruptcy procedures and  
9 rights.”;

10                   (6) in subsection (f)—

11                   (A) by striking “(f)(1)” and inserting “(f)”;

12                   and

13                   (B) by striking paragraph (2);

14                   (7) in subsection (g)—

15                   (A) by striking “(g)(1)” and inserting

16 “(g)”;

17                   (B) by striking paragraph (2);

18                   (8) in subsection (h)—

19                   (A) by redesignating paragraphs (1)

20 through (4) as paragraphs (2) through (5), re-  
21 spectively;

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

24                   “(1) The Supreme Court may promulgate rules under  
25 section 2075 of title 28, or the Judicial Conference of the

1 *United States may prescribe guidelines, for setting a max-*  
2 *imum allowable fee chargeable by a bankruptcy petition*  
3 *preparer. A bankruptcy petition preparer shall notify the*  
4 *debtor of any such maximum amount before preparing any*  
5 *document for filing for a debtor or accepting any fee from*  
6 *the debtor.”;*

7 (C) *in paragraph (2), as so redesignated—*

8 (i) *by striking “Within 10 days after*  
9 *the date of the filing of a petition, a bank-*  
10 *ruptcy petition preparer shall file a” and*  
11 *inserting “A”;*

12 (ii) *by inserting “by the bankruptcy*  
13 *petition preparer shall be filed together with*  
14 *the petition,” after “perjury”; and*

15 (iii) *by adding at the end the fol-*  
16 *lowing: “If rules or guidelines setting a*  
17 *maximum fee for services have been promul-*  
18 *gated or prescribed under paragraph (1),*  
19 *the declaration under this paragraph shall*  
20 *include a certification that the bankruptcy*  
21 *petition preparer complied with the notifi-*  
22 *cation requirement under paragraph (1).”;*

23 (D) *by striking paragraph (3), as so red-*  
24 *esignated, and inserting the following:*

1       “(3)(A) *The court shall disallow and order the imme-*  
2 *diately turnover to the bankruptcy trustee any fee referred*  
3 *to in paragraph (2) found to be in excess of the value of*  
4 *any services—*

5               “(i) *rendered by the bankruptcy petition pre-*  
6 *parer during the 12-month period immediately pre-*  
7 *ceding the date of the filing of the petition; or*

8               “(ii) *found to be in violation of any rule or*  
9 *guideline promulgated or prescribed under paragraph*  
10 *(1).*

11       “(B) *All fees charged by a bankruptcy petition pre-*  
12 *parer may be forfeited in any case in which the bankruptcy*  
13 *petition preparer fails to comply with this subsection or*  
14 *subsection (b), (c), (d), (e), (f), or (g).*

15       “(C) *An individual may exempt any funds recovered*  
16 *under this paragraph under section 522(b).”; and*

17               “(E) *in paragraph (4), as so redesignated, by*  
18 *striking “or the United States trustee” and in-*  
19 *serting “the United States trustee (or the bank-*  
20 *ruptcy administrator, if any) or the court, on*  
21 *the initiative of the court,”;*

22               “(9) *in subsection (i)(1), by striking the matter*  
23 *preceding subparagraph (A) and inserting the fol-*  
24 *lowing:*

1       “(i)(1) If a bankruptcy petition preparer violates this  
2 section or commits any act that the court finds to be fraudu-  
3 lent, unfair, or deceptive, on the motion of the debtor, trust-  
4 ee, United States trustee (or the bankruptcy administrator,  
5 if any), and after notice and a hearing, the court shall order  
6 the bankruptcy petition preparer to pay to the debtor—”;

7               (10) in subsection (j)—

8                       (A) in paragraph (2)—

9                               (i) in subparagraph (A)(i)(I), by strik-  
10                               ing “a violation of which subjects a person  
11                               to criminal penalty”;

12                               (ii) in subparagraph (B)—

13                                       (I) by striking “or has not paid a  
14                                       penalty” and inserting “has not paid  
15                                       a penalty”; and

16                                       (II) by inserting “or failed to dis-  
17                                       gorge all fees ordered by the court”  
18                                       after “a penalty imposed under this  
19                                       section,”;

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

22                               (C) by inserting after paragraph (2) the fol-  
23                               lowing:

24       “(3) The court, as part of its contempt power, may  
25       enjoin a bankruptcy petition preparer that has failed to

1 *comply with a previous order issued under this section. The*  
2 *injunction under this paragraph may be issued on the mo-*  
3 *tion of the court, the trustee, or the United States trustee*  
4 *(or the bankruptcy administrator, if any).”; and*

5 *(11) by adding at the end the following:*

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

10 *“(2) The court shall triple the amount of a fine as-*  
11 *sessed under paragraph (1) in any case in which the court*  
12 *finds that a bankruptcy petition preparer—*

13 *“(A) advised the debtor to exclude assets or in-*  
14 *come that should have been included on applicable*  
15 *schedules;*

16 *“(B) advised the debtor to use a false Social Se-*  
17 *curity account number;*

18 *“(C) failed to inform the debtor that the debtor*  
19 *was filing for relief under this title; or*

20 *“(D) prepared a document for filing in a man-*  
21 *ner that failed to disclose the identity of the bank-*  
22 *ruptcy petition preparer.*

23 *“(3) A debtor, trustee, creditor, or United States trust-*  
24 *ee (or the bankruptcy administrator, if any) may file a mo-*



1 tion for an order imposing a fine on the bankruptcy peti-  
2 tion preparer for any violation of this section.

3 “(4)(A) Fines imposed under this subsection in judi-  
4 cial districts served by United States trustees shall be paid  
5 to the United States trustee, who shall deposit an amount  
6 equal to such fines in a special account of the United States  
7 Trustee System Fund referred to in section 586(e)(2) of title  
8 28. Amounts deposited under this subparagraph shall be  
9 available to fund the enforcement of this section on a na-  
10 tional basis.

11 “(B) Fines imposed under this subsection in judicial  
12 districts served by bankruptcy administrators shall be de-  
13 posited as offsetting receipts to the fund established under  
14 section 1931 of title 28, and shall remain available until  
15 expended to reimburse any appropriation for the amount  
16 paid out of such appropriation for expenses of the operation  
17 and maintenance of the courts of the United States.”.

18 **SEC. 222. SENSE OF CONGRESS.**

19 *It is the sense of Congress that States should develop*  
20 *curricula relating to the subject of personal finance, de-*  
21 *signed for use in elementary and secondary schools.*

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

3 *Section 507(a) of title 11, United States Code, as*  
 4 *amended by section 212, is amended by inserting after*  
 5 *paragraph (9) the following:*

6 *“(10) Tenth, allowed claims for death or per-*  
 7 *sonal injury resulting from the operation of a motor*  
 8 *vehicle or vessel if such operation was unlawful be-*  
 9 *cause the debtor was intoxicated from using alcohol,*  
 10 *a drug, or another substance.”.*

11 **SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANK-**  
 12 **RUPTCY.**

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

15 *(1) in subsection (b)—*

16 *(A) in paragraph (2)—*

17 *(i) in subparagraph (A), by striking*  
 18 *“and” at the end;*

19 *(ii) in subparagraph (B), by striking*  
 20 *the period at the end and inserting “; and”;*

21 *(iii) by adding at the end the fol-*  
 22 *lowing:*

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

1                   (iv) by striking “(2)(A) any property”  
2                   and inserting:

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

4                   “(A) any property”;

5                   (B) by striking paragraph (1) and insert-  
6                   ing:

7           “(2) Property listed in this paragraph is property that  
8 is specified under subsection (d), unless the State law that  
9 is applicable to the debtor under paragraph (3)(A) specifi-  
10 cally does not so authorize.”;

11                   (C) by striking “(b) Notwithstanding” and  
12                   inserting “(b)(1) Notwithstanding”;

13                   (D) by striking “paragraph (2)” each place  
14                   it appears and inserting “paragraph (3)”;

15                   (E) by striking “paragraph (1)” each place  
16                   it appears and inserting “paragraph (2)”;

17                   (F) by striking “Such property is—”; and

18                   (G) by adding at the end the following:

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

21                   “(A) If the retirement funds are in a retirement  
22 fund that has received a favorable determination  
23 under section 7805 of the Internal Revenue Code of  
24 1986, and that determination is in effect as of the  
25 date of the filing of the petition in a case under this

1 *title, those funds shall be presumed to be exempt from*  
2 *the estate.*

3 *“(B) If the retirement funds are in a retirement*  
4 *fund that has not received a favorable determination*  
5 *under such section 7805, those funds are exempt from*  
6 *the estate if the debtor demonstrates that—*

7 *“(i) no prior determination to the contrary*  
8 *has been made by a court or the Internal Rev-*  
9 *enue Service; and*

10 *“(ii)(I) the retirement fund is in substan-*  
11 *tial compliance with the applicable requirements*  
12 *of the Internal Revenue Code of 1986; or*

13 *“(II) the retirement fund fails to be in sub-*  
14 *stantial compliance with the applicable require-*  
15 *ments of the Internal Revenue Code of 1986 and*  
16 *the debtor is not materially responsible for that*  
17 *failure.*

18 *“(C) A direct transfer of retirement funds from*  
19 *1 fund or account that is exempt from taxation under*  
20 *section 401, 403, 408, 408A, 414, 457, or 501(a) of*  
21 *the Internal Revenue Code of 1986, under section*  
22 *401(a)(31) of the Internal Revenue Code of 1986, or*  
23 *otherwise, shall not cease to qualify for exemption*  
24 *under paragraph (3)(C) or subsection (d)(12) by rea-*  
25 *son of such direct transfer.*

1           “(D)(i) Any distribution that qualifies as an eli-  
2           gible rollover distribution within the meaning of sec-  
3           tion 402(c) of the Internal Revenue Code of 1986 or  
4           that is described in clause (ii) shall not cease to qual-  
5           ify for exemption under paragraph (3)(C) or sub-  
6           section (d)(12) by reason of such distribution.

7           “(ii) A distribution described in this clause is an  
8           amount that—

9                   “(I) has been distributed from a fund or ac-  
10                  count that is exempt from taxation under section  
11                  401, 403, 408, 408A, 414, 457, or 501(a) of the  
12                  Internal Revenue Code of 1986; and

13                  “(II) to the extent allowed by law, is depos-  
14                  ited in such a fund or account not later than 60  
15                  days after the distribution of such amount.”; and  
16                  (2) in subsection (d)—

17                   (A) in the matter preceding paragraph (1),  
18                  by striking “subsection (b)(1)” and inserting  
19                  “subsection (b)(2)”; and

20                   (B) by adding at the end the following:

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

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

3           (1) in paragraph (17), by striking “or” at the  
4 end;

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

7           (3) by inserting after paragraph (18) the fol-  
8 lowing:

9           “(19) under subsection (a), of withholding of in-  
10 come from a debtor’s wages and collection of amounts  
11 withheld, under the debtor’s agreement authorizing  
12 that withholding and collection for the benefit of a  
13 pension, profit-sharing, stock bonus, or other plan es-  
14 tablished under section 401, 403, 408, 408A, 414, 457,  
15 or 501(c) of the *Internal Revenue Code* of 1986, that  
16 is sponsored by the employer of the debtor, or an affil-  
17 iate, successor, or predecessor of such employer—

18           “(A) to the extent that the amounts withheld  
19 and collected are used solely for payments relat-  
20 ing to a loan from a plan under section  
21 408(b)(1) of the *Employee Retirement Income*  
22 *Security Act* of 1974 or is subject to section  
23 72(p) of the *Internal Revenue Code* of 1986; or

24           “(B) a loan from a thrift savings plan per-  
25 mitted under subchapter III of chapter 84 of title

1           5, that satisfies the requirements of section  
2           8433(g) of such title;

3           but nothing in this paragraph may be construed to  
4           provide that any loan made under a governmental  
5           plan under section 414(d), or a contract or account  
6           under section 403(b), of the Internal Revenue Code of  
7           1986 constitutes a claim or a debt under this title;”.

8           (c) *EXCEPTIONS TO DISCHARGE*.—Section 523(a) of  
9           title 11, United States Code, as amended by section 215,  
10          is amended by inserting after paragraph (17) the following:

11           “(18) owed to a pension, profit-sharing, stock  
12          bonus, or other plan established under section 401,  
13          403, 408, 408A, 414, 457, or 501(c) of the Internal  
14          Revenue Code of 1986, under—

15           “(A) a loan permitted under section  
16          408(b)(1) of the Employee Retirement Income  
17          Security Act of 1974, or subject to section 72(p)  
18          of the Internal Revenue Code of 1986; or

19           “(B) a loan from a thrift savings plan per-  
20          mitted under subchapter III of chapter 84 of title  
21          5, that satisfies the requirements of section  
22          8433(g) of such title;

23          but nothing in this paragraph may be construed to  
24          provide that any loan made under a governmental  
25          plan under section 414(d), or a contract or account

1        *under section 403(b), of the Internal Revenue Code of*  
2        *1986 constitutes a claim or a debt under this title;*  
3        *or”.*

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

6        *“(f) A plan may not materially alter the terms of a*  
7        *loan described in section 362(b)(19) and any amounts re-*  
8        *quired to repay such loan shall not constitute ‘disposable*  
9        *income’ under section 1325.”.*

10       *(e) ASSET LIMITATION.—*

11                *(1) LIMITATION.—Section 522 of title 11, United*  
12        *States Code, is amended by adding at the end the fol-*  
13        *lowing:*

14        *“(n) For assets in individual retirement accounts de-*  
15        *scribed in section 408 or 408A of the Internal Revenue Code*  
16        *of 1986, other than a simplified employee pension under*  
17        *section 408(k) of such Code or a simple retirement account*  
18        *under section 408(p) of such Code, the aggregate value of*  
19        *such assets exempted under this section, without regard to*  
20        *amounts attributable to rollover contributions under section*  
21        *402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the*  
22        *Internal Revenue Code of 1986, and earnings thereon, shall*  
23        *not exceed \$1,000,000 in a case filed by a debtor who is*  
24        *an individual, except that such amount may be increased*  
25        *if the interests of justice so require.”.*



1           (2) *ADJUSTMENT OF DOLLAR AMOUNTS.*—*Para-*  
2           *graphs (1) and (2) of section 104(b) of title 11,*  
3           *United States Code, are amended by inserting*  
4           *“522(n),” after “522(d).”*

5   **SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANK-**  
6                                   **RUPTCY.**

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

9                   (1) *in subsection (b)—*

10                           (A) *in paragraph (4), by striking “or” at*  
11                           *the end;*

12                           (B) *by redesignating paragraph (5) as*  
13                           *paragraph (9); and*

14                           (C) *by inserting after paragraph (4) the fol-*  
15                           *lowing:*

16                           “*(5) funds placed in an education individual re-*  
17                           *irement account (as defined in section 530(b)(1) of*  
18                           *the Internal Revenue Code of 1986) not later than*  
19                           *365 days before the date of the filing of the petition*  
20                           *in a case under this title, but—*

21                           “*(A) only if the designated beneficiary of*  
22                           *such account was a child, stepchild, grandchild,*  
23                           *or stepgrandchild of the debtor for the taxable*  
24                           *year for which funds were placed in such ac-*  
25                           *count;*

1           “(B) only to the extent that such funds—

2                   “(i) are not pledged or promised to  
3           any entity in connection with any extension  
4           of credit; and

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

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

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

20                   “(A) only if the designated beneficiary of  
21          the amounts paid or contributed to such tuition  
22          program was a child, stepchild, grandchild, or  
23          stepgrandchild of the debtor for the taxable year  
24          for which funds were paid or contributed;

1           “(B) with respect to the aggregate amount  
2           paid or contributed to such program having the  
3           same designated beneficiary, only so much of  
4           such amount as does not exceed the total con-  
5           tributions permitted under section 529(b)(7) of  
6           such Code with respect to such beneficiary, as  
7           adjusted beginning on the date of the filing of the  
8           petition in a case under this title by the annual  
9           increase or decrease (rounded to the nearest tenth  
10          of 1 percent) in the education expenditure cat-  
11          egory of the Consumer Price Index prepared by  
12          the Department of Labor; and

13           “(C) in the case of funds paid or contrib-  
14          uted to such program having the same designated  
15          beneficiary not earlier than 720 days nor later  
16          than 365 days before such date, only so much of  
17          such funds as does not exceed \$5,000;”;

18          (2) by adding at the end the following:

19          “(e) In determining whether any of the relationships  
20          specified in paragraph (5)(A) or (6)(A) of subsection (b)  
21          exists, a legally adopted child of an individual (and a child  
22          who is a member of an individual’s household, if placed  
23          with such individual by an authorized placement agency  
24          for legal adoption by such individual), or a foster child of  
25          an individual (if such child has as the child’s principal

1 *place of abode the home of the debtor and is a member of*  
2 *the debtor's household) shall be treated as a child of such*  
3 *individual by blood.”.*

4 (b) *DEBTOR'S DUTIES.*—Section 521 of title 11,  
5 *United States Code, as amended by section 106, is amended*  
6 *by adding at the end the following:*

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

14 **SEC. 226. DEFINITIONS.**

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

17 (1) *by inserting after paragraph (2) the fol-*  
18 *lowing:*

19 “(3) *‘assisted person’ means any person whose*  
20 *debts consist primarily of consumer debts and the*  
21 *value of whose nonexempt property is less than*  
22 *\$150,000;”;*

23 (2) *by inserting after paragraph (4) the fol-*  
24 *lowing:*

1           “(4A) ‘bankruptcy assistance’ means any goods  
2           or services sold or otherwise provided to an assisted  
3           person with the express or implied purpose of pro-  
4           viding information, advice, counsel, document prepa-  
5           ration, or filing, or attendance at a creditors’ meeting  
6           or appearing in a proceeding on behalf of another or  
7           providing legal representation with respect to a case  
8           or proceeding under this title;” and

9           (3) by inserting after paragraph (12) the fol-  
10          lowing:

11           “(12A) ‘debt relief agency’ means any person  
12           who provides any bankruptcy assistance to an as-  
13           sisted person in return for the payment of money or  
14           other valuable consideration, or who is a bankruptcy  
15           petition preparer under section 110, but does not in-  
16           clude—

17                   “(A) any person who is an officer, director,  
18                   employee, or agent of a person who provides such  
19                   assistance or of the bankruptcy petition pre-  
20                   parer;

21                   “(B) a nonprofit organization that is ex-  
22                   empt from taxation under section 501(c)(3) of  
23                   the Internal Revenue Code of 1986;

24                   “(C) a creditor of such assisted person, to  
25                   the extent that the creditor is assisting such as-

1           *sisted person to restructure any debt owed by*  
 2           *such assisted person to the creditor;*

3           “(D) a depository institution (as defined in  
 4           *section 3 of the Federal Deposit Insurance Act)*  
 5           *or any Federal credit union or State credit*  
 6           *union (as those terms are defined in section 101*  
 7           *of the Federal Credit Union Act), or any affiliate*  
 8           *or subsidiary of such depository institution or*  
 9           *credit union; or*

10           “(E) an author, publisher, distributor, or  
 11           *seller of works subject to copyright protection*  
 12           *under title 17, when acting in such capacity.”.*

13           (b) *CONFORMING AMENDMENT.*—Section 104(b) of title  
 14           11, *United States Code*, is amended by inserting “101(3),”  
 15           after “sections” each place it appears.

16           ***SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.***

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

20           ***“§ 526. Restrictions on debt relief agencies***

21           “(a) A debt relief agency shall not—

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

1           “(2) *make any statement, or counsel or advise*  
2           *any assisted person or prospective assisted person to*  
3           *make a statement in a document filed in a case or*  
4           *proceeding under this title, that is untrue and mis-*  
5           *leading, or that upon the exercise of reasonable care,*  
6           *should have been known by such agency to be untrue*  
7           *or misleading;*

8           “(3) *misrepresent to any assisted person or pro-*  
9           *spective assisted person, directly or indirectly, affirm-*  
10          *atively or by material omission, with respect to—*

11                   “(A) *the services that such agency will pro-*  
12                   *vide to such person; or*

13                   “(B) *the benefits and risks that may result*  
14                   *if such person becomes a debtor in a case under*  
15                   *this title; or*

16           “(4) *advise an assisted person or prospective as-*  
17           *sisted person to incur more debt in contemplation of*  
18           *such person filing a case under this title or to pay*  
19           *an attorney or bankruptcy petition preparer fee or*  
20           *charge for services performed as part of preparing for*  
21           *or representing a debtor in a case under this title.*

22           “(b) *Any waiver by any assisted person of any protec-*  
23           *tion or right provided under this section shall not be en-*  
24           *forceable against the debtor by any Federal or State court*

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

3       “(c)(1) *Any contract for bankruptcy assistance between*  
4 *a debt relief agency and an assisted person that does not*  
5 *comply with the material requirements of this section, sec-*  
6 *tion 527, or section 528 shall be void and may not be en-*  
7 *forced by any Federal or State court or by any other person,*  
8 *other than such assisted person.*

9       “(2) *Any debt relief agency shall be liable to an as-*  
10 *sisted person in the amount of any fees or charges in con-*  
11 *nection with providing bankruptcy assistance to such per-*  
12 *son that such debt relief agency has received, for actual*  
13 *damages, and for reasonable attorneys’ fees and costs if such*  
14 *agency is found, after notice and a hearing, to have—*

15               “(A) *intentionally or negligently failed to com-*  
16 *ply with any provision of this section, section 527, or*  
17 *section 528 with respect to a case or proceeding under*  
18 *this title for such assisted person;*

19               “(B) *provided bankruptcy assistance to an as-*  
20 *sisted person in a case or proceeding under this title*  
21 *that is dismissed or converted to a case under another*  
22 *chapter of this title because of such agency’s inten-*  
23 *tional or negligent failure to file any required docu-*  
24 *ment including those specified in section 521; or*



1           “(C) intentionally or negligently disregarded the  
2           material requirements of this title or the Federal  
3           Rules of Bankruptcy Procedure applicable to such  
4           agency.

5           “(3) In addition to such other remedies as are provided  
6           under State law, whenever the chief law enforcement officer  
7           of a State, or an official or agency designated by a State,  
8           has reason to believe that any person has violated or is vio-  
9           lating this section, the State—

10           “(A) may bring an action to enjoin such viola-  
11           tion;

12           “(B) may bring an action on behalf of its resi-  
13           dents to recover the actual damages of assisted persons  
14           arising from such violation, including any liability  
15           under paragraph (2); and

16           “(C) in the case of any successful action under  
17           subparagraph (A) or (B), shall be awarded the costs  
18           of the action and reasonable attorneys’ fees as deter-  
19           mined by the court.

20           “(4) The district courts of the United States for dis-  
21           tricts located in the State shall have concurrent jurisdiction  
22           of any action under subparagraph (A) or (B) of paragraph  
23           (3).

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

1 *Federal or State law, if the court, on its own motion or*  
2 *on the motion of the United States trustee or the debtor,*  
3 *finds that a person intentionally violated this section, or*  
4 *engaged in a clear and consistent pattern or practice of vio-*  
5 *lating this section, the court may—*

6           “(A) *enjoin the violation of such section; or*

7           “(B) *impose an appropriate civil penalty*  
8 *against such person.*

9           “(d) *No provision of this section, section 527, or sec-*  
10 *tion 528 shall—*

11           “(1) *annul, alter, affect, or exempt any person*  
12 *subject to such sections from complying with any law*  
13 *of any State except to the extent that such law is in-*  
14 *consistent with those sections, and then only to the ex-*  
15 *tent of the inconsistency; or*

16           “(2) *be deemed to limit or curtail the authority*  
17 *or ability—*

18           “(A) *of a State or subdivision or instru-*  
19 *mentality thereof, to determine and enforce*  
20 *qualifications for the practice of law under the*  
21 *laws of that State; or*

22           “(B) *of a Federal court to determine and*  
23 *enforce the qualifications for the practice of law*  
24 *before that court.”.*

1       (b) *CONFORMING AMENDMENT.*—*The table of sections*  
 2 *for chapter 5 of title 11, United States Code, is amended*  
 3 *by inserting after the item relating to section 525, the fol-*  
 4 *lowing:*

“526. *Restrictions on debt relief agencies.*”.

5       ***SEC. 228. DISCLOSURES.***

6       (a) *DISCLOSURES.*—*Subchapter II of chapter 5 of title*  
 7 *11, United States Code, as amended by section 227, is*  
 8 *amended by adding at the end the following:*

9       ***“§ 527. Disclosures***

10       “*(a) A debt relief agency providing bankruptcy assist-*  
 11 *ance to an assisted person shall provide—*

12               “*(1) the written notice required under section*  
 13 *342(b)(1); and*

14               “*(2) to the extent not covered in the written no-*  
 15 *tice described in paragraph (1), and not later than 3*  
 16 *business days after the first date on which a debt re-*  
 17 *lief agency first offers to provide any bankruptcy as-*  
 18 *sistance services to an assisted person, a clear and*  
 19 *conspicuous written notice advising assisted persons*  
 20 *that—*

21                       “*(A) all information that the assisted per-*  
 22 *son is required to provide with a petition and*  
 23 *thereafter during a case under this title is re-*  
 24 *quired to be complete, accurate, and truthful;*

1           “(B) all assets and all liabilities are re-  
2           quired to be completely and accurately disclosed  
3           in the documents filed to commence the case, and  
4           the replacement value of each asset as defined in  
5           section 506 must be stated in those documents  
6           where requested after reasonable inquiry to estab-  
7           lish such value;

8           “(C) current monthly income, the amounts  
9           specified in section 707(b)(2), and, in a case  
10          under chapter 13 of this title, disposable income  
11          (determined in accordance with section  
12          707(b)(2)), are required to be stated after reason-  
13          able inquiry; and

14          “(D) information that an assisted person  
15          provides during their case may be audited pur-  
16          suant to this title, and that failure to provide  
17          such information may result in dismissal of the  
18          case under this title or other sanction, including  
19          a criminal sanction.

20          “(b) A debt relief agency providing bankruptcy assist-  
21          ance to an assisted person shall provide each assisted person  
22          at the same time as the notices required under subsection  
23          (a)(1) the following statement, to the extent applicable, or  
24          one substantially similar. The statement shall be clear and  
25          conspicuous and shall be in a single document separate

1 *from other documents or notices provided to the assisted*  
2 *person:*

3       “*IMPORTANT INFORMATION ABOUT BANK-*  
4 *RUPTCY ASSISTANCE SERVICES FROM AN ATTOR-*  
5 *NEY OR BANKRUPTCY PETITION PREPARER.*

6       “*If you decide to seek bankruptcy relief, you can rep-*  
7 *resent yourself, you can hire an attorney to represent you,*  
8 *or you can get help in some localities from a bankruptcy*  
9 *petition preparer who is not an attorney. THE LAW RE-*  
10 *QUIRES AN ATTORNEY OR BANKRUPTCY PETI-*  
11 *TION PREPARER TO GIVE YOU A WRITTEN CON-*  
12 *TRACT SPECIFYING WHAT THE ATTORNEY OR*  
13 *BANKRUPTCY PETITION PREPARER WILL DO FOR*  
14 *YOU AND HOW MUCH IT WILL COST. Ask to see the*  
15 *contract before you hire anyone.*

16       “*The following information helps you understand*  
17 *what must be done in a routine bankruptcy case to help*  
18 *you evaluate how much service you need. Although bank-*  
19 *ruptcy can be complex, many cases are routine.*

20       “*Before filing a bankruptcy case, either you or your*  
21 *attorney should analyze your eligibility for different forms*  
22 *of debt relief available under the Bankruptcy Code and*  
23 *which form of relief is most likely to be beneficial for you.*  
24 *Be sure you understand the relief you can obtain and its*  
25 *limitations. To file a bankruptcy case, documents called a*

1 *Petition, Schedules and Statement of Financial Affairs, as*  
2 *well as in some cases a Statement of Intention need to be*  
3 *prepared correctly and filed with the bankruptcy court. You*  
4 *will have to pay a filing fee to the bankruptcy court. Once*  
5 *your case starts, you will have to attend the required first*  
6 *meeting of creditors where you may be questioned by a court*  
7 *official called a ‘trustee’ and by creditors.*

8       *“If you choose to file a chapter 7 case, you may be*  
9 *asked by a creditor to reaffirm a debt. You may want help*  
10 *deciding whether to do so. A creditor is not permitted to*  
11 *coerce you into reaffirming your debts.*

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

17       *“If you select another type of relief under the Bank-*  
18 *ruptcy Code other than chapter 7 or chapter 13, you will*  
19 *want to find out what should be done from someone familiar*  
20 *with that type of relief.*

21       *“Your bankruptcy case may also involve litigation.*  
22 *You are generally permitted to represent yourself in litiga-*  
23 *tion in bankruptcy court, but only attorneys, not bank-*  
24 *ruptcy petition preparers, can give you legal advice.’.*

1       “(c) *Except to the extent the debt relief agency provides*  
2 *the required information itself after reasonably diligent in-*  
3 *quiry of the assisted person or others so as to obtain such*  
4 *information reasonably accurately for inclusion on the peti-*  
5 *tion, schedules or statement of financial affairs, a debt relief*  
6 *agency providing bankruptcy assistance to an assisted per-*  
7 *son, to the extent permitted by nonbankruptcy law, shall*  
8 *provide each assisted person at the time required for the*  
9 *notice required under subsection (a)(1) reasonably sufficient*  
10 *information (which shall be provided in a clear and con-*  
11 *spicuous writing) to the assisted person on how to provide*  
12 *all the information the assisted person is required to pro-*  
13 *vide under this title pursuant to section 521, including—*

14               “(1) *how to value assets at replacement value,*  
15               *determine current monthly income, the amounts spec-*  
16               *ified in section 707(b)(2) and, in a chapter 13 case,*  
17               *how to determine disposable income in accordance*  
18               *with section 707(b)(2) and related calculations;*

19               “(2) *how to complete the list of creditors, includ-*  
20               *ing how to determine what amount is owed and what*  
21               *address for the creditor should be shown; and*

22               “(3) *how to determine what property is exempt*  
23               *and how to value exempt property at replacement*  
24               *value as defined in section 506.*

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

5       (b) *CONFORMING AMENDMENT.*—The table of sections  
6 for chapter 5 of title 11, United States Code, as amended  
7 by section 227, is amended by inserting after the item relat-  
8 ing to section 526 the following:

“527. Disclosures.”.

9       **SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.**

10       (a) *ENFORCEMENT.*—Subchapter II of chapter 5 of  
11 title 11, United States Code, as amended by sections 227  
12 and 228, is amended by adding at the end the following:

13       **“§ 528. Requirements for debt relief agencies**

14       “(a) A debt relief agency shall—

15               “(1) not later than 5 business days after the first  
16 date on which such agency provides any bankruptcy  
17 assistance services to an assisted person, but prior to  
18 such assisted person’s petition under this title being  
19 filed, execute a written contract with such assisted  
20 person that explains clearly and conspicuously—

21                       “(A) the services such agency will provide to  
22 such assisted person; and

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



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

3           “(3) clearly and conspicuously disclose in any  
4           advertisement of bankruptcy assistance services or of  
5           the benefits of bankruptcy directed to the general pub-  
6           lic (whether in general media, seminars or specific  
7           mailings, telephonic or electronic messages, or other-  
8           wise) that the services or benefits are with respect to  
9           bankruptcy relief under this title; and

10           “(4) clearly and conspicuously use the following  
11           statement in such advertisement: ‘We are a debt relief  
12           agency. We help people file for bankruptcy relief  
13           under the Bankruptcy Code.’ or a substantially simi-  
14           lar statement.

15           “(b)(1) An advertisement of bankruptcy assistance  
16           services or of the benefits of bankruptcy directed to the gen-  
17           eral public includes—

18           “(A) descriptions of bankruptcy assistance in  
19           connection with a chapter 13 plan whether or not  
20           chapter 13 is specifically mentioned in such advertise-  
21           ment; and

22           “(B) statements such as ‘federally supervised re-  
23           payment plan’ or ‘Federal debt restructuring help’ or  
24           other similar statements that could lead a reasonable  
25           consumer to believe that debt counseling was being of-

1        *ferred when in fact the services were directed to pro-*  
 2        *viding bankruptcy assistance with a chapter 13 plan*  
 3        *or other form of bankruptcy relief under this title.*

4        *“(2) An advertisement, directed to the general public,*  
 5        *indicating that the debt relief agency provides assistance*  
 6        *with respect to credit defaults, mortgage foreclosures, evic-*  
 7        *tion proceedings, excessive debt, debt collection pressure, or*  
 8        *inability to pay any consumer debt shall—*

9                *“(A) disclose clearly and conspicuously in such*  
 10        *advertisement that the assistance may involve bank-*  
 11        *ruptcy relief under this title; and*

12                *“(B) include the following statement: ‘We are a*  
 13        *debt relief agency. We help people file for bankruptcy*  
 14        *relief under the Bankruptcy Code.’ or a substantially*  
 15        *similar statement.”.*

16        *(b) CONFORMING AMENDMENT.—The table of sections*  
 17        *for chapter 5 of title 11, United States Code, as amended*  
 18        *by section 227 and 228, is amended by inserting after the*  
 19        *item relating to section 527, the following:*

*“528. Requirements for debt relief agencies.”.*

20        ***SEC. 230. GAO STUDY.***

21                *(a) STUDY.—Not later than 270 days after the date*  
 22        *of enactment of this Act, the Comptroller General of the*  
 23        *United States shall conduct a study of the feasibility, effec-*  
 24        *tiveness, and cost of requiring trustees appointed under title*  
 25        *11, United States Code, or the bankruptcy courts, to provide*

1 *to the Office of Child Support Enforcement promptly after*  
2 *the commencement of cases by debtors who are individuals*  
3 *under such title, the names and social security account*  
4 *numbers of such debtors for the purposes of allowing such*  
5 *Office to determine whether such debtors have outstanding*  
6 *obligations for child support (as determined on the basis*  
7 *of information in the Federal Case Registry or other na-*  
8 *tional database).*

9       *(b) REPORT.—Not later than 300 days after the date*  
10 *of enactment of this Act, the Comptroller General shall sub-*  
11 *mit to the President pro tempore of the Senate and the*  
12 *Speaker of the House of Representatives a report containing*  
13 *the results of the study required by subsection (a).*

14 **SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE IN-**  
15 **FORMATION.**

16       *(a) LIMITATION.—Section 363(b)(1) of title 11, United*  
17 *States Code, is amended by striking the period at the end*  
18 *and inserting the following:*

19 *“, except that if the debtor in connection with offering a*  
20 *product or a service discloses to an individual a policy pro-*  
21 *hibiting the transfer of personally identifiable information*  
22 *about individuals to persons that are not affiliated with*  
23 *the debtor and if such policy is in effect on the date of the*  
24 *commencement of the case, then the trustee may not sell or*

1 *lease personally identifiable information to any person un-*  
 2 *less—*

3           “(A) *such sale or such lease is consistent with*  
 4 *such policy; or*

5           “(B) *after appointment of a consumer privacy*  
 6 *ombudsman in accordance with section 332, and after*  
 7 *notice and a hearing, the court approves such sale or*  
 8 *such lease—*

9           “(i) *giving due consideration to the facts,*  
 10 *circumstances, and conditions of such sale or*  
 11 *such lease; and*

12           “(ii) *finding that no showing was made*  
 13 *that such sale or such lease would violate appli-*  
 14 *cable nonbankruptcy law.”.*

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

18           “(41A) *‘personally identifiable information’*  
 19 *means—*

20           “(A) *if provided by an individual to the*  
 21 *debtor in connection with obtaining a product or*  
 22 *a service from the debtor primarily for personal,*  
 23 *family, or household purposes—*

24           “(i) *the first name (or initial) and last*  
 25 *name of such individual, whether given at*

1           *birth or time of adoption, or resulting from*  
2           *a lawful change of name;*

3           “(ii) *the geographical address of a*  
4           *physical place of residence of such indi-*  
5           *vidual;*

6           “(iii) *an electronic address (including*  
7           *an e-mail address) of such individual;*

8           “(iv) *a telephone number dedicated to*  
9           *contacting such individual at such physical*  
10          *place of residence;*

11          “(v) *a social security account number*  
12          *issued to such individual; or*

13          “(vi) *the account number of a credit*  
14          *card issued to such individual; or*

15          “(B) *if identified in connection with 1 or*  
16          *more of the items of information specified in*  
17          *subparagraph (A)—*

18                 “(i) *a birth date, the number of a cer-*  
19                 *tificate of birth or adoption, or a place of*  
20                 *birth; or*

21                 “(ii) *any other information concerning*  
22                 *an identified individual that, if disclosed,*  
23                 *will result in contacting or identifying such*  
24                 *individual physically or electronically;”.*

1 **SEC. 232. CONSUMER PRIVACY OMBUDSMAN.**

2       (a) CONSUMER PRIVACY OMBUDSMAN.—Title 11 of the  
3 United States Code is amended by inserting after section  
4 331 the following:

5 **“§ 332. Consumer privacy ombudsman**

6       “(a) If a hearing is required under section  
7 363(b)(1)(B), the court shall order the United States trustee  
8 to appoint, not later than 5 days before the commencement  
9 of the hearing, 1 disinterested person (other than the United  
10 States trustee) to serve as the consumer privacy ombudsman  
11 in the case and shall require that notice of such hearing  
12 be timely given to such ombudsman.

13       “(b) The consumer privacy ombudsman may appear  
14 and be heard at such hearing and shall provide to the court  
15 information to assist the court in its consideration of the  
16 facts, circumstances, and conditions of the proposed sale or  
17 lease of personally identifiable information under section  
18 363(b)(1)(B). Such information may include presentation  
19 of—

20               “(1) the debtor’s privacy policy;

21               “(2) the potential losses or gains of privacy to  
22 consumers if such sale or such lease is approved by  
23 the court;

24               “(3) the potential costs or benefits to consumers  
25 if such sale or such lease is approved by the court;  
26 and

1           “(4) the potential alternatives that would miti-  
2           gate potential privacy losses or potential costs to con-  
3           sumers.

4           “(c) A consumer privacy ombudsman shall not disclose  
5 any personally identifiable information obtained by the om-  
6 budsman under this title.”.

7           (b) *COMPENSATION OF CONSUMER PRIVACY OMBUDS-*  
8 *MAN.*—Section 330(a)(1) of title 11, United States Code, is  
9 amended in the matter preceding subparagraph (A), by in-  
10 serring “a consumer privacy ombudsman appointed under  
11 section 332,” before “an examiner”.

12           (c) *CONFORMING AMENDMENT.*—The table of sections  
13 for subchapter II of chapter 3 of title 11, United States  
14 Code, is amended by adding at the end the following:

“332. Consumer privacy ombudsman.”.

15 **SEC. 233. PROHIBITION ON DISCLOSURE OF NAME OF**  
16 **MINOR CHILDREN.**

17           (a) *PROHIBITION.*—Title 11 of the United States Code,  
18 as amended by section 106, is amended by inserting after  
19 section 111 the following:

20 **“§112. Prohibition on disclosure of name of minor**  
21 **children**

22           “The debtor may be required to provide information  
23 regarding a minor child involved in matters under this title  
24 but may not be required to disclose in the public records  
25 in the case the name of such minor child. The debtor may

1 *be required to disclose the name of such minor child in a*  
 2 *nonpublic record that is maintained by the court and made*  
 3 *available by the court for examination by the United States*  
 4 *trustee, the trustee, and the auditor (if any) serving under*  
 5 *section 586(f) of title 28, in the case. The court, the United*  
 6 *States trustee, the trustee, and such auditor shall not dis-*  
 7 *close the name of such minor child maintained in such non-*  
 8 *public record.”.*

9 (b) *CLERICAL AMENDMENT.*—*The table of sections for*  
 10 *chapter 1 of title 11, United States Code, as amended by*  
 11 *section 106, is amended by inserting after the item relating*  
 12 *to section 111 the following:*

*“112. Prohibition on disclosure of name of minor children.”.*

13 (c) *CONFORMING AMENDMENT.*—*Section 107(a) of title*  
 14 *11, United States Code, is amended by inserting “and sub-*  
 15 *ject to section 112” after “section”.*

16 ***TITLE III —DISCOURAGING***  
 17 ***BANKRUPTCY ABUSE***

18 ***SEC. 301. TECHNICAL AMENDMENTS.***

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

21 (1) *by striking “by a court” and inserting “on*  
 22 *a prisoner by any court”;*

23 (2) *by striking “section 1915(b) or (f)” and in-*  
 24 *serting “subsection (b) or (f)(2) of section 1915”; and*



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

3   **SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.**

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

6           (1) in paragraph (1), by striking “and” at the  
7           end;

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

10          (3) by adding at the end the following:

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

18           “(A) the stay under subsection (a) with re-  
19           spect to any action taken with respect to a debt  
20           or property securing such debt or with respect to  
21           any lease shall terminate with respect to the  
22           debtor on the 30th day after the filing of the  
23           later case;

24           “(B) on the motion of a party in interest  
25           for continuation of the automatic stay and upon

1           *notice and a hearing, the court may extend the*  
2           *stay in particular cases as to any or all creditors*  
3           *(subject to such conditions or limitations as the*  
4           *court may then impose) after notice and a hear-*  
5           *ing completed before the expiration of the 30-day*  
6           *period only if the party in interest demonstrates*  
7           *that the filing of the later case is in good faith*  
8           *as to the creditors to be stayed; and*

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

13               “(i) as to all creditors, if—

14                       “(I) more than 1 previous case  
15                       *under any of chapters 7, 11, and 13 in*  
16                       *which the individual was a debtor was*  
17                       *pending within the preceding 1-year*  
18                       *period;*

19                       “(II) a previous case under any of  
20                       *chapters 7, 11, and 13 in which the in-*  
21                       *dividual was a debtor was dismissed*  
22                       *within such 1-year period, after the*  
23                       *debtor failed to—*

24                               “(aa) file or amend the peti-  
25                               *tion or other documents as re-*

1           *quired by this title or the court*  
2           *without substantial excuse (but*  
3           *mere inadvertence or negligence*  
4           *shall not be a substantial excuse*  
5           *unless the dismissal was caused*  
6           *by the negligence of the debtor's*  
7           *attorney);*

8                     *“(bb) provide adequate pro-*  
9                     *tection as ordered by the court; or*

10                    *“(cc) perform the terms of a*  
11                    *plan confirmed by the court; or*

12                    *“(III) there has not been a sub-*  
13                    *stantial change in the financial or per-*  
14                    *sonal affairs of the debtor since the dis-*  
15                    *missal of the next most previous case*  
16                    *under chapter 7, 11, or 13 or any other*  
17                    *reason to conclude that the later case*  
18                    *will be concluded—*

19                    *“(aa) if a case under chapter*  
20                    *7, with a discharge; or*

21                    *“(bb) if a case under chapter*  
22                    *11 or 13, with a confirmed plan*  
23                    *that will be fully performed; and*

24                    *“(ii) as to any creditor that com-*  
25                    *menced an action under subsection (d) in a*

1           *previous case in which the individual was*  
2           *a debtor if, as of the date of dismissal of*  
3           *such case, that action was still pending or*  
4           *had been resolved by terminating, condi-*  
5           *tioning, or limiting the stay as to actions of*  
6           *such creditor; and*

7           “(4)(A)(i) *if a single or joint case is filed by or*  
8           *against a debtor who is an individual under this*  
9           *title, and if 2 or more single or joint cases of the debt-*  
10           *or were pending within the previous year but were*  
11           *dismissed, other than a case refiled under section*  
12           *707(b), the stay under subsection (a) shall not go into*  
13           *effect upon the filing of the later case; and*

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

17           “(B) *if, within 30 days after the filing of the*  
18           *later case, a party in interest requests the court may*  
19           *order the stay to take effect in the case as to any or*  
20           *all creditors (subject to such conditions or limitations*  
21           *as the court may impose), after notice and a hearing,*  
22           *only if the party in interest demonstrates that the fil-*  
23           *ing of the later case is in good faith as to the creditors*  
24           *to be stayed;*

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

4           “(D) for purposes of subparagraph (B), a case is  
5 presumptively filed not in good faith (but such pre-  
6 sumption may be rebutted by clear and convincing  
7 evidence to the contrary)—

8           “(i) as to all creditors if—

9           “(I) 2 or more previous cases under  
10 this title in which the individual was a  
11 debtor were pending within the 1-year pe-  
12 riod;

13           “(II) a previous case under this title in  
14 which the individual was a debtor was dis-  
15 missed within the time period stated in this  
16 paragraph after the debtor failed to file or  
17 amend the petition or other documents as  
18 required by this title or the court without  
19 substantial excuse (but mere inadvertence or  
20 negligence shall not be substantial excuse  
21 unless the dismissal was caused by the neg-  
22 ligence of the debtor’s attorney), failed to  
23 provide adequate protection as ordered by  
24 the court, or failed to perform the terms of  
25 a plan confirmed by the court; or

1           “(III) there has not been a substantial  
2           change in the financial or personal affairs  
3           of the debtor since the dismissal of the next  
4           most previous case under this title, or any  
5           other reason to conclude that the later case  
6           will not be concluded, if a case under chap-  
7           ter 7, with a discharge, and if a case under  
8           chapter 11 or 13, with a confirmed plan  
9           that will be fully performed; or

10           “(ii) as to any creditor that commenced an  
11           action under subsection (d) in a previous case in  
12           which the individual was a debtor if, as of the  
13           date of dismissal of such case, such action was  
14           still pending or had been resolved by termi-  
15           nating, conditioning, or limiting the stay as to  
16           such action of such creditor.”.

17 **SEC. 303. CURBING ABUSIVE FILINGS.**

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

20           (1) in paragraph (2), by striking “or” at the  
21 end;

22           (2) in paragraph (3), by striking the period at  
23 the end and inserting “; or”; and

24           (3) by adding at the end the following:

1           “(4) with respect to a stay of an act against real  
2           property under subsection (a), by a creditor whose  
3           claim is secured by an interest in such real property,  
4           if the court finds that the filing of the petition was  
5           part of a scheme to delay, hinder, and defraud credi-  
6           tors that involved either—

7                   “(A) transfer of all or part ownership of, or  
8                   other interest in, such real property without the  
9                   consent of the secured creditor or court approval;  
10                  or

11                   “(B) multiple bankruptcy filings affecting  
12                  such real property.

13 *If recorded in compliance with applicable State laws gov-*  
14 *erning notices of interests or liens in real property, an order*  
15 *entered under paragraph (4) shall be binding in any other*  
16 *case under this title purporting to affect such real property*  
17 *filed not later than 2 years after the date of the entry of*  
18 *such order by the court, except that a debtor in a subsequent*  
19 *case under this title may move for relief from such order*  
20 *based upon changed circumstances or for good cause shown,*  
21 *after notice and a hearing. Any Federal, State, or local gov-*  
22 *ernmental unit that accepts notices of interests or liens in*  
23 *real property shall accept any certified copy of an order*  
24 *described in this subsection for indexing and recording.”.*

1       (b) *AUTOMATIC STAY*.—Section 362(b) of title 11,  
 2 *United States Code*, as amended by section 224, is amended  
 3 by inserting after paragraph (19), the following:

4           “(20) under subsection (a), of any act to enforce  
 5 any lien against or security interest in real property  
 6 following entry of the order under subsection (d)(4) as  
 7 to such real property in any prior case under this  
 8 title, for a period of 2 years after the date of the entry  
 9 of such an order, except that the debtor, in a subse-  
 10 quent case under this title, may move for relief from  
 11 such order based upon changed circumstances or for  
 12 other good cause shown, after notice and a hearing;

13           “(21) under subsection (a), of any act to enforce  
 14 any lien against or security interest in real prop-  
 15 erty—

16           “(A) if the debtor is ineligible under section  
 17 109(g) to be a debtor in a case under this title;  
 18 or

19           “(B) if the case under this title was filed in  
 20 violation of a bankruptcy court order in a prior  
 21 case under this title prohibiting the debtor from  
 22 being a debtor in another case under this title;”.

23 **SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY**  
 24 **SECURITY.**

25 Title 11, *United States Code*, is amended—



1           (1) in section 521(a), as so designated by section  
2 106—

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

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

7           (C) by adding at the end the following:

8           “(6) in a case under chapter 7 of this title in  
9 which the debtor is an individual, not retain posses-  
10 sion of personal property as to which a creditor has  
11 an allowed claim for the purchase price secured in  
12 whole or in part by an interest in such personal  
13 property unless the debtor, not later than 45 days  
14 after the first meeting of creditors under section  
15 341(a), either—

16           “(A) enters into an agreement with the  
17 creditor pursuant to section 524(c) with respect  
18 to the claim secured by such property; or

19           “(B) redeems such property from the secu-  
20 rity interest pursuant to section 722.

21 If the debtor fails to so act within the 45-day period referred  
22 to in paragraph (6), the stay under section 362(a) is termi-  
23 nated with respect to the personal property of the estate or  
24 of the debtor which is affected, such property shall no longer  
25 be property of the estate, and the creditor may take what-

1 *ever action as to such property as is permitted by applica-*  
 2 *ble nonbankruptcy law, unless the court determines on the*  
 3 *motion of the trustee filed before the expiration of such 45-*  
 4 *day period, and after notice and a hearing, that such prop-*  
 5 *erty is of consequential value or benefit to the estate, orders*  
 6 *appropriate adequate protection of the creditor's interest,*  
 7 *and orders the debtor to deliver any collateral in the debtor's*  
 8 *possession to the trustee.”; and*

9           (2) *in section 722, by inserting “in full at the*  
 10 *time of redemption” before the period at the end.*

11 **SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE**  
 12 **DEBTOR DOES NOT COMPLETE INTENDED**  
 13 **SURRENDER OF CONSUMER DEBT COLLAT-**  
 14 **ERAL.**

15 *Title 11, United States Code, is amended—*

16           (1) *in section 362, as amended by section 106—*

17               (A) *in subsection (e), by striking “(e), and*  
 18 *(f)” and inserting “(e), (f), and (h)”;*

19               (B) *by redesignating subsection (h) as sub-*  
 20 *section (k) and transferring such subsection so as*  
 21 *to insert it after subsection (j) as added by sec-*  
 22 *tion 106; and*

23               (C) *by inserting after subsection (g) the fol-*  
 24 *lowing:*

1       “(h)(1) *In a case in which the debtor is an individual,*  
2 *the stay provided by subsection (a) is terminated with re-*  
3 *spect to personal property of the estate or of the debtor se-*  
4 *curing in whole or in part a claim, or subject to an unex-*  
5 *pired lease, and such personal property shall no longer be*  
6 *property of the estate if the debtor fails within the applica-*  
7 *ble time set by section 521(a)(2)—*

8               “(A) *to file timely any statement of intention re-*  
9 *quired under section 521(a)(2) with respect to such*  
10 *personal property or to indicate in such statement*  
11 *that the debtor will either surrender such personal*  
12 *property or retain it and, if retaining such personal*  
13 *property, either redeem such personal property pursu-*  
14 *ant to section 722, enter into an agreement of the*  
15 *kind specified in section 524(c) applicable to the debt*  
16 *secured by such personal property, or assume such*  
17 *unexpired lease pursuant to section 365(p) if the*  
18 *trustee does not do so, as applicable; and*

19               “(B) *to take timely the action specified in such*  
20 *statement, as it may be amended before expiration of*  
21 *the period for taking action, unless such statement*  
22 *specifies the debtor’s intention to reaffirm such debt*  
23 *on the original contract terms and the creditor refuses*  
24 *to agree to the reaffirmation on such terms.*

1       “(2) Paragraph (1) does not apply if the court deter-  
2 mines, on the motion of the trustee filed before the expira-  
3 tion of the applicable time set by section 521(a)(2), after  
4 notice and a hearing, that such personal property is of con-  
5 sequential value or benefit to the estate, and orders appro-  
6 priate adequate protection of the creditor’s interest, and or-  
7 ders the debtor to deliver any collateral in the debtor’s pos-  
8 session to the trustee. If the court does not so determine,  
9 the stay provided by subsection (a) shall terminate upon  
10 the conclusion of the hearing on the motion.”; and

11               (2) in section 521, as amended by sections 106  
12 and 225—

13               (A) in subsection (a)(2) by striking “con-  
14 sumer”;

15               (B) in subsection (a)(2)(B)—

16                       (i) by striking “forty-five days after  
17 the filing of a notice of intent under this  
18 section” and inserting “30 days after the  
19 first date set for the meeting of creditors  
20 under section 341(a)”; and

21                       (ii) by striking “forty-five day” and  
22 inserting “30-day”;

23               (C) in subsection (a)(2)(C) by inserting “,  
24 except as provided in section 362(h)” before the  
25 semicolon; and

1                   (D) by adding at the end the following:

2           “(d) If the debtor fails timely to take the action speci-  
 3 fied in subsection (a)(6) of this section, or in paragraphs  
 4 (1) and (2) of section 362(h), with respect to property which  
 5 a lessor or bailor owns and has leased, rented, or bailed  
 6 to the debtor or as to which a creditor holds a security inter-  
 7 est not otherwise voidable under section 522(f), 544, 545,  
 8 547, 548, or 549, nothing in this title shall prevent or limit  
 9 the operation of a provision in the underlying lease or  
 10 agreement that has the effect of placing the debtor in default  
 11 under such lease or agreement by reason of the occurrence,  
 12 pendency, or existence of a proceeding under this title or  
 13 the insolvency of the debtor. Nothing in this subsection shall  
 14 be deemed to justify limiting such a provision in any other  
 15 circumstance.”.

16 **SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT**

17                   **IN CHAPTER 13.**

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

20                   “(i) the plan provides that—

21                           “(I) the holder of such claim retain the  
 22                           lien securing such claim until the earlier  
 23                           of—

1                   “(aa) the payment of the under-  
2                   lying debt determined under nonbank-  
3                   ruptcy law; or

4                   “(bb) discharge under section  
5                   1328; and

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

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

14 “For purposes of paragraph (5), section 506 shall not apply  
15 to a claim described in that paragraph if the creditor has  
16 a purchase money security interest securing the debt that  
17 is the subject of the claim, the debt was incurred within  
18 the 910-day preceding the date of the filing of the petition,  
19 and the collateral for that debt consists of a motor vehicle  
20 (as defined in section 30102 of title 49) acquired for the  
21 personal use of the debtor, or if collateral for that debt con-  
22 sists of any other thing of value, if the debt was incurred  
23 during the 1-year period preceding that filing.”.

24               (c) *DEFINITIONS.*—Section 101 of title 11, United  
25 States Code, is amended—

1           (1) *by inserting after paragraph (13) the fol-*  
 2 *lowing:*

3           “(13A) ‘debtor’s principal residence’—

4           “(A) *means a residential structure, includ-*  
 5 *ing incidental property, without regard to*  
 6 *whether that structure is attached to real prop-*  
 7 *erty; and*

8           “(B) *includes an individual condominium*  
 9 *or cooperative unit, a mobile or manufactured*  
 10 *home, or trailer;”;* and

11           (2) *by inserting after paragraph (27), the fol-*  
 12 *lowing:*

13           “(27A) ‘incidental property’ *means, with respect*  
 14 *to a debtor’s principal residence—*

15           “(A) *property commonly conveyed with a*  
 16 *principal residence in the area where the real*  
 17 *property is located;*

18           “(B) *all easements, rights, appurtenances,*  
 19 *fixtures, rents, royalties, mineral rights, oil or*  
 20 *gas rights or profits, water rights, escrow funds,*  
 21 *or insurance proceeds; and*

22           “(C) *all replacements or additions;”.*

23 **SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.**

24           *Section 522(b)(3) of title 11, United States Code, as*  
 25 *so designated by section 106, is amended—*

1 (1) in subparagraph (A)—

2 (A) by striking “180 days” and inserting  
3 “730 days”; and

4 (B) by striking “, or for a longer portion of  
5 such 180-day period than in any other place”  
6 and inserting “or if the debtor’s domicile has not  
7 been located at a single State for such 730-day  
8 period, the place in which the debtor’s domicile  
9 was located for 180 days immediately preceding  
10 the 730-day period or for a longer portion of  
11 such 180-day period than in any other place”;  
12 and

13 (2) by adding at the end the following:

14 “If the effect of the domiciliary requirement under subpara-  
15 graph (A) is to render the debtor ineligible for any exemp-  
16 tion, the debtor may elect to exempt property that is speci-  
17 fied under subsection (d).”.

