

# Union Calendar No. 14

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 256

[Report No. 109–31, Part I]

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2005

Referred to the Committee on the Judiciary and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

APRIL 8, 2005

Reported from the Committee on the Judiciary

APRIL 8, 2005

Committee on Financial Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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## AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

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 2005”.

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.
- Sec. 234. Protection of personal information.

#### TITLE III—DISCOURAGING BANKRUPTCY ABUSE

- Sec. 301. Technical amendments.
- 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.
- Sec. 331. Limitation on retention bonuses, severance pay, and certain other payments.
- Sec. 332. Fraudulent involuntary bankruptcy.

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

Subtitle A—General Business Bankruptcy Provisions

- Sec. 401. Adequate protection for investors.
- Sec. 402. Meetings of creditors and equity security holders.
- Sec. 403. Protection of refinance of security interest.
- Sec. 404. Executory contracts and unexpired leases.
- 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.
- Sec. 440. Scheduling conferences.
- 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.
- Sec. 717. Standards for tax disclosure.
- Sec. 718. Setoff of tax refunds.
- Sec. 719. Special provisions related to the treatment of State and local taxes.
- 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.
- Sec. 1230. Property no longer subject to redemption.
- Sec. 1231. Trustees.
- Sec. 1232. Bankruptcy forms.
- 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.
- Sec. 1302. Enhanced disclosure for credit extensions secured by a dwelling.
- Sec. 1303. Disclosures related to “introductory rates”.
- Sec. 1304. Internet-based credit card solicitations.
- Sec. 1305. Disclosures related to late payment deadlines and penalties.

- Sec. 1306. Prohibition on certain actions for failure to incur finance charges.  
 Sec. 1307. Dual use debit card.  
 Sec. 1308. Study of bankruptcy impact of credit extended to dependent students.  
 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.  
 Sec. 1403. Payment of insurance benefits to retired employees.  
 Sec. 1404. Debts nondischargeable if incurred in violation of securities fraud laws.  
 Sec. 1405. Appointment of trustee in cases of suspected fraud.  
 Sec. 1406. 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”.

6   **SEC. 102. DISMISSAL OR CONVERSION.**

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

9                   (1) by striking the section heading and insert-  
 10 ing the following:

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

13           and

14                   (2) in subsection (b)—

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

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

3 (i) in the first sentence—

4 (I) by striking “but not at the re-  
5 quest or suggestion of” and inserting  
6 “trustee (or bankruptcy adminis-  
7 trator, if any), or”;

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

13 (III) by striking “a substantial  
14 abuse” and inserting “an abuse”; and

15 (ii) by striking the next to last sen-  
16 tence; and

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

18 “(2)(A)(i) In considering under paragraph (1) wheth-  
19 er the granting of relief would be an abuse of the provi-  
20 sions of this chapter, the court shall presume abuse exists  
21 if the debtor’s current monthly income reduced by the  
22 amounts determined under clauses (ii), (iii), and (iv), and  
23 multiplied by 60 is not less than the lesser of—



1           “(I) 25 percent of the debtor’s nonpriority un-  
2           secured claims in the case, or \$6,000, whichever is  
3           greater; or

4           “(II) \$10,000.

5           “(ii)(I) The debtor’s monthly expenses shall be the  
6           debtor’s applicable monthly expense amounts specified  
7           under the National Standards and Local Standards, and  
8           the debtor’s actual monthly expenses for the categories  
9           specified as Other Necessary Expenses issued by the In-  
10          ternal Revenue Service for the area in which the debtor  
11          resides, as in effect on the date of the order for relief,  
12          for the debtor, the dependents of the debtor, and the  
13          spouse of the debtor in a joint case, if the spouse is not  
14          otherwise a dependent. Such expenses shall include rea-  
15          sonably necessary health insurance, disability insurance,  
16          and health savings account expenses for the debtor, the  
17          spouse of the debtor, or the dependents of the debtor. Not-  
18          withstanding any other provision of this clause, the  
19          monthly expenses of the debtor shall not include any pay-  
20          ments for debts. In addition, the debtor’s monthly ex-  
21          penses shall include the debtor’s reasonably necessary ex-  
22          penses incurred to maintain the safety of the debtor and  
23          the family of the debtor from family violence as identified  
24          under section 309 of the Family Violence Prevention and  
25          Services Act, or other applicable Federal law. The ex-

1 penses included in the debtor’s monthly expenses de-  
2 scribed in the preceding sentence shall be kept confidential  
3 by the court. In addition, if it is demonstrated that it is  
4 reasonable and necessary, the debtor’s monthly expenses  
5 may also include an additional allowance for food and  
6 clothing of up to 5 percent of the food and clothing cat-  
7 egories as specified by the National Standards issued by  
8 the Internal Revenue Service.

