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<td>001. memo</td>
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<td>007. report</td>
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**COLLECTION:**
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15428

**FOLDER TITLE:**
Child Support-Bankruptcy Bill [2]

**RESTRICION CODES**

- Presidential Records Act - [44 U.S.C. 2204(a)]
  - P1 National Security Classified Information [(a)(1) of the PRA]
  - P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
  - P3 Release would violate a Federal statute [(a)(3) of the PRA]
  - P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
  - P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
  - P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

- Freedom of Information Act - [5 U.S.C. 552(b)]
  - b(1) National security classified information [(b)(1) of the FOIA]
  - b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
  - b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
  - b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
  - b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
  - b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
  - b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
  - b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor’s deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.
What are the possible ways in which NEC's potential compromise could be seen as reversing our strong position to date on child support?

1. our draft position on making luxury purchases w/in 90 days nondischargeable.
2. the potential that we could move too many people from Chapter 7 to Chapter 13, where they could screw up and end up moving back to Chapter 7 with even less left over in assets to pay child support (although there is just as strong an argument that the movement from 7 to 13 could help child support, if done right).
3. the fear that we'll end up compromising more down the road.
4. fear that if our "balancing" proposals don't fly, the reform will make an already unlevel playing field, where the credit card companies have so much power, even worse.

cc Cynthia-

Cynthia - Here is the HTS bankruptcy draft paper we discussed. But the cover page (this page) is something I'd like to understand where we are on the miners side.

-Diana
Hi Diana,

John Monahan asked me to follow up with you on the new bankruptcy reform legislation and its impacts on child support.

Attached is a draft document—give me a call if you'd like to discuss.

Thanks -

Jamie
The New Bankruptcy Reform Legislation and Child Support

Background

The U.S. Bankruptcy Code currently provides a number of protections designed to give priority to child support obligations. Child support debts are generally not dischargeable in bankruptcy, and actions to collect child support from property of the debtor are exempt from the automatic stay that stops other creditor collections. Child support is also given greater priority when an estate in bankruptcy is liquidated and the debtor's funds are disbursed. Finally, child support creditors are given special status to appear in court in bankruptcy cases without charge and without meeting certain other requirements.

A variety of other Federal and State laws give child support special status in collection actions apart from the Bankruptcy Code. Child support has priority for payment through wage garnishment under State law (a requirement of the Social Security Act) and under the Consumer Credit Protection Act there are higher limits on the percentage of disposable income which can be attached. In addition, child support obligations can be enforced through a wide variety of enforcement mechanisms that are not available to other creditors.

Proposed Bankruptcy Legislation

Proposed legislation in both the Senate and the House would make a number of changes to the Bankruptcy Code that would affect the ability of some parents to collect child support. One provision of consequence would make certain consumer and credit card debts not dischargeable under Chapter 7 if incurred within ninety days of filing for bankruptcy, or at any time, if the debtor had no reasonable expectation or ability to pay. Although this provision would have no direct affect on the 56 percent of total child support collections made through wage garnishment, the remaining 44 percent could be affected: In cases where wages cannot be garnished — where obligors are either self-employed or unemployed but have income other than wages — child support obligees would be forced to compete for payment with credit card companies to the extent that the credit card debts are no longer subject to discharge.

Another proposed change in the House bill would require certain debtors who meet income and discretionary income thresholds — and thus have the ability to repay part or all of their debts — to file a Chapter 13 bankruptcy (a consumer repayment plan bankruptcy) rather than a
Chapter 7 bankruptcy (a traditional liquidation bankruptcy). The Senate bill addresses this issue by giving bankruptcy courts more authority to dismiss Chapter 7 petitions for abuse, i.e. an ability to repay.

Some commentators argue that forcing debtors who now file Chapter 7 bankruptcies to file in Chapter 13 could disadvantage parents seeking to collect child support because payments would have to be made on other debts as well as child support. On the other hand, other commentators argue that forcing debtors into Chapter 13 benefits child support obligors because the supervised payment plan would require payment of all child support arrears.

**House and Senate Amendments**

House Bill, H. R. 3150, as passed on June 10, 1998, and Senate Bill S. 1301 both include a number of changes to protect child support. These changes include, but are not limited to:

- Child support is given the first priority in payment during the pendency of the bankruptcy proceeding.
- Child support is given first priority in line for payment in Chapter 13 plans.
- A special exemption from the automatic stay for wage withholding and certain other child support enforcement actions is added.
- Child support debts due after filing must be paid before a Chapter 13 plan can be confirmed and child support debts must be paid before discharge of a Chapter 13 plan.

The House bill also added a provision (Shaw amendment) to give child support a special priority protection after discharge as against other creditors for a two year period. This provision is currently drafted in such a way as to be very unclear how it could be implemented.

**Impact on CSE**

1. The Bankruptcy bills, even as amended, do not change the argument that more debts, such as credit card debts, will survive bankruptcy and therefore, arguably, compete with child support. However, the impact on child support collections of more debts surviving bankruptcy will be mitigated by the priority given to child support debt and the wide variety of enforcement tools available to child support obligees that are not available to other creditors.
Most importantly, child support will continue to have a priority for wage garnishment, the primary means of collection. Also, nothing in the proposed bankruptcy legislation will affect the special status given to child support in collection actions provided by law outside the Bankruptcy Code. For example, child support obligees can continue to collect child support arrears through the Federal Income Tax Refund Offset Program. This is a program not available to other creditors and which collected over $1.1 billion in 1996. In addition, child support obligations can be enforced through a wide variety of other enforcement mechanisms such as contempt, criminal prosecution, automatic liens, and license revocations that are not available to other creditors.

The Bankruptcy bills will have some indirect impact on child support payments by forcing more petitioners into Chapter 13 plans instead of Chapter 7 bankruptcies. However, the nature of this impact is not entirely clear and probably minimal in any event.