18 **SEC. 308. REDUCTION OF HOMESTEAD EXEMPTION FOR**

19 **FRAUD.**

20 Section 522 of title 11, United States Code, as amend-  
21 ed by section 224, is amended—

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

25 (2) by adding at the end the following:



1       “(o) For purposes of subsection (b)(3)(A), and notwith-  
2 standing subsection (a), the value of an interest in—

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

5               “(2) a cooperative that owns property that the  
6 debtor or a dependent of the debtor uses as a resi-  
7 dence;

8               “(3) a burial plot for the debtor or a dependent  
9 of the debtor; or

10              “(4) real or personal property that the debtor or  
11 a dependent of the debtor claims as a homestead;

12 shall be reduced to the extent that such value is attributable  
13 to any portion of any property that the debtor disposed of  
14 in the 10-year period ending on the date of the filing of  
15 the petition with the intent to hinder, delay, or defraud a  
16 creditor and that the debtor could not exempt, or that por-  
17 tion that the debtor could not exempt, under subsection (b),  
18 if on such date the debtor had held the property so disposed  
19 of.”.

20 **SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER**

21 **13 CASES.**

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

1           (1) *in subparagraph (A), by striking “and” at*  
2 *the end;*

3           (2) *in subparagraph (B)—*

4                 (A) *by striking “in the converted case, with*  
5 *allowed secured claims” and inserting “only in*  
6 *a case converted to a case under chapter 11 or*  
7 *12, but not in a case converted to a case under*  
8 *chapter 7, with allowed secured claims in cases*  
9 *under chapters 11 and 12”;* and

10                (B) *by striking the period and inserting “;*  
11 *and”;* and

12           (3) *by adding at the end the following:*

13                 “(C) *with respect to cases converted from chapter*  
14 *13—*

15                         “(i) *the claim of any creditor holding secu-*  
16 *rity as of the date of the petition shall continue*  
17 *to be secured by that security unless the full*  
18 *amount of such claim determined under applica-*  
19 *ble nonbankruptcy law has been paid in full as*  
20 *of the date of conversion, notwithstanding any*  
21 *valuation or determination of the amount of an*  
22 *allowed secured claim made for the purposes of*  
23 *the case under chapter 13; and*

24                         “(ii) *unless a prebankruptcy default has*  
25 *been fully cured under the plan at the time of*

1           *conversion, in any proceeding under this title or*  
2           *otherwise, the default shall have the effect given*  
3           *under applicable nonbankruptcy law.”.*

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

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

12           ***“(2)(A) If the debtor in a case under chapter 7 is an***  
13           ***individual, the debtor may notify the creditor in writing***  
14           ***that the debtor desires to assume the lease. Upon being so***  
15           ***notified, the creditor may, at its option, notify the debtor***  
16           ***that it is willing to have the lease assumed by the debtor***  
17           ***and may condition such assumption on cure of any out-***  
18           ***standing default on terms set by the contract.***

19           ***“(B) If, not later than 30 days after notice is provided***  
20           ***under subparagraph (A), the debtor notifies the lessor in***  
21           ***writing that the lease is assumed, the liability under the***  
22           ***lease will be assumed by the debtor and not by the estate.***

23           ***“(C) The stay under section 362 and the injunction***  
24           ***under section 524(a)(2) shall not be violated by notification***  
25           ***of the debtor and negotiation of cure under this subsection.***

1       “(3) *In a case under chapter 11 in which the debtor*  
 2 *is an individual and in a case under chapter 13, if the*  
 3 *debtor is the lessee with respect to personal property and*  
 4 *the lease is not assumed in the plan confirmed by the court,*  
 5 *the lease is deemed rejected as of the conclusion of the hear-*  
 6 *ing on confirmation. If the lease is rejected, the stay under*  
 7 *section 362 and any stay under section 1301 is automati-*  
 8 *cally terminated with respect to the property subject to the*  
 9 *lease.”.*

10       (c) *ADEQUATE PROTECTION OF LESSORS AND PUR-*  
 11 *CHASE MONEY SECURED CREDITORS.—*

12           (1) *CONFIRMATION OF PLAN.—Section*  
 13 *1325(a)(5)(B) of title 11, United States Code, as*  
 14 *amended by section 306, is amended—*

15           (A) *in clause (i), by striking “and” at the*  
 16 *end;*

17           (B) *in clause (ii), by striking “or” at the*  
 18 *end and inserting “and”; and*

19           (C) *by adding at the end the following:*

20           “(iii) *if—*

21           “(I) *property to be distributed pursu-*  
 22 *ant to this subsection is in the form of peri-*  
 23 *odic payments, such payments shall be in*  
 24 *equal monthly amounts; and*

1           “(II) the holder of the claim is secured  
2           by personal property, the amount of such  
3           payments shall not be less than an amount  
4           sufficient to provide to the holder of such  
5           claim adequate protection during the period  
6           of the plan; or”.

7           (2) *PAYMENTS.*—Section 1326(a) of title 11,  
8           United States Code, is amended to read as follows:

9           “(a)(1) Unless the court orders otherwise, the debtor  
10          shall commence making payments not later than 30 days  
11          after the date of the filing of the plan or the order for relief,  
12          whichever is earlier, in the amount—

13               “(A) proposed by the plan to the trustee;

14               “(B) scheduled in a lease of personal property  
15          directly to the lessor for that portion of the obligation  
16          that becomes due after the order for relief, reducing  
17          the payments under subparagraph (A) by the amount  
18          so paid and providing the trustee with evidence of  
19          such payment, including the amount and date of pay-  
20          ment; and

21               “(C) that provides adequate protection directly  
22          to a creditor holding an allowed claim secured by per-  
23          sonal property to the extent the claim is attributable  
24          to the purchase of such property by the debtor for that  
25          portion of the obligation that becomes due after the

1        *order for relief, reducing the payments under sub-*  
2        *paragraph (A) by the amount so paid and providing*  
3        *the trustee with evidence of such payment, including*  
4        *the amount and date of payment.*

5        *“(2) A payment made under paragraph (1)(A) shall*  
6        *be retained by the trustee until confirmation or denial of*  
7        *confirmation. If a plan is confirmed, the trustee shall dis-*  
8        *tribute any such payment in accordance with the plan as*  
9        *soon as is practicable. If a plan is not confirmed, the trustee*  
10       *shall return any such payments not previously paid and*  
11       *not yet due and owing to creditors pursuant to paragraph*  
12       *(3) to the debtor, after deducting any unpaid claim allowed*  
13       *under section 503(b).*

14       *“(3) Subject to section 363, the court may, upon notice*  
15       *and a hearing, modify, increase, or reduce the payments*  
16       *required under this subsection pending confirmation of a*  
17       *plan.*

18       *“(4) Not later than 60 days after the date of filing*  
19       *of a case under this chapter, a debtor retaining possession*  
20       *of personal property subject to a lease or securing a claim*  
21       *attributable in whole or in part to the purchase price of*  
22       *such property shall provide the lessor or secured creditor*  
23       *reasonable evidence of the maintenance of any required in-*  
24       *surance coverage with respect to the use or ownership of*

1 *such property and continue to do so for so long as the debtor*  
2 *retains possession of such property.”.*

3 **SEC. 310. LIMITATION ON LUXURY GOODS.**

4 *Section 523(a)(2)(C) of title 11, United States Code,*  
5 *is amended to read as follows:*

6 *“(C)(i) for purposes of subparagraph (A)—*

7 *“(I) consumer debts owed to a single*  
8 *creditor and aggregating more than \$500*  
9 *for luxury goods or services incurred by an*  
10 *individual debtor on or within 90 days be-*  
11 *fore the order for relief under this title are*  
12 *presumed to be nondischargeable; and*

13 *“(II) cash advances aggregating more*  
14 *than \$750 that are extensions of consumer*  
15 *credit under an open end credit plan ob-*  
16 *tained by an individual debtor on or within*  
17 *70 days before the order for relief under this*  
18 *title, are presumed to be nondischargeable;*  
19 *and*

20 *“(i) for purposes of this subparagraph—*

21 *“(I) the terms ‘consumer’, ‘credit’, and*  
22 *‘open end credit plan’ have the same mean-*  
23 *ings as in section 103 of the Truth in Lend-*  
24 *ing Act; and*

1                   “(II) the term ‘luxury goods or serv-  
2                   ices’ does not include goods or services rea-  
3                   sonably necessary for the support or main-  
4                   tenance of the debtor or a dependent of the  
5                   debtor.”.

6 **SEC. 311. AUTOMATIC STAY.**

7           (a) *IN GENERAL.*—Section 362(b) of title 11, United  
8 States Code, as amended by sections 224 and 303, is amend-  
9 ed by inserting after paragraph (21), the following:

10                   “(22) subject to subsection (n), under subsection  
11                   (a)(3), of the continuation of any eviction, unlawful  
12                   detainer action, or similar proceeding by a lessor  
13                   against a debtor involving residential property in  
14                   which the debtor resides as a tenant under a lease or  
15                   rental agreement and with respect to which the lessor  
16                   has obtained before the date of the filing of the bank-  
17                   ruptcy petition, a judgment for possession of such  
18                   property against the debtor;

19                   “(23) subject to subsection (o), under subsection  
20                   (a)(3), of an eviction action that seeks possession of  
21                   the residential property in which the debtor resides as  
22                   a tenant under a lease or rental agreement based on  
23                   endangerment of such property or the illegal use of  
24                   controlled substances on such property, but only if the  
25                   lessor files with the court, and serves upon the debtor,



1        *a certification under penalty of perjury that such an*  
2        *eviction action has been filed, or that the debtor, dur-*  
3        *ing the 30-day period preceding the date of the filing*  
4        *of the certification, has endangered property or ille-*  
5        *gally used or allowed to be used a controlled substance*  
6        *on the property;*

7                *“(24) under subsection (a), of any transfer that*  
8        *is not avoidable under section 544 and that is not*  
9        *avoidable under section 549;”.*

10        *(b) LIMITATIONS.—Section 362 of title 11, United*  
11        *States Code, as amended by sections 106 and 305, is amend-*  
12        *ed by adding at the end the following:*

13                *“(l)(1) Except as otherwise provided in this subsection,*  
14        *subsection (b)(22) shall apply on the date that is 30 days*  
15        *after the date on which the bankruptcy petition is filed, if*  
16        *the debtor files with the petition and serves upon the lessor*  
17        *a certification under penalty of perjury that—*

18                *“(A) under nonbankruptcy law applicable in the*  
19        *jurisdiction, there are circumstances under which the*  
20        *debtor would be permitted to cure the entire monetary*  
21        *default that gave rise to the judgment for possession,*  
22        *after that judgment for possession was entered; and*

23                *“(B) the debtor (or an adult dependent of the*  
24        *debtor) has deposited with the clerk of the court, any*

1        *rent that would become due during the 30-day period*  
2        *after the filing of the bankruptcy petition.*

3        *“(2) If, within the 30-day period after the filing of*  
4 *the bankruptcy petition, the debtor (or an adult dependent*  
5 *of the debtor) complies with paragraph (1) and files with*  
6 *the court and serves upon the lessor a further certification*  
7 *under penalty of perjury that the debtor (or an adult de-*  
8 *pendent of the debtor) has cured, under nonbankruptcy law*  
9 *applicable in the jurisdiction, the entire monetary default*  
10 *that gave rise to the judgment under which possession is*  
11 *sought by the lessor, subsection (b)(22) shall not apply, un-*  
12 *less ordered to apply by the court under paragraph (3).*

13        *“(3)(A) If the lessor files an objection to any certifi-*  
14 *cation filed by the debtor under paragraph (1) or (2), and*  
15 *serves such objection upon the debtor, the court shall hold*  
16 *a hearing within 10 days after the filing and service of such*  
17 *objection to determine if the certification filed by the debtor*  
18 *under paragraph (1) or (2) is true.*

19        *“(B) If the court upholds the objection of the lessor filed*  
20 *under subparagraph (A)—*

21            *“(i) subsection (b)(22) shall apply immediately*  
22            *and relief from the stay provided under subsection*  
23            *(a)(3) shall not be required to enable the lessor to*  
24            *complete the process to recover full possession of the*  
25            *property; and*

1           “(ii) the clerk of the court shall immediately  
2           serve upon the lessor and the debtor a certified copy  
3           of the court’s order upholding the lessor’s objection.

4           “(4) If a debtor, in accordance with paragraph (5),  
5           indicates on the petition that there was a judgment for pos-  
6           session of the residential rental property in which the debtor  
7           resides and does not file a certification under paragraph  
8           (1) or (2)—

9           “(A) subsection (b)(22) shall apply immediately  
10          upon failure to file such certification, and relief from  
11          the stay provided under subsection (a)(3) shall not be  
12          required to enable the lessor to complete the process to  
13          recover full possession of the property; and

14          “(B) the clerk of the court shall immediately  
15          serve upon the lessor and the debtor a certified copy  
16          of the docket indicating the absence of a filed certifi-  
17          cation and the applicability of the exception to the  
18          stay under subsection (b)(22).

19          “(5)(A) Where a judgment for possession of residential  
20          property in which the debtor resides as a tenant under a  
21          lease or rental agreement has been obtained by the lessor,  
22          the debtor shall so indicate on the bankruptcy petition and  
23          shall provide the name and address of the lessor that ob-  
24          tained that pre-petition judgment on the petition and on  
25          any certification filed under this subsection.

1       “(B) *The form of certification filed with the petition,*  
2 *as specified in this subsection, shall provide for the debtor*  
3 *to certify, and the debtor shall certify—*

4               “(i) *whether a judgment for possession of resi-*  
5 *dential rental housing in which the debtor resides has*  
6 *been obtained against the debtor before the date of the*  
7 *filing of the petition; and*

8               “(ii) *whether the debtor is claiming under para-*  
9 *graph (1) that under nonbankruptcy law applicable*  
10 *in the jurisdiction, there are circumstances under*  
11 *which the debtor would be permitted to cure the entire*  
12 *monetary default that gave rise to the judgment for*  
13 *possession, after that judgment of possession was en-*  
14 *tered, and has made the appropriate deposit with the*  
15 *court.*

16       “(C) *The standard forms (electronic and otherwise)*  
17 *used in a bankruptcy proceeding shall be amended to reflect*  
18 *the requirements of this subsection.*

19       “(D) *The clerk of the court shall arrange for the*  
20 *prompt transmittal of the rent deposited in accordance with*  
21 *paragraph (1)(B) to the lessor.*

22       “(m)(1) *Except as otherwise provided in this sub-*  
23 *section, subsection (b)(23) shall apply on the date that is*  
24 *15 days after the date on which the lessor files and serves*  
25 *a certification described in subsection (b)(23).*

1       “(2)(A) *If the debtor files with the court an objection*  
2 *to the truth or legal sufficiency of the certification described*  
3 *in subsection (b)(23) and serves such objection upon the les-*  
4 *sor, subsection (b)(23) shall not apply, unless ordered to*  
5 *apply by the court under this subsection.*

6       “(B) *If the debtor files and serves the objection under*  
7 *subparagraph (A), the court shall hold a hearing within*  
8 *10 days after the filing and service of such objection to de-*  
9 *termine if the situation giving rise to the lessor’s certifi-*  
10 *cation under paragraph (1) existed or has been remedied.*

11       “(C) *If the debtor can demonstrate to the satisfaction*  
12 *of the court that the situation giving rise to the lessor’s cer-*  
13 *tification under paragraph (1) did not exist or has been*  
14 *remedied, the stay provided under subsection (a)(3) shall*  
15 *remain in effect until the termination of the stay under this*  
16 *section.*

17       “(D) *If the debtor cannot demonstrate to the satisfac-*  
18 *tion of the court that the situation giving rise to the lessor’s*  
19 *certification under paragraph (1) did not exist or has been*  
20 *remedied—*

21               “(i) *relief from the stay provided under sub-*  
22 *section (a)(3) shall not be required to enable the lessor*  
23 *to proceed with the eviction; and*

1           “(ii) the clerk of the court shall immediately  
2           serve upon the lessor and the debtor a certified copy  
3           of the court’s order upholding the lessor’s certification.

4           “(3) If the debtor fails to file, within 15 days, an objec-  
5           tion under paragraph (2)(A)—

6           “(A) subsection (b)(23) shall apply immediately  
7           upon such failure and relief from the stay provided  
8           under subsection (a)(3) shall not be required to enable  
9           the lessor to complete the process to recover full posses-  
10          sion of the property; and

11          “(B) the clerk of the court shall immediately  
12          serve upon the lessor and the debtor a certified copy  
13          of the docket indicating such failure.”.

14   **SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY**

15                   **DISCHARGES.**

16          *Title 11, United States Code, is amended—*

17                  (1) *in section 727(a)(8), by striking “six” and*  
18                  *inserting “8”; and*

19                  (2) *in section 1328, by inserting after subsection*  
20                  *(e) the following:*

21                  “(f) Notwithstanding subsections (a) and (b), the court  
22                  shall not grant a discharge of all debts provided for in the  
23                  plan or disallowed under section 502, if the debtor has re-  
24                  ceived a discharge—

1           “(1) in a case filed under chapter 7, 11, or 12  
2 of this title during the 4-year period preceding the  
3 date of the order for relief under this chapter, or

4           “(2) in a case filed under chapter 13 of this title  
5 during the 2-year period preceding the date of such  
6 order.”.

7 **SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND AN-**  
8 **TIQUES.**

9           (a) *DEFINITION.*—Section 522(f) of title 11, United  
10 States Code, is amended by adding at the end the following:

11           “(4)(A) Subject to subparagraph (B), for purposes of  
12 paragraph (1)(B), the term ‘household goods’ means—

13           “(i) clothing;

14           “(ii) furniture;

15           “(iii) appliances;

16           “(iv) 1 radio;

17           “(v) 1 television;

18           “(vi) 1 VCR;

19           “(vii) linens;

20           “(viii) china;

21           “(ix) crockery;

22           “(x) kitchenware;

23           “(xi) educational materials and educational  
24 equipment primarily for the use of minor dependent  
25 children of the debtor;

1           *(xii) medical equipment and supplies;*

2           *“(xiii) furniture exclusively for the use of minor*  
3 *children, or elderly or disabled dependents of the debt-*  
4 *or;*

5           *“(xiv) personal effects (including the toys and*  
6 *hobby equipment of minor dependent children and*  
7 *wedding rings) of the debtor and the dependents of the*  
8 *debtor; and*

9           *“(xv) 1 personal computer and related equip-*  
10 *ment.*

11          *“(B) The term ‘household goods’ does not include—*

12           *“(i) works of art (unless by or of the debtor, or*  
13 *any relative of the debtor);*

14           *“(ii) electronic entertainment equipment with a*  
15 *fair market value of more than \$500 in the aggregate*  
16 *(except 1 television, 1 radio, and 1 VCR);*

17           *“(iii) items acquired as antiques with a fair*  
18 *market value of more than \$500 in the aggregate;*

19           *“(iv) jewelry with a fair market value of more*  
20 *than \$500 in the aggregate (except wedding rings);*  
21 *and*

22           *“(v) a computer (except as otherwise provided*  
23 *for in this section), motor vehicle (including a tractor*  
24 *or lawn tractor), boat, or a motorized recreational de-*  
25 *vice, conveyance, vehicle, watercraft, or aircraft.”.*



1       (b) *STUDY.*—Not later than 2 years after the date of  
2 enactment of this Act, the Director of the Executive Office  
3 for United States Trustees shall submit a report to the Com-  
4 mittee on the Judiciary of the Senate and the Committee  
5 on the Judiciary of the House of Representatives containing  
6 its findings regarding utilization of the definition of house-  
7 hold goods, as defined in section 522(f)(4) of title 11, United  
8 States Code, as added by subsection (a), with respect to the  
9 avoidance of nonpossessory, nonpurchase money security  
10 interests in household goods under section 522(f)(1)(B) of  
11 title 11, United States Code, and the impact such section  
12 522(f)(4) has had on debtors and on the bankruptcy courts.  
13 Such report may include recommendations for amendments  
14 to such section 522(f)(4) consistent with the Director’s find-  
15 ings.

16 **SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE**  
17 **DEBTS.**

18       (a) *IN GENERAL.*—Section 523(a) of title 11, United  
19 States Code, is amended by inserting after paragraph (14)  
20 the following:

21               “(14A) incurred to pay a tax to a governmental  
22 unit, other than the United States, that would be non-  
23 dischargeable under paragraph (1);”.

1       (b) *DISCHARGE UNDER CHAPTER 13.*—Section  
 2 1328(a) of title 11, United States Code, is amended by strik-  
 3 ing paragraphs (1) through (3) and inserting the following:

4           “(1) provided for under section 1322(b)(5);

5           “(2) of the kind specified in paragraph (2), (3),  
 6 (4), (5), (8), or (9) of section 523(a);

7           “(3) for restitution, or a criminal fine, included  
 8 in a sentence on the debtor’s conviction of a crime; or

9           “(4) for restitution, or damages, awarded in a  
 10 civil action against the debtor as a result of willful  
 11 or malicious injury by the debtor that caused per-  
 12 sonal injury to an individual or the death of an indi-  
 13 vidual.”.

14 **SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7**  
 15 **AND 13 CASES.**

16       (a) *NOTICE.*—Section 342 of title 11, United States  
 17 Code, as amended by section 102, is amended—

18           (1) in subsection (c)—

19               (A) by inserting “(1)” after “(c)”;

20               (B) by striking “, but the failure of such no-  
 21 tice to contain such information shall not invali-  
 22 date the legal effect of such notice”; and

23               (C) by adding at the end the following:

24           “(2)(A) If, within the 90 days before the commence-  
 25 ment of a voluntary case, a creditor supplies the debtor in

1 *at least 2 communications sent to the debtor with the cur-*  
2 *rent account number of the debtor and the address at which*  
3 *such creditor requests to receive correspondence, then any*  
4 *notice required by this title to be sent by the debtor to such*  
5 *creditor shall be sent to such address and shall include such*  
6 *account number.*

7       “(B) *If a creditor would be in violation of applicable*  
8 *nonbankruptcy law by sending any such communication*  
9 *within such 90-day period and if such creditor supplies the*  
10 *debtor in the last 2 communications with the current ac-*  
11 *count number of the debtor and the address at which such*  
12 *creditor requests to receive correspondence, then any notice*  
13 *required by this title to be sent by the debtor to such creditor*  
14 *shall be sent to such address and shall include such account*  
15 *number.”; and*

16           (2) *by adding at the end the following:*

17       “(e)(1) *In a case under chapter 7 or 13 of this title*  
18 *of a debtor who is an individual, a creditor at any time*  
19 *may both file with the court and serve on the debtor a notice*  
20 *of address to be used to provide notice in such case to such*  
21 *creditor.*

22       “(2) *Any notice in such case required to be provided*  
23 *to such creditor by the debtor or the court later than 5 days*  
24 *after the court and the debtor receive such creditor’s notice*  
25 *of address, shall be provided to such address.*

1           “(f)(1) *An entity may file with any bankruptcy court*  
2 *a notice of address to be used by all the bankruptcy courts*  
3 *or by particular bankruptcy courts, as so specified by such*  
4 *entity at the time such notice is filed, to provide notice to*  
5 *such entity in all cases under chapters 7 and 13 pending*  
6 *in the courts with respect to which such notice is filed, in*  
7 *which such entity is a creditor.*

8           “(2) *In any case filed under chapter 7 or 13, any no-*  
9 *tice required to be provided by a court with respect to which*  
10 *a notice is filed under paragraph (1), to such entity later*  
11 *than 30 days after the filing of such notice under paragraph*  
12 *(1) shall be provided to such address unless with respect*  
13 *to a particular case a different address is specified in a*  
14 *notice filed and served in accordance with subsection (e).*

15           “(3) *A notice filed under paragraph (1) may be with-*  
16 *drawn by such entity.*

17           “(g)(1) *Notice provided to a creditor by the debtor or*  
18 *the court other than in accordance with this section (exclud-*  
19 *ing this subsection) shall not be effective notice until such*  
20 *notice is brought to the attention of such creditor. If such*  
21 *creditor designates a person or an organizational subdivi-*  
22 *sion of such creditor to be responsible for receiving notices*  
23 *under this title and establishes reasonable procedures so that*  
24 *such notices receivable by such creditor are to be delivered*  
25 *to such person or such subdivision, then a notice provided*

1 *to such creditor other than in accordance with this section*  
2 *(excluding this subsection) shall not be considered to have*  
3 *been brought to the attention of such creditor until such no-*  
4 *tice is received by such person or such subdivision.*

5       “(2) *A monetary penalty may not be imposed on a*  
6 *creditor for a violation of a stay in effect under section*  
7 *362(a) (including a monetary penalty imposed under sec-*  
8 *tion 362(k)) or for failure to comply with section 542 or*  
9 *543 unless the conduct that is the basis of such violation*  
10 *or of such failure occurs after such creditor receives notice*  
11 *effective under this section of the order for relief.”.*

12       **(b) DEBTOR’S DUTIES.**—*Section 521 of title 11,*  
13 *United States Code, as amended by sections 106, 225, and*  
14 *305, is amended—*

15               *(1) in subsection (a), as so designated by section*  
16 *106, by amending paragraph (1) to read as follows:*

17               “(1) *file—*

18                       “(A) *a list of creditors; and*

19                       “(B) *unless the court orders otherwise—*

20                               “(i) *a schedule of assets and liabilities;*

21                               “(ii) *a schedule of current income and*  
22 *current expenditures;*

23                               “(iii) *a statement of the debtor’s finan-*  
24 *cial affairs and, if section 342(b) applies, a*  
25 *certificate—*

1           “(I) of an attorney whose name is  
2           indicated on the petition as the attor-  
3           ney for the debtor, or a bankruptcy pe-  
4           tition preparer signing the petition  
5           under section 110(b)(1), indicating  
6           that such attorney or the bankruptcy  
7           petition preparer delivered to the debt-  
8           or the notice required by section  
9           342(b); or

10           “(II) if no attorney is so indi-  
11           cated, and no bankruptcy petition pre-  
12           parer signed the petition, of the debtor  
13           that such notice was received and read  
14           by the debtor;

15           “(iv) copies of all payment advices or  
16           other evidence of payment received within  
17           60 days before the date of the filing of the  
18           petition, by the debtor from any employer of  
19           the debtor;

20           “(v) a statement of the amount of  
21           monthly net income, itemized to show how  
22           the amount is calculated; and

23           “(vi) a statement disclosing any rea-  
24           sonably anticipated increase in income or  
25           expenditures over the 12-month period fol-

1            *lowing the date of the filing of the peti-*  
2            *tion;”;* and

3            *(2) by adding at the end the following:*

4            *“(e)(1) If the debtor in a case under chapter 7 or 13*  
5 *is an individual and if a creditor files with the court at*  
6 *any time a request to receive a copy of the petition, sched-*  
7 *ules, and statement of financial affairs filed by the debtor,*  
8 *then the court shall make such petition, such schedules, and*  
9 *such statement available to such creditor.*

10          *“(2)(A) The debtor shall provide—*

11            *“(i) not later than 7 days before the date first*  
12 *set for the first meeting of creditors, to the trustee a*  
13 *copy of the Federal income tax return required under*  
14 *applicable law (or at the election of the debtor, a*  
15 *transcript of such return) for the most recent tax year*  
16 *ending immediately before the commencement of the*  
17 *case and for which a Federal income tax return was*  
18 *filed; and*

19            *“(ii) at the same time the debtor complies with*  
20 *clause (i), a copy of such return (or if elected under*  
21 *clause (i), such transcript) to any creditor that timely*  
22 *requests such copy.*

23          *“(B) If the debtor fails to comply with clause (i) or*  
24 *(ii) of subparagraph (A), the court shall dismiss the case*

1 *unless the debtor demonstrates that the failure to so comply*  
2 *is due to circumstances beyond the control of the debtor.*

3       “(C) *If a creditor requests a copy of such tax return*  
4 *or such transcript and if the debtor fails to provide a copy*  
5 *of such tax return or such transcript to such creditor at*  
6 *the time the debtor provides such tax return or such tran-*  
7 *script to the trustee, then the court shall dismiss the case*  
8 *unless the debtor demonstrates that the failure to provide*  
9 *a copy of such tax return or such transcript is due to cir-*  
10 *cumstances beyond the control of the debtor.*

11       “(3) *If a creditor in a case under chapter 13 files with*  
12 *the court at any time a request to receive a copy of the*  
13 *plan filed by the debtor, then the court shall make available*  
14 *to such creditor a copy of the plan—*

15               “(A) *at a reasonable cost; and*

16               “(B) *not later than 5 days after such request is*  
17 *filed.*

18       “(f) *At the request of the court, the United States trust-*  
19 *ee, or any party in interest in a case under chapter 7, 11,*  
20 *or 13, a debtor who is an individual shall file with the*  
21 *court—*

22               “(1) *at the same time filed with the taxing au-*  
23 *thority, a copy of each Federal income tax return re-*  
24 *quired under applicable law (or at the election of the*  
25 *debtor, a transcript of such tax return) with respect*



1       to each tax year of the debtor ending while the case  
2       is pending under such chapter;

3           “(2) at the same time filed with the taxing au-  
4       thority, each Federal income tax return required  
5       under applicable law (or at the election of the debtor,  
6       a transcript of such tax return) that had not been  
7       filed with such authority as of the date of the com-  
8       mencement of the case and that was subsequently filed  
9       for any tax year of the debtor ending in the 3-year  
10      period ending on the date of the commencement of the  
11      case;

12           “(3) a copy of each amendment to any Federal  
13      income tax return or transcript filed with the court  
14      under paragraph (1) or (2); and

15           “(4) in a case under chapter 13—

16           “(A) on the date that is either 90 days after  
17      the end of such tax year or 1 year after the date  
18      of the commencement of the case, whichever is  
19      later, if a plan is not confirmed before such later  
20      date; and

21           “(B) annually after the plan is confirmed  
22      and until the case is closed, not later than the  
23      date that is 45 days before the anniversary of the  
24      confirmation of the plan;

1       *a statement, under penalty of perjury, of the income*  
2       *and expenditures of the debtor during the tax year of*  
3       *the debtor most recently concluded before such state-*  
4       *ment is filed under this paragraph, and of the month-*  
5       *ly income of the debtor, that shows how income, ex-*  
6       *penditures, and monthly income are calculated.*

7       “(g)(1) *A statement referred to in subsection (f)(4)*  
8       *shall disclose—*

9               “(A) *the amount and sources of the income of the*  
10       *debtor;*

11               “(B) *the identity of any person responsible with*  
12       *the debtor for the support of any dependent of the*  
13       *debtor; and*

14               “(C) *the identity of any person who contributed,*  
15       *and the amount contributed, to the household in*  
16       *which the debtor resides.*

17       “(2) *The tax returns, amendments, and statement of*  
18       *income and expenditures described in subsections (e)(2)(A)*  
19       *and (f) shall be available to the United States trustee (or*  
20       *the bankruptcy administrator, if any), the trustee, and any*  
21       *party in interest for inspection and copying, subject to the*  
22       *requirements of section 315(c) of the Bankruptcy Abuse Pre-*  
23       *vention and Consumer Protection Act of 2004.*

24       “(h) *If requested by the United States trustee or by*  
25       *the trustee, the debtor shall provide—*

1           “(1) a document that establishes the identity of  
2           the debtor, including a driver’s license, passport, or  
3           other document that contains a photograph of the  
4           debtor; or

5           “(2) such other personal identifying information  
6           relating to the debtor that establishes the identity of  
7           the debtor.”.

8           (c)(1) Not later than 180 days after the date of the  
9           enactment of this Act, the Director of the Administrative  
10          Office of the United States Courts shall establish procedures  
11          for safeguarding the confidentiality of any tax information  
12          required to be provided under this section.

13          (2) The procedures under paragraph (1) shall include  
14          restrictions on creditor access to tax information that is re-  
15          quired to be provided under this section.

16          (3) Not later than 540 days after the date of enactment  
17          of this Act, the Director of the Administrative Office of the  
18          United States Courts shall prepare and submit to the Presi-  
19          dent pro tempore of the Senate and the Speaker of the House  
20          of Representatives a report that—

21                  (A) assesses the effectiveness of the procedures es-  
22                  tablished under paragraph (1); and

23                  (B) if appropriate, includes proposed legislation  
24                  to—

1           (i) further protect the confidentiality of tax  
2           information; and

3           (ii) provide penalties for the improper use  
4           by any person of the tax information required to  
5           be provided under this section.

6   **SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHED-**  
7                           **ULES OR PROVIDE REQUIRED INFORMATION.**

8           Section 521 of title 11, United States Code, as amend-  
9           ed by sections 106, 225, 305, and 315, is amended by add-  
10          ing at the end the following:

11          “(i)(1) Subject to paragraphs (2) and (4) and notwith-  
12          standing section 707(a), if an individual debtor in a vol-  
13          untary case under chapter 7 or 13 fails to file all of the  
14          information required under subsection (a)(1) within 45  
15          days after the date of the filing of the petition, the case  
16          shall be automatically dismissed effective on the 46th day  
17          after the date of the filing of the petition.

18          “(2) Subject to paragraph (4) and with respect to a  
19          case described in paragraph (1), any party in interest may  
20          request the court to enter an order dismissing the case. If  
21          requested, the court shall enter an order of dismissal not  
22          later than 5 days after such request.

23          “(3) Subject to paragraph (4) and upon request of the  
24          debtor made within 45 days after the date of the filing of  
25          the petition described in paragraph (1), the court may

1 *allow the debtor an additional period of not to exceed 45*  
 2 *days to file the information required under subsection*  
 3 *(a)(1) if the court finds justification for extending the pe-*  
 4 *riod for the filing.*

5       “(4) Notwithstanding any other provision of this sub-  
 6 section, on the motion of the trustee filed before the expira-  
 7 tion of the applicable period of time specified in paragraph  
 8 (1), (2), or (3), and after notice and a hearing, the court  
 9 may decline to dismiss the case if the court finds that the  
 10 debtor attempted in good faith to file all the information  
 11 required by subsection (a)(1)(B)(iv) and that the best inter-  
 12 ests of creditors would be served by administration of the  
 13 case.”.

14 **SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON**  
 15 **CONFIRMATION OF THE PLAN.**

16       Section 1324 of title 11, United States Code, is amend-  
 17 ed—

18           (1) by striking “After” and inserting the fol-  
 19 lowing:

20       “(a) Except as provided in subsection (b) and after”;  
 21 and

22           (2) by adding at the end the following:

23       “(b) The hearing on confirmation of the plan may be  
 24 held not earlier than 20 days and not later than 45 days  
 25 after the date of the meeting of creditors under section

1 341(a), unless the court determines that it would be in the  
 2 best interests of the creditors and the estate to hold such  
 3 hearing at an earlier date and there is no objection to such  
 4 earlier date.”.

5 **SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION**  
 6 **IN CERTAIN CASES.**

7 Title 11, United States Code, is amended—

8 (1) by amending section 1322(d) to read as fol-  
 9 lows:

10 “(d)(1) If the current monthly income of the debtor  
 11 and the debtor’s spouse combined, when multiplied by 12,  
 12 is not less than—

13 “(A) in the case of a debtor in a household of 1  
 14 person, the median family income of the applicable  
 15 State for 1 earner;

16 “(B) in the case of a debtor in a household of 2,  
 17 3, or 4 individuals, the highest median family income  
 18 of the applicable State for a family of the same num-  
 19 ber or fewer individuals; or

20 “(C) in the case of a debtor in a household ex-  
 21 ceeding 4 individuals, the highest median family in-  
 22 come of the applicable State for a family of 4 or fewer  
 23 individuals, plus \$525 per month for each individual  
 24 in excess of 4,

1 *the plan may not provide for payments over a period that*  
2 *is longer than 5 years.*

3       “(2) *If the current monthly income of the debtor and*  
4 *the debtor’s spouse combined, when multiplied by 12, is less*  
5 *than—*

6               “(A) *in the case of a debtor in a household of 1*  
7 *person, the median family income of the applicable*  
8 *State for 1 earner;*

9               “(B) *in the case of a debtor in a household of 2,*  
10 *3, or 4 individuals, the highest median family income*  
11 *of the applicable State for a family of the same num-*  
12 *ber or fewer individuals; or*

13               “(C) *in the case of a debtor in a household ex-*  
14 *ceeding 4 individuals, the highest median family in-*  
15 *come of the applicable State for a family of 4 or fewer*  
16 *individuals, plus \$525 per month for each individual*  
17 *in excess of 4,*

18 *the plan may not provide for payments over a period that*  
19 *is longer than 3 years, unless the court, for cause, approves*  
20 *a longer period, but the court may not approve a period*  
21 *that is longer than 5 years.”;*

22               (2) *in section 1325(b)(1)(B), by striking “three-*  
23 *year period” and inserting “applicable commitment*  
24 *period”;* and

1           (3) *in section 1325(b), as amended by section*  
2           *102, by adding at the end the following:*

3           “(4) *For purposes of this subsection, the ‘applicable*  
4           *commitment period’—*

5                   “(A) *subject to subparagraph (B), shall be—*

6                           “(i) *3 years; or*

7                           “(ii) *not less than 5 years, if the current*  
8                           *monthly income of the debtor and the debtor’s*  
9                           *spouse combined, when multiplied by 12, is not*  
10                           *less than—*

11                                   “(I) *in the case of a debtor in a house-*  
12                                   *hold of 1 person, the median family income*  
13                                   *of the applicable State for 1 earner;*

14                                   “(II) *in the case of a debtor in a*  
15                                   *household of 2, 3, or 4 individuals, the high-*  
16                                   *est median family income of the applicable*  
17                                   *State for a family of the same number or*  
18                                   *fewer individuals; or*

19                                   “(III) *in the case of a debtor in a*  
20                                   *household exceeding 4 individuals, the high-*  
21                                   *est median family income of the applicable*  
22                                   *State for a family of 4 or fewer individuals,*  
23                                   *plus \$525 per month for each individual in*  
24                                   *excess of 4; and*



1           “(B) may be less than 3 or 5 years, whichever  
2           is applicable under subparagraph (A), but only if the  
3           plan provides for payment in full of all allowed unse-  
4           cured claims over a shorter period.”; and

5           (4) in section 1329(c), by striking “three years”  
6           and inserting “the applicable commitment period  
7           under section 1325(b)(1)(B)”.

8   **SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF**  
9                           **RULE 9011 OF THE FEDERAL RULES OF BANK-**  
10                          **RUPTCY PROCEDURE.**

11           *It is the sense of Congress that rule 9011 of the Federal*  
12           *Rules of Bankruptcy Procedure (11 U.S.C. App.) should be*  
13           *modified to include a requirement that all documents (in-*  
14           *cluding schedules), signed and unsigned, submitted to the*  
15           *court or to a trustee by debtors who represent themselves*  
16           *and debtors who are represented by attorneys be submitted*  
17           *only after the debtors or the debtors’ attorneys have made*  
18           *reasonable inquiry to verify that the information contained*  
19           *in such documents is—*

20           (1) *well grounded in fact; and*

21           (2) *warranted by existing law or a good faith ar-*  
22           *gument for the extension, modification, or reversal of*  
23           *existing law.*

1 **SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL**  
2 **CASES.**

3 *Section 362(e) of title 11, United States Code, is*  
4 *amended—*

5 *(1) by inserting “(1)” after “(e)”; and*

6 *(2) by adding at the end the following:*

7 *“(2) Notwithstanding paragraph (1), in a case under*  
8 *chapter 7, 11, or 13 in which the debtor is an individual,*  
9 *the stay under subsection (a) shall terminate on the date*  
10 *that is 60 days after a request is made by a party in inter-*  
11 *est under subsection (d), unless—*

12 *“(A) a final decision is rendered by the court*  
13 *during the 60-day period beginning on the date of the*  
14 *request; or*

15 *“(B) such 60-day period is extended—*

16 *“(i) by agreement of all parties in interest;*  
17 *or*

18 *“(ii) by the court for such specific period of*  
19 *time as the court finds is required for good*  
20 *cause, as described in findings made by the*  
21 *court.”.*

22 **SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.**

23 *(a) PROPERTY OF THE ESTATE.—*

24 *(1) IN GENERAL.—Subchapter I of chapter 11 of*  
25 *title 11, United States Code, is amended by adding*  
26 *at the end the following:*

1 **“§ 1115. Property of the estate**

2 “(a) In a case in which the debtor is an individual,  
3 property of the estate includes, in addition to the property  
4 specified in section 541—

5 “(1) all property of the kind specified in section  
6 541 that the debtor acquires after the commencement  
7 of the case but before the case is closed, dismissed, or  
8 converted to a case under chapter 7, 12, or 13, which-  
9 ever occurs first; and

10 “(2) earnings from services performed by the  
11 debtor after the commencement of the case but before  
12 the case is closed, dismissed, or converted to a case  
13 under chapter 7, 12, or 13, whichever occurs first.

14 “(b) Except as provided in section 1104 or a confirmed  
15 plan or order confirming a plan, the debtor shall remain  
16 in possession of all property of the estate.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-  
18 tions for subchapter I of chapter 11 of title 11, United  
19 States Code, is amended by adding at the end the fol-  
20 lowing:

“1115. Property of the estate.”.

21 (b) CONTENTS OF PLAN.—Section 1123(a) of title 11,  
22 United States Code, is amended—

23 (1) in paragraph (6), by striking “and” at the  
24 end;

1           (2) *in paragraph (7), by striking the period and*  
2 *inserting “; and”; and*

3           (3) *by adding at the end the following:*

4           “(8) *in a case in which the debtor is an indi-*  
5 *vidual, provide for the payment to creditors under the*  
6 *plan of all or such portion of earnings from personal*  
7 *services performed by the debtor after the commence-*  
8 *ment of the case or other future income of the debtor*  
9 *as is necessary for the execution of the plan.”.*

10       (c) *CONFIRMATION OF PLAN.—*

11           (1) *REQUIREMENTS RELATING TO VALUE OF*  
12 *PROPERTY.—Section 1129(a) of title 11, United*  
13 *States Code, as amended by section 213, is amended*  
14 *by adding at the end the following:*

15           “(15) *In a case in which the debtor is an indi-*  
16 *vidual and in which the holder of an allowed unse-*  
17 *cured claim objects to the confirmation of the plan—*

18           “(A) *the value, as of the effective date of the*  
19 *plan, of the property to be distributed under the*  
20 *plan on account of such claim is not less than*  
21 *the amount of such claim; or*

22           “(B) *the value of the property to be distrib-*  
23 *uted under the plan is not less than the projected*  
24 *disposable income of the debtor (as defined in*  
25 *section 1325(b)(2)) to be received during the 5-*

1           *year period beginning on the date that the first*  
2           *payment is due under the plan, or during the*  
3           *period for which the plan provides payments,*  
4           *whichever is longer.”.*

5           (2) *REQUIREMENT RELATING TO INTERESTS IN*  
6           *PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11,*  
7           *United States Code, is amended by inserting before*  
8           *the period at the end the following: “, except that in*  
9           *a case in which the debtor is an individual, the debtor*  
10           *may retain property included in the estate under sec-*  
11           *tion 1115, subject to the requirements of subsection*  
12           *(a)(14) of this section”.*

13           (d) *EFFECT OF CONFIRMATION.—Section 1141(d) of*  
14           *title 11, United States Code, is amended—*

15           (1) *in paragraph (2), by striking “The confirma-*  
16           *tion of a plan does not discharge an individual debt-*  
17           *or” and inserting “A discharge under this chapter*  
18           *does not discharge a debtor who is an individual”;*  
19           *and*

20           (2) *by adding at the end the following:*

21           “(5) *In a case in which the debtor is an individual—*

22           “(A) *unless after notice and a hearing the court*  
23           *orders otherwise for cause, confirmation of the plan*  
24           *does not discharge any debt provided for in the plan*

1        *until the court grants a discharge on completion of all*  
2        *payments under the plan;*

3            *“(B) at any time after the confirmation of the*  
4        *plan, and after notice and a hearing, the court may*  
5        *grant a discharge to the debtor who has not completed*  
6        *payments under the plan if—*

7            *“(i) the value, as of the effective date of the*  
8        *plan, of property actually distributed under the*  
9        *plan on account of each allowed unsecured claim*  
10       *is not less than the amount that would have been*  
11       *paid on such claim if the estate of the debtor had*  
12       *been liquidated under chapter 7 on such date;*  
13       *and*

14           *“(i) modification of the plan under section*  
15        *1127 is not practicable; and”.*

16        *(e) MODIFICATION OF PLAN.—Section 1127 of title 11,*  
17        *United States Code, is amended by adding at the end the*  
18        *following:*

19           *“(e) If the debtor is an individual, the plan may be*  
20        *modified at any time after confirmation of the plan but*  
21        *before the completion of payments under the plan, whether*  
22        *or not the plan has been substantially consummated, upon*  
23        *request of the debtor, the trustee, the United States trustee,*  
24        *or the holder of an allowed unsecured claim, to—*

1           “(1) increase or reduce the amount of payments  
2           on claims of a particular class provided for by the  
3           plan;

4           “(2) extend or reduce the time period for such  
5           payments; or

6           “(3) alter the amount of the distribution to a  
7           creditor whose claim is provided for by the plan to  
8           the extent necessary to take account of any payment  
9           of such claim made other than under the plan.

10          “(f)(1) Sections 1121 through 1128 and the require-  
11          ments of section 1129 apply to any modification under sub-  
12          section (a).

13          “(2) The plan, as modified, shall become the plan only  
14          after there has been disclosure under section 1125 as the  
15          court may direct, notice and a hearing, and such modifica-  
16          tion is approved.”.

17          **SEC. 322. LIMITATIONS ON HOMESTEAD EXEMPTION.**

18          (a) *EXEMPTIONS.*—Section 522 of title 11, United  
19          States Code, as amended by sections 224 and 308, is amend-  
20          ed by adding at the end the following:

21          “(p)(1) Except as provided in paragraph (2) of this  
22          subsection and sections 544 and 548, as a result of electing  
23          under subsection (b)(3)(A) to exempt property under State  
24          or local law, a debtor may not exempt any amount of inter-  
25          est that was acquired by the debtor during the 1215-day

1 *period preceding the date of the filing of the petition that*  
2 *exceeds in the aggregate \$125,000 in value in—*

3           “(A) *real or personal property that the debtor or*  
4 *a dependent of the debtor uses as a residence;*

5           “(B) *a cooperative that owns property that the*  
6 *debtor or a dependent of the debtor uses as a resi-*  
7 *dence;*

8           “(C) *a burial plot for the debtor or a dependent*  
9 *of the debtor; or*

10           “(D) *real or personal property that the debtor or*  
11 *dependent of the debtor claims as a homestead.*

12           “(2)(A) *The limitation under paragraph (1) shall not*  
13 *apply to an exemption claimed under subsection (b)(3)(A)*  
14 *by a family farmer for the principal residence of such farm-*  
15 *er.*

16           “(B) *For purposes of paragraph (1), any amount of*  
17 *such interest does not include any interest transferred from*  
18 *a debtor’s previous principal residence (which was acquired*  
19 *prior to the beginning of such 1215-day period) into the*  
20 *debtor’s current principal residence, if the debtor’s previous*  
21 *and current residences are located in the same State.*

22           “(q)(1) *As a result of electing under subsection*  
23 *(b)(3)(A) to exempt property under State or local law, a*  
24 *debtor may not exempt any amount of an interest in prop-*  
25 *erty described in subparagraphs (A), (B), (C), and (D) of*



1 *subsection (p)(1) which exceeds in the aggregate \$125,000*  
2 *if—*

3           “(A) *the court determines, after notice and a*  
4 *hearing, that the debtor has been convicted of a felony*  
5 *(as defined in section 3156 of title 18), which under*  
6 *the circumstances, demonstrates that the filing of the*  
7 *case was an abuse of the provisions of this title; or*

8           “(B) *the debtor owes a debt arising from—*

9           “(i) *any violation of the Federal securities*  
10 *laws (as defined in section 3(a)(47) of the Secu-*  
11 *rities Exchange Act of 1934), any State securi-*  
12 *ties laws, or any regulation or order issued*  
13 *under Federal securities laws or State securities*  
14 *laws;*

15           “(ii) *fraud, deceit, or manipulation in a fi-*  
16 *duciary capacity or in connection with the pur-*  
17 *chase or sale of any security registered under sec-*  
18 *tion 12 or 15(d) of the Securities Exchange Act*  
19 *of 1934 or under section 6 of the Securities Act*  
20 *of 1933;*

21           “(iii) *any civil remedy under section 1964*  
22 *of title 18; or*

23           “(iv) *any criminal act, intentional tort, or*  
24 *willful or reckless misconduct that caused serious*

1           *physical injury or death to another individual*  
 2           *in the preceding 5 years.*

3           “(2) Paragraph (1) shall not apply to the extent the  
 4 amount of an interest in property described in subpara-  
 5 graphs (A), (B), (C), and (D) of subsection (p)(1) is reason-  
 6 ably necessary for the support of the debtor and any depend-  
 7 ent of the debtor.”.

8           (b) *ADJUSTMENT OF DOLLAR AMOUNTS.*—Paragraphs  
 9 (1) and (2) of section 104(b) of title 11, United States Code,  
 10 as amended by section 224, are amended by inserting  
 11 “522(p), 522(q),” after “522(n),”.

12 **SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICI-**  
 13 **PANT CONTRIBUTIONS AND OTHER PROP-**  
 14 **ERTY FROM THE ESTATE.**

15           Section 541(b) of title 11, United States Code, as  
 16 amended by section 225, is amended by adding after para-  
 17 graph (6), as added by section 225(a)(1)(C), the following:

18           “(7) any amount—

19                   “(A) withheld by an employer from the  
 20 wages of employees for payment as contribu-  
 21 tions—

22                           “(i) to—

23                                   “(I) an employee benefit plan that  
 24 is subject to title I of the Employee Re-  
 25 tirement Income Security Act of 1974

1           or under an employee benefit plan  
2           which is a governmental plan under  
3           section 414(d) of the Internal Revenue  
4           Code of 1986;

5           “(II) a deferred compensation  
6           plan under section 457 of the Internal  
7           Revenue Code of 1986; or

8           “(III) a tax-deferred annuity  
9           under section 403(b) of the Internal  
10          Revenue Code of 1986;

11          except that such amount under this sub-  
12          paragraph shall not constitute disposable  
13          income as defined in section 1325(b)(2); or

14          “(ii) to a health insurance plan regu-  
15          lated by State law whether or not subject to  
16          such title; or

17          “(B) received by an employer from employ-  
18          ees for payment as contributions—

19          “(i) to—

20                 “(I) an employee benefit plan that  
21                 is subject to title I of the Employee Re-  
22                 tirement Income Security Act of 1974  
23                 or under an employee benefit plan  
24                 which is a governmental plan under



1       “(e) *The district court in which a case under title 11*  
 2 *is commenced or is pending shall have exclusive jurisdic-*  
 3 *tion—*

4               “(1) *of all the property, wherever located, of the*  
 5 *debtor as of the commencement of such case, and of*  
 6 *property of the estate; and*

7               “(2) *over all claims or causes of action that in-*  
 8 *volve construction of section 327 of title 11, United*  
 9 *States Code, or rules relating to disclosure require-*  
 10 *ments under section 327.”.*

11       (b) *APPLICABILITY.—This section shall only apply to*  
 12 *cases filed after the date of enactment of this Act.*

13       ***SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE***

14                       ***INCREASE.***

15       (a) *ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11,*  
 16 *UNITED STATES CODE.—Section 1930(a) of title 28,*  
 17 *United States Code, is amended by striking paragraph (1)*  
 18 *and inserting the following:*

19               “(1) *For a case commenced—*

20                       “(A) *under chapter 7 of title 11, \$160; or*

21                       “(B) *under chapter 13 of title 11, \$150.”.*

22       (b) *UNITED STATES TRUSTEE SYSTEM FUND.—Sec-*  
 23 *tion 589a(b) of title 28, United States Code, is amended—*

24               (1) *by striking paragraph (1) and inserting the*  
 25 *following:*

1           “(1)(A) 40.63 percent of the fees collected under  
2           section 1930(a)(1)(A) of this title in cases commenced  
3           under chapter 7 of title 11; and

4           “(B) 70.00 percent of the fees collected under sec-  
5           tion 1930(a)(1)(B) of this title in cases commenced  
6           under chapter 13 of title 11;”;

7           (2) in paragraph (2), by striking “one-half” and  
8           inserting “three-fourths”; and

9           (3) in paragraph (4), by striking “one-half” and  
10          inserting “100 percent”.

11          (c) *COLLECTION AND DEPOSIT OF MISCELLANEOUS*  
12 *BANKRUPTCY FEES.*—Section 406(b) of the Judiciary Ap-  
13 propriations Act, 1990 (28 U.S.C. 1931 note) is amended  
14 by striking “pursuant to 28 U.S.C. section 1930(b)” and  
15 all that follows through “28 U.S.C. section 1931” and in-  
16 serting “under section 1930(b) of title 28, United States  
17 Code, and 31.25 percent of the fees collected under section  
18 1930(a)(1)(A) of that title, 30.00 percent of the fees collected  
19 under section 1930(a)(1)(B) of that title, and 25 percent  
20 of the fees collected under section 1930(a)(3) of that title  
21 shall be deposited as offsetting receipts to the fund estab-  
22 lished under section 1931 of that title”.

23 **SEC. 326. SHARING OF COMPENSATION.**

24          Section 504 of title 11, United States Code, is amended  
25 by adding at the end the following:

1       “(c) This section shall not apply with respect to shar-  
2     ing, or agreeing to share, compensation with a bona fide  
3     public service attorney referral program that operates in  
4     accordance with non-Federal law regulating attorney refer-  
5     ral services and with rules of professional responsibility ap-  
6     plicable to attorney acceptance of referrals.”.

7     **SEC. 327. FAIR VALUATION OF COLLATERAL.**

8       Section 506(a) of title 11, United States Code, is  
9     amended by—

10           (1) inserting “(1)” after “(a)”; and

11           (2) by adding at the end the following:

12       “(2) If the debtor is an individual in a case under  
13     chapter 7 or 13, such value with respect to personal prop-  
14     erty securing an allowed claim shall be determined based  
15     on the replacement value of such property as of the date  
16     of the filing of the petition without deduction for costs of  
17     sale or marketing. With respect to property acquired for  
18     personal, family, or household purposes, replacement value  
19     shall mean the price a retail merchant would charge for  
20     property of that kind considering the age and condition of  
21     the property at the time value is determined.”.

1 **SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGA-**  
2 **TIONS.**

3 (a) *EXECUTORY CONTRACTS AND UNEXPIRED*  
4 *LEASES.*—Section 365 of title 11, United States Code, is  
5 amended—

6 (1) *in subsection (b)*—

7 (A) *in paragraph (1)(A), by striking the*  
8 *semicolon at the end and inserting the following:*  
9 *“other than a default that is a breach of a provi-*  
10 *sion relating to the satisfaction of any provision*  
11 *(other than a penalty rate or penalty provision)*  
12 *relating to a default arising from any failure to*  
13 *perform nonmonetary obligations under an un-*  
14 *expired lease of real property, if it is impossible*  
15 *for the trustee to cure such default by performing*  
16 *nonmonetary acts at and after the time of as-*  
17 *sumption, except that if such default arises from*  
18 *a failure to operate in accordance with a non-*  
19 *residential real property lease, then such default*  
20 *shall be cured by performance at and after the*  
21 *time of assumption in accordance with such*  
22 *lease, and pecuniary losses resulting from such*  
23 *default shall be compensated in accordance with*  
24 *the provisions of this paragraph;”*; and



1           (B) in paragraph (2)(D), by striking “pen-  
2           alty rate or provision” and inserting “penalty  
3           rate or penalty provision”;

4           (2) in subsection (c)—

5           (A) in paragraph (2), by inserting “or” at  
6           the end;

7           (B) in paragraph (3), by striking “; or” at  
8           the end and inserting a period; and

9           (C) by striking paragraph (4);

10          (3) in subsection (d)—

11          (A) by striking paragraphs (5) through (9);  
12          and

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

15          (4) in subsection (f)(1) by striking “; except  
16          that” and all that follows through the end of the para-  
17          graph and inserting a period.