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

19       “(III) In addition, for a debtor eligible for chapter  
20 13, the debtor’s monthly expenses may include the actual  
21 administrative expenses of administering a chapter 13  
22 plan for the district in which the debtor resides, up to an  
23 amount of 10 percent of the projected plan payments, as  
24 determined under schedules issued by the Executive Office  
25 for United States Trustees.

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

11       “(V) In addition, the debtor’s monthly expenses may  
12 include an allowance for housing and utilities, in excess  
13 of the allowance specified by the Local Standards for  
14 housing and utilities issued by the Internal Revenue Serv-  
15 ice, based on the actual expenses for home energy costs  
16 if the debtor provides documentation of such actual ex-  
17 penses and demonstrates that such actual expenses are  
18 reasonable and necessary.

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

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

24               “(II) any additional payments to secured credi-  
25 tors necessary for the debtor, in filing a plan under

1 chapter 13 of this title, to maintain possession of the  
2 debtor's primary residence, motor vehicle, or other  
3 property necessary for the support of the debtor and  
4 the debtor's dependents, that serves as collateral for  
5 secured debts;

6 divided by 60.

7 “(iv) The debtor's expenses for payment of all pri-  
8 ority claims (including priority child support and alimony  
9 claims) shall be calculated as the total amount of debts  
10 entitled to priority, divided by 60.

11 “(B)(i) In any proceeding brought under this sub-  
12 section, the presumption of abuse may only be rebutted  
13 by demonstrating special circumstances, such as a serious  
14 medical condition or a call or order to active duty in the  
15 Armed Forces, to the extent such special circumstances  
16 that justify additional expenses or adjustments of current  
17 monthly income for which there is no reasonable alter-  
18 native.

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

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

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

4           “(iii) The debtor shall attest under oath to the accu-  
5           racy of any information provided to demonstrate that ad-  
6           ditional expenses or adjustments to income are required.

7           “(iv) The presumption of abuse may only be rebutted  
8           if the additional expenses or adjustments to income re-  
9           ferred to in clause (i) cause the product of the debtor’s  
10          current monthly income reduced by the amounts deter-  
11          mined under clauses (ii), (iii), and (iv) of subparagraph  
12          (A) when multiplied by 60 to be less than the lesser of—

13                 “(I) 25 percent of the debtor’s nonpriority un-  
14                 secured claims, or \$6,000, whichever is greater; or

15                 “(II) \$10,000.

16          “(C) As part of the schedule of current income and  
17          expenditures required under section 521, the debtor shall  
18          include a statement of the debtor’s current monthly in-  
19          come, and the calculations that determine whether a pre-  
20          sumption arises under subparagraph (A)(i), that show how  
21          each such amount is calculated.

22          “(D) Subparagraphs (A) through (C) shall not apply,  
23          and the court may not dismiss or convert a case based  
24          on any form of means testing, if the debtor is a disabled  
25          veteran (as defined in section 3741(1) of title 38), and

1 the indebtedness occurred primarily during a period dur-  
2 ing which he or she was—

3 “(i) on active duty (as defined in section  
4 101(d)(1) of title 10); or

5 “(ii) performing a homeland defense activity (as  
6 defined in section 901(1) of title 32).

7 “(3) In considering under paragraph (1) whether the  
8 granting of relief would be an abuse of the provisions of  
9 this chapter in a case in which the presumption in sub-  
10 paragraph (A)(i) of such paragraph does not arise or is  
11 rebutted, the court shall consider—

12 “(A) whether the debtor filed the petition in  
13 bad faith; or

14 “(B) the totality of the circumstances (includ-  
15 ing whether the debtor seeks to reject a personal  
16 services contract and the financial need for such re-  
17 jection as sought by the debtor) of the debtor’s fi-  
18 nancial situation demonstrates abuse.