2. A strong argument can be made that the bankruptcy bills, as amended, on balance, do more to strengthen child support enforcement than weaken it.

4. There may be no way to entirely satisfy some of the women's groups concerns relating to the bankruptcy bill's purported impact on child support enforcement without making major changes to the bankruptcy reforms by deleting the new exceptions to discharge and deleting all means tests or other provisions which would limit Chapter 7 filings. Without these types of major deletions, there appears to be little more that can be done to protect child support that has not already been addressed in the bills. It may be possible to strengthen the provision in the House bill (Shaw amendment) which attempts to give child support priority protection post-discharge. However, such provisions raise many practical implementation concerns and therefore may not be feasible.
The next bankruptcy working group meeting with Sarah Rosen will take place on
- Tuesday, July 28th at 3:30 pm in room 239 to discuss legislative developments or
lack thereof and Senator Dianne Feinstein's Creditworthiness Amendment

Which is attached. Unless I hear differently, your clearance will be in system.

Thanks
**DISTRIBUTION LIST**

**Bankruptcy Working Group**

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<tr>
<th>Name</th>
<th>Fax</th>
<th>Department</th>
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<tbody>
<tr>
<td>Mark McClellan</td>
<td>622-2633</td>
<td>Treasury Dept.</td>
</tr>
<tr>
<td>Karl Scholz</td>
<td>622-0605</td>
<td>Treasury Dept.</td>
</tr>
<tr>
<td>Eric Berg</td>
<td>906-5708</td>
<td>Ofc. Thrift Supervision</td>
</tr>
<tr>
<td>Bill Magrini</td>
<td>906-7842</td>
<td>Ofc. Thrift Supervision</td>
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<tr>
<td>Laurence S. Campbell</td>
<td>482-0325</td>
<td>Commerce</td>
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<tr>
<td>Eric R. Biel</td>
<td>482-4636</td>
<td>Commerce</td>
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<tr>
<td>Melanie Cook</td>
<td>482-4191</td>
<td>Commerce</td>
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<tr>
<td>Fran Allegra</td>
<td>307-3904</td>
<td>Justice Dept.</td>
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<tr>
<td>Janet Potts</td>
<td>690-2119</td>
<td>Dept. of Agriculture</td>
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<tr>
<td>Patricia Ruggles</td>
<td>690-6562</td>
<td>HHS</td>
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<tr>
<td>George Greenberg</td>
<td>401-7321</td>
<td>HHS</td>
</tr>
<tr>
<td>Marcy Wilder</td>
<td>690-7998</td>
<td>HHS</td>
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<tr>
<td>Arnold Grundeman</td>
<td>690-1741</td>
<td>USDA</td>
</tr>
<tr>
<td>Paul Weech</td>
<td>205-6802</td>
<td>SBA</td>
</tr>
<tr>
<td>Jean Veta</td>
<td>205-2689</td>
<td>Education</td>
</tr>
<tr>
<td>Shayla Simmons</td>
<td>208-7619</td>
<td>Dept. of Interea</td>
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<tr>
<td>Robert Weiner</td>
<td>61647</td>
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<tr>
<td>Maria Echaveste</td>
<td>62983</td>
<td>OPL</td>
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<td>51292</td>
<td>Financial Institutions Branch</td>
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<td>Joe Minarik</td>
<td>51198</td>
<td>White House - OMB</td>
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<tr>
<td>Roger Ballentine</td>
<td>66468</td>
<td>White House - Leg. Affairs</td>
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<tr>
<td>Nicole Rabner</td>
<td>62878</td>
<td>DPC</td>
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<tr>
<td>Diana Fortuna</td>
<td>67431</td>
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Facsimile Cover Sheet

TO: Roger Ballantine

FAX NUMBER: 456-6468

PHONE NUMBER:

FROM: Richard Pfohl
        (202) 224-6443

SUBJECT: Outline of Feinstein Creditworthiness Bankruptcy Amendment

TOTAL NUMBER OF PAGES SENT (including cover sheet): 7

If you do not receive all pages, please call: (202) 224-6443

COMMENTS:
Roger - Following is an outline of what we expect to offer, together with very rough draft talking points. I'm working with Leg. Cns1. on finalizing language, which I will share with you when done. This was developed working with consumer groups. We're more wed to the concept than the specifics, so would be happy to take suggestions. We really would like to have the Administration behind this, exerting as much leverage as you can. Feel free to call with questions/suggestions.

Richard

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Feinstein Creditworthiness Amendment
Summary

Limitations on Extensions of Credit Which Contribute to Bankruptcy

These provisions would be added to the Truth in Lending Act. They are intended to give consumers adequate information about borrowing which may result in financial problems and to provide protections for families against becoming overextended on such debt by making inadequate minimum payments. In addition, these provisions would protect other creditors of consumers who get in over their heads because of loans made after the consumer was already fully extended on credit. Finally, by requiring reporting by lenders to the Federal Reserve Board of potentially risky loans, these provisions would allow the Board and the Office of Comptroller of the Currency to better regulate our nation's banking system for safety and soundness.

Section 1. Definition. (15 U.S.C. § 1601(bb))

High Debt to Income Ratio Loan: A high debt to income ratio loan is one in which the borrower's monthly household debt on consumer credit obligations (excluding residential mortgage transactions and refinancing of residential mortgage obligations) together with any amount anticipated to be advanced by the creditor within 30 days of the loan is made is greater than 40% of the consumer's monthly household gross income. For the purposes of this definition, the monthly debt on a credit card obligation shall be calculated as eight percent of the total principal balance or the minimum payment then due, whichever is greater.


Any creditor extending open end credit by soliciting the consumer in any manner must, prior to granting credit, obtain a signed written statement from the consumer, in a form mandated by the Federal Reserve Board, which sets forth the information necessary to calculate whether the loan being made is a high debt to income ratio loan. A creditor is entitled to rely on such statement in making the designation provided for under section 3, if such reliance is reasonable in light of any other information which the creditor has concerning the debtor's circumstances.
Section 3. Designation of Extension of Credit as High Debt to Income Ratio Loan.