18          (b) *IMPAIRMENT OF CLAIMS OR INTERESTS.*—Section  
19          1124(2) of title 11, United States Code, is amended—

20          (1) in subparagraph (A), by inserting “or of a  
21          kind that section 365(b)(2) expressly does not require  
22          to be cured” before the semicolon at the end;

23          (2) in subparagraph (C), by striking “and” at  
24          the end;

1           (3) by redesignating subparagraph (D) as sub-  
2           paragraph (E); and

3           (4) by inserting after subparagraph (C) the fol-  
4           lowing:

5                       “(D) if such claim or such interest arises  
6                       from any failure to perform a nonmonetary obli-  
7                       gation, other than a default arising from failure  
8                       to operate a nonresidential real property lease  
9                       subject to section 365(b)(1)(A), compensates the  
10                      holder of such claim or such interest (other than  
11                      the debtor or an insider) for any actual pecu-  
12                      niary loss incurred by such holder as a result of  
13                      such failure; and”.

14   **SEC. 329. CLARIFICATION OF POSTPETITION WAGES AND**  
15   **BENEFITS.**

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

18                       “(A) the actual, necessary costs and expenses of pre-  
19                       serving the estate including—

20                                       “(i) wages, salaries, and commissions for  
21                                       services rendered after the commencement of the  
22                                       case; and

23                                       “(ii) wages and benefits awarded pursuant  
24                                       to a judicial proceeding or a proceeding of the  
25                                       National Labor Relations Board as back pay at-

1           *tributable to any period of time occurring after*  
 2           *commencement of the case under this title, as a*  
 3           *result of a violation of Federal or State law by*  
 4           *the debtor, without regard to the time of the oc-*  
 5           *currence of unlawful conduct on which such*  
 6           *award is based or to whether any services were*  
 7           *rendered, if the court determines that payment of*  
 8           *wages and benefits by reason of the operation of*  
 9           *this clause will not substantially increase the*  
 10          *probability of layoff or termination of current*  
 11          *employees, or of nonpayment of domestic support*  
 12          *obligations, during the case under this title;”.*

13   ***SEC. 330. DELAY OF DISCHARGE DURING PENDENCY OF***  
 14                                   ***CERTAIN PROCEEDINGS.***

15           *(a) CHAPTER 7.—Section 727(a) of title 11, United*  
 16   *States Code, as amended by section 106, is amended—*

17                   *(1) in paragraph (10), by striking “or” at the*  
 18           *end;*

19                   *(2) in paragraph (11) by striking the period at*  
 20           *the end and inserting “; or”; and*

21                   *(3) by inserting after paragraph (11) the fol-*  
 22           *lowing:*

23                   *“(12) the court after notice and a hearing held*  
 24           *not more than 10 days before the date of the entry of*

1       *the order granting the discharge finds that there is*  
2       *reasonable cause to believe that—*

3               “(A) section 522(q)(1) may be applicable to  
4       *the debtor; and*

5               “(B) there is pending any proceeding in  
6       *which the debtor may be found guilty of a felony*  
7       *of the kind described in section 522(q)(1)(A) or*  
8       *liable for a debt of the kind described in section*  
9       *522(q)(1)(B).”.*

10       (b) *CHAPTER 11.—Section 1141(d) of title 11, United*  
11       *States Code, as amended by section 321, is amended by add-*  
12       *ing at the end the following:*

13               “(C) unless after notice and a hearing held not  
14       *more than 10 days before the date of the entry of the*  
15       *order granting the discharge, the court finds that*  
16       *there is no reasonable cause to believe that—*

17               “(i) section 522(q)(1) may be applicable to  
18       *the debtor; and*

19               “(ii) there is pending any proceeding in  
20       *which the debtor may be found guilty of a felony*  
21       *of the kind described in section 522(q)(1)(A) or*  
22       *liable for a debt of the kind described in section*  
23       *522(q)(1)(B).”.*

24       (c) *CHAPTER 12.—Section 1228 of title 11, United*  
25       *States Code, is amended—*

1           (1) *in subsection (a) by striking “As” and in-*  
2           *serting “Subject to subsection (d), as”,*

3           (2) *in subsection (b) by striking “At” and insert-*  
4           *ing “Subject to subsection (d), at”, and*

5           (3) *by adding at the end the following:*

6           “(f) *The court may not grant a discharge under this*  
7           *chapter unless the court after notice and a hearing held not*  
8           *more than 10 days before the date of the entry of the order*  
9           *granting the discharge finds that there is no reasonable*  
10          *cause to believe that—*

11           “(1) *section 522(q)(1) may be applicable to the*  
12          *debtor; and*

13           “(2) *there is pending any proceeding in which*  
14          *the debtor may be found guilty of a felony of the kind*  
15          *described in section 522(q)(1)(A) or liable for a debt*  
16          *of the kind described in section 522(q)(1)(B).”.*

17          (d) *CHAPTER 13.—Section 1328 of title 11, United*  
18          *States Code, as amended by section 106, is amended—*

19           (1) *in subsection (a) by striking “As” and in-*  
20           *serting “Subject to subsection (d), as”,*

21           (2) *in subsection (b) by striking “At” and insert-*  
22           *ing “Subject to subsection (d), at”, and*

23           (3) *by adding at the end the following:*

24           “(h) *The court may not grant a discharge under this*  
25          *chapter unless the court after notice and a hearing held not*

1 *more than 10 days before the date of the entry of the order*  
 2 *granting the discharge finds that there is no reasonable*  
 3 *cause to believe that—*

4           “(1) section 522(q)(1) may be applicable to the  
 5 debtor; and

6           “(2) there is pending any proceeding in which  
 7 the debtor may be found guilty of a felony of the kind  
 8 described in section 522(q)(1)(A) or liable for a debt  
 9 of the kind described in section 522(q)(1)(B).”.

10 ***TITLE IV—GENERAL AND SMALL***  
 11 ***BUSINESS BANKRUPTCY PRO-***  
 12 ***VISIONS***

13 ***Subtitle A—General Business***  
 14 ***Bankruptcy Provisions***

15 ***SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.***

16           (a) *DEFINITION.*—Section 101 of title 11, United  
 17 States Code, is amended by inserting after paragraph (48)  
 18 the following:

19           “(48A) ‘securities self regulatory organization’  
 20 means either a securities association registered with  
 21 the Securities and Exchange Commission under sec-  
 22 tion 15A of the Securities Exchange Act of 1934 or  
 23 a national securities exchange registered with the Se-  
 24 curities and Exchange Commission under section 6 of  
 25 the Securities Exchange Act of 1934;”.

1       (b) *AUTOMATIC STAY*.—Section 362(b) of title 11,  
 2 *United States Code*, as amended by sections 224, 303, and  
 3 311, is amended by inserting after paragraph (24) the fol-  
 4 *lowing*:

5               “(25) under subsection (a), of—

6                       “(A) the commencement or continuation of  
 7 an investigation or action by a securities self  
 8 regulatory organization to enforce such organiza-  
 9 tion’s regulatory power;

10                      “(B) the enforcement of an order or deci-  
 11 sion, other than for monetary sanctions, obtained  
 12 in an action by such securities self regulatory or-  
 13 ganization to enforce such organization’s regu-  
 14 latory power; or

15                      “(C) any act taken by such securities self  
 16 regulatory organization to delist, delete, or refuse  
 17 to permit quotation of any stock that does not  
 18 meet applicable regulatory requirements;”.

19 **SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY**  
 20 **HOLDERS.**

21       Section 341 of title 11, *United States Code*, is amended  
 22 by adding at the end the following:

23       “(e) Notwithstanding subsections (a) and (b), the  
 24 court, on the request of a party in interest and after notice  
 25 and a hearing, for cause may order that the United States

1 trustee not convene a meeting of creditors or equity security  
 2 holders if the debtor has filed a plan as to which the debtor  
 3 solicited acceptances prior to the commencement of the  
 4 case.”.

5 **SEC. 403. PROTECTION OF REFINANCE OF SECURITY INTER-**  
 6 **EST.**

7 Subparagraphs (A), (B), and (C) of section 547(e)(2)  
 8 of title 11, United States Code, are each amended by strik-  
 9 ing “10” each place it appears and inserting “30”.

10 **SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED**  
 11 **LEASES.**

12 (a) *IN GENERAL.*—Section 365(d)(4) of title 11,  
 13 United States Code, is amended to read as follows:

14 “(4)(A) Subject to subparagraph (B), an unexpired  
 15 lease of nonresidential real property under which the debtor  
 16 is the lessee shall be deemed rejected, and the trustee shall  
 17 immediately surrender that nonresidential real property to  
 18 the lessor, if the trustee does not assume or reject the unex-  
 19 pired lease by the earlier of—

20 (i) the date that is 120 days after the date of  
 21 the order for relief; or

22 (ii) the date of the entry of an order confirming  
 23 a plan.

24 “(B)(i) The court may extend the period determined  
 25 under subparagraph (A), prior to the expiration of the 120-





1 *gate amount of which, in comparison to the annual gross*  
 2 *revenue of that creditor, is disproportionately large.”.*

3 *(b) INFORMATION.—Section 1102(b) of title 11, United*  
 4 *States Code, is amended by adding at the end the following:*

5 *“(3) A committee appointed under subsection (a)*  
 6 *shall—*

7 *“(A) provide access to information for creditors*  
 8 *who—*

9 *“(i) hold claims of the kind represented by*  
 10 *that committee; and*

11 *“(ii) are not appointed to the committee;*

12 *“(B) solicit and receive comments from the credi-*  
 13 *tors described in subparagraph (A); and*

14 *“(C) be subject to a court order that compels any*  
 15 *additional report or disclosure to be made to the*  
 16 *creditors described in subparagraph (A).”.*

17 **SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11,**  
 18 **UNITED STATES CODE.**

19 *Section 546 of title 11, United States Code, is amend-*  
 20 *ed—*

21 *(1) by redesignating the second subsection (g) (as*  
 22 *added by section 222(a) of Public Law 103–394) as*  
 23 *subsection (h);*

24 *(2) in subsection (h), as so redesignated, by in-*  
 25 *serting “and subject to the prior rights of holders of*

1       *security interests in such goods or the proceeds of such*  
 2       *goods” after “consent of a creditor”; and*

3               *(3) by adding at the end the following:*

4       *“(i)(1) Notwithstanding paragraphs (2) and (3) of sec-*  
 5       *tion 545, the trustee may not avoid a warehouseman’s lien*  
 6       *for storage, transportation, or other costs incidental to the*  
 7       *storage and handling of goods.*

8       *“(2) The prohibition under paragraph (1) shall be ap-*  
 9       *plied in a manner consistent with any State statute appli-*  
 10       *cable to such lien that is similar to section 7–209 of the*  
 11       *Uniform Commercial Code, as in effect on the date of enact-*  
 12       *ment of the Bankruptcy Abuse Prevention and Consumer*  
 13       *Protection Act of 2004, or any successor to such section 7–*  
 14       *209.”.*

15       **SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11,**

16                       **UNITED STATES CODE.**

17       *Section 330(a) of title 11, United States Code, is*  
 18       *amended—*

19               *(1) in paragraph (3)—*

20                       *(A) by striking “(A) In” and inserting*  
 21                       *“In”; and*

22                       *(B) by inserting “to an examiner, trustee*  
 23                       *under chapter 11, or professional person” after*  
 24                       *“awarded”; and*

25               *(2) by adding at the end the following:*

1       “(7) *In determining the amount of reasonable com-*  
 2 *ensation to be awarded to a trustee, the court shall treat*  
 3 *such compensation as a commission, based on section 326.*”.

4       **SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.**

5       *Section 1125 of title 11, United States Code, is amend-*  
 6 *ed by adding at the end the following:*

7       “(g) *Notwithstanding subsection (b), an acceptance or*  
 8 *rejection of the plan may be solicited from a holder of a*  
 9 *claim or interest if such solicitation complies with applica-*  
 10 *ble nonbankruptcy law and if such holder was solicited be-*  
 11 *fore the commencement of the case in a manner complying*  
 12 *with applicable nonbankruptcy law.*”.

13       **SEC. 409. PREFERENCES.**

14       *Section 547(c) of title 11, United States Code, is*  
 15 *amended—*

16               (1) *by striking paragraph (2) and inserting the*  
 17 *following:*

18               “(2) *to the extent that such transfer was in pay-*  
 19 *ment of a debt incurred by the debtor in the ordinary*  
 20 *course of business or financial affairs of the debtor*  
 21 *and the transferee, and such transfer was—*

22                       “(A) *made in the ordinary course of busi-*  
 23 *ness or financial affairs of the debtor and the*  
 24 *transferee; or*

1           “(B) made according to ordinary business  
2           terms;”;

3           (2) in paragraph (8), by striking the period at  
4           the end and inserting “; or”; and

5           (3) by adding at the end the following:

6           “(9) if, in a case filed by a debtor whose debts  
7           are not primarily consumer debts, the aggregate value  
8           of all property that constitutes or is affected by such  
9           transfer is less than \$5,000.”.

10 **SEC. 410. VENUE OF CERTAIN PROCEEDINGS.**

11           Section 1409(b) of title 28, United States Code, is  
12           amended by inserting “, or a debt (excluding a consumer  
13           debt) against a noninsider of less than \$10,000,” after  
14           “\$5,000”.

15 **SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

16           Section 1121(d) of title 11, United States Code, is  
17           amended—

18           (1) by striking “On” and inserting “(1) Subject  
19           to paragraph (2), on”; and

20           (2) by adding at the end the following:

21           “(2)(A) The 120-day period specified in paragraph (1)  
22           may not be extended beyond a date that is 18 months after  
23           the date of the order for relief under this chapter.



1 *ruptcy law, or other requirement that representation at the*  
 2 *meeting of creditors under subsection (a) be by an attorney,*  
 3 *a creditor holding a consumer debt or any representative*  
 4 *of the creditor (which may include an entity or an employee*  
 5 *of an entity and may be a representative for more than*  
 6 *1 creditor) shall be permitted to appear at and participate*  
 7 *in the meeting of creditors in a case under chapter 7 or*  
 8 *13, either alone or in conjunction with an attorney for the*  
 9 *creditor. Nothing in this subsection shall be construed to*  
 10 *require any creditor to be represented by an attorney at*  
 11 *any meeting of creditors.”.*

12 **SEC. 414. DEFINITION OF DISINTERESTED PERSON.**

13 *Section 101(14) of title 11, United States Code, is*  
 14 *amended to read as follows:*

15 *“(14) ‘disinterested person’ means a person*  
 16 *that—*

17 *“(A) is not a creditor, an equity security*  
 18 *holder, or an insider;*

19 *“(B) is not and was not, within 2 years be-*  
 20 *fore the date of the filing of the petition, a direc-*  
 21 *tor, officer, or employee of the debtor; and*

22 *“(C) does not have an interest materially*  
 23 *adverse to the interest of the estate or of any*  
 24 *class of creditors or equity security holders, by*  
 25 *reason of any direct or indirect relationship to,*

1           *connection with, or interest in, the debtor, or for*  
2           *any other reason;”.*

3   **SEC. 415. FACTORS FOR COMPENSATION OF PROFESSIONAL**  
4           **PERSONS.**

5           *Section 330(a)(3) of title 11, United States Code, is*  
6   *amended—*

7           (1) *in subparagraph (D), by striking “and” at*  
8           *the end;*

9           (2) *by redesignating subparagraph (E) as sub-*  
10          *paragraph (F); and*

11          (3) *by inserting after subparagraph (D) the fol-*  
12          *lowing:*

13                *“(E) with respect to a professional person,*  
14                *whether the person is board certified or otherwise has*  
15                *demonstrated skill and experience in the bankruptcy*  
16                *field; and”.*

17   **SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.**

18          *Section 1104(b) of title 11, United States Code, is*  
19   *amended—*

20                (1) *by inserting “(1)” after “(b)”;* and

21                (2) *by adding at the end the following:*

22                    *“(2)(A) If an eligible, disinterested trustee is elected*  
23                    *at a meeting of creditors under paragraph (1), the United*  
24                    *States trustee shall file a report certifying that election.*



1       “(B) Upon the filing of a report under subparagraph  
2 (A)—

3               “(i) the trustee elected under paragraph (1) shall  
4       be considered to have been selected and appointed for  
5       purposes of this section; and

6               “(ii) the service of any trustee appointed under  
7       subsection (d) shall terminate.

8       “(C) The court shall resolve any dispute arising out  
9 of an election described in subparagraph (A).”.

10 **SEC. 417. UTILITY SERVICE.**

11       Section 366 of title 11, United States Code, is amend-  
12 ed—

13               (1) in subsection (a), by striking “subsection (b)”  
14       and inserting “subsections (b) and (c)”; and

15               (2) by adding at the end the following:

16       “(c)(1)(A) For purposes of this subsection, the term  
17 ‘assurance of payment’ means—

18               “(i) a cash deposit;

19               “(ii) a letter of credit;

20               “(iii) a certificate of deposit;

21               “(iv) a surety bond;

22               “(v) a prepayment of utility consumption; or

23               “(vi) another form of security that is mutually  
24       agreed on between the utility and the debtor or the  
25       trustee.

1       “(B) For purposes of this subsection an administrative  
2 expense priority shall not constitute an assurance of pay-  
3 ment.

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

11       “(3)(A) On request of a party in interest and after  
12 notice and a hearing, the court may order modification of  
13 the amount of an assurance of payment under paragraph  
14 (2).

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

18               “(i) the absence of security before the date of the  
19 filing of the petition;

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

23               “(iii) the availability of an administrative ex-  
24 pense priority.

1       “(4) Notwithstanding any other provision of law, with  
2 respect to a case subject to this subsection, a utility may  
3 recover or set off against a security deposit provided to the  
4 utility by the debtor before the date of the filing of the peti-  
5 tion without notice or order of the court.”.

6       **SEC. 418. BANKRUPTCY FEES.**

7       Section 1930 of title 28, United States Code, is amend-  
8 ed—

9               (1) in subsection (a), by striking “Notwith-  
10 standing section 1915 of this title, the” and inserting  
11 “The”; and

12               (2) by adding at the end the following:

13       “(f)(1) Under the procedures prescribed by the Judicial  
14 Conference of the United States, the district court or the  
15 bankruptcy court may waive the filing fee in a case under  
16 chapter 7 of title 11 for an individual if the court deter-  
17 mines that such individual has income less than 150 per-  
18 cent of the income official poverty line (as defined by the  
19 Office of Management and Budget, and revised annually  
20 in accordance with section 673(2) of the Omnibus Budget  
21 Reconciliation Act of 1981) applicable to a family of the  
22 size involved and is unable to pay that fee in installments.  
23 For purposes of this paragraph, the term ‘filing fee’ means  
24 the filing required by subsection (a), or any other fee pre-  
25 scribed by the Judicial Conference under subsections (b)

1 *and (c) that is payable to the clerk upon the commencement*  
 2 *of a case under chapter 7.*

3 “(2) *The district court or the bankruptcy court may*  
 4 *waive for such debtors other fees prescribed under sub-*  
 5 *sections (b) and (c).*”

6 “(3) *This subsection does not restrict the district court*  
 7 *or the bankruptcy court from waiving, in accordance with*  
 8 *Judicial Conference policy, fees prescribed under this sec-*  
 9 *tion for other debtors and creditors.*”

10 **SEC. 419. MORE COMPLETE INFORMATION REGARDING AS-**  
 11 **SETS OF THE ESTATE.**

12 (a) *IN GENERAL.*—

13 (1) *DISCLOSURE.*—*The Judicial Conference of*  
 14 *the United States, in accordance with section 2075 of*  
 15 *title 28 of the United States Code and after consider-*  
 16 *ation of the views of the Director of the Executive Of-*  
 17 *fice for United States Trustees, shall propose amended*  
 18 *Federal Rules of Bankruptcy Procedure and in ac-*  
 19 *cordance with rule 9009 of the Federal Rules of Bank-*  
 20 *ruptcy Procedure shall prescribe official bankruptcy*  
 21 *forms directing debtors under chapter 11 of title 11*  
 22 *of United States Code, to disclose the information de-*  
 23 *scribed in paragraph (2) by filing and serving peri-*  
 24 *odic financial and other reports designed to provide*  
 25 *such information.*

1           (2) *INFORMATION.*—*The information referred to*  
2           *in paragraph (1) is the value, operations, and profit-*  
3           *ability of any closely held corporation, partnership,*  
4           *or of any other entity in which the debtor holds a sub-*  
5           *stantial or controlling interest.*

6           (b) *PURPOSE.*—*The purpose of the rules and reports*  
7           *under subsection (a) shall be to assist parties in interest*  
8           *taking steps to ensure that the debtor’s interest in any enti-*  
9           *ty referred to in subsection (a)(2) is used for the payment*  
10          *of allowed claims against debtor.*

11                           ***Subtitle B—Small Business***  
12                           ***Bankruptcy Provisions***

13          ***SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT***  
14                           ***AND PLAN.***

15          *Section 1125 of title 11, United States Code, is amend-*  
16          *ed—*

17                   (1) *in subsection (a)(1), by inserting before the*  
18                   *semicolon “and in determining whether a disclosure*  
19                   *statement provides adequate information, the court*  
20                   *shall consider the complexity of the case, the benefit*  
21                   *of additional information to creditors and other par-*  
22                   *ties in interest, and the cost of providing additional*  
23                   *information”;* and

24                   (2) *by striking subsection (f), and inserting the*  
25                   *following:*

1       “(f) Notwithstanding subsection (b), in a small busi-  
2   ness case—

3               “(1) the court may determine that the plan itself  
4   provides adequate information and that a separate  
5   disclosure statement is not necessary;

6               “(2) the court may approve a disclosure state-  
7   ment submitted on standard forms approved by the  
8   court or adopted under section 2075 of title 28; and

9               “(3)(A) the court may conditionally approve a  
10   disclosure statement subject to final approval after  
11   notice and a hearing;

12              “(B) acceptances and rejections of a plan may be  
13   solicited based on a conditionally approved disclosure  
14   statement if the debtor provides adequate information  
15   to each holder of a claim or interest that is solicited,  
16   but a conditionally approved disclosure statement  
17   shall be mailed not later than 25 days before the date  
18   of the hearing on confirmation of the plan; and

19              “(C) the hearing on the disclosure statement may  
20   be combined with the hearing on confirmation of a  
21   plan.”.

22   **SEC. 432. DEFINITIONS.**

23       (a) *DEFINITIONS.*—Section 101 of title 11, United  
24   States Code, is amended by striking paragraph (51C) and  
25   inserting the following:

1           “(51C) ‘small business case’ means a case filed  
2           under chapter 11 of this title in which the debtor is  
3           a small business debtor;

4           “(51D) ‘small business debtor’—

5           “(A) subject to subparagraph (B), means a  
6           person engaged in commercial or business activi-  
7           ties (including any affiliate of such person that  
8           is also a debtor under this title and excluding a  
9           person whose primary activity is the business of  
10          owning or operating real property or activities  
11          incidental thereto) that has aggregate noncontin-  
12          gent liquidated secured and unsecured debts as of  
13          the date of the petition or the date of the order  
14          for relief in an amount not more than  
15          \$2,000,000 (excluding debts owed to 1 or more  
16          affiliates or insiders) for a case in which the  
17          United States trustee has not appointed under  
18          section 1102(a)(1) a committee of unsecured  
19          creditors or where the court has determined that  
20          the committee of unsecured creditors is not suffi-  
21          ciently active and representative to provide effec-  
22          tive oversight of the debtor; and

23          “(B) does not include any member of a  
24          group of affiliated debtors that has aggregate  
25          noncontingent liquidated secured and unsecured





1 **SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.**

2 (a) *REPORTING REQUIRED.*—

3 (1) *IN GENERAL.*—Chapter 3 of title 11, United  
4 States Code, is amended by inserting after section 307  
5 the following:

6 **“§ 308. Debtor reporting requirements**

7 “(a) For purposes of this section, the term ‘profit-  
8 ability’ means, with respect to a debtor, the amount of  
9 money that the debtor has earned or lost during current  
10 and recent fiscal periods.

11 “(b) A small business debtor shall file periodic finan-  
12 cial and other reports containing information including—

13 “(1) the debtor’s profitability;

14 “(2) reasonable approximations of the debtor’s  
15 projected cash receipts and cash disbursements over a  
16 reasonable period;

17 “(3) comparisons of actual cash receipts and dis-  
18 bursements with projections in prior reports;

19 “(4)(A) whether the debtor is—

20 “(i) in compliance in all material respects  
21 with postpetition requirements imposed by this  
22 title and the Federal Rules of Bankruptcy Proce-  
23 dure; and

24 “(ii) timely filing tax returns and other re-  
25 quired government filings and paying taxes and  
26 other administrative expenses when due;



1 *with section 2073 of title 28 of the United States Code*  
2 *amended Federal Rules of Bankruptcy Procedure, and shall*  
3 *prescribe in accordance with rule 9009 of the Federal Rules*  
4 *of Bankruptcy Procedure official bankruptcy forms, direct-*  
5 *ing small business debtors to file periodic financial and*  
6 *other reports containing information, including informa-*  
7 *tion relating to—*

8           (1) *the debtor's profitability;*

9           (2) *the debtor's cash receipts and disbursements;*

10          *and*

11           (3) *whether the debtor is timely filing tax re-*  
12 *turns and paying taxes and other administrative ex-*  
13 *penses when due.*

14          (b) *PURPOSE.—The rules and forms proposed under*  
15 *subsection (a) shall be designed to achieve a practical bal-*  
16 *ance among—*

17           (1) *the reasonable needs of the bankruptcy court,*  
18 *the United States trustee, creditors, and other parties*  
19 *in interest for reasonably complete information;*

20           (2) *a small business debtor's interest that re-*  
21 *quired reports be easy and inexpensive to complete;*  
22 *and*

23           (3) *the interest of all parties that the required re-*  
24 *ports help such debtor to understand such debtor's fi-*  
25 *nancial condition and plan the such debtor's future.*

1 **SEC. 436. DUTIES IN SMALL BUSINESS CASES.**

2 (a) *DUTIES IN CHAPTER 11 CASES.*—Subchapter I of  
3 chapter 11 of title 11, United States Code, as amended by  
4 section 321, is amended by adding at the end the following:

5 **“§ 1116. Duties of trustee or debtor in possession in**  
6 **small business cases**

7 “In a small business case, a trustee or the debtor in  
8 possession, in addition to the duties provided in this title  
9 and as otherwise required by law, shall—

10 “(1) append to the voluntary petition or, in an  
11 involuntary case, file not later than 7 days after the  
12 date of the order for relief—

13 “(A) its most recent balance sheet, statement  
14 of operations, cash-flow statement, Federal in-  
15 come tax return; or

16 “(B) a statement made under penalty of  
17 perjury that no balance sheet, statement of oper-  
18 ations, or cash-flow statement has been prepared  
19 and no Federal tax return has been filed;

20 “(2) attend, through its senior management per-  
21 sonnel and counsel, meetings scheduled by the court or  
22 the United States trustee, including initial debtor  
23 interviews, scheduling conferences, and meetings of  
24 creditors convened under section 341 unless the court,  
25 after notice and a hearing, waives that requirement

1       upon a finding of extraordinary and compelling cir-  
2       cumstances;

3               “(3) timely file all schedules and statements of  
4       financial affairs, unless the court, after notice and a  
5       hearing, grants an extension, which shall not extend  
6       such time period to a date later than 30 days after  
7       the date of the order for relief, absent extraordinary  
8       and compelling circumstances;

9               “(4) file all postpetition financial and other re-  
10      ports required by the Federal Rules of Bankruptcy  
11      Procedure or by local rule of the district court;

12              “(5) subject to section 363(c)(2), maintain insur-  
13      ance customary and appropriate to the industry;

14              “(6)(A) timely file tax returns and other re-  
15      quired government filings; and

16              “(B) subject to section 363(c)(2), timely pay all  
17      taxes entitled to administrative expense priority ex-  
18      cept those being contested by appropriate proceedings  
19      being diligently prosecuted; and

20              “(7) allow the United States trustee, or a des-  
21      ignated representative of the United States trustee, to  
22      inspect the debtor’s business premises, books, and  
23      records at reasonable times, after reasonable prior  
24      written notice, unless notice is waived by the debtor.”.

1           (b) *CLERICAL AMENDMENT.*—*The table of sections for*  
 2 *chapter 11 of title 11, United States Code, as amended by*  
 3 *section 321, is amended by inserting after the item relating*  
 4 *to section 1115 the following:*

*“1116. Duties of trustee or debtor in possession in small business cases.”.*

5   ***SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.***

6           *Section 1121 of title 11, United States Code, is amend-*  
 7 *ed by striking subsection (e) and inserting the following:*

8           “(e) *In a small business case—*

9                   “(1) *only the debtor may file a plan until after*  
 10 *180 days after the date of the order for relief, unless*  
 11 *that period is—*

12                           “(A) *extended as provided by this sub-*  
 13 *section, after notice and a hearing; or*

14                           “(B) *the court, for cause, orders otherwise;*

15                   “(2) *the plan and a disclosure statement (if any)*  
 16 *shall be filed not later than 300 days after the date*  
 17 *of the order for relief; and*

18                   “(3) *the time periods specified in paragraphs (1)*  
 19 *and (2), and the time fixed in section 1129(e) within*  
 20 *which the plan shall be confirmed, may be extended*  
 21 *only if—*

22                           “(A) *the debtor, after providing notice to*  
 23 *parties in interest (including the United States*  
 24 *trustee), demonstrates by a preponderance of the*  
 25 *evidence that it is more likely than not that the*

1           *court will confirm a plan within a reasonable*  
2           *period of time;*

3                   “(B) a new deadline is imposed at the time  
4           *the extension is granted; and*

5                   “(C) the order extending time is signed be-  
6           *fore the existing deadline has expired.”.*

7   **SEC. 438. PLAN CONFIRMATION DEADLINE.**

8           *Section 1129 of title 11, United States Code, is amend-*  
9           *ed by adding at the end the following:*

10           “(e) In a small business case, the court shall confirm  
11           *a plan that complies with the applicable provisions of this*  
12           *title and that is filed in accordance with section 1121(e)*  
13           *not later than 45 days after the plan is filed unless the*  
14           *time for confirmation is extended in accordance with sec-*  
15           *tion 1121(e)(3).”.*

16   **SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.**

17           *Section 586(a) of title 28, United States Code, is*  
18           *amended—*

19                   (1) *in paragraph (3)—*

20                           (A) *in subparagraph (G), by striking “and”*  
21                           *at the end;*

22                           (B) *by redesignating subparagraph (H) as*  
23                           *subparagraph (I); and*

24                           (C) *by inserting after subparagraph (G) the*  
25                           *following:*

1           “(H) in small business cases (as defined in  
2 section 101 of title 11), performing the addi-  
3 tional duties specified in title 11 pertaining to  
4 such cases; and”;

5           (2) in paragraph (5), by striking “and” at the  
6 end;

7           (3) in paragraph (6), by striking the period at  
8 the end and inserting a semicolon; and

9           (4) by adding at the end the following:

10          “(7) in each of such small business cases—

11           “(A) conduct an initial debtor interview as  
12 soon as practicable after the date of the order for  
13 relief but before the first meeting scheduled under  
14 section 341(a) of title 11, at which time the  
15 United States trustee shall—

16           “(i) begin to investigate the debtor’s vi-  
17 ability;

18           “(ii) inquire about the debtor’s busi-  
19 ness plan;

20           “(iii) explain the debtor’s obligations  
21 to file monthly operating reports and other  
22 required reports;

23           “(iv) attempt to develop an agreed  
24 scheduling order; and



1                   “(v) inform the debtor of other obliga-  
2                   tions;

3                   “(B) if determined to be appropriate and  
4                   advisable, visit the appropriate business premises  
5                   of the debtor, ascertain the state of the debtor’s  
6                   books and records, and verify that the debtor has  
7                   filed its tax returns; and

8                   “(C) review and monitor diligently the debt-  
9                   or’s activities, to identify as promptly as possible  
10                  whether the debtor will be unable to confirm a  
11                  plan; and

12                  “(8) in any case in which the United States  
13                  trustee finds material grounds for any relief under  
14                  section 1112 of title 11, the United States trustee shall  
15                  apply promptly after making that finding to the  
16                  court for relief.”.

17 **SEC. 440. SCHEDULING CONFERENCES.**

18                  Section 105(d) of title 11, United States Code, is  
19                  amended—

20                         (1) in the matter preceding paragraph (1), by  
21                         striking “; may”; and

22                         (2) by striking paragraph (1) and inserting the  
23                         following:

1           “(1) shall hold such status conferences as are  
2           necessary to further the expeditious and economical  
3           resolution of the case; and”.

4   **SEC. 441. SERIAL FILER PROVISIONS.**

5           Section 362 of title 11, United States Code, as amend-  
6   ed by sections 106, 305, and 311, is amended—

7           (1) in subsection (k), as so redesignated by sec-  
8   tion 305—

9           (A) by striking “An” and inserting “(1)  
10          Except as provided in paragraph (2), an”; and

11          (B) by adding at the end the following:

12          “(2) If such violation is based on an action taken by  
13          an entity in the good faith belief that subsection (h) applies  
14          to the debtor, the recovery under paragraph (1) of this sub-  
15          section against such entity shall be limited to actual dam-  
16          ages.”; and

17          (2) by adding at the end the following:

18          “(n)(1) Except as provided in paragraph (2), sub-  
19          section (a) does not apply in a case in which the debtor—

20                  “(A) is a debtor in a small business case pending  
21                  at the time the petition is filed;

22                  “(B) was a debtor in a small business case that  
23                  was dismissed for any reason by an order that became  
24                  final in the 2-year period ending on the date of the  
25                  order for relief entered with respect to the petition;

1           “(C) was a debtor in a small business case in  
2           which a plan was confirmed in the 2-year period end-  
3           ing on the date of the order for relief entered with re-  
4           spect to the petition; or

5           “(D) is an entity that has acquired substantially  
6           all of the assets or business of a small business debtor  
7           described in subparagraph (A), (B), or (C), unless  
8           such entity establishes by a preponderance of the evi-  
9           dence that such entity acquired substantially all of  
10          the assets or business of such small business debtor in  
11          good faith and not for the purpose of evading this  
12          paragraph.

13          “(2) Paragraph (1) does not apply—

14                 “(A) to an involuntary case involving no collu-  
15                 sion by the debtor with creditors; or

16                 “(B) to the filing of a petition if—

17                         “(i) the debtor proves by a preponderance of  
18                         the evidence that the filing of the petition re-  
19                         sulted from circumstances beyond the control of  
20                         the debtor not foreseeable at the time the case  
21                         then pending was filed; and

22                         “(ii) it is more likely than not that the  
23                         court will confirm a feasible plan, but not a liq-  
24                         uidating plan, within a reasonable period of  
25                         time.”.

1 **SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CON-**  
2 **VERSION AND APPOINTMENT OF TRUSTEE.**

3 (a) *EXPANDED GROUNDS FOR DISMISSAL OR CONVER-*  
4 *SION.*—Section 1112 of title 11, United States Code, is  
5 amended by striking subsection (b) and inserting the fol-  
6 lowing:

7 “(b)(1) *Except as provided in paragraph (2) of this*  
8 *subsection, subsection (c) of this section, and section*  
9 *1104(a)(3), on request of a party in interest, and after no-*  
10 *tice and a hearing, absent unusual circumstances specifi-*  
11 *cally identified by the court that establish that the requested*  
12 *conversion or dismissal is not in the best interests of credi-*  
13 *tors and the estate, the court shall convert a case under this*  
14 *chapter to a case under chapter 7 or dismiss a case under*  
15 *this chapter, whichever is in the best interests of creditors*  
16 *and the estate, if the movant establishes cause.*

17 “(2) *The relief provided in paragraph (1) shall not be*  
18 *granted absent unusual circumstances specifically identi-*  
19 *fied by the court that establish that such relief is not in*  
20 *the best interests of creditors and the estate, if the debtor*  
21 *or another party in interest objects and establishes that—*

22 “(A) *there is a reasonable likelihood that a plan*  
23 *will be confirmed within the timeframes established in*  
24 *sections 1121(e) and 1129(e) of this title, or if such*  
25 *sections do not apply, within a reasonable period of*  
26 *time; and*

1           “(B) the grounds for granting such relief include  
2           an act or omission of the debtor other than under  
3           paragraph (4)(A)—

4                   “(i) for which there exists a reasonable jus-  
5                   tification for the act or omission; and

6                   “(ii) that will be cured within a reasonable  
7                   period of time fixed by the court.

8           “(3) The court shall commence the hearing on a motion  
9           under this subsection not later than 30 days after filing  
10           of the motion, and shall decide the motion not later than  
11           15 days after commencement of such hearing, unless the  
12           movant expressly consents to a continuance for a specific  
13           period of time or compelling circumstances prevent the  
14           court from meeting the time limits established by this para-  
15           graph.

16           “(4) For purposes of this subsection, the term ‘cause’  
17           includes—

18                   “(A) substantial or continuing loss to or diminu-  
19                   tion of the estate and the absence of a reasonable like-  
20                   lihood of rehabilitation;

21                   “(B) gross mismanagement of the estate;

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

24                   “(D) unauthorized use of cash collateral substan-  
25                   tially harmful to 1 or more creditors;

1           “(E) failure to comply with an order of the  
2 court;

3           “(F) unexcused failure to satisfy timely any fil-  
4 ing or reporting requirement established by this title  
5 or by any rule applicable to a case under this chap-  
6 ter;

7           “(G) failure to attend the meeting of creditors  
8 convened under section 341(a) or an examination or-  
9 dered under rule 2004 of the Federal Rules of Bank-  
10 ruptcy Procedure without good cause shown by the  
11 debtor;

12           “(H) failure timely to provide information or at-  
13 tend meetings reasonably requested by the United  
14 States trustee (or the bankruptcy administrator, if  
15 any);

16           “(I) failure timely to pay taxes owed after the  
17 date of the order for relief or to file tax returns due  
18 after the date of the order for relief;

19           “(J) failure to file a disclosure statement, or to  
20 file or confirm a plan, within the time fixed by this  
21 title or by order of the court;

22           “(K) failure to pay any fees or charges required  
23 under chapter 123 of title 28;

24           “(L) revocation of an order of confirmation  
25 under section 1144;

1           “(M) inability to effectuate substantial con-  
2 summation of a confirmed plan;

3           “(N) material default by the debtor with respect  
4 to a confirmed plan;

5           “(O) termination of a confirmed plan by reason  
6 of the occurrence of a condition specified in the plan;  
7 and

8           “(P) failure of the debtor to pay any domestic  
9 support obligation that first becomes payable after the  
10 date of the filing of the petition.

11          “(5) The court shall commence the hearing on a motion  
12 under this subsection not later than 30 days after filing  
13 of the motion, and shall decide the motion not later than  
14 15 days after commencement of such hearing, unless the  
15 movant expressly consents to a continuance for a specific  
16 period of time or compelling circumstances prevent the  
17 court from meeting the time limits established by this para-  
18 graph.”.

19          (b) *ADDITIONAL GROUNDS FOR APPOINTMENT OF*  
20 *TRUSTEE.*—Section 1104(a) of title 11, United States Code,  
21 is amended—

22           (1) in paragraph (1), by striking “or” at the  
23 end;

24           (2) in paragraph (2), by striking the period at  
25 the end and inserting “; or”; and

1           (3) by adding at the end the following:

2           “(3) if grounds exist to convert or dismiss the  
3           case under section 1112, but the court determines that  
4           the appointment of a trustee or an examiner is in the  
5           best interests of creditors and the estate.”.

6   **SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED**  
7                           **STATES CODE, WITH RESPECT TO SMALL**  
8                           **BUSINESSES.**

9           Not later than 2 years after the date of enactment of  
10 this Act, the Administrator of the Small Business Adminis-  
11 tration, in consultation with the Attorney General, the Di-  
12 rector of the Executive Office for United States Trustees,  
13 and the Director of the Administrative Office of the United  
14 States Courts, shall—

15           (1) conduct a study to determine—

16                   (A) the internal and external factors that  
17                   cause small businesses, especially sole proprietor-  
18                   ships, to become debtors in cases under title 11,  
19                   United States Code, and that cause certain small  
20                   businesses to successfully complete cases under  
21                   chapter 11 of such title; and

22                   (B) how Federal laws relating to bank-  
23                   ruptcy may be made more effective and efficient  
24                   in assisting small businesses to remain viable;  
25                   and



1           (2) *submit to the President pro tempore of the*  
2           *Senate and the Speaker of the House of Representa-*  
3           *tives a report summarizing that study.*

4   **SEC. 444. PAYMENT OF INTEREST.**

5           *Section 362(d)(3) of title 11, United States Code, is*  
6   *amended—*

7           (1) *by inserting “or 30 days after the court de-*  
8           *termines that the debtor is subject to this paragraph,*  
9           *whichever is later” after “90-day period”;* and

10          (2) *by striking subparagraph (B) and inserting*  
11         *the following:*

12                 *“(B) the debtor has commenced monthly*  
13                 *payments that—*

14                         *“(i) may, in the debtor’s sole discre-*  
15                         *tion, notwithstanding section 363(c)(2), be*  
16                         *made from rents or other income generated*  
17                         *before or after the commencement of the case*  
18                         *by or from the property to each creditor*  
19                         *whose claim is secured by such real estate*  
20                         *(other than a claim secured by a judgment*  
21                         *lien or by an unmatured statutory lien);*  
22                         *and*

23                         *“(ii) are in an amount equal to inter-*  
24                         *est at the then applicable nondefault con-*

1                    *tract rate of interest on the value of the*  
2                    *creditor's interest in the real estate; or”.*

3    **SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.**

4            *Section 503(b) of title 11, United States Code, is*  
5 *amended—*

6            (1) *in paragraph (5), by striking “and” at the*  
7 *end;*

8            (2) *in paragraph (6), by striking the period at*  
9 *the end and inserting a semicolon; and*

10           (3) *by adding at the end the following:*

11            *“(7) with respect to a nonresidential real prop-*  
12 *erty lease previously assumed under section 365, and*  
13 *subsequently rejected, a sum equal to all monetary ob-*  
14 *ligations due, excluding those arising from or relating*  
15 *to a failure to operate or a penalty provision, for the*  
16 *period of 2 years following the later of the rejection*  
17 *date or the date of actual turnover of the premises,*  
18 *without reduction or setoff for any reason whatsoever*  
19 *except for sums actually received or to be received*  
20 *from an entity other than the debtor, and the claim*  
21 *for remaining sums due for the balance of the term*  
22 *of the lease shall be a claim under section 502(b)(6);”.*

1 **SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A**  
2 **PLAN ADMINISTRATOR OF AN EMPLOYEE**  
3 **BENEFIT PLAN.**

4 (a) *IN GENERAL.*—Section 521(a) of title 11, United  
5 States Code, as amended by sections 106 and 304, is amend-  
6 ed—

7 (1) *in paragraph (5), by striking “and” at the*  
8 *end;*

9 (2) *in paragraph (6), by striking the period at*  
10 *the end and inserting “; and”; and*

11 (3) *by adding after paragraph (6) the following:*

12 “(7) *unless a trustee is serving in the case, con-*  
13 *tinue to perform the obligations required of the ad-*  
14 *ministrator (as defined in section 3 of the Employee*  
15 *Retirement Income Security Act of 1974) of an em-*  
16 *ployee benefit plan if at the time of the commence-*  
17 *ment of the case the debtor (or any entity designated*  
18 *by the debtor) served as such administrator.”.*

19 (b) *DUTIES OF TRUSTEES.*—Section 704(a) of title 11,  
20 United States Code, as amended by sections 102 and 219,  
21 is amended—

22 (1) *in paragraph (10), by striking “and” at the*  
23 *end; and*

24 (2) *by adding at the end the following:*

25 “(11) *if, at the time of the commencement of the*  
26 *case, the debtor (or any entity designated by the debt-*

1 or) served as the administrator (as defined in section  
 2 3 of the Employee Retirement Income Security Act of  
 3 1974) of an employee benefit plan, continue to per-  
 4 form the obligations required of the administrator;  
 5 and”.

6 (c) **CONFORMING AMENDMENT.**—Section 1106(a)(1) of  
 7 title 11, United States Code, is amended to read as follows:

8 “(1) perform the duties of the trustee, as speci-  
 9 fied in paragraphs (2), (5), (7), (8), (9), (10), and  
 10 (11) of section 704;”.

11 **SEC. 447. APPOINTMENT OF COMMITTEE OF RETIRED EM-**  
 12 **PLOYEES.**

13 Section 1114(d) of title 11, United States Code, is  
 14 amended—

15 (1) by striking “appoint” and inserting “order  
 16 the appointment of”, and

17 (2) by adding at the end the following: “The  
 18 United States trustee shall appoint any such com-  
 19 mittee.”.

20 **TITLE V—MUNICIPAL**  
 21 **BANKRUPTCY PROVISIONS**

22 **SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETI-**  
 23 **TION.**

24 (a) **TECHNICAL AMENDMENT RELATING TO MUNICI-**  
 25 **PALITIES.**—Section 921(d) of title 11, United States Code,

1 *is amended by inserting “notwithstanding section 301(b)”*  
 2 *before the period at the end.*

3 (b) *CONFORMING AMENDMENT.—Section 301 of title*  
 4 *11, United States Code, is amended—*

5 (1) *by inserting “(a)” before “A voluntary”; and*

6 (2) *by striking the last sentence and inserting*  
 7 *the following:*

8 “(b) *The commencement of a voluntary case under a*  
 9 *chapter of this title constitutes an order for relief under such*  
 10 *chapter.”.*

11 **SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER**

12 **9.**

13 *Section 901(a) of title 11, United States Code, is*  
 14 *amended—*

15 (1) *by inserting “555, 556,” after “553,”; and*

16 (2) *by inserting “559, 560, 561, 562,” after*  
 17 *“557.”.*

18 **TITLE VI—BANKRUPTCY DATA**

19 **SEC. 601. IMPROVED BANKRUPTCY STATISTICS.**

20 (a) *IN GENERAL.—Chapter 6 of title 28, United States*  
 21 *Code, is amended by adding at the end the following:*

22 **“§ 159. Bankruptcy statistics**

23 “(a) *The clerk of the district court, or the clerk of the*  
 24 *bankruptcy court if one is certified pursuant to section*  
 25 *156(b) of this title, shall collect statistics regarding debtors*

1 *who are individuals with primarily consumer debts seeking*  
2 *relief under chapters 7, 11, and 13 of title 11. Those statis-*  
3 *tics shall be in a standardized format prescribed by the Di-*  
4 *rector of the Administrative Office of the United States*  
5 *Courts (referred to in this section as the ‘Director’).*

6 “(b) *The Director shall—*

7 “(1) *compile the statistics referred to in sub-*  
8 *section (a);*

9 “(2) *make the statistics available to the public;*  
10 *and*

11 “(3) *not later than July 1, 2006, and annually*  
12 *thereafter, prepare, and submit to Congress a report*  
13 *concerning the information collected under subsection*  
14 *(a) that contains an analysis of the information.*

15 “(c) *The compilation required under subsection (b)*  
16 *shall—*

17 “(1) *be itemized, by chapter, with respect to title*  
18 *11;*

19 “(2) *be presented in the aggregate and for each*  
20 *district; and*

21 “(3) *include information concerning—*

22 “(A) *the total assets and total liabilities of*  
23 *the debtors described in subsection (a), and in*  
24 *each category of assets and liabilities, as re-*

1           *ported in the schedules prescribed pursuant to*  
2           *section 2075 of this title and filed by debtors;*

3           “(B) *the current monthly income, average*  
4           *income, and average expenses of debtors as re-*  
5           *ported on the schedules and statements that each*  
6           *such debtor files under sections 521 and 1322 of*  
7           *title 11;*

8           “(C) *the aggregate amount of debt dis-*  
9           *charged in cases filed during the reporting pe-*  
10          *riod, determined as the difference between the*  
11          *total amount of debt and obligations of a debtor*  
12          *reported on the schedules and the amount of such*  
13          *debt reported in categories which are predomi-*  
14          *nantly nondischargeable;*

15          “(D) *the average period of time between the*  
16          *date of the filing of the petition and the closing*  
17          *of the case for cases closed during the reporting*  
18          *period;*

19          “(E) *for cases closed during the reporting*  
20          *period—*

21                  “(i) *the number of cases in which a re-*  
22                  *affirmation agreement was filed; and*

23                  “(ii)(I) *the total number of reaffirma-*  
24                  *tion agreements filed;*

1           “(II) of those cases in which a reaffir-  
2           mation agreement was filed, the number of  
3           cases in which the debtor was not rep-  
4           resented by an attorney; and

5           “(III) of those cases in which a reaffir-  
6           mation agreement was filed, the number of  
7           cases in which the reaffirmation agreement  
8           was approved by the court;

9           “(F) with respect to cases filed under chap-  
10          ter 13 of title 11, for the reporting  
11          period—

12           “(i)(I) the number of cases in which a  
13           final order was entered determining the  
14           value of property securing a claim in an  
15           amount less than the amount of the claim;  
16           and

17           “(II) the number of final orders en-  
18           tered determining the value of property se-  
19           curing a claim;

20           “(ii) the number of cases dismissed, the  
21           number of cases dismissed for failure to  
22           make payments under the plan, the number  
23           of cases refiled after dismissal, and the  
24           number of cases in which the plan was com-  
25           pleted, separately itemized with respect to





1 **“§ 589b. Bankruptcy data**

2 “(a) *RULES.*—*The Attorney General shall, within a*  
3 *reasonable time after the effective date of this section, issue*  
4 *rules requiring uniform forms for (and from time to time*  
5 *thereafter to appropriately modify and approve)—*

6 “(1) *final reports by trustees in cases under*  
7 *chapters 7, 12, and 13 of title 11; and*

8 “(2) *periodic reports by debtors in possession or*  
9 *trustees in cases under chapter 11 of title 11.*

10 “(b) *REPORTS.*—*Each report referred to in subsection*  
11 *(a) shall be designed (and the requirements as to place and*  
12 *manner of filing shall be established) so as to facilitate com-*  
13 *pilation of data and maximum possible access of the public,*  
14 *both by physical inspection at one or more central filing*  
15 *locations, and by electronic access through the Internet or*  
16 *other appropriate media.*

17 “(c) *REQUIRED INFORMATION.*—*The information re-*  
18 *quired to be filed in the reports referred to in subsection*  
19 *(b) shall be that which is in the best interests of debtors*  
20 *and creditors, and in the public interest in reasonable and*  
21 *adequate information to evaluate the efficiency and practi-*  
22 *cality of the Federal bankruptcy system. In issuing rules*  
23 *proposing the forms referred to in subsection (a), the Attor-*  
24 *ney General shall strike the best achievable practical bal-*  
25 *ance between—*

1           “(1) the reasonable needs of the public for infor-  
2           mation about the operational results of the Federal  
3           bankruptcy system;

4           “(2) economy, simplicity, and lack of undue bur-  
5           den on persons with a duty to file reports; and

6           “(3) appropriate privacy concerns and safe-  
7           guards.

8           “(d) *FINAL REPORTS.*—The uniform forms for final  
9           reports required under subsection (a) for use by trustees  
10          under chapters 7, 12, and 13 of title 11 shall, in addition  
11          to such other matters as are required by law or as the Attor-  
12          ney General in the discretion of the Attorney General shall  
13          propose, include with respect to a case under such title—

14               “(1) information about the length of time the  
15               case was pending;

16               “(2) assets abandoned;

17               “(3) assets exempted;

18               “(4) receipts and disbursements of the estate;

19               “(5) expenses of administration, including for  
20               use under section 707(b), actual costs of admin-  
21               istering cases under chapter 13 of title 11;

22               “(6) claims asserted;

23               “(7) claims allowed; and

24               “(8) distributions to claimants and claims dis-  
25               charged without payment,

1 *in each case by appropriate category and, in cases under*  
2 *chapters 12 and 13 of title 11, date of confirmation of the*  
3 *plan, each modification thereto, and defaults by the debtor*  
4 *in performance under the plan.*

5       “(e) *PERIODIC REPORTS.*—*The uniform forms for*  
6 *periodic reports required under subsection (a) for use by*  
7 *trustees or debtors in possession under chapter 11 of title*  
8 *11 shall, in addition to such other matters as are required*  
9 *by law or as the Attorney General in the discretion of the*  
10 *Attorney General shall propose, include—*

11               “(1) *information about the industry classifica-*  
12 *tion, published by the Department of Commerce, for*  
13 *the businesses conducted by the debtor;*

14               “(2) *length of time the case has been pending;*

15               “(3) *number of full-time employees as of the date*  
16 *of the order for relief and at the end of each reporting*  
17 *period since the case was filed;*

18               “(4) *cash receipts, cash disbursements and prof-*  
19 *itability of the debtor for the most recent period and*  
20 *cumulatively since the date of the order for relief;*

21               “(5) *compliance with title 11, whether or not tax*  
22 *returns and tax payments since the date of the order*  
23 *for relief have been timely filed and made;*

24               “(6) *all professional fees approved by the court*  
25 *in the case for the most recent period and cumula-*

1        *tively since the date of the order for relief (separately*  
2        *reported, for the professional fees incurred by or on*  
3        *behalf of the debtor, between those that would have*  
4        *been incurred absent a bankruptcy case and those*  
5        *not); and*

6                *“(7) plans of reorganization filed and confirmed*  
7        *and, with respect thereto, by class, the recoveries of*  
8        *the holders, expressed in aggregate dollar values and,*  
9        *in the case of claims, as a percentage of total claims*  
10       *of the class allowed.”.*

11        *(b) CLERICAL AMENDMENT.—The table of sections for*  
12       *chapter 39 of title 28, United States Code, is amended by*  
13       *adding at the end the following:*

*“589b. Bankruptcy data.”.*

14       **SEC. 603. AUDIT PROCEDURES.**

15        *(a) IN GENERAL.—*

16                *(1) ESTABLISHMENT OF PROCEDURES.—The At-*  
17        *torney General (in judicial districts served by United*  
18        *States trustees) and the Judicial Conference of the*  
19        *United States (in judicial districts served by bank-*  
20        *ruptcy administrators) shall establish procedures to*  
21        *determine the accuracy, veracity, and completeness of*  
22        *petitions, schedules, and other information that the*  
23        *debtor is required to provide under sections 521 and*  
24        *1322 of title 11, United States Code, and, if applica-*  
25        *ble, section 111 of such title, in cases filed under*

1 *chapter 7 or 13 of such title in which the debtor is*  
2 *an individual. Such audits shall be in accordance*  
3 *with generally accepted auditing standards and per-*  
4 *formed by independent certified public accountants or*  
5 *independent licensed public accountants, provided*  
6 *that the Attorney General and the Judicial Con-*  
7 *ference, as appropriate, may develop alternative au-*  
8 *ditting standards not later than 2 years after the date*  
9 *of enactment of this Act.*

10 (2) *PROCEDURES.—Those procedures required by*  
11 *paragraph (1) shall—*

12 (A) *establish a method of selecting appro-*  
13 *priate qualified persons to contract to perform*  
14 *those audits;*

15 (B) *establish a method of randomly select-*  
16 *ing cases to be audited, except that not less than*  
17 *1 out of every 250 cases in each Federal judicial*  
18 *district shall be selected for audit;*

19 (C) *require audits of schedules of income*  
20 *and expenses that reflect greater than average*  
21 *variances from the statistical norm of the district*  
22 *in which the schedules were filed if those*  
23 *variances occur by reason of higher income or*  
24 *higher expenses than the statistical norm of the*  
25 *district in which the schedules were filed; and*

1           (D) establish procedures for providing, not  
2           less frequently than annually, public information  
3           concerning the aggregate results of such audits  
4           including the percentage of cases, by district, in  
5           which a material misstatement of income or ex-  
6           penditures is reported.