19 “(4)(A) The court, on its own initiative or on the mo-  
20 tion of a party in interest, in accordance with the proce-  
21 dures described in rule 9011 of the Federal Rules of  
22 Bankruptcy Procedure, may order the attorney for the  
23 debtor to reimburse the trustee for all reasonable costs  
24 in prosecuting a motion filed under section 707(b), includ-  
25 ing reasonable attorneys’ fees, if—

1           “(i) a trustee files a motion for dismissal or  
2 conversion under this subsection; and

3           “(ii) the court—

4                 “(I) grants such motion; and

5                 “(II) finds that the action of the attorney  
6 for the debtor in filing a case under this chap-  
7 ter violated rule 9011 of the Federal Rules of  
8 Bankruptcy Procedure.

9           “(B) If the court finds that the attorney for the debt-  
10 or violated rule 9011 of the Federal Rules of Bankruptcy  
11 Procedure, the court, on its own initiative or on the motion  
12 of a party in interest, in accordance with such procedures,  
13 may order—

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

16                 “(ii) the payment of such civil penalty to the  
17 trustee, the United States trustee (or the bank-  
18 ruptcy administrator, if any).

19           “(C) The signature of an attorney on a petition,  
20 pleading, or written motion shall constitute a certification  
21 that the attorney has—

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

1           “(ii) determined that the petition, pleading, or  
2 written motion—

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

4                   “(II) is warranted by existing law or a  
5 good faith argument for the extension, modi-  
6 fication, or reversal of existing law and does not  
7 constitute an abuse under paragraph (1).

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

12           “(5)(A) Except as provided in subparagraph (B) and  
13 subject to paragraph (6), the court, on its own initiative  
14 or on the motion of a party in interest, in accordance with  
15 the procedures described in rule 9011 of the Federal Rules  
16 of Bankruptcy Procedure, may award a debtor all reason-  
17 able costs (including reasonable attorneys’ fees) in con-  
18 testing a motion filed by a party in interest (other than  
19 a trustee or United States trustee (or bankruptcy adminis-  
20 trator, if any)) under this subsection if—

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

22                   “(ii) the court finds that—

23                           “(I) the position of the party that filed the  
24 motion violated rule 9011 of the Federal Rules  
25 of Bankruptcy Procedure; or



1           “(II) the attorney (if any) who filed the  
2           motion did not comply with the requirements of  
3           clauses (i) and (ii) of paragraph (4)(C), and the  
4           motion was made solely for the purpose of co-  
5           ercing a debtor into waiving a right guaranteed  
6           to the debtor under this title.

7           “(B) A small business that has a claim of an aggre-  
8           gate amount less than \$1,000 shall not be subject to sub-  
9           paragraph (A)(ii)(I).

10          “(C) For purposes of this paragraph—

11           “(i) the term ‘small business’ means an unin-  
12           corporated business, partnership, corporation, asso-  
13           ciation, or organization that—

14           “(I) has fewer than 25 full-time employees  
15           as determined on the date on which the motion  
16           is filed; and

17           “(II) is engaged in commercial or business  
18           activity; and

19           “(ii) the number of employees of a wholly  
20           owned subsidiary of a corporation includes the em-  
21           ployees of—

22           “(I) a parent corporation; and

23           “(II) any other subsidiary corporation of  
24           the parent corporation.

1       “(6) Only the judge or United States trustee (or  
2 bankruptcy administrator, if any) may file a motion under  
3 section 707(b), if the current monthly income of the debt-  
4 or, or in a joint case, the debtor and the debtor’s spouse,  
5 as of the date of the order for relief, when multiplied by  
6 12, is equal to or less than—

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

10              “(B) in the case of a debtor in a household of  
11 2, 3, or 4 individuals, the highest median family in-  
12 come of the applicable State for a family of the same  
13 number or fewer individuals; or

14              “(C) in the case of a debtor in a household ex-  
15 ceeding 4 individuals, the highest median family in-  
16 come of the applicable State for a family of 4 or  
17 fewer individuals, plus \$525 per month for each in-  
18 dividual in excess of 4.

19       “(7)(A) No judge, United States trustee (or bank-  
20 ruptcy administrator, if any), trustee, or other party in  
21 interest may file a motion under paragraph (2) if the cur-  
22 rent monthly income of the debtor, including a veteran (as  
23 that term is defined in section 101 of title 38), and the  
24 debtor’s spouse combined, as of the date of the order for  
25 relief when multiplied by 12, is equal to or less than—

1           “(i) in the case of a debtor in a household of  
2           1 person, the median family income of the applicable  
3           State for 1 earner;

4           “(ii) in the case of a debtor in a household of  
5           2, 3, or 4 individuals, the highest median family in-  
6           come of the applicable State for a family of the same  
7           number or fewer individuals; or

8           “(iii) in the case of a debtor in a household ex-  
9           ceeding 4 individuals, the highest median family in-  
10          come of the applicable State for a family of 4 or  
11          fewer individuals, plus \$525 per month for each in-  
12          dividual in excess of 4.