Any loan which meets the definition in section 1 shall be designated by the creditor as a "high debt to income ratio loan".

Section 4. Special Requirements for High Debt to Income Ratio Loans.

A creditor making a high debt to income ratio loan shall — at least three days prior to making credit available:

a. provide information to the consumer in a form designed by the Federal Reserve Board concerning the risks and consequences of becoming overextended on credit;

b. inform the consumer that the loan has been designated a high debt to income ratio loan;

c. report to the Federal Reserve Board on an annual basis the number of such loans made, the median interest rate on such loans, and the total amount of credit extended on such loans.

Section 5. Prohibition of Penalty Rates.

A creditor may not raise the interest rate charged on a high debt to income ratio loan because of a default by the borrower.

Section 6. Minimum Payments on High Debt to Income Ratio Loans.

A creditor making a high debt to income ratio loan or its assignees shall not offer the borrower the option of making monthly minimum payments which cover less than 4 percent of the total loan balance together with interest then due at any time during the period of the loan.

Section 7. High Debt to Income Ratio Loans in Bankruptcy.

A creditor making a high debt to income ratio loan shall not be entitled to raise claims in bankruptcy under 11 U.S.C. §§ 523(a)(2), 707, 727, or 1328.
Section 8. Bankruptcy Claims for Prepetition Interest Due May be Disallowed at the Discretion of the Court.

If a court finds that a high debt to income ratio loan either

(1) caused the borrower to file bankruptcy, or

(2) if payment of a claim on such loan would reduce the payments to other unsecured creditors,

the court may disallow any prepetition interest claim on such loan.

Section 9. Penalties

A creditor that fails to comply with section 2, 3, 4, 5, or 6 of this Act shall be liable to the consumer for actual damages, costs including attorney fees, and statutory damages of $2,000.
FEINSTEIN CREDITWORTHINESS AMENDMENT
FACT SHEET

THE FEINSTEIN AMENDMENT IS NEEDED TO CURB IRRESPONSIBLE
BEHAVIOR BY CREDIT CARD COMPANIES AND CONSUMERS THAT
CAUSES BANKRUPTCIES

- Studies by the Congressional Budget Office, the Federal Deposit Insurance
Corporation, and independent economists link the rise in bankruptcy filings
directly to the rise in consumer debt. In 1975 total household debt was 24% of
aggregate household income. Today, total household debt is more than
104% of aggregate household income. There is greater potential for
financial problems and bankruptcy, because more families owe more
money.

- In 1997, the credit industry mailed more than three billion credit card
solicitations to American families.

- The credit industry increasingly searches for risky borrowers because it is
hungry for debtors that will carry big balances and pay the most interest.
Many credit card lenders now cancel borrowing privileges or impose
fees on borrowers who pay their balance in full each month.

- Lending to a family who already pays more than 40% of its income to
credit cards is a major contributing factor to bankruptcy. Sophisticated
marketing techniques, not unlike those of the cigarette industry, have been
designed to encourage families to accept and use more credit than ever
before. Families get sucked in, for example, by low minimum payments.
Many families do not understand that making minimum payments causes
the loan balance to increase.

- The typical family that filed for bankruptcy in 1997 owed more than
one and a half times its annual income in short-term, high interest debt.
This means that a family earning $24,000 had an average of $36,000 in
credit card or other similar debt.
The Feinstein Amendment Limits Irresponsible Behavior That Contributes to Bankruptcy

- The amendment would require lenders to ask the borrower, before extending new credit, how much the borrower is already paying on existing credit card debts. This will help borrowers determine whether they are already overextended. It will also help lenders determine the risk of making a new loan.

- If the borrower is already spending more than 40% of monthly income on credit card debt, the lender would be required to send educational information about the risk of becoming overextended, before extending new credit.

- The amendment requires lenders to report the Federal Reserve Board on risky loans extended (i.e., credit cards issued). This will help protect lenders and their depositors and investors from risks associated with excessive imprudent lending.

- The amendment would require that consumers pay a minimum monthly balance on risky loans, so that substantial new balances do not accumulate over time and contribute to bankruptcy.

- The amendment would protect careful lenders, such as credit unions, from the risk associated with lenders who make expensive new loans to families that are already struggling.

- If a risky loan causes a family to file bankruptcy, the lender would share responsibility for that filing, because it would have made the loan with full information that the borrower was already overextended.
THE FEINSTEIN AMENDMENT PROTECTS RESPONSIBLE CREDIT CARD COMPANIES AND DOES NOT RESTRICT ACCESS TO CREDIT BY CONSUMERS WHO NEED IT.

- The Feinstein amendment: 1) reduces needless bankruptcies due to inappropriately extended credit, and 2) benefits responsible companies that check credit history, don’t extend risky credit, and don’t engage in deceptive consumer “come on’s.”

- Nothing in the amendment would impose expensive new requirements on lenders making loans to families that are not already paying more than 40% of their income on credit cards. All of the information required to be gathered by this amendment can be included on the debtor’s credit application. The information required is also subject to easy verification on credit reports.

- The amendment does not deny any American consumer access to credit. Nothing in the amendment precludes a lender from granting credit to any family on whatever terms the market will bear. However, whenever new credit is granted to a family already paying more than 40% of its income to credit cards, special care will be necessary.
Reforming our flawed bankruptcy code and strengthening child support enforcement go hand-in-hand in reinforcing personal responsibility.

VOTE FOR S. 1301
THE CONSUMER BANKRUPTCY REFORM ACT

The following organizations and companies and an overwhelming majority of Americans support restoring personal responsibility to our nation's flawed bankruptcy system.