7           (b) AMENDMENTS.—Section 586 of title 28, United  
8           States Code, is amended—

9           (1) in subsection (a), by striking paragraph (6)  
10          and inserting the following:

11           “(6) make such reports as the Attorney General  
12          directs, including the results of audits performed  
13          under section 603(a) of the Bankruptcy Abuse Preven-  
14          tion and Consumer Protection Act of 2004;” and

15          (2) by adding at the end the following:

16          “(f)(1) The United States trustee for each district is  
17          authorized to contract with auditors to perform audits in  
18          cases designated by the United States trustee, in accordance  
19          with the procedures established under section 603(a) of the  
20          Bankruptcy Abuse Prevention and Consumer Protection  
21          Act of 2004.

22          “(2)(A) The report of each audit referred to in para-  
23          graph (1) shall be filed with the court and transmitted to  
24          the United States trustee. Each report shall clearly and con-  
25          spicuously specify any material misstatement of income or

1 *expenditures or of assets identified by the person performing*  
2 *the audit. In any case in which a material misstatement*  
3 *of income or expenditures or of assets has been reported,*  
4 *the clerk of the district court (or the clerk of the bankruptcy*  
5 *court if one is certified under section 156(b) of this title)*  
6 *shall give notice of the misstatement to the creditors in the*  
7 *case.*

8       “(B) *If a material misstatement of income or expendi-*  
9 *tures or of assets is reported, the United States trustee*  
10 *shall—*

11               “(i) *report the material misstatement, if appro-*  
12 *priate, to the United States Attorney pursuant to sec-*  
13 *tion 3057 of title 18; and*

14               “(ii) *if advisable, take appropriate action, in-*  
15 *cluding but not limited to commencing an adversary*  
16 *proceeding to revoke the debtor’s discharge pursuant*  
17 *to section 727(d) of title 11.”.*

18       (c) *AMENDMENTS TO SECTION 521 OF TITLE 11,*  
19 *U.S.C.—Section 521(a) of title 11, United States Code, as*  
20 *so designated by section 106, is amended in each of para-*  
21 *graphs (3) and (4) by inserting “or an auditor serving*  
22 *under section 586(f) of title 28” after “serving in the case”.*

23       (d) *AMENDMENTS TO SECTION 727 OF TITLE 11,*  
24 *U.S.C.—Section 727(d) of title 11, United States Code, is*  
25 *amended—*



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

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

5           (3) by adding at the end the following:

6           “(4) the debtor has failed to explain satisfac-  
7 torily—

8                   “(A) a material misstatement in an audit  
9 referred to in section 586(f) of title 28; or

10                   “(B) a failure to make available for inspec-  
11 tion all necessary accounts, papers, documents,  
12 financial records, files, and all other papers,  
13 things, or property belonging to the debtor that  
14 are requested for an audit referred to in section  
15 586(f) of title 28.”.

16           (e) *EFFECTIVE DATE.*—The amendments made by this  
17 section shall take effect 18 months after the date of enact-  
18 ment of this Act.

19   **SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY**  
20                   **OF BANKRUPTCY DATA.**

21           *It is the sense of Congress that—*

22                   (1) the national policy of the United States  
23 should be that all data held by bankruptcy clerks in  
24 electronic form, to the extent such data reflects only  
25 public records (as defined in section 107 of title 11,

1 *United States Code), should be released in a usable*  
2 *electronic form in bulk to the public, subject to such*  
3 *appropriate privacy concerns and safeguards as Con-*  
4 *gress and the Judicial Conference of the United States*  
5 *may determine; and*

6 *(2) there should be established a bankruptcy data*  
7 *system in which—*

8 *(A) a single set of data definitions and*  
9 *forms are used to collect data nationwide; and*

10 *(B) data for any particular bankruptcy*  
11 *case are aggregated in the same electronic record.*

12 ***TITLE VII—BANKRUPTCY TAX***  
13 ***PROVISIONS***

14 ***SEC. 701. TREATMENT OF CERTAIN LIENS.***

15 *(a) TREATMENT OF CERTAIN LIENS.—Section 724 of*  
16 *title 11, United States Code, is amended—*

17 *(1) in subsection (b), in the matter preceding*  
18 *paragraph (1), by inserting “(other than to the extent*  
19 *that there is a properly perfected unavoidable tax lien*  
20 *arising in connection with an ad valorem tax on real*  
21 *or personal property of the estate)” after “under this*  
22 *title”;*

23 *(2) in subsection (b)(2), by inserting “(except*  
24 *that such expenses, other than claims for wages, sala-*  
25 *ries, or commissions that arise after the date of the*

1       *filing of the petition, shall be limited to expenses in-*  
 2       *curring under chapter 7 of this title and shall not in-*  
 3       *clude expenses incurred under chapter 11 of this*  
 4       *title)” after “507(a)(1)”;* and

5               *(3) by adding at the end the following:*

6       “(e) *Before subordinating a tax lien on real or per-*  
 7       *sonal property of the estate, the trustee shall—*

8               “(1) *exhaust the unencumbered assets of the es-*  
 9       *tate; and*

10              “(2) *in a manner consistent with section 506(c),*  
 11       *recover from property securing an allowed secured*  
 12       *claim the reasonable, necessary costs and expenses of*  
 13       *preserving or disposing of such property.*

14       “(f) *Notwithstanding the exclusion of ad valorem tax*  
 15       *liens under this section and subject to the requirements of*  
 16       *subsection (e), the following may be paid from property of*  
 17       *the estate which secures a tax lien, or the proceeds of such*  
 18       *property:*

19              “(1) *Claims for wages, salaries, and commissions*  
 20       *that are entitled to priority under section 507(a)(4).*

21              “(2) *Claims for contributions to an employee*  
 22       *benefit plan entitled to priority under section*  
 23       *507(a)(5).”.*

24       (b) *DETERMINATION OF TAX LIABILITY.—Section*  
 25       *505(a)(2) of title 11, United States Code, is amended—*

1           (1) *in subparagraph (A), by striking “or” at the*  
2 *end;*

3           (2) *in subparagraph (B), by striking the period*  
4 *at the end and inserting “; or”; and*

5           (3) *by adding at the end the following:*

6           “(C) *the amount or legality of any amount aris-*  
7 *ing in connection with an ad valorem tax on real or*  
8 *personal property of the estate, if the applicable pe-*  
9 *riod for contesting or redetermining that amount*  
10 *under any law (other than a bankruptcy law) has ex-*  
11 *pired.”.*

12 **SEC. 702. TREATMENT OF FUEL TAX CLAIMS.**

13           *Section 501 of title 11, United States Code, is amended*  
14 *by adding at the end the following:*

15           “(e) *A claim arising from the liability of a debtor for*  
16 *fuel use tax assessed consistent with the requirements of sec-*  
17 *tion 31705 of title 49 may be filed by the base jurisdiction*  
18 *designated pursuant to the International Fuel Tax Agree-*  
19 *ment (as defined in section 31701 of title 49) and, if so*  
20 *filed, shall be allowed as a single claim.”.*

21 **SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF**  
22 **TAXES.**

23           *Section 505(b) of title 11, United States Code, is*  
24 *amended—*

1           (1) *in the first sentence, by inserting “at the ad-*  
2 *dress and in the manner designated in paragraph*  
3 *(1)” after “determination of such tax”;*

4           (2) *by striking “(1) upon payment” and insert-*  
5 *ing “(A) upon payment”;*

6           (3) *by striking “(A) such governmental unit”*  
7 *and inserting “(i) such governmental unit”;*

8           (4) *by striking “(B) such governmental unit”*  
9 *and inserting “(ii) such governmental unit”;*

10          (5) *by striking “(2) upon payment” and insert-*  
11 *ing “(B) upon payment”;*

12          (6) *by striking “(3) upon payment” and insert-*  
13 *ing “(C) upon payment”;*

14          (7) *by striking “(b)” and inserting “(2)”;* and

15          (8) *by inserting before paragraph (2), as so des-*  
16 *ignated, the following:*

17          “(b)(1)(A) *The clerk shall maintain a list under which*  
18 *a Federal, State, or local governmental unit responsible for*  
19 *the collection of taxes within the district may—*

20                 *“(i) designate an address for service of requests*  
21 *under this subsection; and*

22                 *“(ii) describe where further information con-*  
23 *cerning additional requirements for filing such re-*  
24 *quests may be found.*

1       “(B) If such governmental unit does not designate an  
2 address and provide such address to the clerk under sub-  
3 paragraph (A), any request made under this subsection  
4 may be served at the address for the filing of a tax return  
5 or protest with the appropriate taxing authority of such  
6 governmental unit.”.

7       **SEC. 704. RATE OF INTEREST ON TAX CLAIMS.**

8       (a) *IN GENERAL.*—Subchapter I of chapter 5 of title  
9 11, United States Code, is amended by adding at the end  
10 the following:

11       **“§ 511. Rate of interest on tax claims**

12       “(a) If any provision of this title requires the payment  
13 of interest on a tax claim or on an administrative expense  
14 tax, or the payment of interest to enable a creditor to receive  
15 the present value of the allowed amount of a tax claim, the  
16 rate of interest shall be the rate determined under applica-  
17 ble nonbankruptcy law.

18       “(b) In the case of taxes paid under a confirmed plan  
19 under this title, the rate of interest shall be determined as  
20 of the calendar month in which the plan is confirmed.”.

21       (b) *CLERICAL AMENDMENT.*—The table of sections for  
22 subchapter I of chapter 5 of title 11, United States Code,  
23 is amended by adding at the end the following:

“511. Rate of interest on tax claims.”.

1 **SEC. 705. PRIORITY OF TAX CLAIMS.**

2 *Section 507(a)(8) of title 11, United States Code, is*  
3 *amended—*

4 *(1) in subparagraph (A)—*

5 *(A) in the matter preceding clause (i), by*  
6 *inserting “for a taxable year ending on or before*  
7 *the date of the filing of the petition” after “gross*  
8 *receipts”;*

9 *(B) in clause (i), by striking “for a taxable*  
10 *year ending on or before the date of the filing of*  
11 *the petition”;* and

12 *(C) by striking clause (ii) and inserting the*  
13 *following:*

14 *“(ii) assessed within 240 days before*  
15 *the date of the filing of the petition, exclu-*  
16 *sive of—*

17 *“(I) any time during which an*  
18 *offer in compromise with respect to*  
19 *that tax was pending or in effect dur-*  
20 *ing that 240-day period, plus 30 days;*  
21 *and*

22 *“(II) any time during which a*  
23 *stay of proceedings against collections*  
24 *was in effect in a prior case under this*  
25 *title during that 240-day period, plus*  
26 *90 days.”;* and

1           (2) *by adding at the end the following:*

2           *“An otherwise applicable time period specified in this*  
3 *paragraph shall be suspended for any period during*  
4 *which a governmental unit is prohibited under appli-*  
5 *cable nonbankruptcy law from collecting a tax as a*  
6 *result of a request by the debtor for a hearing and an*  
7 *appeal of any collection action taken or proposed*  
8 *against the debtor, plus 90 days; plus any time dur-*  
9 *ing which the stay of proceedings was in effect in a*  
10 *prior case under this title or during which collection*  
11 *was precluded by the existence of 1 or more confirmed*  
12 *plans under this title, plus 90 days.”.*

13 **SEC. 706. PRIORITY PROPERTY TAXES INCURRED.**

14           *Section 507(a)(8)(B) of title 11, United States Code,*  
15 *is amended by striking “assessed” and inserting “in-*  
16 *curred”.*

17 **SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**  
18 **TER 13.**

19           *Section 1328(a)(2) of title 11, United States Code, as*  
20 *amended by section 314, is amended by striking “para-*  
21 *graph” and inserting “section 507(a)(8)(C) or in para-*  
22 *graph (1)(B), (1)(C),”.*



1 **SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**  
 2 **TER 11.**

3 *Section 1141(d) of title 11, United States Code, as*  
 4 *amended by sections 321 and 330, is amended by adding*  
 5 *at the end the following:*

6 *“(6) Notwithstanding paragraph (1), the confirmation*  
 7 *of a plan does not discharge a debtor that is a corporation*  
 8 *from any debt—*

9 *“(A) of a kind specified in paragraph (2)(A) or*  
 10 *(2)(B) of section 523(a) that is owed to a domestic*  
 11 *governmental unit, or owed to a person as the result*  
 12 *of an action filed under subchapter III of chapter 37*  
 13 *of title 31 or any similar State statute; or*

14 *“(B) for a tax or customs duty with respect to*  
 15 *which the debtor—*

16 *“(i) made a fraudulent return; or*

17 *“(ii) willfully attempted in any manner to*  
 18 *evade or to defeat such tax or such customs*  
 19 *duty.”.*

20 **SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO**  
 21 **PREPETITION TAXES.**

22 *Section 362(a)(8) of title 11, United States Code, is*  
 23 *amended by striking “the debtor” and inserting “a cor-*  
 24 *porate debtor’s tax liability for a taxable period the bank-*  
 25 *ruptcy court may determine or concerning the tax liability*

1 *of a debtor who is an individual for a taxable period ending*  
2 *before the date of the order for relief under this title”.*

3 **SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11**

4 **CASES.**

5 *Section 1129(a)(9) of title 11, United States Code, is*  
6 *amended—*

7 *(1) in subparagraph (B), by striking “and” at*  
8 *the end;*

9 *(2) in subparagraph (C), by striking “deferred*  
10 *cash payments,” and all that follows through the end*  
11 *of the subparagraph, and inserting “regular install-*  
12 *ment payments in cash—*

13 *“(i) of a total value, as of the effective*  
14 *date of the plan, equal to the allowed*  
15 *amount of such claim;*

16 *“(ii) over a period ending not later*  
17 *than 5 years after the date of the order for*  
18 *relief under section 301, 302, or 303; and*

19 *“(iii) in a manner not less favorable*  
20 *than the most favored nonpriority unse-*  
21 *cured claim provided for by the plan (other*  
22 *than cash payments made to a class of*  
23 *creditors under section 1122(b)); and”;* and

24 *(3) by adding at the end the following:*

1           “(D) with respect to a secured claim which  
 2           would otherwise meet the description of an unse-  
 3           cured claim of a governmental unit under sec-  
 4           tion 507(a)(8), but for the secured status of that  
 5           claim, the holder of that claim will receive on ac-  
 6           count of that claim, cash payments, in the same  
 7           manner and over the same period, as prescribed  
 8           in subparagraph (C).”

9   **SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIB-**  
 10           **ITED.**

11           Section 545(2) of title 11, United States Code, is  
 12           amended by inserting before the semicolon at the end the  
 13           following: “, except in any case in which a purchaser is  
 14           a purchaser described in section 6323 of the Internal Rev-  
 15           enue Code of 1986, or in any other similar provision of  
 16           State or local law”.

17   **SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSI-**  
 18           **NESS.**

19           (a) *PAYMENT OF TAXES REQUIRED.*—Section 960 of  
 20           title 28, United States Code, is amended—

21                   (1) by inserting “(a)” before “Any”; and

22                   (2) by adding at the end the following:

23           “(b) A tax under subsection (a) shall be paid on or  
 24           before the due date of the tax under applicable nonbank-  
 25           ruptcy law, unless—

1           “(1) the tax is a property tax secured by a lien  
2           against property that is abandoned under section 554  
3           of title 11, within a reasonable period of time after  
4           the lien attaches, by the trustee in a case under title  
5           11; or

6           “(2) payment of the tax is excused under a spe-  
7           cific provision of title 11.

8           “(c) In a case pending under chapter 7 of title 11,  
9           payment of a tax may be deferred until final distribution  
10          is made under section 726 of title 11, if—

11           “(1) the tax was not incurred by a trustee duly  
12          appointed under chapter 7 of title 11; or

13           “(2) before the due date of the tax, an order of  
14          the court makes a finding of probable insufficiency of  
15          funds of the estate to pay in full the administrative  
16          expenses allowed under section 503(b) of title 11 that  
17          have the same priority in distribution under section  
18          726(b) of title 11 as the priority of that tax.”.

19          (b) *PAYMENT OF AD VALOREM TAXES REQUIRED.*—  
20          Section 503(b)(1)(B)(i) of title 11, United States Code, is  
21          amended by inserting “whether secured or unsecured, in-  
22          cluding property taxes for which liability is in rem, in per-  
23          sonam, or both,” before “except”.

1           (c) *REQUEST FOR PAYMENT OF ADMINISTRATIVE EX-*  
2 *PENSE TAXES ELIMINATED.*—Section 503(b)(1) of title 11,  
3 *United States Code, is amended—*

4           (1) *in subparagraph (B), by striking “and” at*  
5 *the end;*

6           (2) *in subparagraph (C), by adding “and” at the*  
7 *end; and*

8           (3) *by adding at the end the following:*

9           “*(D) notwithstanding the requirements of sub-*  
10 *section (a), a governmental unit shall not be required*  
11 *to file a request for the payment of an expense de-*  
12 *scribed in subparagraph (B) or (C), as a condition of*  
13 *its being an allowed administrative expense;”.*

14          (d) *PAYMENT OF TAXES AND FEES AS SECURED*  
15 *CLAIMS.*—Section 506 of title 11, *United States Code, is*  
16 *amended—*

17           (1) *in subsection (b), by inserting “or State stat-*  
18 *ute” after “agreement”; and*

19           (2) *in subsection (c), by inserting “, including*  
20 *the payment of all ad valorem property taxes with re-*  
21 *spect to the property” before the period at the end.*

22 ***SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.***

23          Section 726(a)(1) of title 11, *United States Code, is*  
24 *amended by striking “before the date on which the trustee*

1 *commences distribution under this section;” and inserting*  
 2 *the following: “on or before the earlier of—*

3 *“(A) the date that is 10 days after the mail-*  
 4 *ing to creditors of the summary of the trustee’s*  
 5 *final report; or*

6 *“(B) the date on which the trustee com-*  
 7 *mences final distribution under this section;”.*

8 **SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AU-**  
 9 **THORITIES.**

10 *Section 523(a) of title 11, United States Code, as*  
 11 *amended by sections 215 and 224, is amended—*

12 *(1) in paragraph (1)(B)—*

13 *(A) in the matter preceding clause (i), by*  
 14 *inserting “or equivalent report or notice,” after*  
 15 *“a return,”;*

16 *(B) in clause (i), by inserting “or given”*  
 17 *after “filed”; and*

18 *(C) in clause (ii)—*

19 *(i) by inserting “or given” after*  
 20 *“filed”; and*

21 *(ii) by inserting “, report, or notice”*  
 22 *after “return”; and*

23 *(2) by adding at the end the following:*

24 *“For purposes of this subsection, the term ‘return’ means*  
 25 *a return that satisfies the requirements of applicable non-*

1 *bankruptcy law (including applicable filing requirements).*  
2 *Such term includes a return prepared pursuant to section*  
3 *6020(a) of the Internal Revenue Code of 1986, or similar*  
4 *State or local law, or a written stipulation to a judgment*  
5 *or a final order entered by a nonbankruptcy tribunal, but*  
6 *does not include a return made pursuant to section 6020(b)*  
7 *of the Internal Revenue Code of 1986, or a similar State*  
8 *or local law.”.*

9 **SEC. 715. DISCHARGE OF THE ESTATE'S LIABILITY FOR UN-**  
10 **PAID TAXES.**

11 *Section 505(b)(2) of title 11, United States Code, as*  
12 *amended by section 703, is amended by inserting “the es-*  
13 *tate,” after “misrepresentation,”.*

14 **SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CON-**  
15 **FIRM CHAPTER 13 PLANS.**

16 *(a) FILING OF PREPETITION TAX RETURNS REQUIRED*  
17 *FOR PLAN CONFIRMATION.—Section 1325(a) of title 11,*  
18 *United States Code, as amended by sections 102, 213, and*  
19 *306, is amended by inserting after paragraph (8) the fol-*  
20 *lowing:*

21 *“(9) the debtor has filed all applicable Federal,*  
22 *State, and local tax returns as required by section*  
23 *1308.”.*

24 *(b) ADDITIONAL TIME PERMITTED FOR FILING TAX*  
25 *RETURNS.—*

1           (1) *IN GENERAL.*—Subchapter I of chapter 13 of  
2           title 11, United States Code, is amended by adding  
3           at the end the following:

4           **“§ 1308. Filing of prepetition tax returns**

5           “(a) Not later than the day before the date on which  
6           the meeting of the creditors is first scheduled to be held  
7           under section 341(a), if the debtor was required to file a  
8           tax return under applicable nonbankruptcy law, the debtor  
9           shall file with appropriate tax authorities all tax returns  
10          for all taxable periods ending during the 4-year period end-  
11          ing on the date of the filing of the petition.

12          “(b)(1) Subject to paragraph (2), if the tax returns re-  
13          quired by subsection (a) have not been filed by the date on  
14          which the meeting of creditors is first scheduled to be held  
15          under section 341(a), the trustee may hold open that meet-  
16          ing for a reasonable period of time to allow the debtor an  
17          additional period of time to file any unfiled returns, but  
18          such additional period of time shall not extend beyond—

19                  “(A) for any return that is past due as of the  
20                  date of the filing of the petition, the date that is 120  
21                  days after the date of that meeting; or

22                  “(B) for any return that is not past due as of  
23                  the date of the filing of the petition, the later of—

24                          “(i) the date that is 120 days after the date  
25                          of that meeting; or



1           “(ii) the date on which the return is due  
2           under the last automatic extension of time for  
3           filing that return to which the debtor is entitled,  
4           and for which request is timely made, in accord-  
5           ance with applicable nonbankruptcy law.

6           “(2) After notice and a hearing, and order entered be-  
7           fore the tolling of any applicable filing period determined  
8           under this subsection, if the debtor demonstrates by a pre-  
9           ponderance of the evidence that the failure to file a return  
10          as required under this subsection is attributable to cir-  
11          cumstances beyond the control of the debtor, the court may  
12          extend the filing period established by the trustee under this  
13          subsection for—

14                 “(A) a period of not more than 30 days for re-  
15                 turns described in paragraph (1); and

16                 “(B) a period not to extend after the applicable  
17                 extended due date for a return described in paragraph  
18                 (2).

19           “(c) For purposes of this section, the term ‘return’ in-  
20          cludes a return prepared pursuant to subsection (a) or (b)  
21          of section 6020 of the Internal Revenue Code of 1986, or  
22          a similar State or local law, or a written stipulation to  
23          a judgment or a final order entered by a nonbankruptcy  
24          tribunal.”.

1           (2) *CONFORMING AMENDMENT.*—*The table of sec-*  
2           *tions for subchapter I of chapter 13 of title 11, United*  
3           *States Code, is amended by adding at the end the fol-*  
4           *lowing:*

*“1308. Filing of prepetition tax returns.”.*

5           (c) *DISMISSAL OR CONVERSION ON FAILURE TO COM-*  
6           *PLY.*—*Section 1307 of title 11, United States Code, is*  
7           *amended—*

8           (1) *by redesignating subsections (e) and (f) as*  
9           *subsections (f) and (g), respectively; and*

10          (2) *by inserting after subsection (d) the fol-*  
11          *lowing:*

12          *“(e) Upon the failure of the debtor to file a tax return*  
13          *under section 1308, on request of a party in interest or the*  
14          *United States trustee and after notice and a hearing, the*  
15          *court shall dismiss a case or convert a case under this chap-*  
16          *ter to a case under chapter 7 of this title, whichever is in*  
17          *the best interest of the creditors and the estate.”.*

18          (d) *TIMELY FILED CLAIMS.*—*Section 502(b)(9) of title*  
19          *11, United States Code, is amended by inserting before the*  
20          *period at the end the following: “, and except that in a*  
21          *case under chapter 13, a claim of a governmental unit for*  
22          *a tax with respect to a return filed under section 1308 shall*  
23          *be timely if the claim is filed on or before the date that*  
24          *is 60 days after the date on which such return was filed*  
25          *as required”.*

1           (e) *RULES FOR OBJECTIONS TO CLAIMS AND TO CON-*  
2 *FIRMATION.—It is the sense of Congress that the Judicial*  
3 *Conference of the United States should, as soon as prac-*  
4 *ticable after the date of enactment of this Act, propose*  
5 *amended Federal Rules of Bankruptcy Procedure that pro-*  
6 *vide—*

7           (1) *notwithstanding the provisions of Rule*  
8 *3015(f), in cases under chapter 13 of title 11, United*  
9 *States Code, that an objection to the confirmation of*  
10 *a plan filed by a governmental unit on or before the*  
11 *date that is 60 days after the date on which the debtor*  
12 *files all tax returns required under sections 1308 and*  
13 *1325(a)(7) of title 11, United States Code, shall be*  
14 *treated for all purposes as if such objection had been*  
15 *timely filed before such confirmation; and*

16           (2) *in addition to the provisions of Rule 3007,*  
17 *in a case under chapter 13 of title 11, United States*  
18 *Code, that no objection to a claim for a tax with re-*  
19 *spect to which a return is required to be filed under*  
20 *section 1308 of title 11, United States Code, shall be*  
21 *filed until such return has been filed as required.*

22 **SEC. 717. STANDARDS FOR TAX DISCLOSURE.**

23           Section 1125(a)(1) of title 11, United States Code, is  
24 *amended—*

1           (1) by inserting “including a discussion of the  
2           potential material Federal tax consequences of the  
3           plan to the debtor, any successor to the debtor, and  
4           a hypothetical investor typical of the holders of claims  
5           or interests in the case,” after “records,”; and

6           (2) by striking “a hypothetical reasonable inves-  
7           tor typical of holders of claims or interests” and in-  
8           serting “such a hypothetical investor”.

9   **SEC. 718. SETOFF OF TAX REFUNDS.**

10          Section 362(b) of title 11, United States Code, as  
11          amended by sections 224, 303, 311, and 401, is amended  
12          by inserting after paragraph (25) the following:

13                 “(26) under subsection (a), of the setoff under  
14                 applicable nonbankruptcy law of an income tax re-  
15                 fund, by a governmental unit, with respect to a tax-  
16                 able period that ended before the date of the order for  
17                 relief against an income tax liability for a taxable pe-  
18                 riod that also ended before the date of the order for  
19                 relief, except that in any case in which the setoff of  
20                 an income tax refund is not permitted under applica-  
21                 ble nonbankruptcy law because of a pending action to  
22                 determine the amount or legality of a tax liability,  
23                 the governmental unit may hold the refund pending  
24                 the resolution of the action, unless the court, on the  
25                 motion of the trustee and after notice and a hearing,



1 case concerning a debtor under this title, and the income,  
2 gain, loss, deductions, and credits of an estate shall be taxed  
3 to or claimed by the debtor, such income, gain, loss, deduc-  
4 tions, and credits shall be taxed to or claimed by the debtor  
5 under a State or local law imposing a tax on or measured  
6 by income and may not be taxed to or claimed by the estate.  
7 The trustee shall make such tax returns of income of cor-  
8 porations and of partnerships as are required under any  
9 State or local law, but with respect to partnerships, shall  
10 make such returns only to the extent such returns are also  
11 required to be made under such Code. The estate shall be  
12 liable for any tax imposed on such corporation or partner-  
13 ship, but not for any tax imposed on partners or members.  
14       “(c) With respect to a partnership or any entity treat-  
15 ed as a partnership under a State or local law imposing  
16 a tax on or measured by income that is a debtor in a case  
17 under this title, any gain or loss resulting from a distribu-  
18 tion of property from such partnership, or any distributive  
19 share of any income, gain, loss, deduction, or credit of a  
20 partner or member that is distributed, or considered distrib-  
21 uted, from such partnership, after the commencement of the  
22 case, is gain, loss, income, deduction, or credit, as the case  
23 may be, of the partner or member, and if such partner or  
24 member is a debtor in a case under this title, shall be subject  
25 to tax in accordance with subsection (a) or (b).

1       “(d) For purposes of any State or local law imposing  
2 a tax on or measured by income, the taxable period of a  
3 debtor in a case under this title shall terminate only if and  
4 to the extent that the taxable period of such debtor termi-  
5 nates under the Internal Revenue Code of 1986.

6       “(e) The estate in any case described in subsection (a)  
7 shall use the same accounting method as the debtor used  
8 immediately before the commencement of the case, if such  
9 method of accounting complies with applicable nonbank-  
10 ruptcy tax law.

11       “(f) For purposes of any State or local law imposing  
12 a tax on or measured by income, a transfer of property  
13 from the debtor to the estate or from the estate to the debtor  
14 shall not be treated as a disposition for purposes of any  
15 provision assigning tax consequences to a disposition, ex-  
16 cept to the extent that such transfer is treated as a dispo-  
17 sition under the Internal Revenue Code of 1986.

18       “(g) Whenever a tax is imposed pursuant to a State  
19 or local law imposing a tax on or measured by income pur-  
20 suant to subsection (a) or (b), such tax shall be imposed  
21 at rates generally applicable to the same types of entities  
22 under such State or local law.

23       “(h) The trustee shall withhold from any payment of  
24 claims for wages, salaries, commissions, dividends, interest,  
25 or other payments, or collect, any amount required to be

1 *withheld or collected under applicable State or local tax*  
2 *law, and shall pay such withheld or collected amount to*  
3 *the appropriate governmental unit at the time and in the*  
4 *manner required by such tax law, and with the same pri-*  
5 *ority as the claim from which such amount was withheld*  
6 *or collected was paid.*

7       “(i)(1) *To the extent that any State or local law im-*  
8 *posing a tax on or measured by income provides for the*  
9 *carryover of any tax attribute from one taxable period to*  
10 *a subsequent taxable period, the estate shall succeed to such*  
11 *tax attribute in any case in which such estate is subject*  
12 *to tax under subsection (a).*

13       “(2) *After such a case is closed or dismissed, the debtor*  
14 *shall succeed to any tax attribute to which the estate suc-*  
15 *ceeded under paragraph (1) to the extent consistent with*  
16 *the Internal Revenue Code of 1986.*

17       “(3) *The estate may carry back any loss or tax at-*  
18 *tribute to a taxable period of the debtor that ended before*  
19 *the date of the order for relief under this title to the extent*  
20 *that—*

21               “(A) *applicable State or local tax law provides*  
22 *for a carryback in the case of the debtor; and*

23               “(B) *the same or a similar tax attribute may be*  
24 *carried back by the estate to such a taxable period of*  
25 *the debtor under the Internal Revenue Code of 1986.*



1       “(j)(1) For purposes of any State or local law impos-  
2       ing a tax on or measured by income, income is not realized  
3       by the estate, the debtor, or a successor to the debtor by rea-  
4       son of discharge of indebtedness in a case under this title,  
5       except to the extent, if any, that such income is subject to  
6       tax under the Internal Revenue Code of 1986.

7       “(2) Whenever the Internal Revenue Code of 1986 pro-  
8       vides that the amount excluded from gross income in respect  
9       of the discharge of indebtedness in a case under this title  
10       shall be applied to reduce the tax attributes of the debtor  
11       or the estate, a similar reduction shall be made under any  
12       State or local law imposing a tax on or measured by income  
13       to the extent such State or local law recognizes such at-  
14       tributes. Such State or local law may also provide for the  
15       reduction of other attributes to the extent that the full  
16       amount of income from the discharge of indebtedness has  
17       not been applied.

18       “(k)(1) Except as provided in this section and section  
19       505, the time and manner of filing tax returns and the  
20       items of income, gain, loss, deduction, and credit of any  
21       taxpayer shall be determined under applicable nonbank-  
22       ruptcy law.

23       “(2) For Federal tax purposes, the provisions of this  
24       section are subject to the Internal Revenue Code of 1986  
25       and other applicable Federal nonbankruptcy law.”.

1           (2) *CLERICAL AMENDMENT.*—*The table of sec-*  
 2           *tions for chapter 3 of title 11, United States Code, is*  
 3           *amended by striking the item relating to section 346*  
 4           *and inserting the following:*

“346. *Special provisions related to the treatment of State and local taxes.*”.

5           (b) *CONFORMING AMENDMENTS.*—*Title 11 of the*  
 6           *United States Code is amended—*

7                   (1) *by striking section 728;*

8                   (2) *in the table of sections for chapter 7 by strik-*  
 9           *ing the item relating to section 728;*

10                  (3) *in section 1146—*

11                           (A) *by striking subsections (a) and (b); and*

12                           (B) *by redesignating subsections (c) and (d)*

13                   *as subsections (a) and (b), respectively; and*

14                  (4) *in section 1231—*

15                           (A) *by striking subsections (a) and (b); and*

16                           (B) *by redesignating subsections (c) and (d)*

17                   *as subsections (a) and (b), respectively.*

18           **SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX RE-**  
 19   **URNS.**

20           *Section 521 of title 11, United States Code, as amend-*  
 21           *ed by sections 106, 225, 305, 315, and 316, is amended by*  
 22           *adding at the end the following:*

23           “(j)(1) *Notwithstanding any other provision of this*  
 24           *title, if the debtor fails to file a tax return that becomes*  
 25           *due after the commencement of the case or to properly ob-*

1 *tain an extension of the due date for filing such return,*  
 2 *the taxing authority may request that the court enter an*  
 3 *order converting or dismissing the case.*

4 “(2) *If the debtor does not file the required return or*  
 5 *obtain the extension referred to in paragraph (1) within*  
 6 *90 days after a request is filed by the taxing authority*  
 7 *under that paragraph, the court shall convert or dismiss*  
 8 *the case, whichever is in the best interests of creditors and*  
 9 *the estate.”.*

10 ***TITLE VIII—ANCILLARY AND***  
 11 ***OTHER CROSS-BORDER CASES***

12 ***SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11,***

13 ***UNITED STATES CODE.***

14 (a) *IN GENERAL.—Title 11, United States Code, is*  
 15 *amended by inserting after chapter 13 the following:*

16 ***“CHAPTER 15—ANCILLARY AND OTHER***  
 17 ***CROSS-BORDER CASES***

*“Sec.*

*“1501. Purpose and scope of application.*

***“SUBCHAPTER I—GENERAL PROVISIONS***

*“1502. Definitions.*

*“1503. International obligations of the United States.*

*“1504. Commencement of ancillary case.*

*“1505. Authorization to act in a foreign country.*

*“1506. Public policy exception.*

*“1507. Additional assistance.*

*“1508. Interpretation.*

***“SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND  
 CREDITORS TO THE COURT***

*“1509. Right of direct access.*

*“1510. Limited jurisdiction.*

*“1511. Commencement of case under section 301 or 303.*

“1512. *Participation of a foreign representative in a case under this title.*

“1513. *Access of foreign creditors to a case under this title.*

“1514. *Notification to foreign creditors concerning a case under this title.*

“SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND  
RELIEF

“1515. *Application for recognition.*

“1516. *Presumptions concerning recognition.*

“1517. *Order granting recognition.*

“1518. *Subsequent information.*

“1519. *Relief that may be granted upon filing petition for recognition.*

“1520. *Effects of recognition of a foreign main proceeding.*

“1521. *Relief that may be granted upon recognition.*

“1522. *Protection of creditors and other interested persons.*

“1523. *Actions to avoid acts detrimental to creditors.*

“1524. *Intervention by a foreign representative.*

“SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND  
FOREIGN REPRESENTATIVES

“1525. *Cooperation and direct communication between the court and foreign courts or foreign representatives.*

“1526. *Cooperation and direct communication between the trustee and foreign courts or foreign representatives.*

“1527. *Forms of cooperation.*

“SUBCHAPTER V—CONCURRENT PROCEEDINGS

“1528. *Commencement of a case under this title after recognition of a foreign main proceeding.*

“1529. *Coordination of a case under this title and a foreign proceeding.*

“1530. *Coordination of more than 1 foreign proceeding.*

“1531. *Presumption of insolvency based on recognition of a foreign main proceeding.*

“1532. *Rule of payment in concurrent proceedings.*

1 **“§ 1501. Purpose and scope of application**

2 “(a) *The purpose of this chapter is to incorporate the*  
3 *Model Law on Cross-Border Insolvency so as to provide ef-*  
4 *fective mechanisms for dealing with cases of cross-border in-*  
5 *solventcy with the objectives of—*

6 “(1) *cooperation between—*

7 “(A) *courts of the United States, United*  
8 *States trustees, trustees, examiners, debtors, and*  
9 *debtors in possession; and*

1           “(B) the courts and other competent au-  
2           thorities of foreign countries involved in cross-  
3           border insolvency cases;

4           “(2) greater legal certainty for trade and invest-  
5           ment;

6           “(3) fair and efficient administration of cross-  
7           border insolvencies that protects the interests of all  
8           creditors, and other interested entities, including the  
9           debtor;

10          “(4) protection and maximization of the value of  
11          the debtor’s assets; and

12          “(5) facilitation of the rescue of financially trou-  
13          bled businesses, thereby protecting investment and  
14          preserving employment.

15          “(b) This chapter applies where—

16          “(1) assistance is sought in the United States by  
17          a foreign court or a foreign representative in connec-  
18          tion with a foreign proceeding;

19          “(2) assistance is sought in a foreign country in  
20          connection with a case under this title;

21          “(3) a foreign proceeding and a case under this  
22          title with respect to the same debtor are pending con-  
23          currently; or

24          “(4) creditors or other interested persons in a  
25          foreign country have an interest in requesting the

1       *commencement of, or participating in, a case or pro-*  
2       *ceeding under this title.*

3       “(c) *This chapter does not apply to—*

4               “(1) *a proceeding concerning an entity, other*  
5       *than a foreign insurance company, identified by ex-*  
6       *clusion in section 109(b);*

7               “(2) *an individual, or to an individual and such*  
8       *individual’s spouse, who have debts within the limits*  
9       *specified in section 109(e) and who are citizens of the*  
10       *United States or aliens lawfully admitted for perma-*  
11       *nent residence in the United States; or*

12               “(3) *an entity subject to a proceeding under the*  
13       *Securities Investor Protection Act of 1970, a stock-*  
14       *broker subject to subchapter III of chapter 7 of this*  
15       *title, or a commodity broker subject to subchapter IV*  
16       *of chapter 7 of this title.*

17       “(d) *The court may not grant relief under this chapter*  
18       *with respect to any deposit, escrow, trust fund, or other se-*  
19       *curity required or permitted under any applicable State in-*  
20       *surance law or regulation for the benefit of claim holders*  
21       *in the United States.*

22       “SUBCHAPTER I—GENERAL PROVISIONS

23       “§ 1502. **Definitions**

24       “*For the purposes of this chapter, the term—*

1           “(1) ‘debtor’ means an entity that is the subject  
2 of a foreign proceeding;

3           “(2) ‘establishment’ means any place of oper-  
4 ations where the debtor carries out a nontransitory  
5 economic activity;

6           “(3) ‘foreign court’ means a judicial or other au-  
7 thority competent to control or supervise a foreign  
8 proceeding;

9           “(4) ‘foreign main proceeding’ means a foreign  
10 proceeding pending in the country where the debtor  
11 has the center of its main interests;

12           “(5) ‘foreign nonmain proceeding’ means a for-  
13 eign proceeding, other than a foreign main pro-  
14 ceeding, pending in a country where the debtor has  
15 an establishment;

16           “(6) ‘trustee’ includes a trustee, a debtor in pos-  
17 session in a case under any chapter of this title, or  
18 a debtor under chapter 9 of this title;

19           “(7) ‘recognition’ means the entry of an order  
20 granting recognition of a foreign main proceeding or  
21 foreign nonmain proceeding under this chapter; and

22           “(8) ‘within the territorial jurisdiction of the  
23 United States’, when used with reference to property  
24 of a debtor, refers to tangible property located within  
25 the territory of the United States and intangible

1        *property deemed under applicable nonbankruptcy law*  
2        *to be located within that territory, including any*  
3        *property subject to attachment or garnishment that*  
4        *may properly be seized or garnished by an action in*  
5        *a Federal or State court in the United States.*

6        ***“§ 1503. International obligations of the United States***

7            *“To the extent that this chapter conflicts with an obli-*  
8        *gation of the United States arising out of any treaty or*  
9        *other form of agreement to which it is a party with one*  
10       *or more other countries, the requirements of the treaty or*  
11       *agreement prevail.*

12       ***“§ 1504. Commencement of ancillary case***

13            *“A case under this chapter is commenced by the filing*  
14       *of a petition for recognition of a foreign proceeding under*  
15       *section 1515.*

16       ***“§ 1505. Authorization to act in a foreign country***

17            *“A trustee or another entity (including an examiner)*  
18       *may be authorized by the court to act in a foreign country*  
19       *on behalf of an estate created under section 541. An entity*  
20       *authorized to act under this section may act in any way*  
21       *permitted by the applicable foreign law.*

22       ***“§ 1506. Public policy exception***

23            *“Nothing in this chapter prevents the court from refus-*  
24       *ing to take an action governed by this chapter if the action*



1 *would be manifestly contrary to the public policy of the*  
2 *United States.*

3 **“§ 1507. Additional assistance**

4       “(a) *Subject to the specific limitations stated elsewhere*  
5 *in this chapter the court, if recognition is granted, may*  
6 *provide additional assistance to a foreign representative*  
7 *under this title or under other laws of the United States.*

8       “(b) *In determining whether to provide additional as-*  
9 *sistance under this title or under other laws of the United*  
10 *States, the court shall consider whether such additional as-*  
11 *sistance, consistent with the principles of comity, will rea-*  
12 *sonably assure—*

13               “(1) *just treatment of all holders of claims*  
14 *against or interests in the debtor’s property;*

15               “(2) *protection of claim holders in the United*  
16 *States against prejudice and inconvenience in the*  
17 *processing of claims in such foreign proceeding;*

18               “(3) *prevention of preferential or fraudulent dis-*  
19 *positions of property of the debtor;*

20               “(4) *distribution of proceeds of the debtor’s prop-*  
21 *erty substantially in accordance with the order pre-*  
22 *scribed by this title; and*

23               “(5) *if appropriate, the provision of an oppor-*  
24 *tunity for a fresh start for the individual that such*  
25 *foreign proceeding concerns.*

1 **“§ 1508. Interpretation**

2       *“In interpreting this chapter, the court shall consider*  
3 *its international origin, and the need to promote an appli-*  
4 *cation of this chapter that is consistent with the application*  
5 *of similar statutes adopted by foreign jurisdictions.*

6 **“SUBCHAPTER II—ACCESS OF FOREIGN REP-**  
7 **RESENTATIVES AND CREDITORS TO THE**  
8 **COURT**

9 **“§ 1509. Right of direct access**

10       *“(a) A foreign representative may commence a case*  
11 *under section 1504 by filing directly with the court a peti-*  
12 *tion for recognition of a foreign proceeding under section*  
13 *1515.*

14       *“(b) If the court grants recognition under section 1515,*  
15 *and subject to any limitations that the court may impose*  
16 *consistent with the policy of this chapter—*

17               *“(1) the foreign representative has the capacity*  
18 *to sue and be sued in a court in the United States;*

19               *“(2) the foreign representative may apply di-*  
20 *rectly to a court in the United States for appropriate*  
21 *relief in that court; and*

22               *“(3) a court in the United States shall grant*  
23 *comity or cooperation to the foreign representative.*

24       *“(c) A request for comity or cooperation by a foreign*  
25 *representative in a court in the United States other than*  
26 *the court which granted recognition shall be accompanied*









1           “(2) a certificate from the foreign court affirm-  
2           ing the existence of such foreign proceeding and of the  
3           appointment of the foreign representative; or

4           “(3) in the absence of evidence referred to in  
5           paragraphs (1) and (2), any other evidence acceptable  
6           to the court of the existence of such foreign proceeding  
7           and of the appointment of the foreign representative.

8           “(c) A petition for recognition shall also be accom-  
9           panied by a statement identifying all foreign proceedings  
10          with respect to the debtor that are known to the foreign rep-  
11          resentative.

12          “(d) The documents referred to in paragraphs (1) and  
13          (2) of subsection (b) shall be translated into English. The  
14          court may require a translation into English of additional  
15          documents.

16          **“§ 1516. Presumptions concerning recognition**

17          “(a) If the decision or certificate referred to in section  
18          1515(b) indicates that the foreign proceeding is a foreign  
19          proceeding and that the person or body is a foreign rep-  
20          resentative, the court is entitled to so presume.

21          “(b) The court is entitled to presume that documents  
22          submitted in support of the petition for recognition are au-  
23          thentic, whether or not they have been legalized.

24          “(c) In the absence of evidence to the contrary, the  
25          debtor’s registered office, or habitual residence in the case

1 *of an individual, is presumed to be the center of the debtor's*  
2 *main interests.*

3 **“§ 1517. Order granting recognition**

4       “(a) *Subject to section 1506, after notice and a hear-*  
5 *ing, an order recognizing a foreign proceeding shall be en-*  
6 *tered if—*

7               “(1) *such foreign proceeding for which recogni-*  
8 *tion is sought is a foreign main proceeding or foreign*  
9 *nonmain proceeding within the meaning of section*  
10 *1502;*

11               “(2) *the foreign representative applying for rec-*  
12 *ognition is a person or body; and*

13               “(3) *the petition meets the requirements of sec-*  
14 *tion 1515.*

15       “(b) *Such foreign proceeding shall be recognized—*

16               “(1) *as a foreign main proceeding if it is pend-*  
17 *ing in the country where the debtor has the center of*  
18 *its main interests; or*

19               “(2) *as a foreign nonmain proceeding if the debt-*  
20 *or has an establishment within the meaning of section*  
21 *1502 in the foreign country where the proceeding is*  
22 *pending.*

23       “(c) *A petition for recognition of a foreign proceeding*  
24 *shall be decided upon at the earliest possible time. Entry*



1 *of an order recognizing a foreign proceeding constitutes rec-*  
2 *ognition under this chapter.*

3       “(d) *The provisions of this subchapter do not prevent*  
4 *modification or termination of recognition if it is shown*  
5 *that the grounds for granting it were fully or partially lack-*  
6 *ing or have ceased to exist, but in considering such action*  
7 *the court shall give due weight to possible prejudice to par-*  
8 *ties that have relied upon the order granting recognition.*  
9 *A case under this chapter may be closed in the manner pre-*  
10 *scribed under section 350.*

11 **“§ 1518. Subsequent information**

12       “*From the time of filing the petition for recognition*  
13 *of a foreign proceeding, the foreign representative shall file*  
14 *with the court promptly a notice of change of status con-*  
15 *cerning—*

16               “(1) *any substantial change in the status of such*  
17 *foreign proceeding or the status of the foreign rep-*  
18 *resentative’s appointment; and*

19               “(2) *any other foreign proceeding regarding the*  
20 *debtor that becomes known to the foreign representa-*  
21 *tive.*

22 **“§ 1519. Relief that may be granted upon filing peti-**  
23 ***tion for recognition***

24       “(a) *From the time of filing a petition for recognition*  
25 *until the court rules on the petition, the court may, at the*

1 *request of the foreign representative, where relief is urgently*  
2 *needed to protect the assets of the debtor or the interests*  
3 *of the creditors, grant relief of a provisional nature, includ-*  
4 *ing—*

5           “(1) *staying execution against the debtor’s assets;*

6           “(2) *entrusting the administration or realization*  
7 *of all or part of the debtor’s assets located in the*  
8 *United States to the foreign representative or another*  
9 *person authorized by the court, including an exam-*  
10 *iner, in order to protect and preserve the value of as-*  
11 *sets that, by their nature or because of other cir-*  
12 *cumstances, are perishable, susceptible to devaluation*  
13 *or otherwise in jeopardy; and*

14           “(3) *any relief referred to in paragraph (3), (4),*  
15 *or (7) of section 1521(a).*

16           “(b) *Unless extended under section 1521(a)(6), the re-*  
17 *lief granted under this section terminates when the petition*  
18 *for recognition is granted.*

19           “(c) *It is a ground for denial of relief under this sec-*  
20 *tion that such relief would interfere with the administration*  
21 *of a foreign main proceeding.*

22           “(d) *The court may not enjoin a police or regulatory*  
23 *act of a governmental unit, including a criminal action or*  
24 *proceeding, under this section.*



1           “(4) section 552 applies to property of the debtor  
2           that is within the territorial jurisdiction of the  
3           United States.

4           “(b) Subsection (a) does not affect the right to com-  
5           mence an individual action or proceeding in a foreign  
6           country to the extent necessary to preserve a claim against  
7           the debtor.

8           “(c) Subsection (a) does not affect the right of a foreign  
9           representative or an entity to file a petition commencing  
10          a case under this title or the right of any party to file  
11          claims or take other proper actions in such a case.

12          **“§ 1521. Relief that may be granted upon recognition**

13          “(a) Upon recognition of a foreign proceeding, whether  
14          main or nonmain, where necessary to effectuate the purpose  
15          of this chapter and to protect the assets of the debtor or  
16          the interests of the creditors, the court may, at the request  
17          of the foreign representative, grant any appropriate relief,  
18          including—

19                  “(1) staying the commencement or continuation  
20                  of an individual action or proceeding concerning the  
21                  debtor’s assets, rights, obligations or liabilities to the  
22                  extent they have not been stayed under section  
23                  1520(a);

1           “(2) staying execution against the debtor’s assets  
2           to the extent it has not been stayed under section  
3           1520(a);

4           “(3) suspending the right to transfer, encumber  
5           or otherwise dispose of any assets of the debtor to the  
6           extent this right has not been suspended under section  
7           1520(a);

8           “(4) providing for the examination of witnesses,  
9           the taking of evidence or the delivery of information  
10          concerning the debtor’s assets, affairs, rights, obliga-  
11          tions or liabilities;

12          “(5) entrusting the administration or realization  
13          of all or part of the debtor’s assets within the terri-  
14          torial jurisdiction of the United States to the foreign  
15          representative or another person, including an exam-  
16          iner, authorized by the court;

17          “(6) extending relief granted under section  
18          1519(a); and

19          “(7) granting any additional relief that may be  
20          available to a trustee, except for relief available under  
21          sections 522, 544, 545, 547, 548, 550, and 724(a).

22          “(b) Upon recognition of a foreign proceeding, whether  
23          main or nonmain, the court may, at the request of the for-  
24          eign representative, entrust the distribution of all or part  
25          of the debtor’s assets located in the United States to the for-



1 (c), only if the interests of the creditors and other interested  
2 entities, including the debtor, are sufficiently protected.

3 “(b) The court may subject relief granted under section  
4 1519 or 1521, or the operation of the debtor’s business under  
5 section 1520(a)(3), to conditions it considers appropriate,  
6 including the giving of security or the filing of a bond.

7 “(c) The court may, at the request of the foreign rep-  
8 resentative or an entity affected by relief granted under sec-  
9 tion 1519 or 1521, or at its own motion, modify or termi-  
10 nate such relief.

11 “(d) Section 1104(d) shall apply to the appointment  
12 of an examiner under this chapter. Any examiner shall  
13 comply with the qualification requirements imposed on a  
14 trustee by section 322.

15 **“§ 1523. Actions to avoid acts detrimental to creditors**

16 “(a) Upon recognition of a foreign proceeding, the for-  
17 eign representative has standing in a case concerning the  
18 debtor pending under another chapter of this title to initiate  
19 actions under sections 522, 544, 545, 547, 548, 550, 553,  
20 and 724(a).

21 “(b) When a foreign proceeding is a foreign nonmain  
22 proceeding, the court must be satisfied that an action under  
23 subsection (a) relates to assets that, under United States  
24 law, should be administered in the foreign nonmain pro-  
25 ceeding.

1 **“§ 1524. Intervention by a foreign representative**

2       *“Upon recognition of a foreign proceeding, the foreign*  
3 *representative may intervene in any proceedings in a State*  
4 *or Federal court in the United States in which the debtor*  
5 *is a party.*

6 **“SUBCHAPTER IV—COOPERATION WITH FOR-**  
7 **EIGN COURTS AND FOREIGN REPRESENTA-**  
8 **TIVES**

9 **“§ 1525. Cooperation and direct communication be-**  
10 **tween the court and foreign courts or for-**  
11 **ign representatives**

12       *“(a) Consistent with section 1501, the court shall co-*  
13 *operate to the maximum extent possible with a foreign court*  
14 *or a foreign representative, either directly or through the*  
15 *trustee.*

16       *“(b) The court is entitled to communicate directly*  
17 *with, or to request information or assistance directly from,*  
18 *a foreign court or a foreign representative, subject to the*  
19 *rights of a party in interest to notice and participation.*

20 **“§ 1526. Cooperation and direct communication be-**  
21 **tween the trustee and foreign courts or**  
22 **foreign representatives**

23       *“(a) Consistent with section 1501, the trustee or other*  
24 *person, including an examiner, authorized by the court,*  
25 *shall, subject to the supervision of the court, cooperate to*



1 *the maximum extent possible with a foreign court or a for-*  
2 *eign representative.*

3       “(b) *The trustee or other person, including an exam-*  
4 *iner, authorized by the court is entitled, subject to the super-*  
5 *vision of the court, to communicate directly with a foreign*  
6 *court or a foreign representative.*

7       **“§ 1527. Forms of cooperation**

8       “*Cooperation referred to in sections 1525 and 1526*  
9 *may be implemented by any appropriate means, includ-*  
10 *ing—*

11               “(1) *appointment of a person or body, including*  
12 *an examiner, to act at the direction of the court;*

13               “(2) *communication of information by any*  
14 *means considered appropriate by the court;*

15               “(3) *coordination of the administration and su-*  
16 *pervision of the debtor’s assets and affairs;*

17               “(4) *approval or implementation of agreements*  
18 *concerning the coordination of proceedings; and*

19               “(5) *coordination of concurrent proceedings re-*  
20 *garding the same debtor.*

21       **“SUBCHAPTER V—CONCURRENT PROCEEDINGS**

22       **“§ 1528. Commencement of a case under this title after**  
23               ***recognition of a foreign main proceeding***

24       “*After recognition of a foreign main proceeding, a case*  
25 *under another chapter of this title may be commenced only*

1 *if the debtor has assets in the United States. The effects of*  
2 *such case shall be restricted to the assets of the debtor that*  
3 *are within the territorial jurisdiction of the United States*  
4 *and, to the extent necessary to implement cooperation and*  
5 *coordination under sections 1525, 1526, and 1527, to other*  
6 *assets of the debtor that are within the jurisdiction of the*  
7 *court under sections 541(a) of this title, and 1334(e) of title*  
8 *28, to the extent that such other assets are not subject to*  
9 *the jurisdiction and control of a foreign proceeding that has*  
10 *been recognized under this chapter.*

11 ***“§ 1529. Coordination of a case under this title and a***  
12 ***foreign proceeding***

13 *“If a foreign proceeding and a case under another*  
14 *chapter of this title are pending concurrently regarding the*  
15 *same debtor, the court shall seek cooperation and coordina-*  
16 *tion under sections 1525, 1526, and 1527, and the following*  
17 *shall apply:*

18 *“(1) If the case in the United States pending at*  
19 *the time the petition for recognition of such foreign*  
20 *proceeding is filed—*

21 *“(A) any relief granted under section 1519*  
22 *or 1521 must be consistent with the relief grant-*  
23 *ed in the case in the United States; and*

1           “(B) section 1520 does not apply even if  
2           such foreign proceeding is recognized as a foreign  
3           main proceeding.