13          “(B) In a case that is not a joint case, current month-  
14          ly income of the debtor’s spouse shall not be considered  
15          for purposes of subparagraph (A) if—

16               “(i)(I) the debtor and the debtor’s spouse are  
17               separated under applicable nonbankruptcy law; or

18               “(II) the debtor and the debtor’s spouse are liv-  
19               ing separate and apart, other than for the purpose  
20               of evading subparagraph (A); and

21               “(ii) the debtor files a statement under penalty  
22               of perjury—

23                       “(I) specifying that the debtor meets the  
24                       requirement of subclause (I) or (II) of clause  
25                       (i); and

1           “(II) disclosing the aggregate, or best esti-  
2           mate of the aggregate, amount of any cash or  
3           money payments received from the debtor’s  
4           spouse attributed to the debtor’s current  
5           monthly income.”.

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

9           “(10A) ‘current monthly income’—

10           “(A) means the average monthly income  
11           from all sources that the debtor receives (or in  
12           a joint case the debtor and the debtor’s spouse  
13           receive) without regard to whether such income  
14           is taxable income, derived during the 6-month  
15           period ending on—

16           “(i) the last day of the calendar  
17           month immediately preceding the date of  
18           the commencement of the case if the debt-  
19           or files the schedule of current income re-  
20           quired by section 521(a)(1)(B)(ii); or

21           “(ii) the date on which current income  
22           is determined by the court for purposes of  
23           this title if the debtor does not file the  
24           schedule of current income required by sec-  
25           tion 521(a)(1)(B)(ii); and

1           “(B) includes any amount paid by any en-  
2           tity other than the debtor (or in a joint case the  
3           debtor and the debtor’s spouse), on a regular  
4           basis for the household expenses of the debtor  
5           or the debtor’s dependents (and in a joint case  
6           the debtor’s spouse if not otherwise a depend-  
7           ent), but excludes benefits received under the  
8           Social Security Act, payments to victims of war  
9           crimes or crimes against humanity on account  
10          of their status as victims of such crimes, and  
11          payments to victims of international terrorism  
12          (as defined in section 2331 of title 18) or do-  
13          mestic terrorism (as defined in section 2331 of  
14          title 18) on account of their status as victims  
15          of such terrorism;”.

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

19                 (1) by inserting “(a)” before “The trustee  
20                 shall—”; and

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

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

24                         “(A) the United States trustee (or the bank-  
25                         ruptcy administrator, if any) shall review all mate-

1       rials filed by the debtor and, not later than 10 days  
2       after the date of the first meeting of creditors, file  
3       with the court a statement as to whether the debt-  
4       or’s case would be presumed to be an abuse under  
5       section 707(b); and

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

9       “(2) The United States trustee (or bankruptcy ad-  
10       ministrators, if any) shall, not later than 30 days after the  
11       date of filing a statement under paragraph (1), either file  
12       a motion to dismiss or convert under section 707(b) or  
13       file a statement setting forth the reasons the United  
14       States trustee (or the bankruptcy administrator, if any)  
15       does not consider such a motion to be appropriate, if the  
16       United States trustee (or the bankruptcy administrator,  
17       if any) determines that the debtor’s case should be pre-  
18       sumed to be an abuse under section 707(b) and the prod-  
19       uct of the debtor’s current monthly income, multiplied by  
20       12 is not less than—

21               “(A) in the case of a debtor in a household of  
22       1 person, the median family income of the applicable  
23       State for 1 earner; or

24               “(B) in the case of a debtor in a household of  
25       2 or more individuals, the highest median family in-

1       come of the applicable State for a family of the same  
2       number or fewer individuals.”.

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

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

11       (e) NONLIMITATION OF INFORMATION.—Nothing in  
12 this title shall limit the ability of a creditor to provide in-  
13 formation to a judge (except for information commu-  
14 nicated ex parte, unless otherwise permitted by applicable  
15 law), United States trustee (or bankruptcy administrator,  
16 if any), or trustee.

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

20       “(c)(1) In this subsection—

21               “(A) the term ‘crime of violence’ has the mean-  
22               ing given such term in section 16 of title 18; and

23               “(B) the term ‘drug trafficking crime’ has the  
24               meaning given such term in section 924(c)(2) of title  
25               18.