NATIONAL TRADE ASSOCIATIONS

Agricultural Retailers Association
American Bankers Association
American Financial Services Association
American Steel Industry Association
American Soybean Association
American's Community Bankers
Associated Credit Bureaus, Inc.
Associated Equipment Distributors
Association of Financial Services Holding Companies
Consumer Bankers Association
Credit Union National Association
Equipment Leasing Association
Financial Services Council
Independent Bankers Association of America
MastenCard International Incorporated
National Apartment Association
National Association of Wheat Growers
National Auto Mobile Dealers Association
National Cattlemen's Beef Association
National Community Pharmacists Association
National Funeral Directors Association
National Grange
National Home Furnishings Association
National Independent Automobile Dealers Association
National Lumber \\n
STATE AND LOCAL TRADE ASSOCIATIONS

Alabama Bankers Association
Alabama Financial Services Association
Alabama Retail Federation
Arizona Bankers Association
Arizona Financial Services Association
Arkansas Bankers Association
Arkansas Community Bankers
Associated Oregon Industries Retail Council
California Bankers Association
California Financial Services Association
California Retailers Association
Colorado Financial Services Association
Colorado Retail Council
Community Bank League of New England
Community Bankers Association of Alabama
Community Bankers Association of Georgia
Community Bankers Association of Illinois
Community Bankers Association of Indiana
Community Bankers Association of Kansas
Community Bankers Association of Kentucky, Inc.
Community Bankers Association of Ohio
Community Bankers Association of Oklahoma
Community Bankers of Florida
Community Bankers of Wisconsin
Connecticut Retailers Association
Delaware Bankers Association
Florida Financial Services Association
Florida Retail Federation
Georgia Bankers Association
Heartland Community Bankers Association
Idaho Financial Services Association
Idaho Retailers Association
Illinois Retail Merchants Association
Independent Bankers Association of New York
Independent Bankers Association of Texas
Independent Bankers of Colorado
Independent Bankers of South Dakota
Independent Community Bankers of Minnesota
Independent Community Bankers of New Mexico
Indiana Bankers Association
Indiana Consumer Finance Association
IndianaRetail Council
Iowa Retail Federation
Iowa's Community Bankers
Kansas Association of Financial Services
Kansas Bankers Association
Kansas Retail Council
Kentucky Bankers Association
Kentucky Consumer Finance Association
Kentucky Retail Federation, Inc.
Louisiana Bankers Association
Louisiana Retailers Association
Maine Association of Community Banks
Maine Bankers Association
Maryland Financial Services Association
Maryland Retailers Association
Massachusetts Bankers Association
Massachusetts Independent Bankers Association
Massachusetts Independent Bankers Bankers Association, Inc.
Michigan Association of Community Bankers
Michigan Financial Services Association
Minnesota Consumer Finance Conference
Minnesota League of Savings & Community Bankers
Minnesota Retail Merchants Association
Mississippi Association of Creditors
Mississippi Bankers Association
Mississippi Leagues of Savings & Credit Union National Association
Consumer Bankers Association
Pennsylvania Bankers Association
Pennsylvania Financial Services Association
Pennsylvania Retailers Association
Retail Council of New York State
Retail Federation of Nevada
Retail Merchants Association of New Hampshire
Retailers Association of Massachusetts
Rhode Island Bankers Association
Rhode Island Retail Federation
South Carolina Bankers Association
South Carolina Financial Services Association
South Dakota Consumer Finance Association
South Dakota Retailers Association
Tennessee Bankers Association
Texas Financial Services Association
Texas Retailers Association
Utah Association of Financial Services
Utah Bankers Association
Utah Retail Merchants Association
Vermont Retail Association
Virginia Association of Community Bankers
Virginia Bankers Association
Virginia Retail Merchants Association
Washington Savings League
Washington State Financial Services Association
West Virginia Bankers Association
West Virginia Consumer Finance Association
West Virginia Retail Association
Wisconsin Bankers Association
Wisconsin Financial Services Association
Wisconsin Merchants Federation
Wyoming Retail Merchants Association

CORPORATIONS

American General Corporation
American General Finance
AmSouth Bank
AVCO Financial Services
BANC ONE CORPORATION
Bank of America
Bank & Body Works
Beneduc Management Corporation
Boscov's Department Stores, Inc.
 Crabtree & Evelyn
Capital One Financial Corporation
Charming Shoppers, Inc.
 Chelsea Manhatten
Chevy Chase Bank, FSB
Circuit City Stores
Citibank
Commercial Credit Corporation
Corporate International Express
Compass Bankshares, Inc.
Crestar Financial Corporation
Dayton Hudson Corporation
Experian
Expressprint
Famous Barr
Federated Department Stores
Fell's
Finance One Corporation
First American Bank Corp.
First Maryland Bancorp
First National Bank of Omaha
First USA Bank, N.A.
First Virginia Bancorp
HMOPLUS Financial Group
Firstar Financial Group
Forbes Department Stores
Future Bank
Gavilan's Trading Company
GE Capital Corporation
Goots
Guaranty Bank, S.S.B.
Hildt's
Hillig-Meyers
Henri Bendel
Houdini International
Huntington Bancshares, Inc.
J.C. Penney Company, Inc.
John Deere Credit
Kauffman's
KeyCorp
Lancaster Byanyi
Leiser New York
Lord & Taylor
LG Ayers
Massachusetts Mutual Life Insurance Company
MBNA America Bank
Morgan Stanley Dean Witter & Co.
Mortgage Bankers Association
Nationwide Bank
New Horizons National Bank
Norwest Corporation
PNC Bank
Proftits, Inc.
Provident Financial Corporation
Regions Financial Corporation
Rhodes, Inc.
Sears, Penfield & Co.
St. Paul Federal Bank
Stege Stores, Inc.
Star scent Corporation
Swarbrooke
Structure
Summit Bargen
The Bon Ton Stores, Inc.
The Limited
The Limited top
The May Department Stores Company
Travelers Group
U.S. Bancorp
Victoria's Secret Stores
Wachovia Bank, N.A.
Wells Fargo
Zale Corporation

"In a nationwide survey, 76% agreed that "individuals should not be allowed to erase all their debt in bankruptcy if they are able to repay a portion of what they owe."