4           “(2) If a case in the United States under this  
5           title commences after recognition, or after the date of  
6           the filing of the petition for recognition, of such for-  
7           eign proceeding—

8           “(A) any relief in effect under section 1519  
9           or 1521 shall be reviewed by the court and shall  
10          be modified or terminated if inconsistent with  
11          the case in the United States; and

12          “(B) if such foreign proceeding is a foreign  
13          main proceeding, the stay and suspension re-  
14          ferred to in section 1520(a) shall be modified or  
15          terminated if inconsistent with the relief granted  
16          in the case in the United States.

17          “(3) In granting, extending, or modifying relief  
18          granted to a representative of a foreign nonmain pro-  
19          ceeding, the court must be satisfied that the relief re-  
20          lates to assets that, under the laws of the United  
21          States, should be administered in the foreign nonmain  
22          proceeding or concerns information required in that  
23          proceeding.

1           “(4) *In achieving cooperation and coordination*  
2           *under sections 1528 and 1529, the court may grant*  
3           *any of the relief authorized under section 305.*

4           **“§1530. Coordination of more than 1 foreign pro-**  
5           **ceeding**

6           *“In matters referred to in section 1501, with respect*  
7           *to more than 1 foreign proceeding regarding the debtor, the*  
8           *court shall seek cooperation and coordination under sections*  
9           *1525, 1526, and 1527, and the following shall apply:*

10           “(1) *Any relief granted under section 1519 or*  
11           *1521 to a representative of a foreign nonmain pro-*  
12           *ceeding after recognition of a foreign main proceeding*  
13           *must be consistent with the foreign main proceeding.*

14           “(2) *If a foreign main proceeding is recognized*  
15           *after recognition, or after the filing of a petition for*  
16           *recognition, of a foreign nonmain proceeding, any re-*  
17           *lief in effect under section 1519 or 1521 shall be re-*  
18           *viewed by the court and shall be modified or termi-*  
19           *nated if inconsistent with the foreign main pro-*  
20           *ceeding.*

21           “(3) *If, after recognition of a foreign nonmain*  
22           *proceeding, another foreign nonmain proceeding is*  
23           *recognized, the court shall grant, modify, or terminate*  
24           *relief for the purpose of facilitating coordination of*  
25           *the proceedings.*

1 **“§ 1531. Presumption of insolvency based on recogni-**  
 2 **tion of a foreign main proceeding**

3 *“In the absence of evidence to the contrary, recognition*  
 4 *of a foreign main proceeding is, for the purpose of com-*  
 5 *mencing a proceeding under section 303, proof that the*  
 6 *debtor is generally not paying its debts as such debts become*  
 7 *due.*

8 **“§ 1532. Rule of payment in concurrent proceedings**

9 *“Without prejudice to secured claims or rights in rem,*  
 10 *a creditor who has received payment with respect to its*  
 11 *claim in a foreign proceeding pursuant to a law relating*  
 12 *to insolvency may not receive a payment for the same claim*  
 13 *in a case under any other chapter of this title regarding*  
 14 *the debtor, so long as the payment to other creditors of the*  
 15 *same class is proportionately less than the payment the*  
 16 *creditor has already received.”.*

17 (b) *CLERICAL AMENDMENT.*—*The table of chapters for*  
 18 *title 11, United States Code, is amended by inserting after*  
 19 *the item relating to chapter 13 the following:*

***“15. Ancillary and Other Cross-Border Cases ..... 1501”.***

20 ***SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28,***  
 21 ***UNITED STATES CODE.***

22 (a) *APPLICABILITY OF CHAPTERS.*—*Section 103 of*  
 23 *title 11, United States Code, is amended—*

24 (1) *in subsection (a), by inserting before the pe-*  
 25 *riod the following: “, and this chapter, sections 307,*

1       362(n), 555 through 557, and 559 through 562 apply  
2       in a case under chapter 15”; and

3               (2) by adding at the end the following:

4       “(k) Chapter 15 applies only in a case under such  
5 chapter, except that—

6               “(1) sections 1505, 1513, and 1514 apply in all  
7 cases under this title; and

8               “(2) section 1509 applies whether or not a case  
9 under this title is pending.”.

10       (b) *DEFINITIONS.*—Section 101 of title 11, United  
11 States Code, is amended by striking paragraphs (23) and  
12 (24) and inserting the following:

13               “(23) ‘foreign proceeding’ means a collective ju-  
14 dicial or administrative proceeding in a foreign coun-  
15 try, including an interim proceeding, under a law re-  
16 lating to insolvency or adjustment of debt in which  
17 proceeding the assets and affairs of the debtor are sub-  
18 ject to control or supervision by a foreign court, for  
19 the purpose of reorganization or liquidation;

20               “(24) ‘foreign representative’ means a person or  
21 body, including a person or body appointed on an in-  
22 terim basis, authorized in a foreign proceeding to ad-  
23 minister the reorganization or the liquidation of the  
24 debtor’s assets or affairs or to act as a representative  
25 of such foreign proceeding;”.

1       (c) *AMENDMENTS TO TITLE 28, UNITED STATES*  
2 *CODE.*—

3           (1) *PROCEDURES.*—Section 157(b)(2) of title 28,  
4 *United States Code, is amended—*

5               (A) *in subparagraph (N), by striking “and”*  
6 *at the end;*

7               (B) *in subparagraph (O), by striking the*  
8 *period at the end and inserting “; and”; and*

9               (C) *by adding at the end the following:*

10                   *“(P) recognition of foreign proceedings and*  
11 *other matters under chapter 15 of title 11.”.*

12           (2) *BANKRUPTCY CASES AND PROCEEDINGS.*—  
13 *Section 1334(c) of title 28, United States Code, is*  
14 *amended by striking “Nothing in” and inserting “Ex-*  
15 *cept with respect to a case under chapter 15 of title*  
16 *11, nothing in”.*

17           (3) *DUTIES OF TRUSTEES.*—Section 586(a)(3) of  
18 *title 28, United States Code, is amended by striking*  
19 *“or 13” and inserting “13, or 15”.*

20           (4) *VENUE OF CASES ANCILLARY TO FOREIGN*  
21 *PROCEEDINGS.*—Section 1410 of title 28, *United*  
22 *States Code, is amended to read as follows:*

1 **“§1410. Venue of cases ancillary to foreign pro-**  
2 **ceedings**

3 “A case under chapter 15 of title 11 may be com-  
4 menced in the district court of the United States for the  
5 district—

6 “(1) in which the debtor has its principal place  
7 of business or principal assets in the United States;

8 “(2) if the debtor does not have a place of busi-  
9 ness or assets in the United States, in which there is  
10 pending against the debtor an action or proceeding in  
11 a Federal or State court; or

12 “(3) in a case other than those specified in para-  
13 graph (1) or (2), in which venue will be consistent  
14 with the interests of justice and the convenience of the  
15 parties, having regard to the relief sought by the for-  
16 eign representative.”.

17 (d) OTHER SECTIONS OF TITLE 11.—Title 11 of the  
18 United States Code is amended—

19 (1) in section 109(b), by striking paragraph (3)  
20 and inserting the following:

21 “(3)(A) a foreign insurance company, engaged  
22 in such business in the United States; or

23 “(B) a foreign bank, savings bank, cooperative  
24 bank, savings and loan association, building and loan  
25 association, or credit union, that has a branch or



1        *agency (as defined in section 1(b) of the International*  
2        *Banking Act of 1978 in the United States.”;*

3            *(2) in section 303, by striking subsection (k);*

4            *(3) by striking section 304;*

5            *(4) in the table of sections for chapter 3 by strik-*  
6        *ing the item relating to section 304;*

7            *(5) in section 306 by striking “, 304,” each place*  
8        *it appears;*

9            *(6) in section 305(a) by striking paragraph (2)*  
10        *and inserting the following:*

11            *“(2)(A) a petition under section 1515 for rec-*  
12        *ognition of a foreign proceeding has been granted;*  
13        *and*

14            *“(B) the purposes of chapter 15 of this title*  
15        *would be best served by such dismissal or suspen-*  
16        *sion.”; and*

17            *(7) in section 508—*

18            *(A) by striking subsection (a); and*

19            *(B) in subsection (b), by striking “(b)”.*

1 **TITLE IX—FINANCIAL CONTRACT**  
 2 **PROVISIONS**

3 **SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CON-**  
 4 **SERVATORS OR RECEIVERS OF INSURED DE-**  
 5 **POSITORY INSTITUTIONS.**

6 (a) *DEFINITION OF QUALIFIED FINANCIAL CON-*  
 7 *TRACT.—*

8 (1) *FDIC-INSURED DEPOSITORY INSTITU-*  
 9 *TIONS.—Section 11(e)(8)(D) of the Federal Deposit*  
 10 *Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amend-*  
 11 *ed—*

12 (A) *by striking “subsection—” and insert-*  
 13 *ing “subsection, the following definitions shall*  
 14 *apply.”; and*

15 (B) *in clause (i), by inserting “, resolution,*  
 16 *or order” after “any similar agreement that the*  
 17 *Corporation determines by regulation”.*

18 (2) *INSURED CREDIT UNIONS.—Section*  
 19 *207(c)(8)(D) of the Federal Credit Union Act (12*  
 20 *U.S.C. 1787(c)(8)(D)) is amended—*

21 (A) *by striking “subsection—” and insert-*  
 22 *ing “subsection, the following definitions shall*  
 23 *apply.”; and*

1           (B) in clause (i), by inserting “, resolution,  
2           or order” after “any similar agreement that the  
3           Board determines by regulation”.

4           (b) DEFINITION OF SECURITIES CONTRACT.—

5           (1) FDIC-INSURED DEPOSITORY INSTITU-  
6           TIONS.—Section 11(e)(8)(D)(ii) of the Federal De-  
7           posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is  
8           amended to read as follows:

9                   “(i) SECURITIES CONTRACT.—The  
10                   term ‘securities contract’—

11                           “(I) means a contract for the pur-  
12                           chase, sale, or loan of a security, a cer-  
13                           tificate of deposit, a mortgage loan, or  
14                           any interest in a mortgage loan, a  
15                           group or index of securities, certificates  
16                           of deposit, or mortgage loans or inter-  
17                           ests therein (including any interest  
18                           therein or based on the value thereof)  
19                           or any option on any of the foregoing,  
20                           including any option to purchase or  
21                           sell any such security, certificate of de-  
22                           posit, mortgage loan, interest, group or  
23                           index, or option, and including any re-  
24                           purchase or reverse repurchase trans-  
25                           action on any such security, certificate

1           *of deposit, mortgage loan, interest,*  
2           *group or index, or option;*

3           “(II) *does not include any pur-*  
4           *chase, sale, or repurchase obligation*  
5           *under a participation in a commercial*  
6           *mortgage loan unless the Corporation*  
7           *determines by regulation, resolution, or*  
8           *order to include any such agreement*  
9           *within the meaning of such term;*

10          “(III) *means any option entered*  
11          *into on a national securities exchange*  
12          *relating to foreign currencies;*

13          “(IV) *means the guarantee by or*  
14          *to any securities clearing agency of*  
15          *any settlement of cash, securities, cer-*  
16          *tificates of deposit, mortgage loans or*  
17          *interests therein, group or index of se-*  
18          *curities, certificates of deposit, or mort-*  
19          *gage loans or interests therein (includ-*  
20          *ing any interest therein or based on*  
21          *the value thereof) or option on any of*  
22          *the foregoing, including any option to*  
23          *purchase or sell any such security, cer-*  
24          *tificate of deposit, mortgage loan, in-*  
25          *terest, group or index, or option;*

1           “(V) means any margin loan;

2           “(VI) means any other agreement  
3 or transaction that is similar to any  
4 agreement or transaction referred to in  
5 this clause;

6           “(VII) means any combination of  
7 the agreements or transactions referred  
8 to in this clause;

9           “(VIII) means any option to enter  
10 into any agreement or transaction re-  
11 ferred to in this clause;

12           “(IX) means a master agreement  
13 that provides for an agreement or  
14 transaction referred to in subclause (I),  
15 (III), (IV), (V), (VI), (VII), or (VIII),  
16 together with all supplements to any  
17 such master agreement, without regard  
18 to whether the master agreement pro-  
19 vides for an agreement or transaction  
20 that is not a securities contract under  
21 this clause, except that the master  
22 agreement shall be considered to be a  
23 securities contract under this clause  
24 only with respect to each agreement or  
25 transaction under the master agree-

1           *ment that is referred to in subclause*  
 2           *(I), (III), (IV), (V), (VI), (VII), or*  
 3           *(VIII); and*

4           “(X) means any security agree-  
 5           ment or arrangement or other credit  
 6           enhancement related to any agreement  
 7           or transaction referred to in this  
 8           clause, including any guarantee or re-  
 9           imbursement obligation in connection  
 10          with any agreement or transaction re-  
 11          ferred to in this clause.”.

12           (2)    INSURED    CREDIT    UNIONS.—Section  
 13           207(c)(8)(D)(ii) of the Federal Credit Union Act (12  
 14           U.S.C. 1787(c)(8)(D)(ii)) is amended to read as fol-  
 15           lows:

16                   “(i)   SECURITIES   CONTRACT.—The  
 17                   term ‘securities contract’—

18                           “(I) means a contract for the pur-  
 19                           chase, sale, or loan of a security, a cer-  
 20                           tificate of deposit, a mortgage loan, or  
 21                           any interest in a mortgage loan, a  
 22                           group or index of securities, certificates  
 23                           of deposit, or mortgage loans or inter-  
 24                           ests therein (including any interest  
 25                           therein or based on the value thereof)

1            *or any option on any of the foregoing,*  
2            *including any option to purchase or*  
3            *sell any such security, certificate of de-*  
4            *posit, mortgage loan, interest, group or*  
5            *index, or option, and including any re-*  
6            *purchase or reverse repurchase trans-*  
7            *action on any such security, certificate*  
8            *of deposit, mortgage loan, interest,*  
9            *group or index, or option;*

10            *“(II) does not include any pur-*  
11            *chase, sale, or repurchase obligation*  
12            *under a participation in a commercial*  
13            *mortgage loan unless the Board deter-*  
14            *mines by regulation, resolution, or*  
15            *order to include any such agreement*  
16            *within the meaning of such term;*

17            *“(III) means any option entered*  
18            *into on a national securities exchange*  
19            *relating to foreign currencies;*

20            *“(IV) means the guarantee by or*  
21            *to any securities clearing agency of*  
22            *any settlement of cash, securities, cer-*  
23            *tificates of deposit, mortgage loans or*  
24            *interests therein, group or index of se-*  
25            *curities, certificates of deposit, or mort-*

1            *gage loans or interests therein (includ-*  
2            *ing any interest therein or based on*  
3            *the value thereof) or option on any of*  
4            *the foregoing, including any option to*  
5            *purchase or sell any such security, cer-*  
6            *tificate of deposit, mortgage loan, in-*  
7            *terest, group or index, or option;*

8            *“(V) means any margin loan;*

9            *“(VI) means any other agreement*  
10           *or transaction that is similar to any*  
11           *agreement or transaction referred to in*  
12           *this clause;*

13           *“(VII) means any combination of*  
14           *the agreements or transactions referred*  
15           *to in this clause;*

16           *“(VIII) means any option to enter*  
17           *into any agreement or transaction re-*  
18           *ferred to in this clause;*

19           *“(IX) means a master agreement*  
20           *that provides for an agreement or*  
21           *transaction referred to in subclause (I),*  
22           *(III), (IV), (V), (VI), (VII), or (VIII),*  
23           *together with all supplements to any*  
24           *such master agreement, without regard*  
25           *to whether the master agreement pro-*



1            *vides for an agreement or transaction*  
 2            *that is not a securities contract under*  
 3            *this clause, except that the master*  
 4            *agreement shall be considered to be a*  
 5            *securities contract under this clause*  
 6            *only with respect to each agreement or*  
 7            *transaction under the master agree-*  
 8            *ment that is referred to in subclause*  
 9            *(I), (III), (IV), (V), (VI), (VII), or*  
 10           *(VIII); and*

11                    *“(X) means any security agree-*  
 12                    *ment or arrangement or other credit*  
 13                    *enhancement related to any agreement*  
 14                    *or transaction referred to in this*  
 15                    *clause, including any guarantee or re-*  
 16                    *imbursement obligation in connection*  
 17                    *with any agreement or transaction re-*  
 18                    *ferred to in this clause.”.*

19            *(c) DEFINITION OF COMMODITY CONTRACT.—*

20                    *(1) FDIC-INSURED DEPOSITORY INSTITU-*  
 21                    *TIONS.—Section 11(e)(8)(D)(iii) of the Federal De-*  
 22                    *posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is*  
 23                    *amended to read as follows:*

24                            *“(iii) COMMODITY CONTRACT.—The*  
 25                            *term ‘commodity contract’ means—*

1           “(I) with respect to a futures com-  
2           mission merchant, a contract for the  
3           purchase or sale of a commodity for fu-  
4           ture delivery on, or subject to the rules  
5           of, a contract market or board of trade;

6           “(II) with respect to a foreign fu-  
7           tures commission merchant, a foreign  
8           future;

9           “(III) with respect to a leverage  
10          transaction merchant, a leverage trans-  
11          action;

12          “(IV) with respect to a clearing  
13          organization, a contract for the pur-  
14          chase or sale of a commodity for future  
15          delivery on, or subject to the rules of,  
16          a contract market or board of trade  
17          that is cleared by such clearing organi-  
18          zation, or commodity option traded on,  
19          or subject to the rules of, a contract  
20          market or board of trade that is  
21          cleared by such clearing organization;

22          “(V) with respect to a commodity  
23          options dealer, a commodity option;

24          “(VI) any other agreement or  
25          transaction that is similar to any

1                   *agreement or transaction referred to in*  
2                   *this clause;*

3                   “*(VII) any combination of the*  
4                   *agreements or transactions referred to*  
5                   *in this clause;*

6                   “*(VIII) any option to enter into*  
7                   *any agreement or transaction referred*  
8                   *to in this clause;*

9                   “*(IX) a master agreement that*  
10                  *provides for an agreement or trans-*  
11                  *action referred to in subclause (I), (II),*  
12                  *(III), (IV), (V), (VI), (VII), or (VIII),*  
13                  *together with all supplements to any*  
14                  *such master agreement, without regard*  
15                  *to whether the master agreement pro-*  
16                  *vides for an agreement or transaction*  
17                  *that is not a commodity contract*  
18                  *under this clause, except that the mas-*  
19                  *ter agreement shall be considered to be*  
20                  *a commodity contract under this clause*  
21                  *only with respect to each agreement or*  
22                  *transaction under the master agree-*  
23                  *ment that is referred to in subclause*  
24                  *(I), (II), (III), (IV), (V), (VI), (VII), or*  
25                  *(VIII); or*

1           “(X) *any security agreement or*  
 2           *arrangement or other credit enhance-*  
 3           *ment related to any agreement or*  
 4           *transaction referred to in this clause,*  
 5           *including any guarantee or reimburse-*  
 6           *ment obligation in connection with*  
 7           *any agreement or transaction referred*  
 8           *to in this clause.”.*

9           (2) *INSURED CREDIT UNIONS.*—*Section*  
 10          *207(c)(8)(D)(iii) of the Federal Credit Union Act (12*  
 11          *U.S.C. 1787(c)(8)(D)(iii)) is amended to read as fol-*  
 12          *lows:*

13                   “(iii) *COMMODITY CONTRACT.*—*The*  
 14                   *term ‘commodity contract’ means—*

15                           “(I) *with respect to a futures com-*  
 16                           *mission merchant, a contract for the*  
 17                           *purchase or sale of a commodity for fu-*  
 18                           *ture delivery on, or subject to the rules*  
 19                           *of, a contract market or board of trade;*

20                                   “(II) *with respect to a foreign fu-*  
 21                                   *tures commission merchant, a foreign*  
 22                                   *future;*

23   “(III) *with respect to a leverage*  
 24   *transaction merchant, a leverage trans-*  
 25   *action;*

1           “(IV) with respect to a clearing  
2 organization, a contract for the pur-  
3 chase or sale of a commodity for future  
4 delivery on, or subject to the rules of,  
5 a contract market or board of trade  
6 that is cleared by such clearing organi-  
7 zation, or commodity option traded on,  
8 or subject to the rules of, a contract  
9 market or board of trade that is  
10 cleared by such clearing organization;

11           “(V) with respect to a commodity  
12 options dealer, a commodity option;

13           “(VI) any other agreement or  
14 transaction that is similar to any  
15 agreement or transaction referred to in  
16 this clause;

17           “(VII) any combination of the  
18 agreements or transactions referred to  
19 in this clause;

20           “(VIII) any option to enter into  
21 any agreement or transaction referred  
22 to in this clause;

23           “(IX) a master agreement that  
24 provides for an agreement or trans-  
25 action referred to in subclause (I), (II),

1            *(III), (IV), (V), (VI), (VII), or (VIII),*  
2            *together with all supplements to any*  
3            *such master agreement, without regard*  
4            *to whether the master agreement pro-*  
5            *vides for an agreement or transaction*  
6            *that is not a commodity contract*  
7            *under this clause, except that the mas-*  
8            *ter agreement shall be considered to be*  
9            *a commodity contract under this clause*  
10           *only with respect to each agreement or*  
11           *transaction under the master agree-*  
12           *ment that is referred to in subclause*  
13           *(I), (II), (III), (IV), (V), (VI), (VII), or*  
14           *(VIII); or*

15           *“(X) any security agreement or*  
16           *arrangement or other credit enhance-*  
17           *ment related to any agreement or*  
18           *transaction referred to in this clause,*  
19           *including any guarantee or reimburse-*  
20           *ment obligation in connection with*  
21           *any agreement or transaction referred*  
22           *to in this clause.”*

23           *(d) DEFINITION OF FORWARD CONTRACT.—*

24           *(1) FDIC-INSURED DEPOSITORY INSTITU-*  
25           *TIONS.—Section 11(e)(8)(D)(iv) of the Federal De-*

1        *posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is*  
2        *amended to read as follows:*

3                    “(iv) *FORWARD CONTRACT.*—*The term*  
4        *‘forward contract’ means—*

5                    “(I) *a contract (other than a com-*  
6        *modity contract) for the purchase, sale,*  
7        *or transfer of a commodity or any*  
8        *similar good, article, service, right, or*  
9        *interest which is presently or in the fu-*  
10       *ture becomes the subject of dealing in*  
11       *the forward contract trade, or product*  
12       *or byproduct thereof, with a maturity*  
13       *date more than 2 days after the date*  
14       *the contract is entered into, including,*  
15       *a repurchase transaction, reverse re-*  
16       *purchase transaction, consignment,*  
17       *lease, swap, hedge transaction, deposit,*  
18       *loan, option, allocated transaction,*  
19       *unallocated transaction, or any other*  
20       *similar agreement;*

21                    “(II) *any combination of agree-*  
22       *ments or transactions referred to in*  
23       *subclauses (I) and (III);*

1           “(III) any option to enter into  
2           any agreement or transaction referred  
3           to in subclause (I) or (II);

4           “(IV) a master agreement that  
5           provides for an agreement or trans-  
6           action referred to in subclauses (I),  
7           (II), or (III), together with all supple-  
8           ments to any such master agreement,  
9           without regard to whether the master  
10          agreement provides for an agreement  
11          or transaction that is not a forward  
12          contract under this clause, except that  
13          the master agreement shall be consid-  
14          ered to be a forward contract under  
15          this clause only with respect to each  
16          agreement or transaction under the  
17          master agreement that is referred to in  
18          subclause (I), (II), or (III); or

19          “(V) any security agreement or  
20          arrangement or other credit enhance-  
21          ment related to any agreement or  
22          transaction referred to in subclause (I),  
23          (II), (III), or (IV), including any  
24          guarantee or reimbursement obligation  
25          in connection with any agreement or



1                    *transaction referred to in any such*  
2                    *subclause.”.*

3                    (2)    *INSURED    CREDIT    UNIONS.—Section*  
4                    *207(c)(8)(D)(iv) of the Federal Credit Union Act (12*  
5                    *U.S.C. 1787(c)(8)(D)(iv)) is amended to read as fol-*  
6                    *lows:*

7                    “(iv) *FORWARD CONTRACT.—The term*  
8                    *‘forward contract’ means—*

9                    “(I) *a contract (other than a com-*  
10                    *modity contract) for the purchase, sale,*  
11                    *or transfer of a commodity or any*  
12                    *similar good, article, service, right, or*  
13                    *interest which is presently or in the fu-*  
14                    *ture becomes the subject of dealing in*  
15                    *the forward contract trade, or product*  
16                    *or byproduct thereof, with a maturity*  
17                    *date more than 2 days after the date*  
18                    *the contract is entered into, including,*  
19                    *a repurchase transaction, reverse re-*  
20                    *purchase transaction, consignment,*  
21                    *lease, swap, hedge transaction, deposit,*  
22                    *loan, option, allocated transaction,*  
23                    *unallocated transaction, or any other*  
24                    *similar agreement;*

1           “(II) any combination of agree-  
2           ments or transactions referred to in  
3           subclauses (I) and (III);

4           “(III) any option to enter into  
5           any agreement or transaction referred  
6           to in subclause (I) or (II);

7           “(IV) a master agreement that  
8           provides for an agreement or trans-  
9           action referred to in subclauses (I),  
10          (II), or (III), together with all supple-  
11          ments to any such master agreement,  
12          without regard to whether the master  
13          agreement provides for an agreement  
14          or transaction that is not a forward  
15          contract under this clause, except that  
16          the master agreement shall be consid-  
17          ered to be a forward contract under  
18          this clause only with respect to each  
19          agreement or transaction under the  
20          master agreement that is referred to in  
21          subclause (I), (II), or (III); or

22          “(V) any security agreement or  
23          arrangement or other credit enhance-  
24          ment related to any agreement or  
25          transaction referred to in subclause (I),

1                   (ii), (iii), or (iv), including any  
 2                   guarantee or reimbursement obligation  
 3                   in connection with any agreement or  
 4                   transaction referred to in any such  
 5                   subclause.”.

6           (e) *DEFINITION OF REPURCHASE AGREEMENT.*—

7                   (1) *FDIC-INSURED DEPOSITORY INSTITU-*  
 8                   *TIONS.*—Section 11(e)(8)(D)(v) of the *Federal Deposit*  
 9                   *Insurance Act (12 U.S.C. 1821(e)(8)(D)(v))* is amend-  
 10                  ed to read as follows:

11                           “(v) *REPURCHASE AGREEMENT.*—The  
 12                           term ‘repurchase agreement’ (which defini-  
 13                           tion also applies to a reverse repurchase  
 14                           agreement)—

15                                   “(I) means an agreement, includ-  
 16                                   ing related terms, which provides for  
 17                                   the transfer of one or more certificates  
 18                                   of deposit, mortgage-related securities  
 19                                   (as such term is defined in the *Securi-*  
 20                                   *ties Exchange Act of 1934*), mortgage  
 21                                   loans, interests in mortgage-related se-  
 22                                   curities or mortgage loans, eligible  
 23                                   bankers’ acceptances, qualified foreign  
 24                                   government securities or securities that  
 25                                   are direct obligations of, or that are

1           *fully guaranteed by, the United States*  
2           *or any agency of the United States*  
3           *against the transfer of funds by the*  
4           *transferee of such certificates of de-*  
5           *posit, eligible bankers' acceptances, se-*  
6           *curities, mortgage loans, or interests*  
7           *with a simultaneous agreement by such*  
8           *transferee to transfer to the transferor*  
9           *thereof certificates of deposit, eligible*  
10          *bankers' acceptances, securities, mort-*  
11          *gage loans, or interests as described*  
12          *above, at a date certain not later than*  
13          *1 year after such transfers or on de-*  
14          *mand, against the transfer of funds, or*  
15          *any other similar agreement;*

16                 *“(II) does not include any repur-*  
17                 *chase obligation under a participation*  
18                 *in a commercial mortgage loan unless*  
19                 *the Corporation determines by regula-*  
20                 *tion, resolution, or order to include*  
21                 *any such participation within the*  
22                 *meaning of such term;*

23                 *“(III) means any combination of*  
24                 *agreements or transactions referred to*  
25                 *in subclauses (I) and (IV);*

1           “(IV) means any option to enter  
2           into any agreement or transaction re-  
3           ferred to in subclause (I) or (III);

4           “(V) means a master agreement  
5           that provides for an agreement or  
6           transaction referred to in subclause (I),  
7           (III), or (IV), together with all supple-  
8           ments to any such master agreement,  
9           without regard to whether the master  
10          agreement provides for an agreement  
11          or transaction that is not a repurchase  
12          agreement under this clause, except  
13          that the master agreement shall be con-  
14          sidered to be a repurchase agreement  
15          under this subclause only with respect  
16          to each agreement or transaction under  
17          the master agreement that is referred to  
18          in subclause (I), (III), or (IV); and

19          “(VI) means any security agree-  
20          ment or arrangement or other credit  
21          enhancement related to any agreement  
22          or transaction referred to in subclause  
23          (I), (III), (IV), or (V), including any  
24          guarantee or reimbursement obligation  
25          in connection with any agreement or

1                    *transaction referred to in any such*  
 2                    *subclause.*

3                    *For purposes of this clause, the term ‘quali-*  
 4                    *fied foreign government security’ means a*  
 5                    *security that is a direct obligation of, or*  
 6                    *that is fully guaranteed by, the central gov-*  
 7                    *ernment of a member of the Organization*  
 8                    *for Economic Cooperation and Development*  
 9                    *(as determined by regulation or order*  
 10                    *adopted by the appropriate Federal banking*  
 11                    *authority).’.*

12                    (2)    *INSURED CREDIT UNIONS.—Section*  
 13                    *207(c)(8)(D)(v) of the Federal Credit Union Act (12*  
 14                    *U.S.C. 1787(c)(8)(D)(v)) is amended to read as fol-*  
 15                    *lows:*

16                    *“(v) REPURCHASE AGREEMENT.—The*  
 17                    *term ‘repurchase agreement’ (which defini-*  
 18                    *tion also applies to a reverse repurchase*  
 19                    *agreement)—*

20                    *“(I) means an agreement, includ-*  
 21                    *ing related terms, which provides for*  
 22                    *the transfer of one or more certificates*  
 23                    *of deposit, mortgage-related securities*  
 24                    *(as such term is defined in the Securi-*  
 25                    *ties Exchange Act of 1934), mortgage*

1                    *loans, interests in mortgage-related se-*  
2                    *curities or mortgage loans, eligible*  
3                    *bankers' acceptances, qualified foreign*  
4                    *government securities or securities that*  
5                    *are direct obligations of, or that are*  
6                    *fully guaranteed by, the United States*  
7                    *or any agency of the United States*  
8                    *against the transfer of funds by the*  
9                    *transferee of such certificates of de-*  
10                   *posit, eligible bankers' acceptances, se-*  
11                   *curities, mortgage loans, or interests*  
12                   *with a simultaneous agreement by such*  
13                   *transferee to transfer to the transferor*  
14                   *thereof certificates of deposit, eligible*  
15                   *bankers' acceptances, securities, mort-*  
16                   *gage loans, or interests as described*  
17                   *above, at a date certain not later than*  
18                   *1 year after such transfers or on de-*  
19                   *mand, against the transfer of funds, or*  
20                   *any other similar agreement;*

21                    *“(II) does not include any repur-*  
22                    *chase obligation under a participation*  
23                    *in a commercial mortgage loan unless*  
24                    *the Board determines by regulation,*  
25                    *resolution, or order to include any such*

1 participation within the meaning of  
2 such term;

3 “(III) means any combination of  
4 agreements or transactions referred to  
5 in subclauses (I) and (IV);

6 “(IV) means any option to enter  
7 into any agreement or transaction re-  
8 ferred to in subclause (I) or (III);

9 “(V) means a master agreement  
10 that provides for an agreement or  
11 transaction referred to in subclause (I),  
12 (III), or (IV), together with all supple-  
13 ments to any such master agreement,  
14 without regard to whether the master  
15 agreement provides for an agreement  
16 or transaction that is not a repurchase  
17 agreement under this clause, except  
18 that the master agreement shall be con-  
19 sidered to be a repurchase agreement  
20 under this subclause only with respect  
21 to each agreement or transaction under  
22 the master agreement that is referred to  
23 in subclause (I), (III), or (IV); and

24 “(VI) means any security agree-  
25 ment or arrangement or other credit



1           *enhancement related to any agreement*  
 2           *or transaction referred to in subclause*  
 3           *(I), (III), (IV), or (V), including any*  
 4           *guarantee or reimbursement obligation*  
 5           *in connection with any agreement or*  
 6           *transaction referred to in any such*  
 7           *subclause.*

8           *For purposes of this clause, the term ‘quali-*  
 9           *fied foreign government security’ means a*  
 10          *security that is a direct obligation of, or*  
 11          *that is fully guaranteed by, the central gov-*  
 12          *ernment of a member of the Organization*  
 13          *for Economic Cooperation and Development*  
 14          *(as determined by regulation or order*  
 15          *adopted by the appropriate Federal banking*  
 16          *authority).’.*

17          (f) *DEFINITION OF SWAP AGREEMENT.—*

18                 (1) *FDIC-INSURED DEPOSITORY INSTITU-*  
 19          *TIONS.—Section 11(e)(8)(D)(vi) of the Federal De-*  
 20          *posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is*  
 21          *amended to read as follows:*

22                         “(vi) *SWAP AGREEMENT.—The term*  
 23                         *‘swap agreement’ means—*

24                                 “(I) *any agreement, including the*  
 25                                 *terms and conditions incorporated by*

1                    *reference in any such agreement, which*  
2                    *is an interest rate swap, option, future,*  
3                    *or forward agreement, including a rate*  
4                    *floor, rate cap, rate collar, cross-cur-*  
5                    *rency rate swap, and basis swap; a*  
6                    *spot, same day-tomorrow, tomorrow-*  
7                    *next, forward, or other foreign ex-*  
8                    *change or precious metals agreement; a*  
9                    *currency swap, option, future, or for-*  
10                   *ward agreement; an equity index or eq-*  
11                   *uity swap, option, future, or forward*  
12                   *agreement; a debt index or debt swap,*  
13                   *option, future, or forward agreement; a*  
14                   *total return, credit spread or credit*  
15                   *swap, option, future, or forward agree-*  
16                   *ment; a commodity index or com-*  
17                   *modity swap, option, future, or for-*  
18                   *ward agreement; or a weather swap,*  
19                   *weather derivative, or weather option;*

20                    *“(II) any agreement or trans-*  
21                    *action that is similar to any other*  
22                    *agreement or transaction referred to in*  
23                    *this clause and that is of a type that*  
24                    *has been, is presently, or in the future*  
25                    *becomes, the subject of recurrent deal-*

1                    *ings in the swap markets (including*  
2                    *terms and conditions incorporated by*  
3                    *reference in such agreement) and that*  
4                    *is a forward, swap, future, or option*  
5                    *on one or more rates, currencies, com-*  
6                    *modities, equity securities or other eq-*  
7                    *uity instruments, debt securities or*  
8                    *other debt instruments, quantitative*  
9                    *measures associated with an occur-*  
10                   *rence, extent of an occurrence, or con-*  
11                   *tingency associated with a financial,*  
12                   *commercial, or economic consequence,*  
13                   *or economic or financial indices or*  
14                   *measures of economic or financial risk*  
15                   *or value;*

16                   *“(III) any combination of agree-*  
17                   *ments or transactions referred to in*  
18                   *this clause;*

19                   *“(IV) any option to enter into*  
20                   *any agreement or transaction referred*  
21                   *to in this clause;*

22                   *“(V) a master agreement that pro-*  
23                   *vides for an agreement or transaction*  
24                   *referred to in subclause (I), (II), (III),*  
25                   *or (IV), together with all supplements*

1           to any such master agreement, without  
2           regard to whether the master agreement  
3           contains an agreement or transaction  
4           that is not a swap agreement under  
5           this clause, except that the master  
6           agreement shall be considered to be a  
7           swap agreement under this clause only  
8           with respect to each agreement or  
9           transaction under the master agree-  
10          ment that is referred to in subclause  
11          (I), (II), (III), or (IV); and

12                   “(VI) any security agreement or  
13                   arrangement or other credit enhance-  
14                   ment related to any agreements or  
15                   transactions referred to in subclause  
16                   (I), (II), (III), (IV), or (V), including  
17                   any guarantee or reimbursement obli-  
18                   gation in connection with any agree-  
19                   ment or transaction referred to in any  
20                   such subclause.

21           Such term is applicable for purposes of this  
22           subsection only and shall not be construed  
23           or applied so as to challenge or affect the  
24           characterization, definition, or treatment of  
25           any swap agreement under any other stat-

1            *ute, regulation, or rule, including the Secu-*  
 2            *rities Act of 1933, the Securities Exchange*  
 3            *Act of 1934, the Public Utility Holding*  
 4            *Company Act of 1935, the Trust Indenture*  
 5            *Act of 1939, the Investment Company Act of*  
 6            *1940, the Investment Advisers Act of 1940,*  
 7            *the Securities Investor Protection Act of*  
 8            *1970, the Commodity Exchange Act, the*  
 9            *Gramm-Leach-Bliley Act, and the Legal*  
 10           *Certainty for Bank Products Act of 2000.”.*

11            (2)    *INSURED CREDIT UNIONS.—Section*  
 12            *207(c)(8)(D) of the Federal Credit Union Act (12*  
 13            *U.S.C. 1787(c)(8)(D)) is amended by adding at the*  
 14            *end the following new clause:*

15                            *“(vi) SWAP AGREEMENT.—The term*  
 16                            *‘swap agreement’ means—*

17    *“(I) any agreement, including the*  
 18    *terms and conditions incorporated by*  
 19    *reference in any such agreement, which*  
 20    *is an interest rate swap, option, future,*  
 21    *or forward agreement, including a rate*  
 22    *floor, rate cap, rate collar, cross-cur-*  
 23    *rency rate swap, and basis swap; a*  
 24    *spot, same day-tomorrow, tomorrow-*  
 25    *next, forward, or other foreign ex-*

1                    *change or precious metals agreement; a*  
2                    *currency swap, option, future, or for-*  
3                    *ward agreement; an equity index or eq-*  
4                    *uity swap, option, future, or forward*  
5                    *agreement; a debt index or debt swap,*  
6                    *option, future, or forward agreement; a*  
7                    *total return, credit spread or credit*  
8                    *swap, option, future, or forward agree-*  
9                    *ment; a commodity index or com-*  
10                   *modity swap, option, future, or for-*  
11                   *ward agreement; or a weather swap,*  
12                   *weather derivative, or weather option;*

13                    *“(II) any agreement or trans-*  
14                    *action that is similar to any other*  
15                    *agreement or transaction referred to in*  
16                    *this clause and that is of a type that*  
17                    *has been, is presently, or in the future*  
18                    *becomes, the subject of recurrent deal-*  
19                    *ings in the swap markets (including*  
20                    *terms and conditions incorporated by*  
21                    *reference in such agreement) and that*  
22                    *is a forward, swap, future, or option on*  
23                    *one or more rates, currencies, commod-*  
24                    *ities, equity securities or other equity*  
25                    *instruments, debt securities or other*

1           *debt instruments, quantitative meas-*  
2           *ures associated with an occurrence, ex-*  
3           *tent of an occurrence, or contingency*  
4           *associated with a financial, commer-*  
5           *cial, or economic consequence, or eco-*  
6           *nomical or financial indices or measures*  
7           *of economic or financial risk or value;*

8                     *“(III) any combination of agree-*  
9                     *ments or transactions referred to in*  
10                    *this clause;*

11                    *“(IV) any option to enter into*  
12                    *any agreement or transaction referred*  
13                    *to in this clause;*

14                    *“(V) a master agreement that pro-*  
15                    *vides for an agreement or transaction*  
16                    *referred to in subclause (I), (II), (III),*  
17                    *or (IV), together with all supplements*  
18                    *to any such master agreement, without*  
19                    *regard to whether the master agreement*  
20                    *contains an agreement or transaction*  
21                    *that is not a swap agreement under*  
22                    *this clause, except that the master*  
23                    *agreement shall be considered to be a*  
24                    *swap agreement under this clause only*  
25                    *with respect to each agreement or*

1            *transaction under the master agree-*  
2            *ment that is referred to in subclause*  
3            *(I), (II), (III), or (IV); and*

4            *“(VI) any security agreement or*  
5            *arrangement or other credit enhance-*  
6            *ment related to any agreements or*  
7            *transactions referred to in subclause*  
8            *(I), (II), (III), (IV), or (V), including*  
9            *any guarantee or reimbursement obli-*  
10           *gation in connection with any agree-*  
11           *ment or transaction referred to in any*  
12           *such subclause.*

13           *Such term is applicable for purposes of this*  
14           *subsection only and shall not be construed*  
15           *or applied so as to challenge or affect the*  
16           *characterization, definition, or treatment of*  
17           *any swap agreement under any other stat-*  
18           *ute, regulation, or rule, including the Secu-*  
19           *rities Act of 1933, the Securities Exchange*  
20           *Act of 1934, the Public Utility Holding*  
21           *Company Act of 1935, the Trust Indenture*  
22           *Act of 1939, the Investment Company Act of*  
23           *1940, the Investment Advisers Act of 1940,*  
24           *the Securities Investor Protection Act of*  
25           *1970, the Commodity Exchange Act, the*



1                   *Gramm-Leach-Bliley Act, and the Legal*  
 2                   *Certainty for Bank Products Act of 2000.*”.

3           (g) *DEFINITION OF TRANSFER.*—

4                   (1) *FDIC-INSURED DEPOSITORY INSTITU-*  
 5                   *TIONS.*—*Section 11(e)(8)(D)(viii) of the Federal De-*  
 6                   *posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is*  
 7                   *amended to read as follows:*

8                                   “(viii) *TRANSFER.*—*The term ‘trans-*  
 9                                   *fer’ means every mode, direct or indirect,*  
 10                                   *absolute or conditional, voluntary or invol-*  
 11                                   *untary, of disposing of or parting with*  
 12                                   *property or with an interest in property,*  
 13                                   *including retention of title as a security in-*  
 14                                   *terest and foreclosure of the depository insti-*  
 15                                   *tution’s equity of redemption.*”.

16                   (2) *INSURED CREDIT UNIONS.*—*Section*  
 17                   *207(c)(8)(D) of the Federal Credit Union Act (12*  
 18                   *U.S.C. 1787(c)(8)(D)) (as amended by subsection (f)*  
 19                   *of this section) is amended by adding at the end the*  
 20                   *following new clause:*

21                                   “(viii) *TRANSFER.*—*The term ‘trans-*  
 22                                   *fer’ means every mode, direct or indirect,*  
 23                                   *absolute or conditional, voluntary or invol-*  
 24                                   *untary, of disposing of or parting with*  
 25                                   *property or with an interest in property,*

1                   including retention of title as a security in-  
 2                   terest and foreclosure of the depository insti-  
 3                   tution's equity of redemption.”.

4           (h) *TREATMENT OF QUALIFIED FINANCIAL CON-*  
 5 *TRACTS.*—

6                   (1) *FDIC-INSURED DEPOSITORY INSTITU-*  
 7 *TIONS.*—Section 11(e)(8) of the *Federal Deposit In-*  
 8 *surance Act (12 U.S.C. 1821(e)(8))* is amended—

9                   (A) in subparagraph (A)—

10                   (i) by striking “paragraph (10)” and  
 11                   inserting “paragraphs (9) and (10)”;

12                   (ii) in clause (i), by striking “to cause  
 13                   the termination or liquidation” and insert-  
 14                   ing “such person has to cause the termi-  
 15                   nation, liquidation, or acceleration”; and

16                   (iii) by striking clause (ii) and insert-  
 17                   ing the following new clause:

18                   “(ii) any right under any security  
 19                   agreement or arrangement or other credit  
 20                   enhancement related to one or more quali-  
 21                   fied financial contracts described in clause  
 22                   (i);” and

23                   (B) in subparagraph (E), by striking clause  
 24                   (i) and inserting the following:

1           “(ii) any right under any security  
2           agreement or arrangement or other credit  
3           enhancement related to one or more quali-  
4           fied financial contracts described in clause  
5           (i);”.

6           (2) *INSURED CREDIT UNIONS.*—Section 207(c)(8)  
7           of the Federal Credit Union Act (12 U.S.C.  
8           1787(c)(8)) is amended—

9           (A) in subparagraph (A)—

10           (i) by striking “paragraph (12)” and  
11           inserting “paragraphs (9) and (10)”;

12           (ii) in clause (i), by striking “to cause  
13           the termination or liquidation” and insert-  
14           ing “such person has to cause the termi-  
15           nation, liquidation, or acceleration”; and

16           (iii) by striking clause (ii) and insert-  
17           ing the following new clause:

18           “(ii) any right under any security  
19           agreement or arrangement or other credit  
20           enhancement related to 1 or more qualified  
21           financial contracts described in clause (i);”;

22           and

23           (B) in subparagraph (E), by striking clause  
24           (i) and inserting the following new clause:

1           “(i) any right under any security  
2           agreement or arrangement or other credit  
3           enhancement related to 1 or more qualified  
4           financial contracts described in clause (i);”.

5           (i) *AVOIDANCE OF TRANSFERS.*—

6           (1) *FDIC-INSURED DEPOSITORY INSTITU-*  
7           *TIONS.*—Section 11(e)(8)(C)(i) of the *Federal Deposit*  
8           *Insurance Act (12 U.S.C. 1821(e)(8)(C)(i))* is amend-  
9           ed by inserting “section 5242 of the *Revised Statutes*  
10           of the *United States* or any other *Federal* or *State*  
11           law relating to the avoidance of preferential or fraud-  
12           ulent transfers,” before “the Corporation”.

13           (2) *INSURED CREDIT UNIONS.*—Section  
14           207(c)(8)(C)(i) of the *Federal Credit Union Act (12*  
15           *U.S.C. 1787(c)(8)(C)(i))* is amended by inserting  
16           “section 5242 of the *Revised Statutes of the United*  
17           *States* or any other *Federal* or *State* law relating to  
18           the avoidance of preferential or fraudulent transfers,”  
19           before “the Board”.

20           **SEC. 902. AUTHORITY OF THE FDIC AND NCUAB WITH RE-**  
21   **SPECT TO FAILED AND FAILING INSTITU-**  
22   **TIONS.**

23           (a) *FEDERAL DEPOSIT INSURANCE CORPORATION.*—

1           (1) *IN GENERAL.*—Section 11(e)(8) of the Fed-  
2           eral Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is  
3           amended—

4                   (A) in subparagraph (E), by striking “other  
5           than paragraph (12) of this subsection, sub-  
6           section (d)(9)” and inserting “other than sub-  
7           sections (d)(9) and (e)(10)”; and

8                   (B) by adding at the end the following new  
9           subparagraphs:

10                   “(F) *CLARIFICATION.*—No provision of law  
11           shall be construed as limiting the right or power  
12           of the Corporation, or authorizing any court or  
13           agency to limit or delay, in any manner, the  
14           right or power of the Corporation to transfer any  
15           qualified financial contract in accordance with  
16           paragraphs (9) and (10) of this subsection or to  
17           disaffirm or repudiate any such contract in ac-  
18           cordance with subsection (e)(1) of this section.

19                   “(G) *WALKAWAY CLAUSES NOT EFFEC-*  
20           *TIVE.*—

21                   “(i) *IN GENERAL.*—Notwithstanding  
22           the provisions of subparagraphs (A) and  
23           (E), and sections 403 and 404 of the Fed-  
24           eral Deposit Insurance Corporation Im-  
25           provement Act of 1991, no walkaway clause

1           *shall be enforceable in a qualified financial*  
2           *contract of an insured depository institu-*  
3           *tion in default.*

4           “(i) *WALKAWAY CLAUSE DEFINED.—*  
5           *For purposes of this subparagraph, the term*  
6           *‘walkaway clause’ means a provision in a*  
7           *qualified financial contract that, after cal-*  
8           *culatation of a value of a party’s position or*  
9           *an amount due to or from 1 of the parties*  
10           *in accordance with its terms upon termi-*  
11           *nation, liquidation, or acceleration of the*  
12           *qualified financial contract, either does not*  
13           *create a payment obligation of a party or*  
14           *extinguishes a payment obligation of a*  
15           *party in whole or in part solely because of*  
16           *such party’s status as a nondefaulting*  
17           *party.”.*

18           (2) *TECHNICAL AND CONFORMING AMEND-*  
19           *MENT.—Section 11(e)(12)(A) of the Federal Deposit*  
20           *Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended*  
21           *by inserting “or the exercise of rights or powers by”*  
22           *after “the appointment of”.*

23           (b) *NATIONAL CREDIT UNION ADMINISTRATION*  
24           *BOARD.—*

1           (1) *IN GENERAL.*—Section 207(c)(8) of the Fed-  
 2           eral Credit Union Act (12 U.S.C. 1787(c)(8)) is  
 3           amended—

4                   (A) in subparagraph (E) (as amended by  
 5                   section 901(h)), by striking “other than para-  
 6                   graph (12) of this subsection, subsection (b)(9)”  
 7                   and inserting “other than subsections (b)(9) and  
 8                   (c)(10)”; and

9                   (B) by adding at the end the following new  
 10                  subparagraphs:

11                   “(F) *CLARIFICATION.*—No provision of law  
 12                   shall be construed as limiting the right or power  
 13                   of the Board, or authorizing any court or agency  
 14                   to limit or delay, in any manner, the right or  
 15                   power of the Board to transfer any qualified fi-  
 16                   nancial contract in accordance with paragraphs  
 17                   (9) and (10) of this subsection or to disaffirm or  
 18                   repudiate any such contract in accordance with  
 19                   subsection (c)(1) of this section.

20                   “(G) *WALKAWAY CLAUSES NOT EFFEC-*  
 21                   *TIVE.*—

22                   “(i) *IN GENERAL.*—Notwithstanding  
 23                   the provisions of subparagraphs (A) and  
 24                   (E), and sections 403 and 404 of the Fed-  
 25                   eral Deposit Insurance Corporation Im-

1            *provement Act of 1991, no walkaway clause*  
2            *shall be enforceable in a qualified financial*  
3            *contract of an insured credit union in de-*  
4            *fault.*

5            “(ii) *WALKAWAY CLAUSE DEFINED.—*  
6            *For purposes of this subparagraph, the term*  
7            *‘walkaway clause’ means a provision in a*  
8            *qualified financial contract that, after cal-*  
9            *culatation of a value of a party’s position or*  
10           *an amount due to or from 1 of the parties*  
11           *in accordance with its terms upon termi-*  
12           *nation, liquidation, or acceleration of the*  
13           *qualified financial contract, either does not*  
14           *create a payment obligation of a party or*  
15           *extinguishes a payment obligation of a*  
16           *party in whole or in part solely because of*  
17           *such party’s status as a nondefaulting*  
18           *party.”.*

19           (2) *TECHNICAL AND CONFORMING AMEND-*  
20           *MENT.—Section 207(c)(12)(A) of the Federal Credit*  
21           *Union Act (12 U.S.C. 1787(c)(12)(A)) is amended by*  
22           *inserting “or the exercise of rights or powers by” after*  
23           *“the appointment of”.*



1 **SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF**  
2 **QUALIFIED FINANCIAL CONTRACTS.**

3 *(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—*

4 *(1) TRANSFERS OF QUALIFIED FINANCIAL CON-*  
5 *TRACTS TO FINANCIAL INSTITUTIONS.—Section*  
6 *11(e)(9) of the Federal Deposit Insurance Act (12*  
7 *U.S.C. 1821(e)(9)) is amended to read as follows:*

8 *“(9) TRANSFER OF QUALIFIED FINANCIAL CON-*  
9 *TRACTS.—*

10 *“(A) IN GENERAL.—In making any transfer*  
11 *of assets or liabilities of a depository institution*  
12 *in default which includes any qualified financial*  
13 *contract, the conservator or receiver for such de-*  
14 *pository institution shall either—*

15 *“(i) transfer to one financial institu-*  
16 *tion, other than a financial institution for*  
17 *which a conservator, receiver, trustee in*  
18 *bankruptcy, or other legal custodian has*  
19 *been appointed or which is otherwise the*  
20 *subject of a bankruptcy or insolvency pro-*  
21 *ceeding—*

22 *“(I) all qualified financial con-*  
23 *tracts between any person or any affil-*  
24 *iate of such person and the depository*  
25 *institution in default;*

1           “(II) all claims of such person or  
2           any affiliate of such person against  
3           such depository institution under any  
4           such contract (other than any claim  
5           which, under the terms of any such  
6           contract, is subordinated to the claims  
7           of general unsecured creditors of such  
8           institution);

9           “(III) all claims of such depository  
10          institution against such person or  
11          any affiliate of such person under any  
12          such contract; and

13          “(IV) all property securing or any  
14          other credit enhancement for any con-  
15          tract described in subclause (I) or any  
16          claim described in subclause (II) or  
17          (III) under any such contract; or

18          “(ii) transfer none of the qualified fi-  
19          nancial contracts, claims, property or other  
20          credit enhancement referred to in clause (i)  
21          (with respect to such person and any affil-  
22          iate of such person).

23          “(B) TRANSFER TO FOREIGN BANK, FOR-  
24          EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
25          AGENCY OF A FOREIGN BANK OR FINANCIAL IN-

1            *STITUTION.—In transferring any qualified fi-*  
2            *nancial contracts and related claims and prop-*  
3            *erty under subparagraph (A)(i), the conservator*  
4            *or receiver for the depository institution shall*  
5            *not make such transfer to a foreign bank, finan-*  
6            *cial institution organized under the laws of a*  
7            *foreign country, or a branch or agency of a for-*  
8            *ign bank or financial institution unless, under*  
9            *the law applicable to such bank, financial insti-*  
10           *tution, branch or agency, to the qualified finan-*  
11           *cial contracts, and to any netting contract, any*  
12           *security agreement or arrangement or other cred-*  
13           *it enhancement related to one or more qualified*  
14           *financial contracts, the contractual rights of the*  
15           *parties to such qualified financial contracts, net-*  
16           *ting contracts, security agreements or arrange-*  
17           *ments, or other credit enhancements are enforce-*  
18           *able substantially to the same extent as per-*  
19           *mitted under this section.*

20            *“(C) TRANSFER OF CONTRACTS SUBJECT TO*  
21            *THE RULES OF A CLEARING ORGANIZATION.—In*  
22            *the event that a conservator or receiver transfers*  
23            *any qualified financial contract and related*  
24            *claims, property, and credit enhancements pur-*  
25            *suant to subparagraph (A)(i) and such contract*

1           is cleared by or subject to the rules of a clearing  
2           organization, the clearing organization shall not  
3           be required to accept the transferee as a member  
4           by virtue of the transfer.

5           “(D) DEFINITIONS.—For purposes of this  
6           paragraph, the term ‘financial institution’  
7           means a broker or dealer, a depository institu-  
8           tion, a futures commission merchant, or any  
9           other institution, as determined by the Corpora-  
10          tion by regulation to be a financial institution,  
11          and the term ‘clearing organization’ has the  
12          same meaning as in section 402 of the Federal  
13          Deposit Insurance Corporation Improvement Act  
14          of 1991.”.