1       “(2) Except as provided in paragraph (3), after no-  
2       tice and a hearing, the court, on a motion by the victim  
3       of a crime of violence or a drug trafficking crime, may  
4       when it is in the best interest of the victim dismiss a vol-  
5       untary case filed under this chapter by a debtor who is  
6       an individual if such individual was convicted of such  
7       crime.

8       “(3) The court may not dismiss a case under para-  
9       graph (2) if the debtor establishes by a preponderance of  
10      the evidence that the filing of a case under this chapter  
11      is necessary to satisfy a claim for a domestic support obli-  
12      gation.”.

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

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

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

19              (3) by inserting after paragraph (6) the fol-  
20      lowing:

21              “(7) the action of the debtor in filing the peti-  
22      tion was in good faith;”.

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



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

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

5           “(2) For purposes of this subsection, the term  
6           ‘disposable income’ means current monthly income  
7           received by the debtor (other than child support pay-  
8           ments, foster care payments, or disability payments  
9           for a dependent child made in accordance with appli-  
10          cable nonbankruptcy law to the extent reasonably  
11          necessary to be expended for such child) less  
12          amounts reasonably necessary to be expended—

13                 “(A)(i) for the maintenance or support of  
14                 the debtor or a dependent of the debtor, or for  
15                 a domestic support obligation, that first be-  
16                 comes payable after the date the petition is  
17                 filed; and

18                 “(ii) for charitable contributions (that  
19                 meet the definition of ‘charitable contribution’  
20                 under section 548(d)(3) to a qualified religious  
21                 or charitable entity or organization (as defined  
22                 in section 548(d)(4)) in an amount not to ex-  
23                 ceed 15 percent of gross income of the debtor  
24                 for the year in which the contributions are  
25                 made; and

1           “(B) if the debtor is engaged in business,  
2           for the payment of expenditures necessary for  
3           the continuation, preservation, and operation of  
4           such business.

5           “(3) Amounts reasonably necessary to be ex-  
6           pended under paragraph (2) shall be determined in  
7           accordance with subparagraphs (A) and (B) of sec-  
8           tion 707(b)(2), if the debtor has current monthly in-  
9           come, when multiplied by 12, greater than—

10           “(A) in the case of a debtor in a household  
11           of 1 person, the median family income of the  
12           applicable State for 1 earner;

13           “(B) in the case of a debtor in a household  
14           of 2, 3, or 4 individuals, the highest median  
15           family income of the applicable State for a fam-  
16           ily of the same number or fewer individuals; or

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

22           (i) SPECIAL ALLOWANCE FOR HEALTH INSUR-  
23           ANCE.—Section 1329(a) of title 11, United States Code,  
24           is 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) reduce amounts to be paid under the plan  
7 by the actual amount expended by the debtor to pur-  
8 chase health insurance for the debtor (and for any  
9 dependent of the debtor if such dependent does not  
10 otherwise have health insurance coverage) if the  
11 debtor documents the cost of such insurance and  
12 demonstrates that—

13                   “(A) such expenses are reasonable and  
14 necessary;

15                   “(B)(i) if the debtor previously paid for  
16 health insurance, the amount is not materially  
17 larger than the cost the debtor previously paid  
18 or the cost necessary to maintain the lapsed  
19 policy; or

20                   “(ii) if the debtor did not have health in-  
21 surance, the amount is not materially larger  
22 than the reasonable cost that would be incurred  
23 by a debtor who purchases health insurance,  
24 who has similar income, expenses, age, and  
25 health status, and who lives in the same geo-

1 graphical location with the same number of de-  
2 pendents who do not otherwise have health in-  
3 surance coverage; and

4 “(C) the amount is not otherwise allowed  
5 for purposes of determining disposable income  
6 under section 1325(b) of this title;

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

9 (j) ADJUSTMENT OF DOLLAR AMOUNTS.—Section  
10 104(b) of title 11, United States Code, is amended by  
11 striking “and 523(a)(2)(C)” each place it appears and in-  
12 serting “523(a)(2)(C), 707(b), and 1325(b)(3)”.

13 (k) DEFINITION OF ‘MEDIAN FAMILY INCOME’.—  
14 Section 101 of title 11, United States Code, is amended  
15 by inserting after paragraph (39) the following:

16 “(39A) ‘median family income’ means for any  
17 year—

18 “(A) the median family income both cal-  
19 culated and reported by the Bureau of the Cen-  
20 sus in the then most recent year; and

21 “(B) if not so calculated and reported in  
22 the then current year, adjusted annually after  
23 such most recent year until the next year in  
24 which median family income is both calculated  
25 and reported by the Bureau of the Census, to

1 reflect the percentage change in the Consumer  
2 Price Index for All Urban Consumers during  
3 the period of years occurring after such most  
4 recent year and before such current year;”.