Paid for by The American Financial Services Association
If you think insurance, banking and securities companies are the only ones urging action on HR 10, read on.

"It is long overdue."
Editorial The Seattle Times May 13, 1998

"...the time is right...
Editorial The Indianapolis News June 12, 1998

"...seize this opportunity...
Editorial Chicago Tribune May 15, 1998

"...join the 21st century.

"We like the bill." 
Editorial The Christian Science Monitor May 18, 1998

It's time to pass HR 10.

American Council of Life Insurance
1001 Pennsylvania Avenue, N.W. Washington D.C. 20004
Bankruptcy shouldn't let parents off the hook

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

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

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

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

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

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

We need a system that fairly protects families and children while reducing abuse of the bankruptcy laws.

The challenge for Congress is to pass a law that is balanced and fair to both the creditor and the debtor — protecting families and children while reducing abuse of the bankruptcy laws.

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

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

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

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

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

As members of Congress grapple with bankruptcy reform, they must deal with the problems that face both creditors and debtors.
Over the past weeks, I've learned about proposed bankruptcy-reform legislation in the House of Representatives that could undermine the ability of some parents to collect child support. I have no quarrel with responsible bankruptcy reform, but I do quarrel with aspects of the bill that would force single parents to compete for their child support payments with high banks trying to collect credit card debts. The welfare of our children must come first.

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

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

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

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

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

To find out more about Hillary Rodham Clinton and read her past columns, visit the Creators Syndicate World Wide Web page (www.creators.com).
the difference between success and failure of the various bills. DeLay, for instance, has promised to
attach amendments highlighting Democratic fundraising abuses to bills such as Shays-Meehan, creating
an awkward situation for Democrats who would otherwise vote in favor of the bill. The Rules Committee
is expected to meet in June to look at the amendments and decide which are "germane" to the legislation.

Meanwhile, a group of 30 freshman Democrats, led by Rep. Harold Ford, sent a letter to House
colleagues this morning urging them to vote against amendments to their bill, HR.2183. The letter notes
that "the vast majority of Republicans view public financing, free TV, and strong issue ad provisions as
poison pills. They will oppose these provisions. The majority of Democrats view a repeal of expenditure
limits, in-state fundraising restrictions, and paycheck protection provisions as poison pills. ... We are
writing today to ask you to please join us in voting against all poison pill amendments that may be offered
to the freshman bill -- both Democratic and Republican."

With time running out for this congressional session, and a number of legislative issues
remaining, reformers are concerned that debate may turn into a sideshow, serving only as filler between
other votes. "One of our fears is, you look at the schedule in June, you've got a number of bills members
have been promised would come up on certain days," said one congressional source. "You've got all
the appropriations bills, you've got budget resolution, you've got bankruptcy reform that was held over
from this week -- there's just a lot of stuff."

Hatch Seeks To Amend Bankruptcy Bill To Protect Child Support. As the Senate Judiciary
Committee marks up S.1301, the bankruptcy reform bill sponsored by Sens. Charles Grassley and Dick
Durbin, Judiciary Chairman Orrin Hatch moved to amend the proposal in order to allay concerns over
protecting child support and alimony payments. Hatch said in a statement: "Although I do not believe
S.1301 actually diminishes the current protections afforded child support and alimony under the US
Bankruptcy Code, I am sensitive to concerns that some provisions could have even an indirect or
unintended consequence for single-parent families." The amendment constructed by Hatch, along with
Sens. Grassley and Jon Kyl, contains the following changes to S.1301:

- Limits non-dischargability presumption to debts which are "not reasonably necessary for
  maintenance or support of debtor or dependent thereof; and in the aggregate exceed the amount
  of $400 per creditor."

- Amends the FTC definition to include as household goods "those items reasonably necessary
  for the maintenance or support of a single parent or minor dependent thereof."

- For single parents with a dependent child, the creditor "would have to prove that debtor
  intentionally paid the non-dischargeable debt with a dischargeable one." If the bankrupt debtor
  owes child support or alimony, the creditor "would have to prove that debtor intentionally paid
  the non-dischargeable debt with a dischargeable one."

- Applies the codebtor stay "where the debtor spouse or ex-spouse is required to make the
  payments as part of a divorce decree or legally binding separation or settlement agreement."

- Confirmation and discharge of a Chapter 13 plan is conditioned on "complete payment of all child
  support and alimony due."

- All child support and alimony must be paid first before all other obligations of Chapter 13.

- Elevates child support in Chapter 7 from priority 7 to priority 1.

- Makes an automatic stay under bankruptcy laws not applicable to State child support collection
  authority, "which seeks to impose or enforce a wage order for domestic support obligations."

- Helps women and children "reach exempt property, to collect support payments notwithstanding
  contrary Federal law."

- Makes "all obligations one ex-spouse owes another non-dischargeable."

House GOP Leaders Confident Kasich's Budget Will Pass. House Budget Committee Chairman John
Kasich's FY99 budget resolution has been approved by his committee on a party line vote, and a House
GOP leadership source said this morning that it will similarly carry the support of the House GOP
conference when it comes to the floor the first week after the Memorial Day recess. Asked if Kasich's
budget will pass, the leadership source said, "Yes." Asked if members of the conference will vote for it
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Domestic Policy Council  
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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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The Senate Should Halt NATO Expansion

By John Lewis Gaddis

NEW HAVEN The decision to expand NATO to include Poland, Hungary and the Czech Republic has produced some strange political alignments. There aren't many causes that Bill Clinton and Jesse Helms can both support, or that Phyllis Schlafly and the editors of The Nation can join in opposing.