15          (2) NOTICE TO QUALIFIED FINANCIAL CONTRACT  
16          COUNTERPARTIES.—Section 11(e)(10)(A) of the Fed-  
17          eral Deposit Insurance Act (12 U.S.C.  
18          1821(e)(10)(A)) is amended in the material imme-  
19          diately following clause (ii) by striking “the conser-  
20          vator” and all that follows through the period and in-  
21          serting the following: “the conservator or receiver  
22          shall notify any person who is a party to any such  
23          contract of such transfer by 5:00 p.m. (eastern time)  
24          on the business day following the date of the appoint-  
25          ment of the receiver in the case of a receivership, or

1 *the business day following such transfer in the case of*  
 2 *a conservatorship.”.*

3 (3) *RIGHTS AGAINST RECEIVER AND CONSER-*  
 4 *VATOR AND TREATMENT OF BRIDGE BANKS.—Section*  
 5 *11(e)(10) of the Federal Deposit Insurance Act (12*  
 6 *U.S.C. 1821(e)(10)) is amended—*

7 (A) *by redesignating subparagraph (B) as*  
 8 *subparagraph (D); and*

9 (B) *by inserting after subparagraph (A) the*  
 10 *following new subparagraphs:*

11 “(B) *CERTAIN RIGHTS NOT ENFORCE-*  
 12 *ABLE.—*

13 “(i) *RECEIVERSHIP.—A person who is*  
 14 *a party to a qualified financial contract*  
 15 *with an insured depository institution may*  
 16 *not exercise any right that such person has*  
 17 *to terminate, liquidate, or net such contract*  
 18 *under paragraph (8)(A) of this subsection*  
 19 *or section 403 or 404 of the Federal Deposit*  
 20 *Insurance Corporation Improvement Act of*  
 21 *1991, solely by reason of or incidental to the*  
 22 *appointment of a receiver for the depository*  
 23 *institution (or the insolvency or financial*  
 24 *condition of the depository institution for*  
 25 *which the receiver has been appointed)—*

1                   “(I) until 5:00 p.m. (eastern time)  
2                   on the business day following the date  
3                   of the appointment of the receiver; or

4                   “(II) after the person has received  
5                   notice that the contract has been trans-  
6                   ferred pursuant to paragraph (9)(A).

7                   “(ii) CONSERVATORSHIP.—A person  
8                   who is a party to a qualified financial con-  
9                   tract with an insured depository institution  
10                  may not exercise any right that such person  
11                  has to terminate, liquidate, or net such con-  
12                  tract under paragraph (8)(E) of this sub-  
13                  section or section 403 or 404 of the Federal  
14                  Deposit Insurance Corporation Improve-  
15                  ment Act of 1991, solely by reason of or in-  
16                  cidental to the appointment of a conservator  
17                  for the depository institution (or the insol-  
18                  vency or financial condition of the depository  
19                  institution for which the conservator  
20                  has been appointed).

21                  “(iii) NOTICE.—For purposes of this  
22                  paragraph, the Corporation as receiver or  
23                  conservator of an insured depository insti-  
24                  tution shall be deemed to have notified a  
25                  person who is a party to a qualified finan-

1            *cial contract with such depository institu-*  
 2            *tion if the Corporation has taken steps rea-*  
 3            *sonably calculated to provide notice to such*  
 4            *person by the time specified in subpara-*  
 5            *graph (A).*

6            “(C) *TREATMENT OF BRIDGE BANKS.—The*  
 7            *following institutions shall not be considered to*  
 8            *be a financial institution for which a conser-*  
 9            *vator, receiver, trustee in bankruptcy, or other*  
 10           *legal custodian has been appointed or which is*  
 11           *otherwise the subject of a bankruptcy or insol-*  
 12           *veny proceeding for purposes of paragraph (9):*

13                    *“(i) A bridge bank.*

14                    *“(ii) A depository institution orga-*  
 15                    *nized by the Corporation, for which a con-*  
 16                    *servator is appointed either—*

17                            *“(I) immediately upon the organi-*  
 18                            *zation of the institution; or*

19                            *“(II) at the time of a purchase*  
 20                            *and assumption transaction between*  
 21                            *the depository institution and the Cor-*  
 22                            *poration as receiver for a depository*  
 23                            *institution in default.”.*

24            *(b) INSURED CREDIT UNIONS.—*

1           (1) *TRANSFERS OF QUALIFIED FINANCIAL CON-*  
2           *TRACTS TO FINANCIAL INSTITUTIONS.*—Section  
3           207(c)(9) of the *Federal Credit Union Act (12 U.S.C.*  
4           *1787(c)(9))* is amended to read as follows:

5           “(9) *TRANSFER OF QUALIFIED FINANCIAL CON-*  
6           *TRACTS.*—

7           “(A) *IN GENERAL.*—In making any transfer  
8           of assets or liabilities of a credit union in default  
9           which includes any qualified financial contract,  
10          the conservator or liquidating agent for such  
11          credit union shall either—

12                 “(i) transfer to 1 financial institution,  
13                 other than a financial institution for which  
14                 a conservator, receiver, trustee in bank-  
15                 ruptcy, or other legal custodian has been  
16                 appointed or which is otherwise the subject  
17                 of a bankruptcy or insolvency proceeding—

18                         “(I) all qualified financial con-  
19                         tracts between any person or any affil-  
20                         iate of such person and the credit  
21                         union in default;

22                         “(II) all claims of such person or  
23                         any affiliate of such person against  
24                         such credit union under any such con-  
25                         tract (other than any claim which,



1            *under the terms of any such contract,*  
2            *is subordinated to the claims of general*  
3            *unsecured creditors of such credit*  
4            *union);*

5            *“(III) all claims of such credit*  
6            *union against such person or any affil-*  
7            *iate of such person under any such*  
8            *contract; and*

9            *“(IV) all property securing or any*  
10           *other credit enhancement for any con-*  
11           *tract described in subclause (I) or any*  
12           *claim described in subclause (II) or*  
13           *(III) under any such contract; or*

14           *“(ii) transfer none of the qualified fi-*  
15           *nancial contracts, claims, property or other*  
16           *credit enhancement referred to in clause (i)*  
17           *(with respect to such person and any affil-*  
18           *iate of such person).*

19           *“(B) TRANSFER TO FOREIGN BANK, FOR-*  
20           *EIGN FINANCIAL INSTITUTION, OR BRANCH OR*  
21           *AGENCY OF A FOREIGN BANK OR FINANCIAL IN-*  
22           *STITUTION.—In transferring any qualified fi-*  
23           *nancial contracts and related claims and prop-*  
24           *erty under subparagraph (A)(i), the conservator*  
25           *or liquidating agent for the credit union shall*

1           *not make such transfer to a foreign bank, finan-*  
2           *cial institution organized under the laws of a*  
3           *foreign country, or a branch or agency of a for-*  
4           *foreign bank or financial institution unless, under*  
5           *the law applicable to such bank, financial insti-*  
6           *tution, branch or agency, to the qualified finan-*  
7           *cial contracts, and to any netting contract, any*  
8           *security agreement or arrangement or other cred-*  
9           *it enhancement related to 1 or more qualified fi-*  
10          *nancial contracts, the contractual rights of the*  
11          *parties to such qualified financial contracts, net-*  
12          *ting contracts, security agreements or arrange-*  
13          *ments, or other credit enhancements are enforce-*  
14          *able substantially to the same extent as per-*  
15          *mitted under this section.*

16                   “(C) *TRANSFER OF CONTRACTS SUBJECT TO*  
17                   *THE RULES OF A CLEARING ORGANIZATION.—In*  
18                   *the event that a conservator or liquidating agent*  
19                   *transfers any qualified financial contract and*  
20                   *related claims, property, and credit enhance-*  
21                   *ments pursuant to subparagraph (A)(i) and such*  
22                   *contract is cleared by or subject to the rules of*  
23                   *a clearing organization, the clearing organiza-*  
24                   *tion shall not be required to accept the transferee*  
25                   *as a member by virtue of the transfer.*

1           “(D) *DEFINITIONS.*—*For purposes of this*  
2           *paragraph—*

3                   “(i) *the term ‘financial institution’*  
4                   *means a broker or dealer, a depository in-*  
5                   *stitution, a futures commission merchant, a*  
6                   *credit union, or any other institution, as*  
7                   *determined by the Board by regulation to be*  
8                   *a financial institution; and*

9                   “(ii) *the term ‘clearing organization’*  
10                  *has the same meaning as in section 402 of*  
11                  *the Federal Deposit Insurance Corporation*  
12                  *Improvement Act of 1991.”.*

13               (2) *NOTICE TO QUALIFIED FINANCIAL CONTRACT*  
14               *COUNTERPARTIES.*—*Section 207(c)(10)(A) of the Fed-*  
15               *eral Credit Union Act (12 U.S.C. 1787(c)(10)(A)) is*  
16               *amended in the material immediately following clause*  
17               *(ii) by striking “the conservator” and all that follows*  
18               *through the period and inserting the following: “the*  
19               *conservator or liquidating agent shall notify any per-*  
20               *son who is a party to any such contract of such*  
21               *transfer by 5:00 p.m. (eastern time) on the business*  
22               *day following the date of the appointment of the liq-*  
23               *uidating agent in the case of a liquidation, or the*  
24               *business day following such transfer in the case of a*  
25               *conservatorship.”.*

1           (3) *RIGHTS AGAINST LIQUIDATING AGENT AND*  
2           *CONSERVATOR AND TREATMENT OF BRIDGE BANKS.—*  
3           *Section 207(c)(10) of the Federal Credit Union Act*  
4           *(12 U.S.C. 1787(c)(10)) is amended—*

5                     *(A) by redesignating subparagraph (B) as*  
6                     *subparagraph (D); and*

7                     *(B) by inserting after subparagraph (A) the*  
8                     *following new subparagraphs:*

9                     “*(B) CERTAIN RIGHTS NOT ENFORCE-*  
10                    *ABLE.—*

11                    “*(i) LIQUIDATION.—A person who is a*  
12                    *party to a qualified financial contract with*  
13                    *an insured credit union may not exercise*  
14                    *any right that such person has to terminate,*  
15                    *liquidate, or net such contract under para-*  
16                    *graph (8)(A) of this subsection or section*  
17                    *403 or 404 of the Federal Deposit Insurance*  
18                    *Corporation Improvement Act of 1991, sole-*  
19                    *ly by reason of or incidental to the appoint-*  
20                    *ment of a liquidating agent for the credit*  
21                    *union institution (or the insolvency or fi-*  
22                    *nanacial condition of the credit union for*  
23                    *which the liquidating agent has been ap-*  
24                    *pointed)—*

1                   “(I) until 5:00 p.m. (eastern time)  
2                   on the business day following the date  
3                   of the appointment of the liquidating  
4                   agent; or

5                   “(II) after the person has received  
6                   notice that the contract has been trans-  
7                   ferred pursuant to paragraph (9)(A).

8                   “(ii) CONSERVATORSHIP.—A person  
9                   who is a party to a qualified financial con-  
10                  tract with an insured credit union may not  
11                  exercise any right that such person has to  
12                  terminate, liquidate, or net such contract  
13                  under paragraph (8)(E) of this subsection  
14                  or section 403 or 404 of the Federal Deposit  
15                  Insurance Corporation Improvement Act of  
16                  1991, solely by reason of or incidental to the  
17                  appointment of a conservator for the credit  
18                  union or the insolvency or financial condi-  
19                  tion of the credit union for which the con-  
20                  servator has been appointed).

21                  “(iii) NOTICE.—For purposes of this  
22                  paragraph, the Board as conservator or liq-  
23                  uidating agent of an insured credit union  
24                  shall be deemed to have notified a person  
25                  who is a party to a qualified financial con-

1           *tract with such credit union if the Board*  
2           *has taken steps reasonably calculated to*  
3           *provide notice to such person by the time*  
4           *specified in subparagraph (A).*

5           “(C) *TREATMENT OF BRIDGE BANKS.—The*  
6           *following institutions shall not be considered to*  
7           *be a financial institution for which a conser-*  
8           *vator, receiver, trustee in bankruptcy, or other*  
9           *legal custodian has been appointed or which is*  
10           *otherwise the subject of a bankruptcy or insol-*  
11           *veny proceeding for purposes of paragraph (9):*

12                   “(i) *A bridge bank.*

13                   “(ii) *A credit union organized by the*  
14                   *Board, for which a conservator is appointed*  
15                   *either—*

16                           “(I) *immediately upon the organi-*  
17                           *zation of the credit union; or*

18                           “(II) *at the time of a purchase*  
19                           *and assumption transaction between*  
20                           *the credit union and the Board as re-*  
21                           *ceiver for a credit union in default.”.*

1 **SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR**  
2 **REPUDIATION OF QUALIFIED FINANCIAL**  
3 **CONTRACTS.**

4 (a) *FDIC-INSURED DEPOSITORY INSTITUTIONS.*—*Sec-*  
5 *tion 11(e) of the Federal Deposit Insurance Act (12 U.S.C.*  
6 *1821(e)) is amended—*

7 (1) *by redesignating paragraphs (11) through*  
8 *(15) as paragraphs (12) through (16), respectively;*

9 (2) *by inserting after paragraph (10) the fol-*  
10 *lowing new paragraph:*

11 “(11) *DISAFFIRMANCE OR REPUDIATION OF*  
12 *QUALIFIED FINANCIAL CONTRACTS.*—*In exercising the*  
13 *rights of disaffirmance or repudiation of a conser-*  
14 *vator or receiver with respect to any qualified finan-*  
15 *cial contract to which an insured depository institu-*  
16 *tion is a party, the conservator or receiver for such*  
17 *institution shall either—*

18 “(A) *disaffirm or repudiate all qualified fi-*  
19 *nancial contracts between—*

20 “(i) *any person or any affiliate of such*  
21 *person; and*

22 “(ii) *the depository institution in de-*  
23 *fault; or*

24 “(B) *disaffirm or repudiate none of the*  
25 *qualified financial contracts referred to in sub-*

1           *paragraph (A) (with respect to such person or*  
2           *any affiliate of such person).’; and*

3           *(3) by adding at the end the following new para-*  
4           *graph:*

5           “(17) *SAVINGS CLAUSE.*—*The meanings of terms*  
6           *used in this subsection are applicable for purposes of*  
7           *this subsection only, and shall not be construed or ap-*  
8           *plied so as to challenge or affect the characterization,*  
9           *definition, or treatment of any similar terms under*  
10           *any other statute, regulation, or rule, including the*  
11           *Gramm-Leach-Bliley Act, the Legal Certainty for*  
12           *Bank Products Act of 2000, the securities laws (as*  
13           *that term is defined in section 3(a)(47) of the Securi-*  
14           *ties Exchange Act of 1934), and the Commodity Ex-*  
15           *change Act.’.*

16           *(b) INSURED CREDIT UNIONS.*—*Section 207(c) of the*  
17           *Federal Credit Union Act (12 U.S.C. 1787(c)) is amend-*  
18           *ed—*

19           *(1) by redesignating paragraphs (11), (12), and*  
20           *(13) as paragraphs (12), (13), and (14), respectively;*

21           *(2) by inserting after paragraph (10) the fol-*  
22           *lowing new paragraph:*

23           “(11) *DISAFFIRMANCE OR REPUDIATION OF*  
24           *QUALIFIED FINANCIAL CONTRACTS.*—*In exercising the*  
25           *rights of disaffirmance or repudiation of a conser-*



1       vator or liquidating agent with respect to any quali-  
2       fied financial contract to which an insured credit  
3       union is a party, the conservator or liquidating agent  
4       for such credit union shall either—

5               “(A) disaffirm or repudiate all qualified fi-  
6       nancial contracts between—

7                       “(i) any person or any affiliate of such  
8       person; and

9                       “(ii) the credit union in default; or

10               “(B) disaffirm or repudiate none of the  
11       qualified financial contracts referred to in sub-  
12       paragraph (A) (with respect to such person or  
13       any affiliate of such person).”; and

14       (3) by adding at the end the following new para-  
15       graph:

16               “(15) SAVINGS CLAUSE.—The meanings of terms  
17       used in this subsection are applicable for purposes of  
18       this subsection only, and shall not be construed or ap-  
19       plied so as to challenge or affect the characterization,  
20       definition, or treatment of any similar terms under  
21       any other statute, regulation, or rule, including the  
22       Gramm-Leach-Bliley Act, the Legal Certainty for  
23       Bank Products Act of 2000, the securities laws (as  
24       that term is defined in section (a)(47) of the Securi-

1 *ties Exchange Act of 1934), and the Commodity Ex-*  
2 *change Act.”.*

3 **SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER**  
4 **AGREEMENTS.**

5 *(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Sec-*  
6 *tion 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act*  
7 *(12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as fol-*  
8 *lows:*

9 *“(vii) TREATMENT OF MASTER AGREE-*  
10 *MENT AS ONE AGREEMENT.—Any master*  
11 *agreement for any contract or agreement de-*  
12 *scribed in any preceding clause of this sub-*  
13 *paragraph (or any master agreement for*  
14 *such master agreement or agreements), to-*  
15 *gether with all supplements to such master*  
16 *agreement, shall be treated as a single*  
17 *agreement and a single qualified financial*  
18 *contract. If a master agreement contains*  
19 *provisions relating to agreements or trans-*  
20 *actions that are not themselves qualified fi-*  
21 *nancial contracts, the master agreement*  
22 *shall be deemed to be a qualified financial*  
23 *contract only with respect to those trans-*  
24 *actions that are themselves qualified finan-*  
25 *cial contracts.”.*

1           (b) *INSURED CREDIT UNIONS.—Section 207(c)(8)(D)*  
2 *of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D))*  
3 *is amended by inserting after clause (vi) (as added by sec-*  
4 *tion 901(f)) the following new clause:*

5                           “(vii) *TREATMENT OF MASTER AGREE-*  
6                           *MENT AS ONE AGREEMENT.—Any master*  
7                           *agreement for any contract or agreement de-*  
8                           *scribed in any preceding clause of this sub-*  
9                           *paragraph (or any master agreement for*  
10                           *such master agreement or agreements), to-*  
11                           *gether with all supplements to such master*  
12                           *agreement, shall be treated as a single*  
13                           *agreement and a single qualified financial*  
14                           *contract. If a master agreement contains*  
15                           *provisions relating to agreements or trans-*  
16                           *actions that are not themselves qualified fi-*  
17                           *nancial contracts, the master agreement*  
18                           *shall be deemed to be a qualified financial*  
19                           *contract only with respect to those trans-*  
20                           *actions that are themselves qualified finan-*  
21                           *cial contracts.”.*

1 **SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IM-**  
2 **PROVEMENT ACT OF 1991.**

3 (a) *DEFINITIONS.*—Section 402 of the Federal Deposit  
4 Insurance Corporation Improvement Act of 1991 (12 U.S.C.  
5 4402) is amended—

6 (1) in paragraph (2)—

7 (A) in subparagraph (A)(ii), by inserting  
8 before the semicolon “, or is exempt from such  
9 registration by order of the Securities and Ex-  
10 change Commission”; and

11 (B) in subparagraph (B), by inserting be-  
12 fore the period “, that has been granted an ex-  
13emption under section 4(c)(1) of the Commodity  
14 Exchange Act, or that is a multilateral clearing  
15 organization (as defined in section 408 of this  
16 Act)”;

17 (2) in paragraph (6)—

18 (A) by redesignating subparagraphs (B)  
19 through (D) as subparagraphs (C) through (E),  
20 respectively;

21 (B) by inserting after subparagraph (A) the  
22 following new subparagraph:

23 “(B) an uninsured national bank or an un-  
24insured State bank that is a member of the Fed-  
25 eral Reserve System, if the national bank or  
26 State member bank is not eligible to make appli-

1            *cation to become an insured bank under section*  
2            *5 of the Federal Deposit Insurance Act;”;* and

3            *(C) by amending subparagraph (C), so re-*  
4            *designated, to read as follows:*

5            *“(C) a branch or agency of a foreign bank,*  
6            *a foreign bank and any branch or agency of the*  
7            *foreign bank, or the foreign bank that established*  
8            *the branch or agency, as those terms are defined*  
9            *in section 1(b) of the International Banking Act*  
10           *of 1978;”;*

11           *(3) in paragraph (11), by inserting before the pe-*  
12           *riod “and any other clearing organization with which*  
13           *such clearing organization has a netting contract”;*

14           *(4) by amending paragraph (14)(A)(i) to read as*  
15           *follows:*

16           *“(i) means a contract or agreement be-*  
17           *tween 2 or more financial institutions,*  
18           *clearing organizations, or members that*  
19           *provides for netting present or future pay-*  
20           *ment obligations or payment entitlements*  
21           *(including liquidation or close out values*  
22           *relating to such obligations or entitlements)*  
23           *among the parties to the agreement; and”;*  
24           *and*

1           (5) by adding at the end the following new para-  
2 graph:

3           “(15) *PAYMENT*.—The term ‘payment’ means a  
4 payment of United States dollars, another currency,  
5 or a composite currency, and a noncash delivery, in-  
6 cluding a payment or delivery to liquidate an  
7 unmatured obligation.”.

8           (b) *ENFORCEABILITY OF BILATERAL NETTING CON-*  
9 *TRACTS*.—Section 403 of the Federal Deposit Insurance  
10 Corporation Improvement Act of 1991 (12 U.S.C. 4403) is  
11 amended—

12           (1) by striking subsection (a) and inserting the  
13 following:

14           “(a) *GENERAL RULE*.—Notwithstanding any other  
15 provision of State or Federal law (other than paragraphs  
16 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
17 Deposit Insurance Act, paragraphs (8)(E), (8)(F), and  
18 (10)(B) of section 207(c) of the Federal Credit Union Act,  
19 or any order authorized under section 5(b)(2) of the Securi-  
20 ties Investor Protection Act of 1970), the covered contrac-  
21 tual payment obligations and the covered contractual pay-  
22 ment entitlements between any 2 financial institutions shall  
23 be netted in accordance with, and subject to the conditions  
24 of, the terms of any applicable netting contract (except as

1 *provided in section 561(b)(2) of title 11, United States*  
2 *Code).*”; and

3           (2) *by adding at the end the following new sub-*  
4 *section:*

5           “(f) *ENFORCEABILITY OF SECURITY AGREEMENTS.—*  
6 *The provisions of any security agreement or arrangement*  
7 *or other credit enhancement related to one or more netting*  
8 *contracts between any 2 financial institutions shall be en-*  
9 *forceable in accordance with their terms (except as provided*  
10 *in section 561(b)(2) of title 11, United States Code), and*  
11 *shall not be stayed, avoided, or otherwise limited by any*  
12 *State or Federal law (other than paragraphs (8)(E), (8)(F),*  
13 *and (10)(B) of section 11(e) of the Federal Deposit Insur-*  
14 *ance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section*  
15 *207(c) of the Federal Credit Union Act, and section 5(b)(2)*  
16 *of the Securities Investor Protection Act of 1970).*”.

17           (c) *ENFORCEABILITY OF CLEARING ORGANIZATION*  
18 *NETTING CONTRACTS.—Section 404 of the Federal Deposit*  
19 *Insurance Corporation Improvement Act of 1991 (12 U.S.C.*  
20 *4404) is amended—*

21           (1) *by striking subsection (a) and inserting the*  
22 *following:*

23           “(a) *GENERAL RULE.—Notwithstanding any other*  
24 *provision of State or Federal law (other than paragraphs*  
25 *(8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal*

1 *Deposit Insurance Act, paragraphs (8)(E), (8)(F), and*  
2 *(10)(B) of section 207(c) of the Federal Credit Union Act,*  
3 *and any order authorized under section 5(b)(2) of the Secu-*  
4 *rities Investor Protection Act of 1970), the covered contrac-*  
5 *tual payment obligations and the covered contractual pay-*  
6 *ment entitlements of a member of a clearing organization*  
7 *to and from all other members of a clearing organization*  
8 *shall be netted in accordance with and subject to the condi-*  
9 *tions of any applicable netting contract (except as provided*  
10 *in section 561(b)(2) of title 11, United States Code).”;* and

11           (2) *by adding at the end the following new sub-*  
12 *section:*

13           “(h) *ENFORCEABILITY OF SECURITY AGREEMENTS.—*  
14 *The provisions of any security agreement or arrangement*  
15 *or other credit enhancement related to one or more netting*  
16 *contracts between any 2 members of a clearing organization*  
17 *shall be enforceable in accordance with their terms (except*  
18 *as provided in section 561(b)(2) of title 11, United States*  
19 *Code), and shall not be stayed, avoided, or otherwise limited*  
20 *by any State or Federal law (other than paragraphs (8)(E),*  
21 *(8)(F), and (10)(B) of section 11(e) of the Federal Deposit*  
22 *Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of*  
23 *section 207(c) of the Federal Credit Union Act, and section*  
24 *5(b)(2) of the Securities Investor Protection Act of 1970).”.*



1       (d) *ENFORCEABILITY OF CONTRACTS WITH UNIN-*  
 2 *SURED NATIONAL BANKS, UNINSURED FEDERAL*  
 3 *BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE*  
 4 *MEMBER BANKS, AND EDGE ACT CORPORATIONS.*—*The*  
 5 *Federal Deposit Insurance Corporation Improvement Act*  
 6 *of 1991 (12 U.S.C. 4401 et seq.) is amended—*

7           (1) *by redesignating section 407 as section 407A;*

8       *and*

9           (2) *by inserting after section 406 the following*  
 10 *new section:*

11   **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**  
 12                           **NATIONAL BANKS, UNINSURED FEDERAL**  
 13                           **BRANCHES AND AGENCIES, CERTAIN UNIN-**  
 14                           **SURED STATE MEMBER BANKS, AND EDGE**  
 15                           **ACT CORPORATIONS.**

16       “(a) *IN GENERAL.*—*Notwithstanding any other provi-*  
 17 *sion of law, paragraphs (8), (9), (10), and (11) of section*  
 18 *11(e) of the Federal Deposit Insurance Act shall apply to*  
 19 *an uninsured national bank or uninsured Federal branch*  
 20 *or Federal agency, a corporation chartered under section*  
 21 *25A of the Federal Reserve Act, or an uninsured State mem-*  
 22 *ber bank which operates, or operates as, a multilateral*  
 23 *clearing organization pursuant to section 409 of this Act,*  
 24 *except that for such purpose—*

1           “(1) any reference to the ‘Corporation as re-  
2           ceiver’ or ‘the receiver or the Corporation’ shall refer  
3           to the receiver appointed by the Comptroller of the  
4           Currency in the case of an uninsured national bank  
5           or uninsured Federal branch or agency, or to the re-  
6           ceiver appointed by the Board of Governors of the  
7           Federal Reserve System in the case of a corporation  
8           chartered under section 25A of the Federal Reserve  
9           Act or an uninsured State member bank;

10           “(2) any reference to the ‘Corporation’ (other  
11           than in section 11(e)(8)(D) of such Act), the ‘Corpora-  
12           tion, whether acting as such or as conservator or re-  
13           ceiver’, a ‘receiver’, or a ‘conservator’ shall refer to the  
14           receiver or conservator appointed by the Comptroller  
15           of the Currency in the case of an uninsured national  
16           bank or uninsured Federal branch or agency, or to  
17           the receiver or conservator appointed by the Board of  
18           Governors of the Federal Reserve System in the case  
19           of a corporation chartered under section 25A of the  
20           Federal Reserve Act or an uninsured State member  
21           bank; and

22           “(3) any reference to an ‘insured depository in-  
23           stitution’ or ‘depository institution’ shall refer to an  
24           uninsured national bank, an uninsured Federal  
25           branch or Federal agency, a corporation chartered

1        *under section 25A of the Federal Reserve Act, or an*  
2        *uninsured State member bank which operates, or op-*  
3        *erates as, a multilateral clearing organization pursu-*  
4        *ant to section 409 of this Act.*

5        “(b) *LIABILITY.*—*The liability of a receiver or conser-*  
6        *vator of an uninsured national bank, uninsured Federal*  
7        *branch or agency, a corporation chartered under section*  
8        *25A of the Federal Reserve Act, or an uninsured State mem-*  
9        *ber bank which operates, or operates as, a multilateral*  
10       *clearing organization pursuant to section 409 of this Act,*  
11       *shall be determined in the same manner and subject to the*  
12       *same limitations that apply to receivers and conservators*  
13       *of insured depository institutions under section 11(e) of the*  
14       *Federal Deposit Insurance Act.*

15       “(c) *REGULATORY AUTHORITY.*—

16                “(1) *IN GENERAL.*—*The Comptroller of the Cur-*  
17        *rency in the case of an uninsured national bank or*  
18        *uninsured Federal branch or agency and the Board of*  
19        *Governors of the Federal Reserve System in the case*  
20        *of a corporation chartered under section 25A of the*  
21        *Federal Reserve Act, or an uninsured State member*  
22        *bank that operates, or operates as, a multilateral*  
23        *clearing organization pursuant to section 409 of this*  
24        *Act, in consultation with the Federal Deposit Insur-*

1        *ance Corporation, may each promulgate regulations*  
 2        *solely to implement this section.*

3            “(2) *SPECIFIC REQUIREMENT.*—*In promulgating*  
 4        *regulations, limited solely to implementing para-*  
 5        *graphs (8), (9), (10), and (11) of section 11(e) of the*  
 6        *Federal Deposit Insurance Act, the Comptroller of the*  
 7        *Currency and the Board of Governors of the Federal*  
 8        *Reserve System each shall ensure that the regulations*  
 9        *generally are consistent with the regulations and poli-*  
 10       *cies of the Federal Deposit Insurance Corporation*  
 11       *adopted pursuant to the Federal Deposit Insurance*  
 12       *Act.*

13           “(d) *DEFINITIONS.*—*For purposes of this section, the*  
 14       *terms ‘Federal branch’, ‘Federal agency’, and ‘foreign bank’*  
 15       *have the same meanings as in section 1(b) of the Inter-*  
 16       *national Banking Act of 1978.’’.*

17        **SEC. 907. BANKRUPTCY LAW AMENDMENTS.**

18           (a) *DEFINITIONS OF FORWARD CONTRACT, REPUR-*  
 19       *CHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP*  
 20       *AGREEMENT, COMMODITY CONTRACT, AND SECURITIES*  
 21       *CONTRACT.*—*Title 11, United States Code, is amended—*

22                (1) *in section 101—*

23                        (A) *in paragraph (25)—*

24                                (i) *by striking “means a contract” and*  
 25                                *inserting “means—*

1           “(A) a contract”;

2                   (ii) by striking “, or any combination  
3           thereof or option thereon;” and inserting “,  
4           or any other similar agreement;”; and

5                   (iii) by adding at the end the fol-  
6           lowing:

7           “(B) any combination of agreements or  
8           transactions referred to in subparagraphs (A)  
9           and (C);

10           “(C) any option to enter into an agreement  
11           or transaction referred to in subparagraph (A)  
12           or (B);

13           “(D) a master agreement that provides for  
14           an agreement or transaction referred to in sub-  
15           paragraph (A), (B), or (C), together with all  
16           supplements to any such master agreement, with-  
17           out regard to whether such master agreement  
18           provides for an agreement or transaction that is  
19           not a forward contract under this paragraph, ex-  
20           cept that such master agreement shall be consid-  
21           ered to be a forward contract under this para-  
22           graph only with respect to each agreement or  
23           transaction under such master agreement that is  
24           referred to in subparagraph (A), (B), or (C); or

1           “(E) any security agreement or arrange-  
2           ment, or other credit enhancement related to any  
3           agreement or transaction referred to in subpara-  
4           graph (A), (B), (C), or (D), including any guar-  
5           antee or reimbursement obligation by or to a for-  
6           ward contract merchant or financial participant  
7           in connection with any agreement or transaction  
8           referred to in any such subparagraph, but not to  
9           exceed the damages in connection with any such  
10          agreement or transaction, measured in accord-  
11          ance with section 562;”;

12           (B) in paragraph (46), by striking “on any  
13          day during the period beginning 90 days before  
14          the date of” and inserting “at any time before”;

15           (C) by amending paragraph (47) to read as  
16          follows:

17           “(47) ‘repurchase agreement’ (which definition  
18          also applies to a reverse repurchase agreement)—

19           “(A) means—

20           “(i) an agreement, including related  
21          terms, which provides for the transfer of one  
22          or more certificates of deposit, mortgage re-  
23          lated securities (as defined in section 3 of  
24          the Securities Exchange Act of 1934), mort-  
25          gage loans, interests in mortgage related se-

1            *curities or mortgage loans, eligible bankers'*  
2            *acceptances, qualified foreign government*  
3            *securities (defined as a security that is a di-*  
4            *rect obligation of, or that is fully guaran-*  
5            *teed by, the central government of a member*  
6            *of the Organization for Economic Coopera-*  
7            *tion and Development), or securities that*  
8            *are direct obligations of, or that are fully*  
9            *guaranteed by, the United States or any*  
10           *agency of the United States against the*  
11           *transfer of funds by the transferee of such*  
12           *certificates of deposit, eligible bankers' ac-*  
13           *ceptances, securities, mortgage loans, or in-*  
14           *terests, with a simultaneous agreement by*  
15           *such transferee to transfer to the transferor*  
16           *thereof certificates of deposit, eligible bank-*  
17           *ers' acceptance, securities, mortgage loans,*  
18           *or interests of the kind described in this*  
19           *clause, at a date certain not later than 1*  
20           *year after such transfer or on demand,*  
21           *against the transfer of funds;*

22            *“(ii) any combination of agreements or*  
23            *transactions referred to in clauses (i) and*  
24            *(iii);*

1           “(iii) an option to enter into an agree-  
2           ment or transaction referred to in clause (i)  
3           or (ii);

4           “(iv) a master agreement that provides  
5           for an agreement or transaction referred to  
6           in clause (i), (ii), or (iii), together with all  
7           supplements to any such master agreement,  
8           without regard to whether such master  
9           agreement provides for an agreement or  
10          transaction that is not a repurchase agree-  
11          ment under this paragraph, except that  
12          such master agreement shall be considered  
13          to be a repurchase agreement under this  
14          paragraph only with respect to each agree-  
15          ment or transaction under the master agree-  
16          ment that is referred to in clause (i), (ii),  
17          or (iii); or

18          “(v) any security agreement or ar-  
19          rangement or other credit enhancement re-  
20          lated to any agreement or transaction re-  
21          ferred to in clause (i), (ii), (iii), or (iv), in-  
22          cluding any guarantee or reimbursement  
23          obligation by or to a repo participant or fi-  
24          nancial participant in connection with any  
25          agreement or transaction referred to in any



1           *such clause, but not to exceed the damages*  
2           *in connection with any such agreement or*  
3           *transaction, measured in accordance with*  
4           *section 562 of this title; and*

5           *“(B) does not include a repurchase obliga-*  
6           *tion under a participation in a commercial*  
7           *mortgage loan;”;*

8           *(D) in paragraph (48), by inserting “, or*  
9           *exempt from such registration under such section*  
10          *pursuant to an order of the Securities and Ex-*  
11          *change Commission,” after “1934”; and*

12          *(E) by amending paragraph (53B) to read*  
13          *as follows:*

14          *“(53B) ‘swap agreement’—*

15                 *“(A) means—*

16                         *“(i) any agreement, including the*  
17                         *terms and conditions incorporated by ref-*  
18                         *erence in such agreement, which is—*

19                                 *“(I) an interest rate swap, option,*  
20                                 *future, or forward agreement, includ-*  
21                                 *ing a rate floor, rate cap, rate collar,*  
22                                 *cross-currency rate swap, and basis*  
23                                 *swap;*

24                                 *“(II) a spot, same day-tomorrow,*  
25                                 *tomorrow-next, forward, or other for-*

1                   *eign exchange or precious metals agree-*  
2                   *ment;*

3                   “(III) *a currency swap, option,*  
4                   *future, or forward agreement;*

5                   “(IV) *an equity index or equity*  
6                   *swap, option, future, or forward agree-*  
7                   *ment;*

8                   “(V) *a debt index or debt swap,*  
9                   *option, future, or forward agreement;*

10                  “(VI) *a total return, credit spread*  
11                  *or credit swap, option, future, or for-*  
12                  *ward agreement;*

13                  “(VII) *a commodity index or a*  
14                  *commodity swap, option, future, or*  
15                  *forward agreement; or*

16                  “(VIII) *a weather swap, weather*  
17                  *derivative, or weather option;*

18                  “(ii) *any agreement or transaction*  
19                  *that is similar to any other agreement or*  
20                  *transaction referred to in this paragraph*  
21                  *and that—*

22                  “(I) *is of a type that has been, is*  
23                  *presently, or in the future becomes, the*  
24                  *subject of recurrent dealings in the*  
25                  *swap markets (including terms and*

1                    *conditions incorporated by reference*  
2                    *therein); and*

3                    “(II) *is a forward, swap, future,*  
4                    *or option on one or more rates, cur-*  
5                    *rencies, commodities, equity securities,*  
6                    *or other equity instruments, debt secu-*  
7                    *rities or other debt instruments, quan-*  
8                    *titative measures associated with an*  
9                    *occurrence, extent of an occurrence, or*  
10                   *contingency associated with a finan-*  
11                   *cial, commercial, or economic con-*  
12                   *sequence, or economic or financial in-*  
13                   *dices or measures of economic or finan-*  
14                   *cial risk or value;*

15                   “(iii) *any combination of agreements*  
16                   *or transactions referred to in this subpara-*  
17                   *graph;*

18                   “(iv) *any option to enter into an*  
19                   *agreement or transaction referred to in this*  
20                   *subparagraph;*

21                   “(v) *a master agreement that provides*  
22                   *for an agreement or transaction referred to*  
23                   *in clause (i), (ii), (iii), or (iv), together*  
24                   *with all supplements to any such master*  
25                   *agreement, and without regard to whether*

1           *the master agreement contains an agree-*  
2           *ment or transaction that is not a swap*  
3           *agreement under this paragraph, except*  
4           *that the master agreement shall be consid-*  
5           *ered to be a swap agreement under this*  
6           *paragraph only with respect to each agree-*  
7           *ment or transaction under the master agree-*  
8           *ment that is referred to in clause (i), (ii),*  
9           *(iii), or (iv); or*

10           *“(vi) any security agreement or ar-*  
11           *rangement or other credit enhancement re-*  
12           *lated to any agreements or transactions re-*  
13           *ferred to in clause (i) through (v), including*  
14           *any guarantee or reimbursement obligation*  
15           *by or to a swap participant or financial*  
16           *participant in connection with any agree-*  
17           *ment or transaction referred to in any such*  
18           *clause, but not to exceed the damages in*  
19           *connection with any such agreement or*  
20           *transaction, measured in accordance with*  
21           *section 562; and*

22           *“(B) is applicable for purposes of this title*  
23           *only, and shall not be construed or applied so as*  
24           *to challenge or affect the characterization, defini-*  
25           *tion, or treatment of any swap agreement under*

1           *any other statute, regulation, or rule, including*  
2           *the Securities Act of 1933, the Securities Ex-*  
3           *change Act of 1934, the Public Utility Holding*  
4           *Company Act of 1935, the Trust Indenture Act*  
5           *of 1939, the Investment Company Act of 1940,*  
6           *the Investment Advisers Act of 1940, the Securi-*  
7           *ties Investor Protection Act of 1970, the Com-*  
8           *modity Exchange Act, the Gramm-Leach-Bliley*  
9           *Act, and the Legal Certainty for Bank Products*  
10          *Act of 2000;”;*

11           *(2) in section 741(7), by striking paragraph (7)*  
12          *and inserting the following:*

13           “(7) ‘*securities contract*’—

14           “(A) *means—*

15           “(i) *a contract for the purchase, sale,*  
16           *or loan of a security, a certificate of deposit,*  
17           *a mortgage loan or any interest in a mort-*  
18           *gage loan, a group or index of securities,*  
19           *certificates of deposit, or mortgage loans or*  
20           *interests therein (including an interest*  
21           *therein or based on the value thereof), or op-*  
22           *tion on any of the foregoing, including an*  
23           *option to purchase or sell any such security,*  
24           *certificate of deposit, mortgage loan, inter-*  
25           *est, group or index, or option, and includ-*

1            *ing any repurchase or reverse repurchase*  
2            *transaction on any such security, certificate*  
3            *of deposit, mortgage loan, interest, group or*  
4            *index, or option;*

5            *“(ii) any option entered into on a na-*  
6            *tional securities exchange relating to foreign*  
7            *currencies;*

8            *“(iii) the guarantee by or to any secu-*  
9            *rities clearing agency of a settlement of*  
10           *cash, securities, certificates of deposit, mort-*  
11           *gage loans or interests therein, group or*  
12           *index of securities, or mortgage loans or in-*  
13           *terests therein (including any interest there-*  
14           *in or based on the value thereof), or option*  
15           *on any of the foregoing, including an option*  
16           *to purchase or sell any such security, cer-*  
17           *tificate of deposit, mortgage loan, interest,*  
18           *group or index, or option;*

19           *“(iv) any margin loan;*

20           *“(v) any other agreement or trans-*  
21           *action that is similar to an agreement or*  
22           *transaction referred to in this subpara-*  
23           *graph;*

1           “(vi) any combination of the agree-  
2           ments or transactions referred to in this  
3           subparagraph;

4           “(vii) any option to enter into any  
5           agreement or transaction referred to in this  
6           subparagraph;

7           “(viii) a master agreement that pro-  
8           vides for an agreement or transaction re-  
9           ferred to in clause (i), (ii), (iii), (iv), (v),  
10          (vi), or (vii), together with all supplements  
11          to any such master agreement, without re-  
12          gard to whether the master agreement pro-  
13          vides for an agreement or transaction that  
14          is not a securities contract under this sub-  
15          paragraph, except that such master agree-  
16          ment shall be considered to be a securities  
17          contract under this subparagraph only with  
18          respect to each agreement or transaction  
19          under such master agreement that is re-  
20          ferred to in clause (i), (ii), (iii), (iv), (v),  
21          (vi), or (vii); or

22          “(ix) any security agreement or ar-  
23          rangement or other credit enhancement re-  
24          lated to any agreement or transaction re-  
25          ferred to in this subparagraph, including

1           *any guarantee or reimbursement obligation*  
2           *by or to a stockbroker, securities clearing*  
3           *agency, financial institution, or financial*  
4           *participant in connection with any agree-*  
5           *ment or transaction referred to in this sub-*  
6           *paragraph, but not to exceed the damages in*  
7           *connection with any such agreement or*  
8           *transaction, measured in accordance with*  
9           *section 562; and*

10           *“(B) does not include any purchase, sale, or*  
11           *repurchase obligation under a participation in a*  
12           *commercial mortgage loan;”*; and

13           *(3) in section 761(4)—*

14           *(A) by striking “or” at the end of subpara-*  
15           *graph (D); and*

16           *(B) by adding at the end the following:*

17           *“(F) any other agreement or transaction*  
18           *that is similar to an agreement or transaction*  
19           *referred to in this paragraph;*

20           *“(G) any combination of the agreements or*  
21           *transactions referred to in this paragraph;*

22           *“(H) any option to enter into an agreement*  
23           *or transaction referred to in this paragraph;*

24           *“(I) a master agreement that provides for*  
25           *an agreement or transaction referred to in sub-*



1 paragraph (A), (B), (C), (D), (E), (F), (G), or  
2 (H), together with all supplements to such mas-  
3 ter agreement, without regard to whether the  
4 master agreement provides for an agreement or  
5 transaction that is not a commodity contract  
6 under this paragraph, except that the master  
7 agreement shall be considered to be a commodity  
8 contract under this paragraph only with respect  
9 to each agreement or transaction under the mas-  
10 ter agreement that is referred to in subparagraph  
11 (A), (B), (C), (D), (E), (F), (G), or (H); or

12 “(J) any security agreement or arrange-  
13 ment or other credit enhancement related to any  
14 agreement or transaction referred to in this  
15 paragraph, including any guarantee or reim-  
16 bursement obligation by or to a commodity  
17 broker or financial participant in connection  
18 with any agreement or transaction referred to in  
19 this paragraph, but not to exceed the damages in  
20 connection with any such agreement or trans-  
21 action, measured in accordance with section  
22 562;”.

23 (b) DEFINITIONS OF FINANCIAL INSTITUTION, FINAN-  
24 CIAL PARTICIPANT, AND FORWARD CONTRACT MER-

1 *CHANT.*—Section 101 of title 11, United States Code, is  
2 amended—

3 (1) by striking paragraph (22) and inserting the  
4 following:

5 “(22) ‘financial institution’ means—

6 “(A) a Federal reserve bank, or an entity  
7 (domestic or foreign) that is a commercial or  
8 savings bank, industrial savings bank, savings  
9 and loan association, trust company, federally-  
10 insured credit union, or receiver, liquidating  
11 agent, or conservator for such entity and, when  
12 any such Federal reserve bank, receiver, liqui-  
13 dating agent, conservator or entity is acting as  
14 agent or custodian for a customer in connection  
15 with a securities contract (as defined in section  
16 741) such customer; or

17 “(B) in connection with a securities con-  
18 tract (as defined in section 741) an investment  
19 company registered under the Investment Com-  
20 pany Act of 1940;”;

21 (2) by inserting after paragraph (22) the fol-  
22 lowing:

23 “(22A) ‘financial participant’ means—

24 “(A) an entity that, at the time it enters  
25 into a securities contract, commodity contract,

1        *swap agreement, repurchase agreement, or for-*  
2        *ward contract, or at the time of the date of the*  
3        *filing of the petition, has one or more agreements*  
4        *or transactions described in paragraph (1), (2),*  
5        *(3), (4), (5), or (6) of section 561(a) with the*  
6        *debtor or any other entity (other than an affil-*  
7        *iate) of a total gross dollar value of not less than*  
8        *\$1,000,000,000 in notional or actual principal*  
9        *amount outstanding on any day during the pre-*  
10       *vious 15-month period, or has gross mark-to-*  
11       *market positions of not less than \$100,000,000*  
12       *(aggregated across counterparties) in one or*  
13       *more such agreements or transactions with the*  
14       *debtor or any other entity (other than an affil-*  
15       *iate) on any day during the previous 15-month*  
16       *period; or*

17                *“(B) a clearing organization (as defined in*  
18                *section 402 of the Federal Deposit Insurance*  
19                *Corporation Improvement Act of 1991);”;* and  
20        *(3) by striking paragraph (26) and inserting the*  
21        *following:*

22                *“(26) ‘forward contract merchant’ means a Fed-*  
23                *eral reserve bank, or an entity the business of which*  
24                *consists in whole or in part of entering into forward*  
25                *contracts as or with merchants in a commodity (as*

1       *defined in section 761) or any similar good, article,*  
2       *service, right, or interest which is presently or in the*  
3       *future becomes the subject of dealing in the forward*  
4       *contract trade;”.*

5       *(c) DEFINITION OF MASTER NETTING AGREEMENT*  
6       *AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-*  
7       *tion 101 of title 11, United States Code, is amended by in-*  
8       *serting after paragraph (38) the following new paragraphs:*

9               “(38A) ‘master netting agreement’—

10               “(A) means an agreement providing for the  
11               *exercise of rights, including rights of netting,*  
12               *setoff, liquidation, termination, acceleration, or*  
13               *close out, under or in connection with one or*  
14               *more contracts that are described in any one or*  
15               *more of paragraphs (1) through (5) of section*  
16               *561(a), or any security agreement or arrange-*  
17               *ment or other credit enhancement related to one*  
18               *or more of the foregoing, including any guar-*  
19               *antee or reimbursement obligation related to 1 or*  
20               *more of the foregoing; and*

21               “(B) if the agreement contains provisions  
22               *relating to agreements or transactions that are*  
23               *not contracts described in paragraphs (1)*  
24               *through (5) of section 561(a), shall be deemed to*  
25               *be a master netting agreement only with respect*

1           to those agreements or transactions that are de-  
 2           scribed in any one or more of paragraphs (1)  
 3           through (5) of section 561(a);

4           “(38B) ‘master netting agreement participant’  
 5           means an entity that, at any time before the date of  
 6           the filing of the petition, is a party to an outstanding  
 7           master netting agreement with the debtor;”.

8           (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
 9           COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-  
 10          CHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS  
 11          UNDER THE AUTOMATIC-STAY.—

12           (1) IN GENERAL.—Section 362(b) of title 11,  
 13          United States Code, as amended by sections 224, 303,  
 14          311, 401, and 718, is amended—

15           (A) in paragraph (6), by inserting “,  
 16          pledged to, under the control of,” after “held by”;

17           (B) in paragraph (7), by inserting “,  
 18          pledged to, under the control of,” after “held by”;

19           (C) by striking paragraph (17) and insert-  
 20          ing the following:

21           “(17) under subsection (a), of the setoff by a  
 22          swap participant or financial participant of a mu-  
 23          tual debt and claim under or in connection with one  
 24          or more swap agreements that constitutes the setoff of  
 25          a claim against the debtor for any payment or other

1        *transfer of property due from the debtor under or in*  
2        *connection with any swap agreement against any*  
3        *payment due to the debtor from the swap participant*  
4        *or financial participant under or in connection with*  
5        *any swap agreement or against cash, securities, or*  
6        *other property held by, pledged to, under the control*  
7        *of, or due from such swap participant or financial*  
8        *participant to margin, guarantee, secure, or settle*  
9        *any swap agreement;”*; and

10                *(D) by inserting after paragraph (26) the*

11                *following:*

12                *“(27) under subsection (a), of the setoff by a*  
13        *master netting agreement participant of a mutual*  
14        *debt and claim under or in connection with one or*  
15        *more master netting agreements or any contract or*  
16        *agreement subject to such agreements that constitutes*  
17        *the setoff of a claim against the debtor for any pay-*  
18        *ment or other transfer of property due from the debtor*  
19        *under or in connection with such agreements or any*  
20        *contract or agreement subject to such agreements*  
21        *against any payment due to the debtor from such*  
22        *master netting agreement participant under or in*  
23        *connection with such agreements or any contract or*  
24        *agreement subject to such agreements or against cash,*  
25        *securities, or other property held by, pledged to, under*

1        *the control of, or due from such master netting agree-*  
 2        *ment participant to margin, guarantee, secure, or set-*  
 3        *tle such agreements or any contract or agreement sub-*  
 4        *ject to such agreements, to the extent that such partic-*  
 5        *ipant is eligible to exercise such offset rights under*  
 6        *paragraph (6), (7), or (17) for each individual con-*  
 7        *tract covered by the master netting agreement in*  
 8        *issue; and”.*

9                (2) *LIMITATION.*—*Section 362 of title 11, United*  
 10        *States Code, as amended by sections 106, 305, 311,*  
 11        *and 441, is amended by adding at the end the fol-*  
 12        *lowing:*

13                “(o) *The exercise of rights not subject to the stay aris-*  
 14        *ing under subsection (a) pursuant to paragraph (6), (7),*  
 15        *(17), or (27) of subsection (b) shall not be stayed by any*  
 16        *order of a court or administrative agency in any proceeding*  
 17        *under this title.”.*

18                (e) *LIMITATION OF AVOIDANCE POWERS UNDER MAS-*  
 19        *TER NETTING AGREEMENT.*—*Section 546 of title 11, United*  
 20        *States Code, is amended—*

21                (1) *in subsection (g) (as added by section 103 of*  
 22        *Public Law 101–311)—*

23                (A) *by striking “under a swap agreement”;*

1           (B) by striking “in connection with a swap  
2           agreement” and inserting “under or in connec-  
3           tion with any swap agreement”; and

4           (C) by inserting “or financial participant”  
5           after “swap participant”; and

6           (2) by adding at the end the following:

7           “(j) Notwithstanding sections 544, 545, 547,  
8           548(a)(1)(B), and 548(b) the trustee may not avoid a trans-  
9           fer made by or to a master netting agreement participant  
10          under or in connection with any master netting agreement  
11          or any individual contract covered thereby that is made be-  
12          fore the commencement of the case, except under section  
13          548(a)(1)(A) and except to the extent that the trustee could  
14          otherwise avoid such a transfer made under an individual  
15          contract covered by such master netting agreement.”.

16          (f) *FRAUDULENT TRANSFERS OF MASTER NETTING*  
17          *AGREEMENTS.*—Section 548(d)(2) of title 11, United States  
18          Code, is amended—

19               (1) in subparagraph (C), by striking “and” at  
20               the end;

21               (2) in subparagraph (D), by striking the period  
22               and inserting “; and”; and

23               (3) by adding at the end the following new sub-  
24               paragraph:



1           “(E) a master netting agreement participant  
2           that receives a transfer in connection with a master  
3           netting agreement or any individual contract covered  
4           thereby takes for value to the extent of such transfer,  
5           except that, with respect to a transfer under any indi-  
6           vidual contract covered thereby, to the extent that  
7           such master netting agreement participant otherwise  
8           did not take (or is otherwise not deemed to have  
9           taken) such transfer for value.”.

10          (g) *TERMINATION OR ACCELERATION OF SECURITIES*  
11 *CONTRACTS.*—Section 555 of title 11, United States Code,  
12 is amended—

13           (1) by amending the section heading to read as  
14 follows:

15          “**§555. Contractual right to liquidate, terminate, or**  
16                 **accelerate a securities contract**”;

17          and

18           (2) in the first sentence, by striking “liquida-  
19           tion” and inserting “liquidation, termination, or ac-  
20           celeration”.