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

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

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

10 (a) SENSE OF CONGRESS.—It is the sense of Con-  
11 gress that the Secretary of the Treasury has the authority  
12 to alter the Internal Revenue Service standards estab-  
13 lished to set guidelines for repayment plans as needed to  
14 accommodate their use under section 707(b) of title 11,  
15 United States Code.

16 (b) STUDY.—

17 (1) IN GENERAL.—Not later than 2 years after  
18 the date of enactment of this Act, the Director of  
19 the Executive Office for United States Trustees shall  
20 submit a report to the Committee on the Judiciary  
21 of the Senate and the Committee on the Judiciary  
22 of the House of Representatives containing the find-  
23 ings of the Director regarding the utilization of In-  
24 ternal Revenue Service standards for determining—

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

4 (B) the impact that the application of such  
5 standards has had on debtors and on the bank-  
6 ruptey courts.

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

12 **SEC. 104. NOTICE OF ALTERNATIVES.**

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

15 “(b) Before the commencement of a case under this  
16 title by an individual whose debts are primarily consumer  
17 debts, the clerk shall give to such individual written notice  
18 containing—

19 “(1) a brief description of—

20 “(A) chapters 7, 11, 12, and 13 and the  
21 general purpose, benefits, and costs of pro-  
22 ceeding under each of those chapters; and

23 “(B) the types of services available from  
24 credit counseling agencies; and

25 “(2) statements specifying that—

1           “(A) a person who knowingly and fraudu-  
2           lently conceals assets or makes a false oath or  
3           statement under penalty of perjury in connec-  
4           tion with a case under this title shall be subject  
5           to fine, imprisonment, or both; and

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

9 **SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING**  
10 **TEST PROGRAM.**

11       (a) DEVELOPMENT OF FINANCIAL MANAGEMENT  
12 AND TRAINING CURRICULUM AND MATERIALS.—The Di-  
13 rector of the Executive Office for United States Trustees  
14 (in this section referred to as the “Director”) shall consult  
15 with a wide range of individuals who are experts in the  
16 field of debtor education, including trustees who serve in  
17 cases under chapter 13 of title 11, United States Code,  
18 and who operate financial management education pro-  
19 grams for debtors, and shall develop a financial manage-  
20 ment training curriculum and materials that can be used  
21 to educate debtors who are individuals on how to better  
22 manage their finances.

23       (b) TEST.—

24           (1) SELECTION OF DISTRICTS.—The Director  
25       shall select 6 judicial districts of the United States

1 in which to test the effectiveness of the financial  
2 management training curriculum and materials de-  
3 veloped under subsection (a).

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

11 (c) EVALUATION.—

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

15 (A) the financial management training cur-  
16 riculum and materials developed under sub-  
17 section (a); and

18 (B) a sample of existing consumer edu-  
19 cation programs such as those described in the  
20 Report of the National Bankruptcy Review  
21 Commission (October 20, 1997) that are rep-  
22 resentative of consumer education programs  
23 carried out by the credit industry, by trustees  
24 serving under chapter 13 of title 11, United



1 States Code, and by consumer counseling  
2 groups.

3 (2) REPORT.—Not later than 3 months after  
4 concluding such evaluation, the Director shall sub-  
5 mit a report to the Speaker of the House of Rep-  
6 resentatives and the President pro tempore of the  
7 Senate, for referral to the appropriate committees of  
8 the Congress, containing the findings of the Director  
9 regarding the effectiveness of such curriculum, such  
10 materials, and such programs and their costs.

11 **SEC. 106. CREDIT COUNSELING.**

12 (a) WHO MAY BE A DEBTOR.—Section 109 of title  
13 11, United States Code, is amended by adding at the end  
14 the following:

15 “(h)(1) Subject to paragraphs (2) and (3), and not-  
16 withstanding any other provision of this section, an indi-  
17 vidual may not be a debtor under this title unless such  
18 individual has, during the 180-day period preceding the  
19 date of filing of the petition by such individual, received  
20 from an approved nonprofit budget and credit counseling  
21 agency described in section 111(a) an individual or group  
22 briefing (including a briefing conducted by telephone or  
23 on the Internet) that outlined the opportunities for avail-  
24 able credit counseling and assisted such individual in per-  
25 forming a related budget analysis.