Even stranger, to a historian, is the consensus that seems to be shaping up in the U.N. community. Historians normally don't agree on much, whether it is about the origins of the Peloponnesian War or the end of the cold war.

John Lewis Gaddis is a professor of history at Yale University.

By Elizabeth Warren

Bankrupt? Pay Your Child Support First

CAMBRIDGE, Mass. The Senate and House are considering legislation to reform U.S. bankruptcy laws. The credit industry has lobbied aggressively for this legislation, complaining that it is difficult to collect from people hiding behind bankruptcy filings.

But it is important to recognize the unintended consequences of the changes the industry wants — specifically, their devastating impact on the tens of thousands of women who turn to bankruptcy courts to collect alimony and child support from former husbands who have sought bankruptcy protection.

A 'reform' that could hurt families

In 1988, Congress declared that child support and other marital obligations were "nondischargeable debts" — meaning that no one who declares bankruptcy can escape liability for these obligations. Like taxes and student loans, these debts must be repaid in full both during and after a bankruptcy. Congress quite properly declared that child support and alimony were a priority and must be paid first and in full.

But some proposals before Congress would add to the list of nondischargeable debts, credit card debt or another form of family maintenance. If bankruptcy filing or incurred when the person did not have "a reasonable expectation or ability to repay" would be included.

This means that even if a debtor declared bankruptcy, credit card debt, or another form of family maintenance, would be included.

All creditors are victimized by bankruptcy. Credit card debt or another form of family maintenance. In about half of the cases, women were creditors trying to collect court-ordered support from their former spouses. Without such reformation, some families would have to turn to public assistance.

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And yet I've had difficulty finding any colleagues who think NATO expansion is a good idea. Indeed, I can recall no one who declared that peace would follow. The post-War I settlement, however, was successful. The lessons of history are clear.

As a striking gap has opened, therefore, between those who make grand strategy and those who reflect on it. This has happened, I think, because the Clinton Administration is not up to answering a few simple questions:

- Why exclude the Russians?
- What is the U.S. goal?

One of the few propositions on which historians tend to agree is that peace settlements work best when they include rather than exclude former adversaries. Within three years after the defeat of Napoleon in 1815, the victors had brought France back within the concert of Europe. Within six years of their surrender in 1945, Germany and Japan were firmly within American-designed security alliances. Both settlements survived for decades. The post-War I settlement, however, excluded Germany. The lessons of history are clear.

I have made it clear that my colleague and I are against an expansion of NATO. It is likely that the Russians view this process with equanimity and that we can expect relations with Moscow to proceed normally while we sort out just who the new members of NATO will be. Perhaps it will next try to tell us that pigs can fly.

What will expansion cost? The Administration's estimate for including Poland, Hungary and the Czech Republic comes to only $1.5 billion over the next 10 years, of which the United States would pay $400 million. That sounds like a bargain, but the estimate assumes no change in the current security environment. Has it occurred to the Administration that the act of expanding NATO, especially if former Soviet states are included, could itself alter the current security environment?
THE WHITE HOUSE

SARAH ROSEN
SENIOR ADVISOR
NATIONAL ECONOMIC COUNCIL
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Bankruptcy Mtg tomorrow
8:30 06-18 at 10:00 AM

Thanks

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NEC: Can't seem to get a clear yes or no.

- Subordinated debt if you have credit card debt?
  - 6th or 7th priority Ch 13 or #1
  - Can only go on limits for credit limit

One of us needs to think this through enough. CA

Expands Discharge. Not too much should be dischargeable.

NEC: Any luxury needed? 4th;
  - Use credit card for non-disp debt

- No on credit card for non-disp debt

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 Dominguez

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### DOCUMENT NO. SUBJECT/TITLE DATE RESTRICTION

| 005. memo | Gene Sperling to POTUS re: Bankruptcy Reform Legislation (7 pages) | ca. June, 1998 | P5 |

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**COLLECTION:**
- Clinton Presidential Records
- Domestic Policy Council
- Cynthia Rice (Subject Files)
- OA/Box Number: 15428

**FOLDER TITLE:**
- Child Support-Bankruptcy Bill [2]

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**RESTRICTION CODES**

Presidential Records Act - [44 U.S.C. 2204(a)]

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]
- C. Closed in accordance with restrictions contained in donor's deed of gift.
- PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
- RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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Dear Mr. Majority Leader:

As you know, the President supports bankruptcy reform that would ask debtors, who have the capacity to repay a portion of their debts, to do so. However, if we make such significant changes to our bankruptcy system, it must be done carefully, we also must tackle abuses by creditors, and we must not create opportunities for new predatory practices to emerge.

The Senate worked on a bipartisan basis to produce a responsible and balanced bill that would have reduced abuses of the bankruptcy system and required debtors and creditors alike to act responsibly. The Administration is disappointed that H.R. 3150, as agreed to by the Conference Committee, contains many flawed aspects of the House bill. If this version of the bill is presented to the President, his senior advisors will recommend that he veto it.

On the central issue of means-testing, the Conference Report uses the Senate framework but would, like the House bill, use a rigid approach that denies bankruptcy judges adequate discretion to decide whether the debtor has the capacity to repay successfully a portion of debts under Chapter 13. Moreover, the bill would require a moderate income debtor to demonstrate that each monthly expense for housing, clothing, transportation, and food that exceeds an IRS determined level is necessary due to “extraordinary circumstances” before that person could get their debts discharged under Chapter 7.

At the same time H.R. 3150 produces a rigid system to ensure that moderate-income debtors repay their debts, it weakens meaningful limits on the homestead exemption -- the mechanism used by the wealthy to shield hundreds of thousands of dollars of wealth from their creditors.