21          (h) *TERMINATION OR ACCELERATION OF COMMOD-*  
22 *ITIES OR FORWARD CONTRACTS.*—Section 556 of title 11,  
23 United States Code, is amended—

24           (1) by amending the section heading to read as  
25 follows:

1 **“§556. Contractual right to liquidate, terminate, or**  
2 **accelerate a commodities contract or for-**  
3 **ward contract”;**

4 (2) *in the first sentence, by striking “liquida-*  
5 *tion” and inserting “liquidation, termination, or ac-*  
6 *celeration”;* and

7 (3) *in the second sentence, by striking “As used”*  
8 *and all that follows through “right,” and inserting*  
9 *“As used in this section, the term ‘contractual right’*  
10 *includes a right set forth in a rule or bylaw of a de-*  
11 *rivatives clearing organization (as defined in the*  
12 *Commodity Exchange Act), a multilateral clearing*  
13 *organization (as defined in the Federal Deposit In-*  
14 *surance Corporation Improvement Act of 1991), a na-*  
15 *tional securities exchange, a national securities asso-*  
16 *ciation, a securities clearing agency, a contract mar-*  
17 *ket designated under the Commodity Exchange Act, a*  
18 *derivatives transaction execution facility registered*  
19 *under the Commodity Exchange Act, or a board of*  
20 *trade (as defined in the Commodity Exchange Act) or*  
21 *in a resolution of the governing board thereof and a*  
22 *right,”.*

23 (i) *TERMINATION OR ACCELERATION OF REPURCHASE*  
24 *AGREEMENTS.—Section 559 of title 11, United States Code,*  
25 *is amended—*

1           (1) *by amending the section heading to read as*  
2     *follows:*

3     ***“§559. Contractual right to liquidate, terminate, or***  
4           ***accelerate a repurchase agreement”;***

5           (2) *in the first sentence, by striking “liquida-*  
6     *tion” and inserting “liquidation, termination, or ac-*  
7     *celeration”;* and

8           (3) *in the third sentence, by striking “As used”*  
9     *and all that follows through “right,” and inserting*  
10    *“As used in this section, the term ‘contractual right’*  
11    *includes a right set forth in a rule or bylaw of a de-*  
12    *rivatives clearing organization (as defined in the*  
13    *Commodity Exchange Act), a multilateral clearing*  
14    *organization (as defined in the Federal Deposit In-*  
15    *surance Corporation Improvement Act of 1991), a na-*  
16    *tional securities exchange, a national securities asso-*  
17    *ciation, a securities clearing agency, a contract mar-*  
18    *ket designated under the Commodity Exchange Act, a*  
19    *derivatives transaction execution facility registered*  
20    *under the Commodity Exchange Act, or a board of*  
21    *trade (as defined in the Commodity Exchange Act) or*  
22    *in a resolution of the governing board thereof and a*  
23    *right.”.*

1           (j) *LIQUIDATION, TERMINATION, OR ACCELERATION OF*  
2 *SWAP AGREEMENTS.*—Section 560 of title 11, United States  
3 *Code, is amended—*

4           (1) *by amending the section heading to read as*  
5 *follows:*

6           “**§560. Contractual right to liquidate, terminate, or**  
7           **accelerate a swap agreement**”;

8           (2) *in the first sentence, by striking “termi-*  
9 *nation of a swap agreement” and inserting “liquida-*  
10 *tion, termination, or acceleration of one or more swap*  
11 *agreements”;*

12           (3) *by striking “in connection with any swap*  
13 *agreement” and inserting “in connection with the ter-*  
14 *mination, liquidation, or acceleration of one or more*  
15 *swap agreements”; and*

16           (4) *in the second sentence, by striking “As used”*  
17 *and all that follows through “right,” and inserting*  
18 *“As used in this section, the term ‘contractual right’*  
19 *includes a right set forth in a rule or bylaw of a de-*  
20 *rivatives clearing organization (as defined in the*  
21 *Commodity Exchange Act), a multilateral clearing*  
22 *organization (as defined in the Federal Deposit In-*  
23 *surance Corporation Improvement Act of 1991), a na-*  
24 *tional securities exchange, a national securities asso-*  
25 *ciation, a securities clearing agency, a contract mar-*

1        *ket designated under the Commodity Exchange Act, a*  
 2        *derivatives transaction execution facility registered*  
 3        *under the Commodity Exchange Act, or a board of*  
 4        *trade (as defined in the Commodity Exchange Act) or*  
 5        *in a resolution of the governing board thereof and a*  
 6        *right.”.*

7        *(k) LIQUIDATION, TERMINATION, ACCELERATION, OR*  
 8        *OFFSET UNDER A MASTER NETTING AGREEMENT AND*  
 9        *ACROSS CONTRACTS.—*

10            *(1) IN GENERAL.—Title 11, United States Code,*  
 11        *is amended by inserting after section 560 the fol-*  
 12        *lowing:*

13        ***“§561. Contractual right to terminate, liquidate, ac-***  
 14                    ***celerate, or offset under a master netting***  
 15                    ***agreement and across contracts; pro-***  
 16                    ***ceedings under chapter 15***

17        *“(a) Subject to subsection (b), the exercise of any con-*  
 18        *tractual right, because of a condition of the kind specified*  
 19        *in section 365(e)(1), to cause the termination, liquidation,*  
 20        *or acceleration of or to offset or net termination values, pay-*  
 21        *ment amounts, or other transfer obligations arising under*  
 22        *or in connection with one or more (or the termination, liq-*  
 23        *uidation, or acceleration of one or more)—*

24            *“(1) securities contracts, as defined in section*  
 25        *741(7);*

1           “(2) *commodity contracts, as defined in section*  
2           761(4);

3           “(3) *forward contracts;*

4           “(4) *repurchase agreements;*

5           “(5) *swap agreements; or*

6           “(6) *master netting agreements,*

7 *shall not be stayed, avoided, or otherwise limited by oper-*  
8 *ation of any provision of this title or by any order of a*  
9 *court or administrative agency in any proceeding under*  
10 *this title.*

11          “(b)(1) *A party may exercise a contractual right de-*  
12 *scribed in subsection (a) to terminate, liquidate, or accel-*  
13 *erate only to the extent that such party could exercise such*  
14 *a right under section 555, 556, 559, or 560 for each indi-*  
15 *vidual contract covered by the master netting agreement in*  
16 *issue.*

17          “(2) *If a debtor is a commodity broker subject to sub-*  
18 *chapter IV of chapter 7—*

19               “(A) *a party may not net or offset an obligation*  
20 *to the debtor arising under, or in connection with, a*  
21 *commodity contract traded on or subject to the rules*  
22 *of a contract market designated under the Commodity*  
23 *Exchange Act or a derivatives transaction execution*  
24 *facility registered under the Commodity Exchange Act*  
25 *against any claim arising under, or in connection*

1       with, other instruments, contracts, or agreements list-  
2       ed in subsection (a) except to the extent that the party  
3       has positive net equity in the commodity accounts at  
4       the debtor, as calculated under such subchapter; and

5               “(B) another commodity broker may not net or  
6       offset an obligation to the debtor arising under, or in  
7       connection with, a commodity contract entered into  
8       or held on behalf of a customer of the debtor and trad-  
9       ed on or subject to the rules of a contract market des-  
10      ignated under the Commodity Exchange Act or a de-  
11      rivatives transaction execution facility registered  
12      under the Commodity Exchange Act against any  
13      claim arising under, or in connection with, other in-  
14      struments, contracts, or agreements listed in sub-  
15      section (a).

16             “(3) No provision of subparagraph (A) or (B) of para-  
17      graph (2) shall prohibit the offset of claims and obligations  
18      that arise under—

19               “(A) a cross-margining agreement or similar ar-  
20      rangement that has been approved by the Commodity  
21      Futures Trading Commission or submitted to the  
22      Commodity Futures Trading Commission under  
23      paragraph (1) or (2) of section 5c(c) of the Com-  
24      modity Exchange Act and has not been abrogated or

1       *rendered ineffective by the Commodity Futures Trad-*  
2       *ing Commission; or*

3           “(B) *any other netting agreement between a*  
4       *clearing organization (as defined in section 761) and*  
5       *another entity that has been approved by the Com-*  
6       *modity Futures Trading Commission.*

7       “(c) *As used in this section, the term ‘contractual*  
8       *right’ includes a right set forth in a rule or bylaw of a*  
9       *derivatives clearing organization (as defined in the Com-*  
10       *modity Exchange Act), a multilateral clearing organization*  
11       *(as defined in the Federal Deposit Insurance Corporation*  
12       *Improvement Act of 1991), a national securities exchange,*  
13       *a national securities association, a securities clearing agen-*  
14       *cy, a contract market designated under the Commodity Ex-*  
15       *change Act, a derivatives transaction execution facility reg-*  
16       *istered under the Commodity Exchange Act, or a board of*  
17       *trade (as defined in the Commodity Exchange Act) or in*  
18       *a resolution of the governing board thereof, and a right,*  
19       *whether or not evidenced in writing, arising under common*  
20       *law, under law merchant, or by reason of normal business*  
21       *practice.*

22       “(d) *Any provisions of this title relating to securities*  
23       *contracts, commodity contracts, forward contracts, repur-*  
24       *chase agreements, swap agreements, or master netting*  
25       *agreements shall apply in a case under chapter 15, so that*



1 *enforcement of contractual provisions of such contracts and*  
 2 *agreements in accordance with their terms will not be*  
 3 *stayed or otherwise limited by operation of any provision*  
 4 *of this title or by order of a court in any case under this*  
 5 *title, and to limit avoidance powers to the same extent as*  
 6 *in a proceeding under chapter 7 or 11 of this title (such*  
 7 *enforcement not to be limited based on the presence or ab-*  
 8 *sence of assets of the debtor in the United States).”.*

9           (2) *CONFORMING AMENDMENT.*—*The table of sec-*  
 10 *tions for chapter 5 of title 11, United States Code, is*  
 11 *amended by inserting after the item relating to sec-*  
 12 *tion 560 the following:*

*“561. Contractual right to terminate, liquidate, accelerate, or offset under a mas-*  
*ter netting agreement and across contracts; proceedings under*  
*chapter 15.”.*

13           (1) *COMMODITY BROKER LIQUIDATIONS.*—*Title 11,*  
 14 *United States Code, is amended by inserting after section*  
 15 *766 the following:*

16 **“§ 767. Commodity broker liquidation and forward**  
 17 **contract merchants, commodity brokers,**  
 18 **stockbrokers, financial institutions, fi-**  
 19 **nancial participants, securities clearing**  
 20 **agencies, swap participants, repo partici-**  
 21 **pants, and master netting agreement par-**  
 22 **ticipants**

23           *“Notwithstanding any other provision of this title, the*  
 24 *exercise of rights by a forward contract merchant, com-*

1 *modity broker, stockbroker, financial institution, financial*  
 2 *participant, securities clearing agency, swap participant,*  
 3 *repo participant, or master netting agreement participant*  
 4 *under this title shall not affect the priority of any unsecured*  
 5 *claim it may have after the exercise of such rights.”.*

6 (m) *STOCKBROKER LIQUIDATIONS.—Title 11, United*  
 7 *States Code, is amended by inserting after section 752 the*  
 8 *following:*

9 **“§ 753. Stockbroker liquidation and forward contract**  
 10 **merchants, commodity brokers, stock-**  
 11 **brokers, financial institutions, financial**  
 12 **participants, securities clearing agencies,**  
 13 **swap participants, repo participants, and**  
 14 **master netting agreement participants**

15 *“Notwithstanding any other provision of this title, the*  
 16 *exercise of rights by a forward contract merchant, com-*  
 17 *modity broker, stockbroker, financial institution, financial*  
 18 *participant, securities clearing agency, swap participant,*  
 19 *repo participant, or master netting agreement participant*  
 20 *under this title shall not affect the priority of any unsecured*  
 21 *claim it may have after the exercise of such rights.”.*

22 (n) *SETOFF.—Section 553 of title 11, United States*  
 23 *Code, is amended—*

24 (1) *in subsection (a)(2)(B)(ii), by inserting be-*  
 25 *fore the semicolon the following: “(except for a setoff*

1 of a kind described in section 362(b)(6), 362(b)(7),  
 2 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561”;

3 (2) in subsection (a)(3)(C), by inserting before  
 4 the period the following: “(except for a setoff of a kind  
 5 described in section 362(b)(6), 362(b)(7), 362(b)(17),  
 6 362(b)(27), 555, 556, 559, 560, or 561)”;

7 (3) in subsection (b)(1), by striking  
 8 “362(b)(14),” and inserting “362(b)(17), 362(b)(27),  
 9 555, 556, 559, 560, 561,”.

10 (o) SECURITIES CONTRACTS, COMMODITY CONTRACTS,  
 11 AND FORWARD CONTRACTS.—Title 11, United States Code,  
 12 is amended—

13 (1) in section 362(b)(6), by striking “financial  
 14 institutions,” each place such term appears and in-  
 15 serting “financial institution, financial participant,”;

16 (2) in sections 362(b)(7) and 546(f), by inserting  
 17 “or financial participant” after “repo participant”  
 18 each place such term appears;

19 (3) in section 546(e), by inserting “financial  
 20 participant,” after “financial institution,”;

21 (4) in section 548(d)(2)(B), by inserting “finan-  
 22 cial participant,” after “financial institution,”;

23 (5) in section 548(d)(2)(C), by inserting “or fi-  
 24 nancial participant” after “repo participant”;

1           (6) in section 548(d)(2)(D), by inserting “or fi-  
2           nancial participant” after “swap participant”;

3           (7) in section 555—

4           (A) by inserting “financial participant,”  
5           after “financial institution,”; and

6           (B) by striking the second sentence and in-  
7           serting the following: “As used in this section,  
8           the term ‘contractual right’ includes a right set  
9           forth in a rule or bylaw of a derivatives clearing  
10          organization (as defined in the Commodity Ex-  
11          change Act), a multilateral clearing organization  
12          (as defined in the Federal Deposit Insurance  
13          Corporation Improvement Act of 1991), a na-  
14          tional securities exchange, a national securities  
15          association, a securities clearing agency, a con-  
16          tract market designated under the Commodity  
17          Exchange Act, a derivatives transaction execu-  
18          tion facility registered under the Commodity Ex-  
19          change Act, or a board of trade (as defined in the  
20          Commodity Exchange Act), or in a resolution of  
21          the governing board thereof, and a right, whether  
22          or not in writing, arising under common law,  
23          under law merchant, or by reason of normal  
24          business practice.”;

1           (8) *in section 556, by inserting “, financial par-*  
2           *ticipant,” after “commodity broker”;*

3           (9) *in section 559, by inserting “or financial*  
4           *participant” after “repo participant” each place such*  
5           *term appears; and*

6           (10) *in section 560, by inserting “or financial*  
7           *participant” after “swap participant”.*

8           (p) *CONFORMING AMENDMENTS.—Title 11, United*  
9           *States Code, is amended—*

10           (1) *in the table of sections for chapter 5—*

11           (A) *by amending the items relating to sec-*  
12           *tions 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 con-*  
*tract or forward contract.”;*

13           *and*

14           (B) *by amending the items relating to sec-*  
15           *tions 559 and 560 to read as follows:*

*“559. Contractual right to liquidate, terminate, or accelerate a repurchase agree-*  
*ment.*

*“560. Contractual right to liquidate, terminate, or accelerate a swap agreement.”;*

16           *and*

17           (2) *in the table of sections for chapter 7—*

18           (A) *by inserting after the item relating to*  
19           *section 766 the following:*

*“767. Commodity broker liquidation and forward contract merchants, commodity*  
*brokers, stockbrokers, financial institutions, financial partici-*  
*pants, securities clearing agencies, swap participants, repo par-*  
*ticipants, and master netting agreement participants.”;*

20           *and*

1                   (B) by inserting after the item relating to  
2                   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.”.

3   **SEC. 908. RECORDKEEPING REQUIREMENTS.**

4           (a) *FDIC-INSURED DEPOSITORY INSTITUTIONS.*—Section  
5   *tion 11(e)(8) of the Federal Deposit Insurance Act (12*  
6   *U.S.C. 1821(e)(8)) is amended by adding at the end the*  
7   *following new subparagraph:*

8                   “(H) *RECORDKEEPING REQUIREMENTS.*—  
9           *The Corporation, in consultation with the appro-*  
10          *priate Federal banking agencies, may prescribe*  
11          *regulations requiring more detailed record-*  
12          *keeping by any insured depository institution*  
13          *with respect to qualified financial contracts (in-*  
14          *cluding market valuations) only if such insured*  
15          *depository institution is in a troubled condition*  
16          *(as such term is defined by the Corporation pur-*  
17          *suant to section 32).”.*

18          (b) *INSURED CREDIT UNIONS.*—Section 207(c)(8) of  
19   *the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is*  
20   *amended by adding at the end the following new subpara-*  
21   *graph:*

22                   “(H) *RECORDKEEPING REQUIREMENTS.*—  
23          *The Board, in consultation with the appropriate*

1           *Federal banking agencies, may prescribe regula-*  
 2           *tions requiring more detailed recordkeeping by*  
 3           *any insured credit union with respect to quali-*  
 4           *fied financial contracts (including market valu-*  
 5           *ations) only if such insured credit union is in a*  
 6           *troubled condition (as such term is defined by*  
 7           *the Board pursuant to section 212).”.*

8   **SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-**  
 9                                   **TION REQUIREMENT.**

10           *Section 13(e)(2) of the Federal Deposit Insurance Act*  
 11           *(12 U.S.C. 1823(e)(2)) is amended to read as follows:*

12                           “(2) *EXEMPTIONS FROM CONTEMPORANEOUS*  
 13                           *EXECUTION REQUIREMENT.—An agreement to provide*  
 14                           *for the lawful collateralization of—*

15                                   “(A) *deposits of, or other credit extension*  
 16                                   *by, a Federal, State, or local governmental enti-*  
 17                                   *ty, or of any depositor referred to in section*  
 18                                   *11(a)(2), including an agreement to provide col-*  
 19                                   *lateral in lieu of a surety bond;*

20                                   “(B) *bankruptcy estate funds pursuant to*  
 21                                   *section 345(b)(2) of title 11, United States Code;*

22                                   “(C) *extensions of credit, including any*  
 23                                   *overdraft, from a Federal reserve bank or Federal*  
 24                                   *home loan bank; or*

1           “(D) one or more qualified financial con-  
2           tracts, as defined in section 11(e)(8)(D),  
3           shall not be deemed invalid pursuant to paragraph  
4           (1)(B) solely because such agreement was not executed  
5           contemporaneously with the acquisition of the collat-  
6           eral or because of pledges, delivery, or substitution of  
7           the collateral made in accordance with such agree-  
8           ment.”.

9   **SEC. 910. DAMAGE MEASURE.**

10       (a) *IN GENERAL.*—Title 11, United States Code, is  
11       amended—

12           (1) by inserting after section 561, as added by  
13       section 907, the following:

14   **“§ 562. Timing of damage measurement in connection**  
15           **with swap agreements, securities con-**  
16           **tracts, forward contracts, commodity con-**  
17           **tracts, repurchase agreements, and mas-**  
18           **ter netting agreements**

19       “(a) If the trustee rejects a swap agreement, securities  
20       contract (as defined in section 741), forward contract, com-  
21       modity contract (as defined in section 761), repurchase  
22       agreement, or master netting agreement pursuant to section  
23       365(a), or if a forward contract merchant, stockbroker, fi-  
24       nancial institution, securities clearing agency, repo partici-  
25       pant, financial participant, master netting agreement par-



1 *ticipant, or swap participant liquidates, terminates, or ac-*  
2 *celerates such contract or agreement, damages shall be*  
3 *measured as of the earlier of—*

4           “(1) *the date of such rejection; or*

5           “(2) *the date or dates of such liquidation, termi-*  
6 *nation, or acceleration.*

7           “(b) *If there are not any commercially reasonable de-*  
8 *terminants of value as of any date referred to in paragraph*  
9 *(1) or (2) of subsection (a), damages shall be measured as*  
10 *of the earliest subsequent date or dates on which there are*  
11 *commercially reasonable determinants of value.*

12           “(c) *For the purposes of subsection (b), if damages are*  
13 *not measured as of the date or dates of rejection, liquida-*  
14 *tion, termination, or acceleration, and the forward contract*  
15 *merchant, stockbroker, financial institution, securities*  
16 *clearing agency, repo participant, financial participant,*  
17 *master netting agreement participant, or swap participant*  
18 *or the trustee objects to the timing of the measurement of*  
19 *damages—*

20           “(1) *the trustee, in the case of an objection by a*  
21 *forward contract merchant, stockbroker, financial in-*  
22 *stitution, securities clearing agency, repo participant,*  
23 *financial participant, master netting agreement par-*  
24 *ticipant, or swap participant; or*

1           “(2) the forward contract merchant, stockbroker,  
 2           financial institution, securities clearing agency, repo  
 3           participant, financial participant, master netting  
 4           agreement participant, or swap participant, in the  
 5           case of an objection by the trustee,  
 6 has the burden of proving that there were no commercially  
 7 reasonable determinants of value as of such date or dates.”;  
 8 and

9           (2) in the table of sections for chapter 5, by in-  
 10          serting after the item relating to section 561 (as  
 11          added by section 907) the following new item:

“562. Timing of damage measure in connection with swap agreements, securities  
 contracts, forward contracts, commodity contracts, repurchase  
 agreements, or master netting agreements.”.

12          (b) *CLAIMS ARISING FROM REJECTION*.—Section  
 13 502(g) of title 11, United States Code, is amended—

14           (1) by inserting “(1)” after “(g)”; and

15           (2) by adding at the end the following:

16          “(2) A claim for damages calculated in accordance  
 17 with section 562 shall be allowed under subsection (a), (b),  
 18 or (c), or disallowed under subsection (d) or (e), as if such  
 19 claim had arisen before the date of the filing of the peti-  
 20 tion.”.

21 **SEC. 911. SIPC STAY.**

22          Section 5(b)(2) of the Securities Investor Protection  
 23 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding  
 24 at the end the following new subparagraph:

1           “(C) *EXCEPTION FROM STAY.*—

2                   “(i) *Notwithstanding section 362 of*  
3 *title 11, United States Code, neither the fil-*  
4 *ing of an application under subsection*  
5 *(a)(3) nor any order or decree obtained by*  
6 *SIPC from the court shall operate as a stay*  
7 *of any contractual rights of a creditor to*  
8 *liquidate, terminate, or accelerate a securi-*  
9 *ties contract, commodity contract, forward*  
10 *contract, repurchase agreement, swap agree-*  
11 *ment, or master netting agreement, as those*  
12 *terms are defined in sections 101, 741, and*  
13 *761 of title 11, United States Code, to offset*  
14 *or net termination values, payment*  
15 *amounts, or other transfer obligations aris-*  
16 *ing under or in connection with one or*  
17 *more of such contracts or agreements, or to*  
18 *foreclose on any cash collateral pledged by*  
19 *the debtor, whether or not with respect to*  
20 *one or more of such contracts or agreements.*

21                   “(ii) *Notwithstanding clause (i), such*  
22 *application, order, or decree may operate as*  
23 *a stay of the foreclosure on, or disposition*  
24 *of, securities collateral pledged by the debt-*  
25 *or, whether or not with respect to one or*

1            *more of such contracts or agreements, secu-*  
 2            *rities sold by the debtor under a repurchase*  
 3            *agreement, or securities lent under a securi-*  
 4            *ties lending agreement.*

5            *“(iii) As used in this subparagraph,*  
 6            *the term ‘contractual right’ includes a right*  
 7            *set forth in a rule or bylaw of a national*  
 8            *securities exchange, a national securities as-*  
 9            *sociation, or a securities clearing agency, a*  
 10           *right set forth in a bylaw of a clearing or-*  
 11           *ganization or contract market or in a reso-*  
 12           *lution of the governing board thereof, and a*  
 13           *right, whether or not in writing, arising*  
 14           *under common law, under law merchant, or*  
 15           *by reason of normal business practice.”.*

16    ***TITLE X—PROTECTION OF FAM-***  
 17           ***ILY FARMERS AND FAMILY***  
 18           ***FISHERMEN***

19    ***SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.***

20            *(a) REENACTMENT.—*

21                    *(1) IN GENERAL.—Chapter 12 of title 11, United*  
 22            *States Code, as reenacted by section 149 of division*  
 23            *C of the Omnibus Consolidated and Emergency Sup-*  
 24            *plemental Appropriations Act, 1999 (Public Law*



1           *transfer, exchange, or other disposition of any*  
2           *farm asset used in the debtor's farming oper-*  
3           *ation, in which case the claim shall be treated as*  
4           *an unsecured claim that is not entitled to pri-*  
5           *ority under section 507, but the debt shall be*  
6           *treated in such manner only if the debtor re-*  
7           *ceives a discharge; or*

8                   *“(B) the holder of a particular claim agrees*  
9                   *to a different treatment of that claim;”.*

10           *(b) SPECIAL NOTICE PROVISIONS.—Section 1231(b) of*  
11           *title 11, United States Code, as so designated by section*  
12           *719, is amended by striking “a State or local governmental*  
13           *unit” and inserting “any governmental unit”.*

14           *(c) EFFECTIVE DATE; APPLICATION OF AMEND-*  
15           *MENTS.—This section and the amendments made by this*  
16           *section shall take effect on the date of the enactment of this*  
17           *Act and shall not apply with respect to cases commenced*  
18           *under title 11 of the United States Code before such date.*

19           ***SEC. 1004. DEFINITION OF FAMILY FARMER.***

20           *Section 101(18) of title 11, United States Code, is*  
21           *amended—*

22                   *(1) in subparagraph (A)—*

23                           *(A) by striking “\$1,500,000” and inserting*  
24                           *“\$3,237,000”; and*

1           (B) by striking “80” and inserting “50”;

2           and

3           (2) in subparagraph (B)(ii)—

4           (A) by striking “\$1,500,000” and inserting

5           “\$3,237,000”; and

6           (B) by striking “80” and inserting “50”.

7   **SEC. 1005. ELIMINATION OF REQUIREMENT THAT FAMILY**  
 8           **FARMER AND SPOUSE RECEIVE OVER 50 PER-**  
 9           **CENT OF INCOME FROM FARMING OPER-**  
 10          **ATION IN YEAR PRIOR TO BANKRUPTCY.**

11          Section 101(18)(A) of title 11, United States Code, is  
 12          amended by striking “for the taxable year preceding the tax-  
 13          able year” and inserting the following:

14                 “for—

15                         “(i) the taxable year preceding; or

16                         “(ii) each of the 2d and 3d taxable  
 17                         years preceding;

18                         the taxable year”.

19   **SEC. 1006. PROHIBITION OF RETROACTIVE ASSESSMENT OF**  
 20           **DISPOSABLE INCOME.**

21          (a) **CONFIRMATION OF PLAN.**—Section 1225(b)(1) of  
 22          title 11, United States Code, is amended—

23                 (1) in subparagraph (A) by striking “or” at the  
 24                 end;

1           (2) *in subparagraph (B) by striking the period*  
2 *at the end and inserting “; or”; and*

3           (3) *by adding at the end the following:*

4           “(C) *the value of the property to be distributed*  
5 *under the plan in the 3-year period, or such longer*  
6 *period as the court may approve under section*  
7 *1222(c), beginning on the date that the first distribu-*  
8 *tion is due under the plan is not less than the debtor’s*  
9 *projected disposable income for such period.”.*

10          (b) *MODIFICATION OF PLAN.—Section 1229 of title 11,*  
11 *United States Code, is amended by adding at the end the*  
12 *following:*

13          “(d) *A plan may not be modified under this section—*

14               “(1) *to increase the amount of any payment due*  
15 *before the plan as modified becomes the plan;*

16               “(2) *by anyone except the debtor, based on an in-*  
17 *crease in the debtor’s disposable income, to increase*  
18 *the amount of payments to unsecured creditors re-*  
19 *quired for a particular month so that the aggregate*  
20 *of such payments exceeds the debtor’s disposable in-*  
21 *come for such month; or*

22               “(3) *in the last year of the plan by anyone ex-*  
23 *cept the debtor, to require payments that would leave*  
24 *the debtor with insufficient funds to carry on the*  
25 *farming operation after the plan is completed.”.*



1 **SEC. 1007. FAMILY FISHERMEN.**

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

4 (1) *by inserting after paragraph (7) the fol-*  
5 *lowing:*

6 “(7A) ‘commercial fishing operation’ means—

7 “(A) *the catching or harvesting of fish,*  
8 *shrimp, lobsters, urchins, seaweed, shellfish, or*  
9 *other aquatic species or products of such species;*  
10 *or*

11 “(B) *for purposes of section 109 and chap-*  
12 *ter 12, aquaculture activities consisting of rais-*  
13 *ing for market any species or product described*  
14 *in subparagraph (A);*

15 “(7B) ‘commercial fishing vessel’ means a vessel  
16 *used by a family fisherman to carry out a commer-*  
17 *cial fishing operation;”;* and

18 (2) *by inserting after paragraph (19) the fol-*  
19 *lowing:*

20 “(19A) ‘family fisherman’ means—

21 “(A) *an individual or individual and*  
22 *spouse engaged in a commercial fishing oper-*  
23 *ation—*

24 “(i) *whose aggregate debts do not ex-*  
25 *ceed \$1,500,000 and not less than 80 per-*  
26 *cent of whose aggregate noncontingent, liq-*

1            *undated debts (excluding a debt for the prin-*  
2            *cipal residence of such individual or such*  
3            *individual and spouse, unless such debt*  
4            *arises out of a commercial fishing oper-*  
5            *ation), on the date the case is filed, arise*  
6            *out of a commercial fishing operation*  
7            *owned or operated by such individual or*  
8            *such individual and spouse; and*

9            *“(ii) who receive from such commercial*  
10           *fishing operation more than 50 percent of*  
11           *such individual’s or such individual’s and*  
12           *spouse’s gross income for the taxable year*  
13           *preceding the taxable year in which the case*  
14           *concerning such individual or such indi-*  
15           *vidual and spouse was filed; or*

16           *“(B) a corporation or partnership—*

17           *“(i) in which more than 50 percent of*  
18           *the outstanding stock or equity is held by—*

19           *“(I) 1 family that conducts the*  
20           *commercial fishing operation; or*

21           *“(II) 1 family and the relatives of*  
22           *the members of such family, and such*  
23           *family or such relatives conduct the*  
24           *commercial fishing operation; and*

1           “(ii)(I) more than 80 percent of the  
2           value of its assets consists of assets related  
3           to the commercial fishing operation;

4           “(II) its aggregate debts do not exceed  
5           \$1,500,000 and not less than 80 percent of  
6           its aggregate noncontingent, liquidated  
7           debts (excluding a debt for 1 dwelling which  
8           is owned by such corporation or partner-  
9           ship and which a shareholder or partner  
10          maintains as a principal residence, unless  
11          such debt arises out of a commercial fishing  
12          operation), on the date the case is filed,  
13          arise out of a commercial fishing operation  
14          owned or operated by such corporation or  
15          such partnership; and

16          “(III) if such corporation issues stock,  
17          such stock is not publicly traded;

18          “(19B) ‘family fisherman with regular annual  
19          income’ means a family fisherman whose annual in-  
20          come is sufficiently stable and regular to enable such  
21          family fisherman to make payments under a plan  
22          under chapter 12 of this title;”.

23          (b) WHO MAY BE A DEBTOR.—Section 109(f) of title  
24          11, United States Code, is amended by inserting “or family  
25          fisherman” after “family farmer”.

1       (c) *CHAPTER 12.*—Chapter 12 of title 11, United  
2 *States Code*, is amended—

3           (1) *in the chapter heading*, by inserting “**OR**  
4 **FISHERMAN**” after “**FAMILY FARMER**”;

5           (2) *in section 1203*, by inserting “or commercial  
6 *fishing operation*” after “farm”; and

7           (3) *in section 1206*, by striking “if the property  
8 *is farmland or farm equipment*” and inserting “if the  
9 *property is farmland, farm equipment, or property*  
10 *used to carry out a commercial fishing operation (in-*  
11 *cluding a commercial fishing vessel)*”.

12       (d) *CLERICAL AMENDMENT.*—In the table of chapters  
13 *for title 11, United States Code*, the item relating to chapter  
14 *12*, is amended to read as follows:

**“12. Adjustments of Debts of a Family Farmer or Family  
Fisherman with Regular Annual Income ..... 1201”.**

15       (e) *APPLICABILITY.*—Nothing in this section shall  
16 *change, affect, or amend the Fishery Conservation and*  
17 *Management Act of 1976 (16 U.S.C. 1801 et seq.).*

18       **TITLE XI—HEALTH CARE AND**  
19       **EMPLOYEE BENEFITS**

20       **SEC. 1101. DEFINITIONS.**

21       (a) *HEALTH CARE BUSINESS DEFINED.*—Section 101  
22 *of title 11, United States Code*, as amended by section 306,  
23 *is amended—*

1           (1) *by redesignating paragraph (27A) as para-*  
2 *graph (27B); and*

3           (2) *by inserting after paragraph (27) the fol-*  
4 *lowing:*

5           “(27A) ‘*health care business*’—

6           “(A) *means any public or private entity*  
7 *(without regard to whether that entity is orga-*  
8 *nized for profit or not for profit) that is pri-*  
9 *marily engaged in offering to the general public*  
10 *facilities and services for—*

11           “(i) *the diagnosis or treatment of in-*  
12 *jury, deformity, or disease; and*

13           “(ii) *surgical, drug treatment, psy-*  
14 *chiatric, or obstetric care; and*

15           “(B) *includes—*

16           “(i) *any—*

17           “(I) *general or specialized hos-*  
18 *pital;*

19           “(II) *ancillary ambulatory, emer-*  
20 *gency, or surgical treatment facility;*

21           “(III) *hospice;*

22           “(IV) *home health agency; and*

23           “(V) *other health care institution*  
24 *that is similar to an entity referred to*

1 *in subclause (I), (II), (III), or (IV);*

2 *and*

3 *“(ii) any long-term care facility, in-*

4 *cluding any—*

5 *“(I) skilled nursing facility;*

6 *“(II) intermediate care facility;*

7 *“(III) assisted living facility;*

8 *“(IV) home for the aged;*

9 *“(V) domiciliary care facility;*

10 *and*

11 *“(VI) health care institution that*

12 *is related to a facility referred to in*

13 *subclause (I), (II), (III), (IV), or (V),*

14 *if that institution is primarily engaged*

15 *in offering room, board, laundry, or*

16 *personal assistance with activities of*

17 *daily living and incidentals to activi-*

18 *ties of daily living;”.*

19 *(b) PATIENT AND PATIENT RECORDS DEFINED.—Sec-*

20 *tion 101 of title 11, United States Code, is amended by in-*

21 *serting after paragraph (40) the following:*

22 *“(40A) ‘patient’ means any individual who ob-*

23 *tains or receives services from a health care business;*

24 *“(40B) ‘patient records’ means any written doc-*

25 *ument relating to a patient or a record recorded in*

1        *a magnetic, optical, or other form of electronic me-*  
 2        *dium;”.*

3        *(c) RULE OF CONSTRUCTION.—The amendments made*  
 4        *by subsection (a) of this section shall not affect the interpre-*  
 5        *tation of section 109(b) of title 11, United States Code.*

6        **SEC. 1102. DISPOSAL OF PATIENT RECORDS.**

7        *(a) IN GENERAL.—Subchapter III of chapter 3 of title*  
 8        *11, United States Code, is amended by adding at the end*  
 9        *the following:*

10        **“§ 351. Disposal of patient records**

11        *“If a health care business commences a case under*  
 12        *chapter 7, 9, or 11, and the trustee does not have a sufficient*  
 13        *amount of funds to pay for the storage of patient records*  
 14        *in the manner required under applicable Federal or State*  
 15        *law, the following requirements shall apply:*

16                *“(1) The trustee shall—*

17                        *“(A) promptly publish notice, in 1 or more*  
 18                        *appropriate newspapers, that if patient records*  
 19                        *are not claimed by the patient or an insurance*  
 20                        *provider (if applicable law permits the insurance*  
 21                        *provider to make that claim) by the date that is*  
 22                        *365 days after the date of that notification, the*  
 23                        *trustee will destroy the patient records; and*

24                        *“(B) during the first 180 days of the 365-*  
 25                        *day period described in subparagraph (A),*

1           *promptly attempt to notify directly each patient*  
2           *that is the subject of the patient records and ap-*  
3           *propriate insurance carrier concerning the pa-*  
4           *tient records by mailing to the most recent*  
5           *known address of that patient, or a family mem-*  
6           *ber or contact person for that patient, and to the*  
7           *appropriate insurance carrier an appropriate*  
8           *notice regarding the claiming or disposing of pa-*  
9           *tient records.*

10           “(2) *If, after providing the notification under*  
11           *paragraph (1), patient records are not claimed dur-*  
12           *ing the 365-day period described under that para-*  
13           *graph, the trustee shall mail, by certified mail, at the*  
14           *end of such 365-day period a written request to each*  
15           *appropriate Federal agency to request permission*  
16           *from that agency to deposit the patient records with*  
17           *that agency, except that no Federal agency is required*  
18           *to accept patient records under this paragraph.*

19           “(3) *If, following the 365-day period described in*  
20           *paragraph (2) and after providing the notification*  
21           *under paragraph (1), patient records are not claimed*  
22           *by a patient or insurance provider, or request is not*  
23           *granted by a Federal agency to deposit such records*  
24           *with that agency, the trustee shall destroy those*  
25           *records by—*



1           “(A) if the records are written, shredding or  
2           burning the records; or

3           “(B) if the records are magnetic, optical, or  
4           other electronic records, by otherwise destroying  
5           those records so that those records cannot be re-  
6           trieved.”.

7           (b) *CLERICAL AMENDMENT.*—The table of sections for  
8           subchapter III of chapter 3 of title 11, United States Code,  
9           is amended by adding at the end the following:

          “351. Disposal of patient records.”.

10       **SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF**  
11                               **CLOSING A HEALTH CARE BUSINESS AND**  
12                               **OTHER ADMINISTRATIVE EXPENSES.**

13           Section 503(b) of title 11, United States Code, as  
14           amended by section 445, is amended by adding at the end  
15           the following:

16           “(8) the actual, necessary costs and expenses of  
17           closing a health care business incurred by a trustee or  
18           by a Federal agency (as defined in section 551(1) of  
19           title 5) or a department or agency of a State or polit-  
20           ical subdivision thereof, including any cost or expense  
21           incurred—

22           “(A) in disposing of patient records in ac-  
23           cordance with section 351; or

24           “(B) in connection with transferring pa-  
25           tients from the health care business that is in the

1           *process of being closed to another health care*  
 2           *business; and”.*

3   **SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PA-**  
 4                           **TIENT ADVOCATE.**

5           *(a) OMBUDSMAN TO ACT AS PATIENT ADVOCATE.—*

6                   *(1) APPOINTMENT OF OMBUDSMAN.—Title 11,*  
 7           *United States Code, as amended by section 232, is*  
 8           *amended by inserting after section 332 the following:*

9   **“§ 333. Appointment of patient care ombudsman**

10           *“(a)(1) If the debtor in a case under chapter 7, 9, or*  
 11   *11 is a health care business, the court shall order, not later*  
 12   *than 30 days after the commencement of the case, the ap-*  
 13   *pointment of an ombudsman to monitor the quality of pa-*  
 14   *tient care and to represent the interests of the patients of*  
 15   *the health care business unless the court finds that the ap-*  
 16   *pointment of such ombudsman is not necessary for the pro-*  
 17   *tection of patients under the specific facts of the case.*

18           *“(2)(A) If the court orders the appointment of an om-*  
 19   *budsman under paragraph (1), the United States trustee*  
 20   *shall appoint 1 disinterested person (other than the United*  
 21   *States trustee) to serve as such ombudsman.*

22           *“(B) If the debtor is a health care business that pro-*  
 23   *vides long-term care, then the United States trustee may*  
 24   *appoint the State Long-Term Care Ombudsman appointed*  
 25   *under the Older Americans Act of 1965 for the State in*

1 *which the case is pending to serve as the ombudsman re-*  
2 *quired by paragraph (1).*

3       “(C) *If the United States trustee does not appoint a*  
4 *State Long-Term Care Ombudsman under subparagraph*  
5 *(B), the court shall notify the State Long-Term Care Om-*  
6 *budsman appointed under the Older Americans Act of 1965*  
7 *for the State in which the case is pending, of the name and*  
8 *address of the person who is appointed under subparagraph*  
9 *(A).*

10       “(b) *An ombudsman appointed under subsection (a)*  
11 *shall—*

12               “(1) *monitor the quality of patient care provided*  
13 *to patients of the debtor, to the extent necessary under*  
14 *the circumstances, including interviewing patients*  
15 *and physicians;*

16               “(2) *not later than 60 days after the date of ap-*  
17 *pointment, and not less frequently than at 60-day in-*  
18 *tervals thereafter, report to the court after notice to*  
19 *the parties in interest, at a hearing or in writing, re-*  
20 *garding the quality of patient care provided to pa-*  
21 *tients of the debtor; and*

22               “(3) *if such ombudsman determines that the*  
23 *quality of patient care provided to patients of the*  
24 *debtor is declining significantly or is otherwise being*  
25 *materially compromised, file with the court a motion*

1       or a written report, with notice to the parties in in-  
2       terest immediately upon making such determination.

3       “(c)(1) An ombudsman appointed under subsection (a)  
4 shall maintain any information obtained by such ombuds-  
5 man under this section that relates to patients (including  
6 information relating to patient records) as confidential in-  
7 formation. Such ombudsman may not review confidential  
8 patient records unless the court approves such review in ad-  
9 vance and imposes restrictions on such ombudsman to pro-  
10 tect the confidentiality of such records.

11       “(2) An ombudsman appointed under subsection  
12 (a)(2)(B) shall have access to patient records consistent  
13 with authority of such ombudsman under the Older Ameri-  
14 cans Act of 1965 and under non-Federal laws governing  
15 the State Long-Term Care Ombudsman program.”.

16               (2) CLERICAL AMENDMENT.—The table of sec-  
17 tions for subchapter II of chapter 3 of title 11, United  
18 States Code, as amended by section 232, is amended  
19 by adding at the end the following:

“333. Appointment of ombudsman.”.

20       (b) COMPENSATION OF OMBUDSMAN.—Section  
21 330(a)(1) of title 11, United States Code, is amended—

22               (1) in the matter preceding subparagraph (A),  
23 by inserting “an ombudsman appointed under section  
24 333, or” before “a professional person”; and

1           (2) in subparagraph (A), by inserting “ombuds-  
2           man,” before “professional person”.

3   **SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO**  
4                                   **TRANSFER PATIENTS.**

5           (a) *IN GENERAL.*—Section 704(a) of title 11, United  
6 States Code, as amended by sections 102, 219, and 446, is  
7 amended by adding at the end the following:

8                           “(12) use all reasonable and best efforts to trans-  
9           fer patients from a health care business that is in the  
10          process of being closed to an appropriate health care  
11          business that—

12                                   “(A) is in the vicinity of the health care  
13          business that is closing;

14                                   “(B) provides the patient with services that  
15          are substantially similar to those provided by the  
16          health care business that is in the process of  
17          being closed; and

18                                   “(C) maintains a reasonable quality of  
19          care.”.

20          (b) *CONFORMING AMENDMENT.*—Section 1106(a)(1) of  
21 title 11, United States Code, as amended by section 446,  
22 is amended by striking “and (11)” and inserting “(11), and  
23 (12)”.

1 **SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION**2 **NOT SUBJECT TO AUTOMATIC STAY.**

3 *Section 362(b) of title 11, United States Code, is*  
 4 *amended by inserting after paragraph (27), as amended by*  
 5 *sections 224, 303, 311, 401, 718, and 907, the following:*

6 *“(28) under subsection (a), of the exclusion by*  
 7 *the Secretary of Health and Human Services of the*  
 8 *debtor from participation in the medicare program or*  
 9 *any other Federal health care program (as defined in*  
 10 *section 1128B(f) of the Social Security Act pursuant*  
 11 *to title XI or XVIII of such Act).”.*

12 **TITLE XII—TECHNICAL**  
 13 **AMENDMENTS**

14 **SEC. 1201. DEFINITIONS.**

15 *Section 101 of title 11, United States Code, as herein-*  
 16 *before amended by this Act, is amended—*

17 *(1) by striking “In this title—” and inserting*  
 18 *“In this title the following definitions shall apply:”;*

19 *(2) in each paragraph (other than paragraph*  
 20 *(54A)), by inserting “The term” after the paragraph*  
 21 *designation;*

22 *(3) in paragraph (35)(B), by striking “para-*  
 23 *graphs (21B) and (33)(A)” and inserting “para-*  
 24 *graphs (23) and (35)”;*

1           (4) *in each of paragraphs (35A), (38), and*  
 2           (54A), *by striking “; and” at the end and inserting*  
 3           *a period;*

4           (5) *in paragraph (51B)—*

5                 (A) *by inserting “who is not a family farm-*  
 6                 *er” after “debtor” the first place it appears; and*

7                 (B) *by striking “thereto having aggregate”*  
 8                 *and all that follows through the end of the para-*  
 9                 *graph and inserting a semicolon;*

10           (6) *by striking paragraph (54) and inserting the*  
 11           *following:*

12                 “(54) *The term ‘transfer’ means—*

13                         “(A) *the creation of a lien;*

14                         “(B) *the retention of title as a security in-*  
 15                         *terest;*

16                         “(C) *the foreclosure of a debtor’s equity of*  
 17                         *redemption; or*

18                         “(D) *each mode, direct or indirect, absolute*  
 19                         *or conditional, voluntary or involuntary, of dis-*  
 20                         *posing of or parting with—*

21                                 “(i) *property; or*

22                                 “(ii) *an interest in property;”;*

23           (7) *in paragraph (54A)—*

24                 (A) *by striking “the term” and inserting*

25                 *“The term”; and*

1                   (B) by indenting the left margin of para-  
2                   graph (54A) 2 ems to the right; and  
3                   (8) in each of paragraphs (1) through (35), in  
4                   each of paragraphs (36), (37), (38A), (38B) and  
5                   (39A), and in each of paragraphs (40) through (55),  
6                   by striking the semicolon at the end and inserting a  
7                   period.

8   **SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.**

9                   Section 104 of title 11, United States Code, is amended  
10 by inserting “522(f)(3),” after “522(d),” each place it ap-  
11 pears.

12 **SEC. 1203. EXTENSION OF TIME.**

13                   Section 108(c)(2) of title 11, United States Code, is  
14 amended by striking “922” and all that follows through  
15 “or”, and inserting “922, 1201, or”.

16 **SEC. 1204. TECHNICAL AMENDMENTS.**

17                   Title 11, United States Code, is amended—

18                   (1) in section 109(b)(2), by striking “subsection  
19                   (c) or (d) of”; and

20                   (2) in section 552(b)(1), by striking “product”  
21                   each place it appears and inserting “products”.



1 **SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**  
 2 **FRAUDULENTLY PREPARE BANKRUPTCY PE-**  
 3 **TITIONS.**

4 *Section 110(j)(4) of title 11, United States Code, as*  
 5 *so redesignated by section 221, is amended by striking “at-*  
 6 *torney’s” and inserting “attorneys”.*

7 **SEC. 1206. LIMITATION ON COMPENSATION OF PROFES-**  
 8 **SIONAL PERSONS.**

9 *Section 328(a) of title 11, United States Code, is*  
 10 *amended by inserting “on a fixed or percentage fee basis,”*  
 11 *after “hourly basis,”.*

12 **SEC. 1207. EFFECT OF CONVERSION.**

13 *Section 348(f)(2) of title 11, United States Code, is*  
 14 *amended by inserting “of the estate” after “property” the*  
 15 *first place it appears.*

16 **SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

17 *Section 503(b)(4) of title 11, United States Code, is*  
 18 *amended by inserting “subparagraph (A), (B), (C), (D), or*  
 19 *(E) of” before “paragraph (3)”.*

20 **SEC. 1209. EXCEPTIONS TO DISCHARGE.**

21 *Section 523 of title 11, United States Code, as amend-*  
 22 *ed by sections 215 and 314, is amended—*

23 *(1) by transferring paragraph (15), as added by*  
 24 *section 304(e) of Public Law 103–394 (108 Stat.*  
 25 *4133), so as to insert such paragraph after subsection*  
 26 *(a)(14A);*

1           (2) *in subsection (a)(9), by striking “motor vehi-*  
 2           *cle” and inserting “motor vehicle, vessel, or aircraft”;*  
 3           *and*

4           (3) *in subsection (e), by striking “a insured”*  
 5           *and inserting “an insured”.*

6   **SEC. 1210. EFFECT OF DISCHARGE.**

7           Section 524(a)(3) of title 11, United States Code, is  
 8           amended by striking “section 523” and all that follows  
 9           through “or that” and inserting “section 523, 1228(a)(1),  
 10          or 1328(a)(1), or that”.

11   **SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREAT-**  
 12                                   **MENT.**

13          Section 525(c) of title 11, United States Code, is  
 14          amended—

15               (1) *in paragraph (1), by inserting “student” be-*  
 16               *fore “grant” the second place it appears; and*

17               (2) *in paragraph (2), by striking “the program*  
 18               *operated under part B, D, or E of” and inserting*  
 19               *“any program operated under”.*

20   **SEC. 1212. PROPERTY OF THE ESTATE.**

21          Section 541(b)(4)(B)(ii) of title 11, United States  
 22          Code, is amended by inserting “365 or” before “542”.

23   **SEC. 1213. PREFERENCES.**

24          (a) *IN GENERAL.*—Section 547 of title 11, United  
 25          States Code, as amended by section 201, is amended—

1           (1) *in subsection (b), by striking “subsection (c)”*  
2           *and inserting “subsections (c) and (i)”*; and

3           (2) *by adding at the end the following:*

4           “*(i) If the trustee avoids under subsection (b) a trans-*  
5           *fer made between 90 days and 1 year before the date of*  
6           *the filing of the petition, by the debtor to an entity that*  
7           *is not an insider for the benefit of a creditor that is an*  
8           *insider, such transfer shall be considered to be avoided*  
9           *under this section only with respect to the creditor that is*  
10          *an insider.”.*

11          (b) *APPLICABILITY.—The amendments made by this*  
12          *section shall apply to any case that is pending or com-*  
13          *menced on or after the date of enactment of this Act.*

14          **SEC. 1214. POSTPETITION TRANSACTIONS.**

15          Section 549(c) of title 11, United States Code, is  
16          amended—

17                 (1) *by inserting “an interest in” after “transfer*  
18                 *of” each place it appears;*

19                 (2) *by striking “such property” and inserting*  
20                 *“such real property”*; and

21                 (3) *by striking “the interest” and inserting*  
22                 *“such interest”.*

23          **SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.**

24          Section 726(b) of title 11, United States Code, is  
25          amended by striking “1009.”.

1 **SEC. 1216. GENERAL PROVISIONS.**

2 *Section 901(a) of title 11, United States Code, is*  
3 *amended by inserting “1123(d),” after “1123(b),”.*

4 **SEC. 1217. ABANDONMENT OF RAILROAD LINE.**

5 *Section 1170(e)(1) of title 11, United States Code, is*  
6 *amended by striking “section 11347” and inserting “section*  
7 *11326(a)”.*

8 **SEC. 1218. CONTENTS OF PLAN.**

9 *Section 1172(c)(1) of title 11, United States Code, is*  
10 *amended by striking “section 11347” and inserting “section*  
11 *11326(a)”.*

12 **SEC. 1219. BANKRUPTCY CASES AND PROCEEDINGS.**

13 *Section 1334(d) of title 28, United States Code, is*  
14 *amended—*

15 *(1) by striking “made under this subsection” and*  
16 *inserting “made under subsection (c)”;* and

17 *(2) by striking “This subsection” and inserting*  
18 *“Subsection (c) and this subsection”.*

19 **SEC. 1220. KNOWING DISREGARD OF BANKRUPTCY LAW OR**  
20 **RULE.**

21 *Section 156(a) of title 18, United States Code, is*  
22 *amended—*

23 *(1) in the first undesignated paragraph—*

24 *(A) by inserting “(1) the term” before*  
25 *“bankruptcy”;* and

1           (B) by striking the period at the end and  
2           inserting “; and”; and

3           (2) in the second undesignated paragraph—

4           (A) by inserting “(2) the term” before “‘doc-  
5           ument’”; and

6           (B) by striking “this title” and inserting  
7           “title 11”.

8   **SEC. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE**  
9           **CORPORATIONS.**

10       (a) *SALE OF PROPERTY OF ESTATE.*—Section 363(d)  
11       of title 11, United States Code, is amended by striking  
12       “only” and all that follows through the end of the subsection  
13       and inserting “only—

14           “(1) in accordance with applicable nonbank-  
15           ruptcy law that governs the transfer of property by  
16           a corporation or trust that is not a moneyed, busi-  
17           ness, or commercial corporation or trust; and

18           “(2) to the extent not inconsistent with any relief  
19           granted under subsection (c), (d), (e), or (f) of section  
20           362.”.

21       (b) *CONFIRMATION OF PLAN OF REORGANIZATION.*—  
22       Section 1129(a) of title 11, United States Code, as amended  
23       by sections 213 and 321, is amended by adding at the end  
24       the following:

1           “(16) *All transfers of property of the plan shall*  
2           *be made in accordance with any applicable provisions*  
3           *of nonbankruptcy law that govern the transfer of*  
4           *property by a corporation or trust that is not a*  
5           *moneyed, business, or commercial corporation or*  
6           *trust.*”.

7           (c) *TRANSFER OF PROPERTY.*—Section 541 of title 11,  
8           *United States Code, as amended by section 225, is amended*  
9           *by adding at the end the following:*

10           “(f) *Notwithstanding any other provision of this title,*  
11           *property that is held by a debtor that is a corporation de-*  
12           *scribed in section 501(c)(3) of the Internal Revenue Code*  
13           *of 1986 and exempt from tax under section 501(a) of such*  
14           *Code may be transferred to an entity that is not such a*  
15           *corporation, but only under the same conditions as would*  
16           *apply if the debtor had not filed a case under this title.*”.

17           (d) *APPLICABILITY.*—*The amendments made by this*  
18           *section shall apply to a case pending under title 11, United*  
19           *States Code, on the date of enactment of this Act, or filed*  
20           *under that title on or after that date of enactment, except*  
21           *that the court shall not confirm a plan under chapter 11*  
22           *of title 11, United States Code, without considering whether*  
23           *this section would substantially affect the rights of a party*  
24           *in interest who first acquired rights with respect to the debt-*  
25           *or after the date of the filing of the petition. The parties*

1 *who may appear and be heard in a proceeding under this*  
2 *section include the attorney general of the State in which*  
3 *the debtor is incorporated, was formed, or does business.*

4 (e) *RULE OF CONSTRUCTION.*—*Nothing in this section*  
5 *shall be construed to require the court in which a case under*  
6 *chapter 11 of title 11, United States Code, is pending to*  
7 *remand or refer any proceeding, issue, or controversy to any*  
8 *other court or to require the approval of any other court*  
9 *for the transfer of property.*

10 ***SEC. 1222. PROTECTION OF VALID PURCHASE MONEY SECUR-***  
11 ***ITY INTERESTS.***

12 *Section 547(c)(3)(B) of title 11, United States Code,*  
13 *is amended by striking “20” and inserting “30”.*

14 ***SEC. 1223. BANKRUPTCY JUDGESHIPS.***

15 (a) *SHORT TITLE.*—*This section may be cited as the*  
16 *“Bankruptcy Judgeship Act of 2003”.*

17 (b) *TEMPORARY JUDGESHIPS.*—

18 (1) *APPOINTMENTS.*—*The following bankruptcy*  
19 *judges shall be appointed in the manner prescribed in*  
20 *section 152(a)(1) of title 28, United States Code, for*  
21 *the appointment of bankruptcy judges provided for in*  
22 *section 152(a)(2) of such title:*

23 (A) *One additional bankruptcy judge for the*  
24 *eastern district of California.*

1           (B) *Three additional bankruptcy judges for*  
2           *the central district of California.*

3           (C) *Four additional bankruptcy judges for*  
4           *the district of Delaware.*

5           (D) *Two additional bankruptcy judges for*  
6           *the southern district of Florida.*

7           (E) *One additional bankruptcy judge for*  
8           *the southern district of Georgia.*

9           (F) *Three additional bankruptcy judges for*  
10          *the district of Maryland.*

11          (G) *One additional bankruptcy judge for*  
12          *the eastern district of Michigan.*

13          (H) *One additional bankruptcy judge for*  
14          *the southern district of Mississippi.*

15          (I) *One additional bankruptcy judge for the*  
16          *district of New Jersey.*

17          (J) *One additional bankruptcy judge for the*  
18          *eastern district of New York.*

19          (K) *One additional bankruptcy judge for*  
20          *the northern district of New York.*

21          (L) *One additional bankruptcy judge for the*  
22          *southern district of New York.*

23          (M) *One additional bankruptcy judge for*  
24          *the eastern district of North Carolina.*



1           (N) *One additional bankruptcy judge for*  
2           *the eastern district of Pennsylvania.*

3           (O) *One additional bankruptcy judge for*  
4           *the middle district of Pennsylvania.*

5           (P) *One additional bankruptcy judge for the*  
6           *district of Puerto Rico.*

7           (Q) *One additional bankruptcy judge for*  
8           *the western district of Tennessee.*

9           (R) *One additional bankruptcy judge for*  
10          *the eastern district of Virginia.*

11          (S) *One additional bankruptcy judge for the*  
12          *district of South Carolina.*

13          (T) *One additional bankruptcy judge for the*  
14          *district of Nevada.*

15          (2) *VACANCIES.—*

16               (A) *DISTRICTS WITH SINGLE APPOINT-*  
17               *MENTS.—Except as provided in subparagraphs*  
18               *(B), (C), (D), and (E), the first vacancy occur-*  
19               *ring in the office of bankruptcy judge in each of*  
20               *the judicial districts set forth in paragraph*  
21               *(1)—*

22                       (i) *occurring 5 years or more after the*  
23                       *appointment date of the bankruptcy judge*  
24                       *appointed under paragraph (1) to such of-*  
25                       *fice; and*

1                   (ii) resulting from the death, retire-  
 2                   ment, resignation, or removal of a bank-  
 3                   ruptcy judge;

4                   shall not be filled.

5                   (B) CENTRAL DISTRICT OF CALIFORNIA.—

6                   The 1st, 2d, and 3d vacancies in the office of  
 7                   bankruptcy judge in the central district of Cali-  
 8                   fornia—

9                   (i) occurring 5 years or more after the  
 10                  respective 1st, 2d, and 3d appointment  
 11                  dates of the bankruptcy judges appointed  
 12                  under paragraph (1)(B); and

13                  (ii) resulting from the death, retire-  
 14                  ment, resignation, or removal of a bank-  
 15                  ruptcy judge;

16                  shall not be filled.