1       “(2)(A) Paragraph (1) shall not apply with respect  
2 to a debtor who resides in a district for which the United  
3 States trustee (or the bankruptcy administrator, if any)  
4 determines that the approved nonprofit budget and credit  
5 counseling agencies for such district are not reasonably  
6 able to provide adequate services to the additional individ-  
7 uals who would otherwise seek credit counseling from such  
8 agencies by reason of the requirements of paragraph (1).

9       “(B) The United States trustee (or the bankruptcy  
10 administrator, if any) who makes a determination de-  
11 scribed in subparagraph (A) shall review such determina-  
12 tion not later than 1 year after the date of such deter-  
13 mination, and not less frequently than annually thereafter.  
14 Notwithstanding the preceding sentence, a nonprofit  
15 budget and credit counseling agency may be disapproved  
16 by the United States trustee (or the bankruptcy adminis-  
17 trator, if any) at any time.

18       “(3)(A) Subject to subparagraph (B), the require-  
19 ments of paragraph (1) shall not apply with respect to  
20 a debtor who submits to the court a certification that—

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

23               “(ii) states that the debtor requested credit  
24 counseling services from an approved nonprofit  
25 budget and credit counseling agency, but was unable

1 to obtain the services referred to in paragraph (1)  
2 during the 5-day period beginning on the date on  
3 which the debtor made that request; and

4 “(iii) is satisfactory to the court.

5 “(B) With respect to a debtor, an exemption under  
6 subparagraph (A) shall cease to apply to that debtor on  
7 the date on which the debtor meets the requirements of  
8 paragraph (1), but in no case may the exemption apply  
9 to that debtor after the date that is 30 days after the debt-  
10 or files a petition, except that the court, for cause, may  
11 order an additional 15 days.

12 “(4) The requirements of paragraph (1) shall not  
13 apply with respect to a debtor whom the court determines,  
14 after notice and hearing, is unable to complete those re-  
15 quirements because of incapacity, disability, or active mili-  
16 tary duty in a military combat zone. For the purposes of  
17 this paragraph, incapacity means that the debtor is im-  
18 paired by reason of mental illness or mental deficiency so  
19 that he is incapable of realizing and making rational deci-  
20 sions with respect to his financial responsibilities; and  
21 “disability” means that the debtor is so physically im-  
22 paired as to be unable, after reasonable effort, to partici-  
23 pate in an in person, telephone, or Internet briefing re-  
24 quired under paragraph (1).”.

1 (b) CHAPTER 7 DISCHARGE.—Section 727(a) of title  
2 11, United States Code, is amended—

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

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

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

8 “(11) after filing the petition, the debtor failed  
9 to complete an instructional course concerning per-  
10 sonal financial management described in section  
11 111, except that this paragraph shall not apply with  
12 respect to a debtor who is a person described in sec-  
13 tion 109(h)(4) or who resides in a district for which  
14 the United States trustee (or the bankruptcy admin-  
15 istrator, if any) determines that the approved in-  
16 structional courses are not adequate to service the  
17 additional individuals who would otherwise be re-  
18 quired to complete such instructional courses under  
19 this section (The United States trustee (or the bank-  
20 ruptcy administrator, if any) who makes a deter-  
21 mination described in this paragraph shall review  
22 such determination not later than 1 year after the  
23 date of such determination, and not less frequently  
24 than annually thereafter.)”.

1           (c) CHAPTER 13 DISCHARGE.—Section 1328 of title  
2 11, United States Code, is amended by adding at the end  
3 the following:

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

8           “(2) Paragraph (1) shall not apply with respect to  
9 a debtor who is a person described in section 109(h)(4)  
10 or who resides in a district for which the United States  
11 trustee (or the bankruptcy administrator, if any) deter-  
12 mines that the approved instructional courses are not ade-  
13 quate to service the additional individuals who would oth-  
14 erwise be required to complete such instructional course  
15 by reason of the requirements of paragraph (1).

16           “(3) The United States trustee (or the bankruptcy  
17 administrator, if any) who makes a determination de-  
18 scribed in paragraph (2) shall review such determination  
19 not later than 1 year after the date of such determination,  
20 and not less frequently than annually thereafter.”.

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

23           (1) by inserting “(a)” before “The debtor  
24 shall—”; and

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

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

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

8 “(2) a copy of the debt repayment plan, if any,  
 9 developed under section 109(h) through the ap-  
 10 proved nonprofit budget and credit counseling agen-  
 11 cy referred to in paragraph (1).”.