The Senate bill took laudable steps to enhance consumer protections from coercive and predatory behavior by creditors. This version of H.R. 3150, however, fails to limit adequately abusive creditor practices such as coercive affirmations and violations of the automatic stay, and rolls back consumer protections. The bill also would deny consumers an effective means for remediying the harm from such practices -- class actions -- and, as to violations of the automatic stay, eliminate
the current authorization for punitive damages against creditors for intentional violations of borrower rights.

Finally, the bill includes provisions from the House bill that would render nondischargeable credit card debts that could compete with child support and alimony payments after a debtor has been declared bankrupt. Specifically, the bill would make nondischargeable any debt that was incurred within 90 days of bankruptcy to pay nondischargeable debt and for certain cash advances. This, in effect, puts debt owed to credit card companies in competition with social priorities like child support and alimony, taxes, and educational loans. All too often pressures from an aggressive creditor trying to collect a nondischargeable debt can keep a struggling debtor from making child support and alimony payments.

The overwhelming vote on the Senate floor for the balanced legislation that body produced demonstrates that reasonable and responsible bankruptcy reform is possible. Unfortunately, H.R. 3150 as developed by the Conference Committee, does not provide such reform. We stand ready to work with you and your colleagues to produce a bill that would meet our concerns and the President could sign.

Sincerely,

Jack Lew
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Record Type: Record

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

cc:

Subject: Final SAP for HR 833, Bankruptcy Reform Act is attached

The SAP was sent earlier this morning.

hr833final.wp
The Administration strongly opposes H.R. 833. If the bill were presented to the President in its current form, his senior advisers would recommend that he veto the bill. However, the Administration strongly supports the Democratic alternative offered by Representatives Nadler, Conyers, and Meehan, which would make a limited number of targeted changes to address the most significant problems with H.R. 833.

The Administration continues to support bankruptcy reform that asks both debtors and creditors to act more responsibly. However, H.R. 833 fails the test of balance between creditors and debtors. As currently drafted, many of the bill’s provisions are unfair to middle- and low-income debtors; at the same time, the bill fails to close loopholes in current law that protect the wealthiest debtors. The bill focuses on perceived abuse of the bankruptcy system by debtors without adequately addressing abuses by creditors, and takes an excessively rigid approach to limiting access to discharge of debts under Chapter 7 of the Bankruptcy Code.

H.R. 833 in its current form would limit access to Chapter 7 to debtors who meet an inflexible and arbitrary means test. The Administration agrees that debtors who can repay a portion of their debt should not have access to Chapter 7. The Administration also agrees that some expense standards should be used to guide the determination of ability to repay, analogous to how expense standards are used by the Internal Revenue Service (IRS) to guide the collection of tax debt. However, H.R. 833 simply takes IRS expense standards, which were not developed for bankruptcy purposes, and applies them rigidly to determine ability to repay in bankruptcy. Under H.R. 833, a debtor whose ability to repay according to the IRS formulas was even $1 above the minimum threshold would have to demonstrate “extraordinary circumstances” in order to gain access to Chapter 7.

Representatives Hyde and Conyers will offer an amendment that also includes a means test but which would use expense standards that are tailored for bankruptcy purposes and that would allow bankruptcy judges limited and appropriate discretion in their application. The Administration could support the Hyde-Conyers amendment (provided that one technical and conforming change is made to make the language of the amendment internally consistent).
The Democratic alternative includes a means test very similar to the Hyde-Conyers amendment that would ensure that debtors who genuinely have the ability to repay a portion of their debts would remain responsible for those debts. Moreover, the Democratic alternative would significantly reduce the administrative and legal burden of means testing by limiting paperwork requirements on low-income debtors with little ability to repay.

The Democratic alternative also would address creditor abuses in bankruptcy, especially those abuses that place priority debt such as child support and alimony payments at risk. There is extensive evidence of coerced or abusive reaffirmations of unsecured debt and low-value secured debt. Such reaffirmations frequently are the result of misleading information or threats from creditors. Remarkably, H.R. 833 would ban class actions filed against creditors who violate reaffirmation requirements -- the mechanism that was effectively used to end abusive practices in important consumer protection cases. Rolling back an avenue of consumer redress for such significant creditor abuse is simply unacceptable.

Many bankruptcy experts have advocated either banning or severely curtailing such reaffirmations because they jeopardize both a debtor's "fresh start" and a debtor's ability to pay priority obligations. The Democratic alternative proposes more limited changes to help address this abuse. Reaffirmations of unsecured and low-valued secured debt would be subject to streamlined court review as part of the means-testing process. If the creditor provided certain easily-calculated disclosures about the financial implications of the reaffirmations (such as the effective annual percentage rate and the amount of any fees and penalties that could be applied), and if the means test suggested that the debtor truly could afford to repay all of his priority debts after taking on this additional obligation, then the reaffirmation would be presumed not to create undue hardship and to be fully understood by the debtor. In addition, those persons to whom the debtor owes child support or alimony obligations would have an opportunity to present evidence that the reaffirmation would place payment of their priority debt at risk.

The Administration also remains concerned about provisions in H.R. 833 that put additional credit card and other nonpriority debts in greater competition after bankruptcy with child support, alimony, and other societal priorities like educational loans and taxes. The Democratic alternative is consistent with the view of the Administration that caution should be exercised in the creation of additional types of nondischargeable credit card debt. H.R. 833 also eliminates virtually all "cramdowns" of secured debt to the actual value of the secured item in bankruptcy. While there are good reasons to limit the most dramatic cramdowns that occur for debts incurred close to bankruptcy, barring most cramdowns, as H.R. 833 would do, puts at risk repayment of other secured and priority debts.

The Administration continues to believe that reform must ensure that debtors are treated fairly and responsibly in the bankruptcy process, recognizing creditors' superior information and bargaining power. The Democratic alternative includes provisions adapted from H.R. 900,
sponsored by Representative LaFalce, that would provide key information to consumers about
credit card debt, including clear notice about the expiration of low "teaser" rates and the length of
time to pay off a debt if only the minimum payment is made. Better information will help
consumers avoid high debt burdens.