17                  (C) DISTRICT OF DELAWARE.—The 1st, 2d,

18                  3d, and 4th vacancies in the office of bankruptcy  
 19                  judge in the district of Delaware—

20                  (i) occurring 5 years or more after the  
 21                  respective 1st, 2d, 3d, and 4th appointment  
 22                  dates of the bankruptcy judges appointed  
 23                  under paragraph (1)(F); and

1                   (ii) resulting from the death, retire-  
 2                   ment, resignation, or removal of a bank-  
 3                   ruptcy judge;

4 shall not be filled.

5                   (D) SOUTHERN DISTRICT OF FLORIDA.—

6                   The 1st and 2d vacancies in the office of bank-  
 7                   ruptcy judge in the southern district of Flor-  
 8                   ida—

9                   (i) occurring 5 years or more after the  
 10                  respective 1st and 2d appointment dates of  
 11                  the bankruptcy judges appointed under  
 12                  paragraph (1)(D); and

13                  (ii) resulting from the death, retire-  
 14                  ment, resignation, or removal of a bank-  
 15                  ruptcy judge;

16 shall not be filled.

17                  (E) DISTRICT OF MARYLAND.—The 1st, 2d,

18                  and 3d vacancies in the office of bankruptcy  
 19                  judge in the district of Maryland—

20                  (i) occurring 5 years or more after the  
 21                  respective 1st, 2d, and 3d appointment  
 22                  dates of the bankruptcy judges appointed  
 23                  under paragraph (1)(F); and

1                   (ii) resulting from the death, retire-  
2                   ment, resignation, or removal of a bank-  
3                   ruptcy judge;

4                   shall not be filled.

5                   (c) *EXTENSIONS.*—

6                   (1) *IN GENERAL.*—The temporary office of bank-  
7                   ruptcy judges authorized for the northern district of  
8                   Alabama, the district of Delaware, the district of  
9                   Puerto Rico, and the eastern district of Tennessee  
10                  under paragraphs (1), (3), (7), and (9) of section 3(a)  
11                  of the Bankruptcy Judgeship Act of 1992 (28 U.S.C.  
12                  152 note) are extended until the first vacancy occur-  
13                  ring in the office of a bankruptcy judge in the appli-  
14                  cable district resulting from the death, retirement, res-  
15                  ignation, or removal of a bankruptcy judge and oc-  
16                  curring 5 years after the date of the enactment of this  
17                  Act.

18                  (2) *APPLICABILITY OF OTHER PROVISIONS.*—All  
19                  other provisions of section 3 of the Bankruptcy Judge-  
20                  ship Act of 1992 (28 U.S.C. 152 note) remain appli-  
21                  cable to the temporary office of bankruptcy judges re-  
22                  ferred to in this subsection.

23                  (d) *TECHNICAL AMENDMENTS.*—Section 152(a) of title  
24                  28, United States Code, is amended—

1           (1) *in paragraph (1), by striking the first sen-*  
 2           *tence and inserting the following: “Each bankruptcy*  
 3           *judge to be appointed for a judicial district, as pro-*  
 4           *vided in paragraph (2), shall be appointed by the*  
 5           *court of appeals of the United States for the circuit*  
 6           *in which such district is located.”; and*

7           (2) *in paragraph (2)—*

8                 (A) *in the item relating to the middle dis-*  
 9                 *trict of Georgia, by striking “2” and inserting*  
 10                 *“3”; and*

11                 (B) *in the collective item relating to the*  
 12                 *middle and southern districts of Georgia, by*  
 13                 *striking “Middle and Southern . . . . . 1”.*

14           (e) *EFFECTIVE DATE.—The amendments made by this*  
 15           *section shall take effect on the date of the enactment of this*  
 16           *Act.*

17           **SEC. 1224. COMPENSATING TRUSTEES.**

18           *Section 1326 of title 11, United States Code, is amend-*  
 19           *ed—*

20           (1) *in subsection (b)—*

21                 (A) *in paragraph (1), by striking “and”;*

22                 (B) *in paragraph (2), by striking the period*  
 23                 *at the end and inserting “; and”; and*

24                 (C) *by adding at the end the following:*

1           “(3) if a chapter 7 trustee has been allowed com-  
2           pensation due to the conversion or dismissal of the  
3           debtor’s prior case pursuant to section 707(b), and  
4           some portion of that compensation remains unpaid in  
5           a case converted to this chapter or in the case dis-  
6           missed under section 707(b) and refiled under this  
7           chapter, the amount of any such unpaid compensa-  
8           tion, which shall be paid monthly—

9                   “(A) by prorating such amount over the re-  
10                  maining duration of the plan; and

11                  “(B) by monthly payments not to exceed the  
12                  greater of—

13                          “(i) \$25; or

14                          “(ii) the amount payable to unsecured  
15                          nonpriority creditors, as provided by the  
16                          plan, multiplied by 5 percent, and the re-  
17                          sult divided by the number of months in the  
18                          plan.”; and

19           (2) by adding at the end the following:

20           “(d) Notwithstanding any other provision of this  
21           title—

22                   “(1) compensation referred to in subsection  
23                   (b)(3) is payable and may be collected by the trustee  
24                   under that paragraph, even if such amount has been  
25                   discharged in a prior case under this title; and

1           “(2) such compensation is payable in a case  
2           under this chapter only to the extent permitted by  
3           subsection (b)(3).”.

4   **SEC. 1225. AMENDMENT TO SECTION 362 OF TITLE 11,**  
5                           **UNITED STATES CODE.**

6           Section 362(b)(18) of title 11, United States Code, is  
7   amended to read as follows:

8           “(18) under subsection (a) of the creation or per-  
9           fection of a statutory lien for an ad valorem property  
10          tax, or a special tax or special assessment on real  
11          property whether or not ad valorem, imposed by a  
12          governmental unit, if such tax or assessment comes  
13          due after the date of the filing of the petition;”.

14   **SEC. 1226. JUDICIAL EDUCATION.**

15          The Director of the Federal Judicial Center, in con-  
16          sultation with the Director of the Executive Office for  
17          United States Trustees, shall develop materials and conduct  
18          such training as may be useful to courts in implementing  
19          this Act and the amendments made by this Act, including  
20          the requirements relating to the means test under section  
21          707(b), and reaffirmation agreements under section 524, of  
22          title 11 of the United States Code, as amended by this Act.

1 **SEC. 1227. RECLAMATION.**

2 (a) *RIGHTS AND POWERS OF THE TRUSTEE.*—Section  
3 546(c) of title 11, United States Code, is amended to read  
4 as follows:

5 “(c)(1) *Except as provided in subsection (d) of this sec-*  
6 *tion and in section 507(c), and subject to the prior rights*  
7 *of a holder of a security interest in such goods or the pro-*  
8 *ceeds thereof, the rights and powers of the trustee under sec-*  
9 *tions 544(a), 545, 547, and 549 are subject to the right of*  
10 *a seller of goods that has sold goods to the debtor, in the*  
11 *ordinary course of such seller’s business, to reclaim such*  
12 *goods if the debtor has received such goods while insolvent,*  
13 *within 45 days before the date of the commencement of a*  
14 *case under this title, but such seller may not reclaim such*  
15 *goods unless such seller demands in writing reclamation of*  
16 *such goods—*

17 “(A) *not later than 45 days after the date of re-*  
18 *ceipt of such goods by the debtor; or*

19 “(B) *not later than 20 days after the date of*  
20 *commencement of the case, if the 45-day period ex-*  
21 *pires after the commencement of the case.*

22 “(2) *If a seller of goods fails to provide notice in the*  
23 *manner described in paragraph (1), the seller still may as-*  
24 *sert the rights contained in section 503(b)(9).”.*



1       (b) *ADMINISTRATIVE EXPENSES.*—Section 503(b) of  
2 title 11, United States Code, as amended by sections 445  
3 and 1103, is amended by adding at the end the following:

4               “(9) the value of any goods received by the debtor  
5 within 20 days before the date of commencement of a  
6 case under this title in which the goods have been sold  
7 to the debtor in the ordinary course of such debtor’s  
8 business.”.

9       **SEC. 1228. PROVIDING REQUESTED TAX DOCUMENTS TO**  
10                               **THE COURT.**

11       (a) *CHAPTER 7 CASES.*—The court shall not grant a  
12 discharge in the case of an individual who is a debtor in  
13 a case under chapter 7 of title 11, United States Code, un-  
14 less requested tax documents have been provided to the  
15 court.

16       (b) *CHAPTER 11 AND CHAPTER 13 CASES.*—The court  
17 shall not confirm a plan of reorganization in the case of  
18 an individual under chapter 11 or 13 of title 11, United  
19 States Code, unless requested tax documents have been filed  
20 with the court.

21       (c) *DOCUMENT RETENTION.*—The court shall destroy  
22 documents submitted in support of a bankruptcy claim not  
23 sooner than 3 years after the date of the conclusion of a  
24 case filed by an individual under chapter 7, 11, or 13 of  
25 title 11, United States Code. In the event of a pending audit

1 *or enforcement action, the court may extend the time for*  
2 *destruction of such requested tax documents.*

3 **SEC. 1229. ENCOURAGING CREDITWORTHINESS.**

4 (a) *SENSE OF THE CONGRESS.—It is the sense of the*  
5 *Congress that—*

6 (1) *certain lenders may sometimes offer credit to*  
7 *consumers indiscriminately, without taking steps to*  
8 *ensure that consumers are capable of repaying the re-*  
9 *sulting debt, and in a manner which may encourage*  
10 *certain consumers to accumulate additional debt; and*

11 (2) *resulting consumer debt may increasingly be*  
12 *a major contributing factor to consumer insolvency.*

13 (b) *STUDY REQUIRED.—The Board of Governors of the*  
14 *Federal Reserve System (hereafter in this section referred*  
15 *to as the “Board”) shall conduct a study of—*

16 (1) *consumer credit industry practices of solici-*  
17 *ting and extending credit—*

18 (A) *indiscriminately;*

19 (B) *without taking steps to ensure that con-*  
20 *sumers are capable of repaying the resulting*  
21 *debt; and*

22 (C) *in a manner that encourages consumers*  
23 *to accumulate additional debt; and*

24 (2) *the effects of such practices on consumer debt*  
25 *and insolvency.*

1       (c) *REPORT AND REGULATIONS.*—Not later than 12  
2 months after the date of enactment of this Act, the Board—

3           (1) shall make public a report on its findings  
4 with respect to the indiscriminate solicitation and ex-  
5 tension of credit by the credit industry;

6           (2) may issue regulations that would require ad-  
7 ditional disclosures to consumers; and

8           (3) may take any other actions, consistent with  
9 its existing statutory authority, that the Board finds  
10 necessary to ensure responsible industrywide practices  
11 and to prevent resulting consumer debt and insol-  
12 vency.

13 **SEC. 1230. PROPERTY NO LONGER SUBJECT TO REDEMP-**  
14 **TION.**

15       Section 541(b) of title 11, United States Code, as  
16 amended by sections 225 and 323, is amended by adding  
17 after paragraph (7), as added by section 323, the following:

18           “(8) subject to subchapter III of chapter 5, any  
19 interest of the debtor in property where the debtor  
20 pledged or sold tangible personal property (other than  
21 securities or written or printed evidences of indebted-  
22 ness or title) as collateral for a loan or advance of  
23 money given by a person licensed under law to make  
24 such loans or advances, where—

1           “(A) the tangible personal property is in the  
2           possession of the pledgee or transferee;

3           “(B) the debtor has no obligation to repay  
4           the money, redeem the collateral, or buy back the  
5           property at a stipulated price; and

6           “(C) neither the debtor nor the trustee have  
7           exercised any right to redeem provided under the  
8           contract or State law, in a timely manner as  
9           provided under State law and section 108(b);  
10          or”.

11 **SEC. 1231. TRUSTEES.**

12          (a) *SUSPENSION AND TERMINATION OF PANEL TRUST-*  
13 *EES AND STANDING TRUSTEES.*—Section 586(d) of title 28,  
14 *United States Code, is amended—*

15           (1) *by inserting “(1)” after “(d)”;* and

16           (2) *by adding at the end the following:*

17          “(2) *A trustee whose appointment under subsection*  
18 *(a)(1) or under subsection (b) is terminated or who ceases*  
19 *to be assigned to cases filed under title 11, United States*  
20 *Code, may obtain judicial review of the final agency deci-*  
21 *sion by commencing an action in the district court of the*  
22 *United States for the district for which the panel to which*  
23 *the trustee is appointed under subsection (a)(1), or in the*  
24 *district court of the United States for the district in which*  
25 *the trustee is appointed under subsection (b) resides, after*

1 *first exhausting all available administrative remedies,*  
2 *which if the trustee so elects, shall also include an adminis-*  
3 *trative hearing on the record. Unless the trustee elects to*  
4 *have an administrative hearing on the record, the trustee*  
5 *shall be deemed to have exhausted all administrative rem-*  
6 *edies for purposes of this paragraph if the agency fails to*  
7 *make a final agency decision within 90 days after the trust-*  
8 *ee requests administrative remedies. The Attorney General*  
9 *shall prescribe procedures to implement this paragraph. The*  
10 *decision of the agency shall be affirmed by the district court*  
11 *unless it is unreasonable and without cause based on the*  
12 *administrative record before the agency.”.*

13       **(b) EXPENSES OF STANDING TRUSTEES.**—Section  
14 586(e) of title 28, United States Code, is amended by add-  
15 ing at the end the following:

16       “(3) After first exhausting all available administrative  
17 remedies, an individual appointed under subsection (b)  
18 may obtain judicial review of final agency action to deny  
19 a claim of actual, necessary expenses under this subsection  
20 by commencing an action in the district court of the United  
21 States for the district where the individual resides. The deci-  
22 sion of the agency shall be affirmed by the district court  
23 unless it is unreasonable and without cause based upon the  
24 administrative record before the agency.



1 *or decree described in such first sentence, or all the appel-*  
2 *lants and appellees (if any) acting jointly, certify that—*

3           “(i) *the judgment, order, or decree involves a*  
4 *question of law as to which there is no controlling de-*  
5 *cision of the court of appeals for the circuit or of the*  
6 *Supreme Court of the United States, or involves a*  
7 *matter of public importance;*

8           “(ii) *the judgment, order, or decree involves a*  
9 *question of law requiring resolution of conflicting de-*  
10 *isions; or*

11           “(iii) *an immediate appeal from the judgment,*  
12 *order, or decree may materially advance the progress*  
13 *of the case or proceeding in which the appeal is taken;*  
14 *and if the court of appeals authorizes the direct appeal of*  
15 *the judgment, order, or decree.*

16           “(B) *If the bankruptcy court, the district court, or the*  
17 *bankruptcy appellate panel—*

18           “(i) *on its own motion or on the request of a*  
19 *party, determines that a circumstance specified in*  
20 *clause (i), (ii), or (iii) of subparagraph (A) exists; or*

21           “(ii) *receives a request made by a majority of the*  
22 *appellants and a majority of appellees (if any) to*  
23 *make the certification described in subparagraph (A);*

1 *then the bankruptcy court, the district court, or the bank-*  
2 *ruptcy appellate panel shall make the certification described*  
3 *in subparagraph (A).*

4 “(C) *The parties may supplement the certification*  
5 *with a short statement of the basis for the certification.*

6 “(D) *An appeal under this paragraph does not stay*  
7 *any proceeding of the bankruptcy court, the district court,*  
8 *or the bankruptcy appellate panel from which the appeal*  
9 *is taken, unless the respective bankruptcy court, district*  
10 *court, or bankruptcy appellate panel, or the court of appeals*  
11 *in which the appeal is pending, issues a stay of such pro-*  
12 *ceeding pending the appeal.*

13 “(E) *Any request under subparagraph (B) for certifi-*  
14 *cation shall be made not later than 60 days after the entry*  
15 *of the judgment, order, or decree.”.*

16 (b) *PROCEDURAL RULES.—*

17 (1) *TEMPORARY APPLICATION.—A provision of*  
18 *this subsection shall apply to appeals under section*  
19 *158(d)(2) of title 28, United States Code, until a rule*  
20 *of practice and procedure relating to such provision*  
21 *and such appeals is promulgated or amended under*  
22 *chapter 131 of such title.*

23 (2) *CERTIFICATION.—A district court, a bank-*  
24 *ruptcy court, or a bankruptcy appellate panel may*  
25 *make a certification under section 158(d)(2) of title*



1 28, *United States Code*, only with respect to matters  
2 pending in the respective bankruptcy court, district  
3 court, or bankruptcy appellate panel.

4 (3) *PROCEDURE*.—Subject to any other provision  
5 of this subsection, an appeal authorized by the court  
6 of appeals under section 158(d)(2)(A) of title 28,  
7 *United States Code*, shall be taken in the manner pre-  
8 scribed in subdivisions (a)(1), (b), (c), and (d) of rule  
9 5 of the *Federal Rules of Appellate Procedure*. For  
10 purposes of subdivision (a)(1) of rule 5—

11 (A) a reference in such subdivision to a dis-  
12 trict court shall be deemed to include a reference  
13 to a bankruptcy court and a bankruptcy appel-  
14 late panel, as appropriate; and

15 (B) a reference in such subdivision to the  
16 parties requesting permission to appeal to be  
17 served with the petition shall be deemed to in-  
18 clude a reference to the parties to the judgment,  
19 order, or decree from which the appeal is taken.

20 (4) *FILING OF PETITION WITH ATTACHMENT*.—A  
21 petition requesting permission to appeal, that is based  
22 on a certification made under subparagraph (A) or  
23 (B) of section 158(d)(2) shall—

24 (A) be filed with the circuit clerk not later  
25 than 10 days after the certification is entered on

1           *the docket of the bankruptcy court, the district*  
2           *court, or the bankruptcy appellate panel from*  
3           *which the appeal is taken; and*

4                   *(B) have attached a copy of such certifi-*  
5           *cation.*

6           (5) *REFERENCES IN RULE 5.—For purposes of*  
7           *rule 5 of the Federal Rules of Appellate Procedure—*

8                   *(A) a reference in such rule to a district*  
9           *court shall be deemed to include a reference to a*  
10          *bankruptcy court and to a bankruptcy appellate*  
11          *panel; and*

12                   *(B) a reference in such rule to a district*  
13          *clerk shall be deemed to include a reference to a*  
14          *clerk of a bankruptcy court and to a clerk of a*  
15          *bankruptcy appellate panel.*

16           (6) *APPLICATION OF RULES.—The Federal Rules*  
17          *of Appellate Procedure shall apply in the courts of*  
18          *appeals with respect to appeals authorized under sec-*  
19          *tion 158(d)(2)(A), to the extent relevant and as if*  
20          *such appeals were taken from final judgments, orders,*  
21          *or decrees of the district courts or bankruptcy appel-*  
22          *late panels exercising appellate jurisdiction under*  
23          *subsection (a) or (b) of section 158 of title 28, United*  
24          *States Code.*

1 **SEC. 1234. INVOLUNTARY CASES.**

2 (a) *AMENDMENTS.*—Section 303 of title 11, United  
3 States Code, is amended—

4 (1) in subsection (b)(1), by—

5 (A) inserting “as to liability or amount”  
6 after “bona fide dispute”; and

7 (B) striking “if such claims” and inserting  
8 “if such noncontingent, undisputed claims”; and

9 (2) in subsection (h)(1), by inserting “as to li-  
10 ability or amount” before the semicolon at the end.

11 (b) *EFFECTIVE DATE; APPLICATION OF AMEND-*  
12 *MENTS.*—This section and the amendments made by this  
13 section shall take effect on the date of the enactment of this  
14 Act and shall apply with respect to cases commenced under  
15 title 11 of the United States Code before, on, and after such  
16 date.

17 **SEC. 1235. FEDERAL ELECTION LAW FINES AND PENALTIES**  
18 **AS NONDISCHARGEABLE DEBT.**

19 Section 523(a) of title 11, United States Code, as  
20 amended by section 314, is amended by inserting after  
21 paragraph (14A) the following:

22 “(14B) incurred to pay fines or penalties im-  
23 posed under Federal election law;”.

1     **TITLE XIII—CONSUMER CREDIT**  
 2                     **DISCLOSURE**

3     **SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END**  
 4                     **CREDIT PLAN.**

5             (a) *MINIMUM PAYMENT DISCLOSURES.*—Section  
 6 *127(b) of the Truth in Lending Act (15 U.S.C. 1637(b))*  
 7 *is amended by adding at the end the following:*

8                     “(11)(A) *In the case of an open end credit plan*  
 9 *that requires a minimum monthly payment of not*  
 10 *more than 4 percent of the balance on which finance*  
 11 *charges are accruing, the following statement, located*  
 12 *on the front of the billing statement, disclosed clearly*  
 13 *and conspicuously: ‘Minimum Payment Warning:*  
 14 *Making only the minimum payment will increase the*  
 15 *interest you pay and the time it takes to repay your*  
 16 *balance. For example, making only the typical 2%*  
 17 *minimum monthly payment on a balance of \$1,000*  
 18 *at an interest rate of 17% would take 88 months to*  
 19 *repay the balance in full. For an estimate of the time*  
 20 *it would take to repay your balance, making only*  
 21 *minimum payments, call this toll-free number:*  
 22 *\_\_\_\_\_.’ (the blank space to be filled in by the*  
 23 *creditor).*

24                     “(B) *In the case of an open end credit plan that*  
 25 *requires a minimum monthly payment of more than*

1       4 percent of the balance on which finance charges are  
2       accruing, the following statement, in a prominent lo-  
3       cation on the front of the billing statement, disclosed  
4       clearly and conspicuously: ‘Minimum Payment  
5       Warning: Making only the required minimum pay-  
6       ment will increase the interest you pay and the time  
7       it takes to repay your balance. Making a typical 5%  
8       minimum monthly payment on a balance of \$300 at  
9       an interest rate of 17% would take 24 months to  
10      repay the balance in full. For an estimate of the time  
11      it would take to repay your balance, making only  
12      minimum monthly payments, call this toll-free num-  
13      ber: \_\_\_\_\_.’ (the blank space to be filled in  
14      by the creditor).

15           “(C) Notwithstanding subparagraphs (A) and  
16      (B), in the case of a creditor with respect to which  
17      compliance with this title is enforced by the Federal  
18      Trade Commission, the following statement, in a  
19      prominent location on the front of the billing state-  
20      ment, disclosed clearly and conspicuously: ‘Minimum  
21      Payment Warning: Making only the required min-  
22      imum payment will increase the interest you pay and  
23      the time it takes to repay your balance. For example,  
24      making only the typical 5% minimum monthly pay-  
25      ment on a balance of \$300 at an interest rate of 17%

1       *would take 24 months to repay the balance in full.*  
2       *For an estimate of the time it would take to repay*  
3       *your balance, making only minimum monthly pay-*  
4       *ments, call the Federal Trade Commission at this toll-*  
5       *free number: \_\_\_\_\_.’ (the blank space to be*  
6       *filled in by the creditor). A creditor who is subject to*  
7       *this subparagraph shall not be subject to subpara-*  
8       *graph (A) or (B).*

9               *“(D) Notwithstanding subparagraph (A), (B), or*  
10          *(C), in complying with any such subparagraph, a*  
11          *creditor may substitute an example based on an in-*  
12          *terest rate that is greater than 17 percent. Any cred-*  
13          *itor that is subject to subparagraph (B) may elect to*  
14          *provide the disclosure required under subparagraph*  
15          *(A) in lieu of the disclosure required under subpara-*  
16          *graph (B).*

17               *“(E) The Board shall, by rule, periodically recal-*  
18          *culate, as necessary, the interest rate and repayment*  
19          *period under subparagraphs (A), (B), and (C).*

20               *“(F)(i) The toll-free telephone number disclosed*  
21          *by a creditor or the Federal Trade Commission under*  
22          *subparagraph (A), (B), or (G), as appropriate, may*  
23          *be a toll-free telephone number established and main-*  
24          *tained by the creditor or the Federal Trade Commis-*  
25          *sion, as appropriate, or may be a toll-free telephone*

1        *number established and maintained by a third party*  
2        *for use by the creditor or multiple creditors or the*  
3        *Federal Trade Commission, as appropriate. The toll-*  
4        *free telephone number may connect consumers to an*  
5        *automated device through which consumers may ob-*  
6        *tain information described in subparagraph (A), (B),*  
7        *or (C), by inputting information using a touch-tone*  
8        *telephone or similar device, if consumers whose tele-*  
9        *phones are not equipped to use such automated device*  
10       *are provided the opportunity to be connected to an in-*  
11       *dividual from whom the information described in sub-*  
12       *paragraph (A), (B), or (C), as applicable, may be ob-*  
13       *tained. A person that receives a request for informa-*  
14       *tion described in subparagraph (A), (B), or (C) from*  
15       *an obligor through the toll-free telephone number dis-*  
16       *closed under subparagraph (A), (B), or (C), as appli-*  
17       *cable, shall disclose in response to such request only*  
18       *the information set forth in the table promulgated by*  
19       *the Board under subparagraph (H)(i).*

20            *“(ii)(I) The Board shall establish and maintain*  
21        *for a period not to exceed 24 months following the ef-*  
22        *fective date of the Bankruptcy Abuse Prevention and*  
23        *Consumer Protection Act of 2004, a toll-free telephone*  
24        *number, or provide a toll-free telephone number estab-*  
25        *lished and maintained by a third party, for use by*

1       creditors that are depository institutions (as defined  
2       in section 3 of the Federal Deposit Insurance Act), in-  
3       cluding a Federal credit union or State credit union  
4       (as defined in section 101 of the Federal Credit Union  
5       Act), with total assets not exceeding \$250,000,000.  
6       The toll-free telephone number may connect consumers  
7       to an automated device through which consumers may  
8       obtain information described in subparagraph (A) or  
9       (B), as applicable, by inputting information using a  
10      touch-tone telephone or similar device, if consumers  
11      whose telephones are not equipped to use such auto-  
12      mated device are provided the opportunity to be con-  
13      nected to an individual from whom the information  
14      described in subparagraph (A) or (B), as applicable,  
15      may be obtained. A person that receives a request for  
16      information described in subparagraph (A) or (B)  
17      from an obligor through the toll-free telephone number  
18      disclosed under subparagraph (A) or (B), as applica-  
19      ble, shall disclose in response to such request only the  
20      information set forth in the table promulgated by the  
21      Board under subparagraph (H)(i). The dollar amount  
22      contained in this subclause shall be adjusted accord-  
23      ing to an indexing mechanism established by the  
24      Board.



1           “(II) Not later than 6 months prior to the expi-  
2           ration of the 24-month period referenced in subclause  
3           (I), the Board shall submit to the Committee on  
4           Banking, Housing, and Urban Affairs of the Senate  
5           and the Committee on Financial Services of the  
6           House of Representatives a report on the program de-  
7           scribed in subclause (I).

8           “(G) The Federal Trade Commission shall estab-  
9           lish and maintain a toll-free number for the purpose  
10          of providing to consumers the information required to  
11          be disclosed under subparagraph (C).

12          “(H) The Board shall—

13               “(i) establish a detailed table illustrating  
14               the approximate number of months that it would  
15               take to repay an outstanding balance if a con-  
16               sumer pays only the required minimum monthly  
17               payments and if no other advances are made,  
18               which table shall clearly present standardized in-  
19               formation to be used to disclose the information  
20               required to be disclosed under subparagraph (A),  
21               (B), or (C), as applicable;

22               “(ii) establish the table required under  
23               clause (i) by assuming—

24                       “(I) a significant number of different  
25                       annual percentage rates;

1           “(II) a significant number of different  
2           account balances;

3           “(III) a significant number of different  
4           minimum payment amounts; and

5           “(IV) that only minimum monthly  
6           payments are made and no additional ex-  
7           tensions of credit are obtained; and

8           “(iii) promulgate regulations that provide  
9           instructional guidance regarding the manner in  
10          which the information contained in the table es-  
11          tablished under clause (i) should be used in re-  
12          sponding to the request of an obligor for any in-  
13          formation required to be disclosed under sub-  
14          paragraph (A), (B), or (C).

15          “(I) The disclosure requirements of this para-  
16          graph do not apply to any charge card account, the  
17          primary purpose of which is to require payment of  
18          charges in full each month.

19          “(J) A creditor that maintains a toll-free tele-  
20          phone number for the purpose of providing customers  
21          with the actual number of months that it will take to  
22          repay the customer’s outstanding balance is not sub-  
23          ject to the requirements of subparagraph (A) or (B).

24          “(K) A creditor that maintains a toll-free tele-  
25          phone number for the purpose of providing customers

1       with the actual number of months that it will take to  
 2       repay an outstanding balance shall include the fol-  
 3       lowing statement on each billing statement: ‘Making  
 4       only the minimum payment will increase the interest  
 5       you pay and the time it takes to repay your balance.  
 6       For more information, call this toll-free number:  
 7       \_\_\_\_\_.’ (the blank space to be filled in by the  
 8       creditor).”.

9       **(b) REGULATORY IMPLEMENTATION.—**

10           (1) *IN GENERAL.—*The Board of Governors of the  
 11       Federal Reserve System (hereafter in this title re-  
 12       ferred to as the “Board”) shall promulgate regula-  
 13       tions implementing the requirements of section  
 14       127(b)(11) of the Truth in Lending Act, as added by  
 15       subsection (a) of this section.

16           (2) *EFFECTIVE DATE.—*Section 127(b)(11) of the  
 17       Truth in Lending Act, as added by subsection (a) of  
 18       this section, and the regulations issued under para-  
 19       graph (1) of this subsection shall not take effect until  
 20       the later of—

21                   (A) 18 months after the date of enactment  
 22                   of this Act; or

23                   (B) 12 months after the publication of such  
 24                   final regulations by the Board.

25       **(c) STUDY OF FINANCIAL DISCLOSURES.—**

1           (1) *IN GENERAL.*—*The Board may conduct a*  
2 *study to determine the types of information available*  
3 *to potential borrowers from consumer credit lending*  
4 *institutions regarding factors qualifying potential*  
5 *borrowers for credit, repayment requirements, and the*  
6 *consequences of default.*

7           (2) *FACTORS FOR CONSIDERATION.*—*In con-*  
8 *ducting a study under paragraph (1), the Board*  
9 *should, in consultation with the other Federal bank-*  
10 *ing agencies (as defined in section 3 of the Federal*  
11 *Deposit Insurance Act), the National Credit Union*  
12 *Administration, and the Federal Trade Commission,*  
13 *consider the extent to which—*

14           (A) *consumers, in establishing new credit*  
15 *arrangements, are aware of their existing pay-*  
16 *ment obligations, the need to consider those obli-*  
17 *gations in deciding to take on new credit, and*  
18 *how taking on excessive credit can result in fi-*  
19 *nancial difficulty;*

20           (B) *minimum periodic payment features of-*  
21 *fered in connection with open end credit plans*  
22 *impact consumer default rates;*

23           (C) *consumers make only the required min-*  
24 *imum payment under open end credit plans;*

1           (D) consumers are aware that making only  
 2           required minimum payments will increase the  
 3           cost and repayment period of an open end credit  
 4           obligation; and

5           (E) the availability of low minimum pay-  
 6           ment options is a cause of consumers experi-  
 7           encing financial difficulty.

8           (3) *REPORT TO CONGRESS.*—*Findings of the*  
 9           *Board in connection with any study conducted under*  
 10          *this subsection shall be submitted to Congress. Such*  
 11          *report shall also include recommendations for legisla-*  
 12          *tive initiatives, if any, of the Board, based on its*  
 13          *findings.*

14   **SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTEN-**  
 15                                   **SIONS SECURED BY A DWELLING.**

16          (a) *OPEN END CREDIT EXTENSIONS.*—

17                  (1) *CREDIT APPLICATIONS.*—*Section 127A(a)(13)*  
 18          *of the Truth in Lending Act (15 U.S.C. 1637a(a)(13))*  
 19          *is amended—*

20                          (A) *by striking “CONSULTATION OF TAX AD-*  
 21                          *VISER.—A statement that the” and inserting the*  
 22                          *following: “TAX DEDUCTIBILITY.—A statement*  
 23                          *that—*

24                                  “(A) *the*”; and

1           (B) by striking the period at the end and  
2           inserting the following: “; and

3           “(B) in any case in which the extension of  
4           credit exceeds the fair market value (as defined  
5           under the Internal Revenue Code of 1986) of the  
6           dwelling, the interest on the portion of the credit  
7           extension that is greater than the fair market  
8           value of the dwelling is not tax deductible for  
9           Federal income tax purposes.”.

10           (2) CREDIT ADVERTISEMENTS.—Section 147(b)  
11           of the Truth in Lending Act (15 U.S.C. 1665b(b)) is  
12           amended—

13           (A) by striking “If any” and inserting the  
14           following:

15           “(1) IN GENERAL.—If any”; and

16           (B) by adding at the end the following:

17           “(2) CREDIT IN EXCESS OF FAIR MARKET  
18           VALUE.—Each advertisement described in subsection  
19           (a) that relates to an extension of credit that may ex-  
20           ceed the fair market value of the dwelling, and which  
21           advertisement is disseminated in paper form to the  
22           public or through the Internet, as opposed to by radio  
23           or television, shall include a clear and conspicuous  
24           statement that—

1           “(A) the interest on the portion of the credit  
2           extension that is greater than the fair market  
3           value of the dwelling is not tax deductible for  
4           Federal income tax purposes; and

5           “(B) the consumer should consult a tax ad-  
6           viser for further information regarding the de-  
7           ductibility of interest and charges.”.

8           (b) *NON-OPEN END CREDIT EXTENSIONS.*—

9           (1) *CREDIT APPLICATIONS.*—Section 128 of the  
10          *Truth in Lending Act (15 U.S.C. 1638)* is amended—

11           (A) in subsection (a), by adding at the end  
12          the following:

13           “(15) In the case of a consumer credit trans-  
14          action that is secured by the principal dwelling of the  
15          consumer, in which the extension of credit may exceed  
16          the fair market value of the dwelling, a clear and con-  
17          spicuous statement that—

18           “(A) the interest on the portion of the credit  
19          extension that is greater than the fair market  
20          value of the dwelling is not tax deductible for  
21          Federal income tax purposes; and

22           “(B) the consumer should consult a tax ad-  
23          viser for further information regarding the de-  
24          ductibility of interest and charges.”; and

1                   (B) in subsection (b), by adding at the end  
2                   the following:

3                   “(3) In the case of a credit transaction described in  
4 paragraph (15) of subsection (a), disclosures required by  
5 that paragraph shall be made to the consumer at the time  
6 of application for such extension of credit.”.

7                   (2) CREDIT ADVERTISEMENTS.—Section 144 of  
8 the Truth in Lending Act (15 U.S.C. 1664) is amend-  
9 ed by adding at the end the following:

10                  “(e) Each advertisement to which this section applies  
11 that relates to a consumer credit transaction that is secured  
12 by the principal dwelling of a consumer in which the exten-  
13 sion of credit may exceed the fair market value of the dwell-  
14 ing, and which advertisement is disseminated in paper  
15 form to the public or through the Internet, as opposed to  
16 by radio or television, shall clearly and conspicuously state  
17 that—

18                  “(1) the interest on the portion of the credit ex-  
19 tension that is greater than the fair market value of  
20 the dwelling is not tax deductible for Federal income  
21 tax purposes; and

22                  “(2) the consumer should consult a tax adviser  
23 for further information regarding the deductibility of  
24 interest and charges.”.

25                  (c) REGULATORY IMPLEMENTATION.—



1           (1) *IN GENERAL.*—*The Board shall promulgate*  
 2           *regulations implementing the amendments made by*  
 3           *this section.*

4           (2) *EFFECTIVE DATE.*—*Regulations issued under*  
 5           *paragraph (1) shall not take effect until the later of—*

6                   (A) *12 months after the date of enactment*  
 7                   *of this Act; or*

8                   (B) *12 months after the date of publication*  
 9                   *of such final regulations by the Board.*

10 ***SEC. 1303. DISCLOSURES RELATED TO “INTRODUCTORY***  
 11 ***RATES”.***

12           (a) *INTRODUCTORY RATE DISCLOSURES.*—*Section*  
 13 *127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is*  
 14 *amended by adding at the end the following:*

15                   “*(6) ADDITIONAL NOTICE CONCERNING ‘INTRO-*  
 16                   *DUCTORY RATES’.*—

17                           “*(A) IN GENERAL.*—*Except as provided in*  
 18                           *subparagraph (B), an application or solicitation*  
 19                           *to open a credit card account and all pro-*  
 20                           *motional materials accompanying such applica-*  
 21                           *tion or solicitation for which a disclosure is re-*  
 22                           *quired under paragraph (1), and that offers a*  
 23                           *temporary annual percentage rate of interest,*  
 24                           *shall—*

1           “(i) use the term ‘introductory’ in im-  
2           mediate proximity to each listing of the  
3           temporary annual percentage rate applica-  
4           ble to such account, which term shall ap-  
5           pear clearly and conspicuously;

6           “(ii) if the annual percentage rate of  
7           interest that will apply after the end of the  
8           temporary rate period will be a fixed rate,  
9           state in a clear and conspicuous manner in  
10          a prominent location closely proximate to  
11          the first listing of the temporary annual  
12          percentage rate (other than a listing of the  
13          temporary annual percentage rate in the  
14          tabular format described in section 122(c)),  
15          the time period in which the introductory  
16          period will end and the annual percentage  
17          rate that will apply after the end of the in-  
18          troductory period; and

19          “(iii) if the annual percentage rate  
20          that will apply after the end of the tem-  
21          porary rate period will vary in accordance  
22          with an index, state in a clear and con-  
23          spicuous manner in a prominent location  
24          closely proximate to the first listing of the  
25          temporary annual percentage rate (other

1            *than a listing in the tabular format pre-*  
2            *scribed by section 122(c)), the time period*  
3            *in which the introductory period will end*  
4            *and the rate that will apply after that,*  
5            *based on an annual percentage rate that*  
6            *was in effect within 60 days before the date*  
7            *of mailing the application or solicitation.*

8            *“(B) EXCEPTION.—Clauses (ii) and (iii) of*  
9            *subparagraph (A) do not apply with respect to*  
10           *any listing of a temporary annual percentage*  
11           *rate on an envelope or other enclosure in which*  
12           *an application or solicitation to open a credit*  
13           *card account is mailed.*

14           *“(C) CONDITIONS FOR INTRODUCTORY*  
15           *RATES.—An application or solicitation to open a*  
16           *credit card account for which a disclosure is re-*  
17           *quired under paragraph (1), and that offers a*  
18           *temporary annual percentage rate of interest*  
19           *shall, if that rate of interest is revocable under*  
20           *any circumstance or upon any event, clearly and*  
21           *conspicuously disclose, in a prominent manner*  
22           *on or with such application or solicitation—*

23           *“(i) a general description of the cir-*  
24           *cumstances that may result in the revoca-*

1            *tion of the temporary annual percentage*  
2            *rate; and*

3            *“(ii) if the annual percentage rate that*  
4            *will apply upon the revocation of the tem-*  
5            *porary annual percentage rate—*

6            *“(I) will be a fixed rate, the an-*  
7            *nual percentage rate that will apply*  
8            *upon the revocation of the temporary*  
9            *annual percentage rate; or*

10           *“(II) will vary in accordance with*  
11           *an index, the rate that will apply after*  
12           *the temporary rate, based on an an-*  
13           *nual percentage rate that was in effect*  
14           *within 60 days before the date of mail-*  
15           *ing the application or solicitation.*

16           *“(D) DEFINITIONS.—In this paragraph—*

17           *“(i) the terms ‘temporary annual per-*  
18           *centage rate of interest’ and ‘temporary an-*  
19           *nual percentage rate’ mean any rate of in-*  
20           *terest applicable to a credit card account for*  
21           *an introductory period of less than 1 year,*  
22           *if that rate is less than an annual percent-*  
23           *age rate that was in effect within 60 days*  
24           *before the date of mailing the application or*  
25           *solicitation; and*

1                   “(ii) the term ‘introductory period’  
 2                   means the maximum time period for which  
 3                   the temporary annual percentage rate may  
 4                   be applicable.

5                   “(E) RELATION TO OTHER DISCLOSURE RE-  
 6                   QUIREMENTS.—Nothing in this paragraph may  
 7                   be construed to supersede subsection (a) of sec-  
 8                   tion 122, or any disclosure required by para-  
 9                   graph (1) or any other provision of this sub-  
 10                  section.”.

11                  (b) REGULATORY IMPLEMENTATION.—

12                   (1) IN GENERAL.—The Board shall promulgate  
 13                   regulations implementing the requirements of section  
 14                   127(c)(6) of the Truth in Lending Act, as added by  
 15                   this section.

16                   (2) EFFECTIVE DATE.—Section 127(c)(6) of the  
 17                   Truth in Lending Act, as added by this section, and  
 18                   regulations issued under paragraph (1) of this sub-  
 19                   section shall not take effect until the later of—

20                   (A) 12 months after the date of enactment  
 21                   of this Act; or

22                   (B) 12 months after the date of publication  
 23                   of such final regulations by the Board.

1 **SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.**

2 (a) *INTERNET-BASED SOLICITATIONS.*—Section 127(c)  
3 of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended  
4 by adding at the end the following:

5 “(7) *INTERNET-BASED SOLICITATIONS.*—

6 “(A) *IN GENERAL.*—In any solicitation to  
7 open a credit card account for any person under  
8 an open end consumer credit plan using the  
9 Internet or other interactive computer service,  
10 the person making the solicitation shall clearly  
11 and conspicuously disclose—

12 “(i) the information described in sub-  
13 paragraphs (A) and (B) of paragraph (1);  
14 and

15 “(ii) the information described in  
16 paragraph (6).

17 “(B) *FORM OF DISCLOSURE.*—The disclo-  
18 sures required by subparagraph (A) shall be—

19 “(i) readily accessible to consumers in  
20 close proximity to the solicitation to open a  
21 credit card account; and

22 “(ii) updated regularly to reflect the  
23 current policies, terms, and fee amounts ap-  
24 plicable to the credit card account.

25 “(C) *DEFINITIONS.*—For purposes of this  
26 paragraph—

1           “(i) the term ‘Internet’ means the  
2           international computer network of both  
3           Federal and non-Federal interoperable  
4           packet switched data networks; and

5           “(ii) the term ‘interactive computer  
6           service’ means any information service, sys-  
7           tem, or access software provider that pro-  
8           vides or enables computer access by multiple  
9           users to a computer server, including spe-  
10          cifically a service or system that provides  
11          access to the Internet and such systems op-  
12          erated or services offered by libraries or edu-  
13          cational institutions.”.

14          (b) *REGULATORY IMPLEMENTATION.*—

15           (1) *IN GENERAL.*—The Board shall promulgate  
16          regulations implementing the requirements of section  
17          127(c)(7) of the Truth in Lending Act, as added by  
18          this section.

19           (2) *EFFECTIVE DATE.*—The amendment made by  
20          subsection (a) and the regulations issued under para-  
21          graph (1) of this subsection shall not take effect until  
22          the later of—

23           (A) 12 months after the date of enactment  
24          of this Act; or

1                   (B) 12 months after the date of publication  
2                   of such final regulations by the Board.

3 **SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT**  
4                   **DEADLINES AND PENALTIES.**

5                   (a) *DISCLOSURES RELATED TO LATE PAYMENT DEAD-*  
6 *LINES AND PENALTIES.*—Section 127(b) of the Truth in  
7 *Lending Act (15 U.S.C. 1637(b)) is amended by adding at*  
8 *the end the following:*

9                   “(12) If a late payment fee is to be imposed due  
10                  to the failure of the obligor to make payment on or  
11                  before a required payment due date, the following  
12                  shall be stated clearly and conspicuously on the bill-  
13                  ing statement:

14                  “(A) The date on which that payment is  
15                  due or, if different, the earliest date on which a  
16                  late payment fee may be charged.

17                  “(B) The amount of the late payment fee to  
18                  be imposed if payment is made after such date.”.

19                  (b) *REGULATORY IMPLEMENTATION.*—

20                  (1) *IN GENERAL.*—The Board shall promulgate  
21                  regulations implementing the requirements of section  
22                  127(b)(12) of the Truth in Lending Act, as added by  
23                  this section.

24                  (2) *EFFECTIVE DATE.*—The amendment made by  
25                  subsection (a) and regulations issued under para-



1        *graph (1) of this subsection shall not take effect until*  
 2        *the later of—*

3                    *(A) 12 months after the date of enactment*  
 4                    *of this Act; or*

5                    *(B) 12 months after the date of publication*  
 6                    *of such final regulations by the Board.*

7        ***SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAIL-***  
 8                    ***URE TO INCUR FINANCE CHARGES.***

9                    *(a) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE*  
 10        *TO INCUR FINANCE CHARGES.—Section 127 of the Truth*  
 11        *in Lending Act (15 U.S.C. 1637) is amended by adding*  
 12        *at the end the following:*

13                    *“(h) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE*  
 14        *TO INCUR FINANCE CHARGES.—A creditor of an account*  
 15        *under an open end consumer credit plan may not terminate*  
 16        *an account prior to its expiration date solely because the*  
 17        *consumer has not incurred finance charges on the account.*  
 18        *Nothing in this subsection shall prohibit a creditor from*  
 19        *terminating an account for inactivity in 3 or more consec-*  
 20        *utive months.”.*

21                    *(b) REGULATORY IMPLEMENTATION.—*

22                    *(1) IN GENERAL.—The Board shall promulgate*  
 23        *regulations implementing the requirements of section*  
 24        *127(h) of the Truth in Lending Act, as added by this*  
 25        *section.*

1           (2) *EFFECTIVE DATE.*—*The amendment made by*  
2           *subsection (a) and regulations issued under para-*  
3           *graph (1) of this subsection shall not take effect until*  
4           *the later of—*

5                     (A) *12 months after the date of enactment*  
6                     *of this Act; or*

7                     (B) *12 months after the date of publication*  
8                     *of such final regulations by the Board.*

9   **SEC. 1307. DUAL USE DEBIT CARD.**

10           (a) *REPORT.*—*The Board may conduct a study of, and*  
11           *present to Congress a report containing its analysis of, con-*  
12           *sumer protections under existing law to limit the liability*  
13           *of consumers for unauthorized use of a debit card or similar*  
14           *access device. Such report, if submitted, shall include rec-*  
15           *ommendations for legislative initiatives, if any, of the*  
16           *Board, based on its findings.*

17           (b) *CONSIDERATIONS.*—*In preparing a report under*  
18           *subsection (a), the Board may include—*

19                     (1) *the extent to which section 909 of the Elec-*  
20                     *tronic Fund Transfer Act (15 U.S.C. 1693g), as in ef-*  
21                     *fect at the time of the report, and the implementing*  
22                     *regulations promulgated by the Board to carry out*  
23                     *that section provide adequate unauthorized use liabil-*  
24                     *ity protection for consumers;*

1           (2) *the extent to which any voluntary industry*  
 2 *rules have enhanced or may enhance the level of pro-*  
 3 *tection afforded consumers in connection with such*  
 4 *unauthorized use liability; and*

5           (3) *whether amendments to the Electronic Fund*  
 6 *Transfer Act (15 U.S.C. 1693 et seq.), or revisions to*  
 7 *regulations promulgated by the Board to carry out*  
 8 *that Act, are necessary to further address adequate*  
 9 *protection for consumers concerning unauthorized use*  
 10 *liability.*

11 **SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EX-**  
 12 **TENDED TO DEPENDENT STUDENTS.**

13 (a) *STUDY.*—

14           (1) *IN GENERAL.*—*The Board shall conduct a*  
 15 *study regarding the impact that the extension of cred-*  
 16 *it described in paragraph (2) has on the rate of cases*  
 17 *filed under title 11 of the United States Code.*

18           (2) *EXTENSION OF CREDIT.*—*The extension of*  
 19 *credit described in this paragraph is the extension of*  
 20 *credit to individuals who are—*

21                   (A) *claimed as dependents for purposes of*  
 22 *the Internal Revenue Code of 1986; and*

23                   (B) *enrolled within 1 year of successfully*  
 24 *completing all required secondary education re-*

1            *quirements and on a full-time basis, in postsec-*  
2            *ondary educational institutions.*

3            *(b) REPORT.—Not later than 1 year after the date of*  
4            *enactment of this Act, the Board shall submit to the Senate*  
5            *and the House of Representatives a report summarizing the*  
6            *results of the study conducted under subsection (a).*

7            ***SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.***

8            *(a) REGULATIONS.—Not later than 6 months after the*  
9            *date of enactment of this Act, the Board, in consultation*  
10           *with the other Federal banking agencies (as defined in sec-*  
11           *tion 3 of the Federal Deposit Insurance Act), the National*  
12           *Credit Union Administration Board, and the Federal*  
13           *Trade Commission, shall promulgate regulations to provide*  
14           *guidance regarding the meaning of the term “clear and con-*  
15           *spicuous”, as used in subparagraphs (A), (B), and (C) of*  
16           *section 127(b)(11) and clauses (ii) and (iii) of section*  
17           *127(c)(6)(A) of the Truth in Lending Act.*

18           *(b) EXAMPLES.—Regulations promulgated under sub-*  
19           *section (a) shall include examples of clear and conspicuous*  
20           *model disclosures for the purposes of disclosures required*  
21           *by the provisions of the Truth in Lending Act referred to*  
22           *in subsection (a).*

23           *(c) STANDARDS.—In promulgating regulations under*  
24           *this section, the Board shall ensure that the clear and con-*  
25           *spicuous standard required for disclosures made under the*

1 *provisions of the Truth in Lending Act referred to in sub-*  
2 *section (a) can be implemented in a manner which results*  
3 *in disclosures which are reasonably understandable and de-*  
4 *signed to call attention to the nature and significance of*  
5 *the information in the notice.*

6 ***TITLE XIV—PREVENTING COR-***  
7 ***PORATE BANKRUPTCY ABUSE***

8 ***SEC. 1401. EMPLOYEE WAGE AND BENEFIT PRIORITIES.***

9 *Section 507(a) of title 11, United States Code, as*  
10 *amended by section 212, is amended—*

11 *(1) in paragraph (4) by striking “90” and in-*  
12 *serting “180”, and*

13 *(2) in paragraphs (4) and (5) by striking*  
14 *“\$4,000” and inserting “\$10,000”.*

15 ***SEC. 1402. FRAUDULENT TRANSFERS AND OBLIGATIONS.***

16 *Section 548 of title 11, United States Code, is amend-*  
17 *ed—*

18 *(1) in subsections (a) and (b) by striking “one*  
19 *year” and inserting “2 years”,*

20 *(2) in subsection (a)—*

21 *(A) by inserting “(including any transfer to*  
22 *or for the benefit of an insider under an employ-*  
23 *ment contract)” after “transfer” the 1st place it*  
24 *appears, and*

1           (B) by inserting “(including any obligation  
2           to or for the benefit of an insider under an em-  
3           ployment contract)” after “obligation” the 1st  
4           place it appears, and

5           (3) in subsection (a)(1)(B)(ii)—

6           (A) in subclause (II) by striking “or” at the  
7           end,

8           (B) in subclause (III) by striking the period  
9           at the end and inserting “; or”, and

10          (C) by adding at the end the following:

11          “(IV) made such transfer to or for the benefit of  
12          an insider, or incurred such obligation to or for the  
13          benefit of an insider, under an employment contract  
14          and not in the ordinary course of business.”.

15   **SEC. 1403. PAYMENT OF INSURANCE BENEFITS TO RETIRED**  
16                           **EMPLOYEES.**

17          Section 1114 of title 11, United States Code, is amend-  
18          ed—

19          (1) by redesignating subsection (l) as subsection  
20          (m), and

21          (2) by inserting after subsection (k) the fol-  
22          lowing:

23          “(l) If the debtor, during the 180-day period ending  
24          on the date of the filing of the petition—

25          “(1) modified retiree benefits; and



1 **TITLE XV—GENERAL EFFECTIVE**  
2 **DATE; APPLICATION OF**  
3 **AMENDMENTS**

4 **SEC. 1501. EFFECTIVE DATE; APPLICATION OF AMEND-**  
5 **MENTS.**

6 (a) *EFFECTIVE DATE.*—*Except as otherwise provided*  
7 *in this Act, this Act and the amendments made by this Act*  
8 *shall take effect 180 days after the date of enactment of this*  
9 *Act.*

10 (b) *APPLICATION OF AMENDMENTS.*—

11 (1) *IN GENERAL.*—*Except as otherwise provided*  
12 *in this Act and paragraph (2), the amendments made*  
13 *by this Act shall not apply with respect to cases com-*  
14 *menced under title 11, United States Code, before the*  
15 *effective date of this Act.*

16 (2) *CERTAIN LIMITATIONS APPLICABLE TO DEBT-*  
17 *ORS.*—*The amendments made by sections 308, 322,*  
18 *and 330 shall apply with respect to cases commenced*  
19 *under title 11, United States Code, on or after the*  
20 *date of the enactment of this Act.*

21 **SEC. 1502. TECHNICAL CORRECTIONS.**

22 (a) *CONFORMING AMENDMENTS TO TITLE 11 OF THE*  
23 *UNITED STATES CODE.*—*Title 11 of the United States*  
24 *Code, as amended by the preceding provisions of this Act,*  
25 *is amended—*



1           (1) *in section 507—*

2                 (A) *in subsection (a)—*

3                     (i) *in paragraph (5)(B)(ii) by striking*  
4                     “*paragraph (3)*” *and inserting “paragraph*  
5                     (4)”; *and*

6                     (ii) *in paragraph (8)(D) by striking*  
7                     “*paragraph (3)*” *and inserting “paragraph*  
8                     (4)”;

9                 (B) *in subsection (b) by striking “subsection*  
10                 (a)(1)” *and inserting “subsection (a)(2)”*; *and*

11                 (C) *in subsection (d) by striking “subsection*  
12                 (a)(3)” *and inserting “subsection (a)(1)”*;

13                 (2) *in section 523(a)(1)(A) by striking*  
14                 “*507(a)(2)*” *and inserting “507(a)(3)”*;

15                 (3) *in section 752(a) by striking “507(a)(1)”*  
16                 *and inserting “507(a)(2)”*;

17                 (4) *in section 766—*

18                     (A) *in subsection (h) by striking*  
19                     “*507(a)(1)*” *and inserting “507(a)(2)”*; *and*

20                     (B) *in subsection (i) by striking*  
21                     “*507(a)(1)*” *each place it appears and inserting*  
22                     “*507(a)(2)*”;

23                 (5) *in section 901(a) by striking “507(a)(1)”*  
24                 *and inserting “507(a)(2)”*;

1           (6) in section 943(b)(5) by striking “507(a)(1)”  
2           and inserting “507(a)(2)”;

3           (7) in section 1123(a)(1) by striking “507(a)(1),  
4           507(a)(2)” and inserting “507(a)(2), 507(a)(3)”;

5           (8) in section 1129(a)(9)—

6                 (A) in subparagraph (A) by striking  
7                 “507(a)(1) or 507(a)(2)” and inserting  
8                 “507(a)(2) or 507(a)(3)”; and

9                 (B) in subparagraph (B) by striking  
10                “507(a)(3)” and inserting “507(a)(1)”;

11           (9) in section 1226(b)(1) by striking “507(a)(1)”  
12           and inserting “507(a)(2)”; and

13           (10) in section 1326(b)(1) by striking  
14           “507(a)(1)” and inserting “507(a)(2)”.

15           (b) *RELATED CONFORMING AMENDMENT.*—Section  
16           6(e) of the Securities Investor Protection Act of 1970 (15  
17           U.S.C. 78fff(e)) is amended by striking “507(a)(1)” and in-  
18           serting “507(a)(2)”.

Attest:

*Clerk.*

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1920**

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**AMENDMENT**