Finally, the Administration supports changes that would close loopholes in current bankruptcy
law, such as those enabling unlimited homestead exemptions and exemptions from repayment
requirements for individuals who are able to file for bankruptcy under Chapter 11, that protect
some of the wealthiest debtors from having to repay a significant portion of their debt.
Bankruptcy reform should not place a greater responsibility for debt repayment on moderate- and
low-income debtors than it does on high-income debtors.

The Administration remains ready to work with the House to address these concerns, building on
the responsible and balanced reform of the Nadler, Conyers, and Meehan Democratic alternative
and the bipartisan approach of the Hyde-Conyers amendment.

* * * * * * *
This Statement of Administration Policy was developed by the Legislative Reference Division (Jones), in consultation with the: Departments of Justice (Silas), the Treasury (Dorsey, McGivern), Commerce (Clark), Education (Aserkoff), HUD (Block), Labor (Greene), the Interior (Schwartz ), HHS (Wallace), and Veterans Affairs (Simmons); Small Business Administration (Cupp); Farm Credit Administration (McMahon); Consumer Product Safety Commission (Bromme); National Labor Relations Board (Higgins); CEA (Elmendorf); White House Legislative Affairs (Johnson, Wiginton); and National Economic Council (Rosen).

Within OMB it was reviewed by Economic Policy (Minarik), HTFD (Rhinesmith, Timberlake, Veenstra, Enger), HRD (Matlack), NRD (Weatherly, Irwin), GC (Aitken), TCJSD (Thompson), VAPD (Hustead), BRCD (Lobron), and BASD (Lee).

The Export-Import Bank and the Domestic Policy Council did not respond to our request for comments on the draft SAP.

OMB/LA Clearance:

H.R. 833 was ordered reported by the House Judiciary Committee by a 22-13 vote on April 28, 1999.

Administration Position to Date

In a March 23rd letter to Rep. Nadler, OMB Director Lew described five general principles that the Administration would look for in a bankruptcy reform bill and stated that the Administration's position on those issues remains the same as it was in the 105th Congress. In a similar letter in October 1998, Director Lew indicated the President would veto the Conference Report on H.R. 3150, which was identical to H.R. 833 as introduced.

In a March 24th letter to Rep. Gekas, the Chairman of the House Judiciary Commercial and Administrative law Subcommittee and the sponsor of H.R. 833, the Department of Justice reiterated the general principles contained in the Director Lew letter and proposed numerous amendments to the bill.

Summary of H.R. 833

H.R. 833 contains more than 160 provisions that affect Federal bankruptcy law. Among the most significant, are proposed changes that would:

- Limit access to Chapter 7 bankruptcy by dismissing, as a presumed abuse of the Bankruptcy Code, petitions from debtors whose monthly income: (1) is greater than the national median monthly income for a family of equal or lesser size; and (2) is sufficient, after deducting living expenses based on IRS guidelines, to permit them to repay at least 25 percent of non-priority unsecured debts or $6,000 over 60 months.
H.R. 833 would permit a debtor to: exclude from the calculation of income up to $10,000 in private school expenses; and claim an extra five percent over the food and clothing IRS allowances for "reasonably necessary" expenses in these categories only. Debtors failing this "means test" would be permitted to file for bankruptcy under Chapter 13. (Chapter 7 allows people to liquidate their assets quickly and wipe out most unsecured debts, such as those to credit card issuers. Chapter 13 requires a repayment plan.) H.R. 833 would allow creditors who believe the debtor fails to meet the bill's means test to seek dismissal of Chapter 7 petitions or conversion to Chapter 13 cases.

- Make nondischargeable any debt, including credit card debt, incurred:
  - to pay an otherwise non-dischargeable debt with the intent to discharge the newly acquired debt; and
  - to pay non-dischargeable debts, without regard to intent, if incurred within 90 days of bankruptcy filing.

- Make debtors repay more debt under Chapter 13 filings by: (1) increasing from three years to five years the minimum term a debtor whose monthly income is greater than the national median monthly income for a family of equal or lesser size has to pay off debts; and (2) eliminating the "superdischarge" of debts (i.e., the discharge of several types of debt, including those for fraud and intentional injuries) that are not discharged in Chapter 7.

- Require creditors who seek reaffirmation of wholly unsecured consumer debt to provide a disclosure that the debtor is entitled to a hearing.

- Limit the ability of a person to obtain successive discharges by making a debtor ineligible for Chapter 7 relief for a period of eight years after receiving a prior Chapter 7 relief and ineligible for Chapter 13 relief for five years after a prior discharge under that chapter.

- Permit the use of State exemptions, rather than Federal exemptions, only if the debtor has lived in the State for two years or more. This would stop debtors from shielding sizable assets by moving to a State with more generous exemptions just prior to filing for bankruptcy.

- Establish a program for the centralized collection and dissemination of bankruptcy data.

- Establish new deadlines for several important events in consumer bankruptcy cases (e.g., changing from 40 days to 90 days the deadline for the first meeting of creditors in Chapter 7 cases).

- Make permanent chapter 12 of the Bankruptcy Code, which, according to the Report
of the National Bankruptcy Review Commission (NBRC), is "better suited to meet the particularized needs of family farmers in financial distress than other forms of bankruptcy relief, such as chapter 11 and chapter 13." H.R. 808, the "Family Farmer Bankruptcy Act Extension", which the President signed into law on March 30, 1999, extended the chapter 12 provisions until October 1, 1999.

Pay-As-You-Go Scoring

According to TCJSD (Thompson), H.R. 833 would not affect direct spending or receipts. Therefore, it is not subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990.

LEGISLATIVE REFERENCE DIVISION
May 4, 1999 - 3:51 PM

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