12 (e) GENERAL PROVISIONS.—

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

16 **“§ 111. Nonprofit budget and credit counseling agen-**  
 17 **cies; financial management instructional**  
 18 **courses**

19 “(a) The clerk shall maintain a publicly available list  
 20 of—

21 “(1) nonprofit budget and credit counseling  
 22 agencies that provide 1 or more services described in  
 23 section 109(h) currently approved by the United  
 24 States trustee (or the bankruptcy administrator, if  
 25 any); and

1           “(2) instructional courses concerning personal  
2           financial management currently approved by the  
3           United States trustee (or the bankruptcy adminis-  
4           trator, if any), as applicable.

5           “(b) The United States trustee (or bankruptcy ad-  
6           ministrators, if any) shall only approve a nonprofit budget  
7           and credit counseling agency or an instructional course  
8           concerning personal financial management as follows:

9           “(1) The United States trustee (or bankruptcy  
10          administrator, if any) shall have thoroughly reviewed  
11          the qualifications of the nonprofit budget and credit  
12          counseling agency or of the provider of the instruc-  
13          tional course under the standards set forth in this  
14          section, and the services or instructional courses  
15          that will be offered by such agency or such provider,  
16          and may require such agency or such provider that  
17          has sought approval to provide information with re-  
18          spect to such review.

19          “(2) The United States trustee (or bankruptcy  
20          administrator, if any) shall have determined that  
21          such agency or such instructional course fully satis-  
22          fies the applicable standards set forth in this section.

23          “(3) If a nonprofit budget and credit counseling  
24          agency or instructional course did not appear on the  
25          approved list for the district under subsection (a)

1 immediately before approval under this section, ap-  
2 proval under this subsection of such agency or such  
3 instructional course shall be for a probationary pe-  
4 riod not to exceed 6 months.

5 “(4) At the conclusion of the applicable proba-  
6 tionary period under paragraph (3), the United  
7 States trustee (or bankruptcy administrator, if any)  
8 may only approve for an additional 1-year period,  
9 and for successive 1-year periods thereafter, an  
10 agency or instructional course that has dem-  
11 onstrated during the probationary or applicable sub-  
12 sequent period of approval that such agency or in-  
13 structional course—

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

16 “(B) can satisfy such standards in the fu-  
17 ture.

18 “(5) Not later than 30 days after any final de-  
19 cision under paragraph (4), an interested person  
20 may seek judicial review of such decision in the ap-  
21 propriate district court of the United States.

22 “(c)(1) The United States trustee (or the bankruptcy  
23 administrator, if any) shall only approve a nonprofit budg-  
24 et and credit counseling agency that demonstrates that it  
25 will provide qualified counselors, maintain adequate provi-



1 sion for safekeeping and payment of client funds, provide  
2 adequate counseling with respect to client credit problems,  
3 and deal responsibly and effectively with other matters re-  
4 lating to the quality, effectiveness, and financial security  
5 of the services it provides.

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

9 “(A) have a board of directors the majority of  
10 which—

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

12 “(ii) will not directly or indirectly benefit  
13 financially from the outcome of the counseling  
14 services provided by such agency;

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

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

21 “(D) provide full disclosures to a client, includ-  
22 ing funding sources, counselor qualifications, pos-  
23 sible impact on credit reports, and any costs of such  
24 program that will be paid by such client and how  
25 such costs will be paid;

1           “(E) provide adequate counseling with respect  
2           to a client’s credit problems that includes an anal-  
3           ysis of such client’s current financial condition, fac-  
4           tors that caused such financial condition, and how  
5           such client can develop a plan to respond to the  
6           problems without incurring negative amortization of  
7           debt;

8           “(F) provide trained counselors who receive no  
9           commissions or bonuses based on the outcome of the  
10          counseling services provided by such agency, and  
11          who have adequate experience, and have been ade-  
12          quately trained to provide counseling services to in-  
13          dividuals in financial difficulty, including the mat-  
14          ters described in subparagraph (E);

15          “(G) demonstrate adequate experience and  
16          background in providing credit counseling; and

17          “(H) have adequate financial resources to pro-  
18          vide continuing support services for budgeting plans  
19          over the life of any repayment plan.

20          “(d) The United States trustee (or the bankruptcy  
21          administrator, if any) shall only approve an instructional  
22          course concerning personal financial management—

23                  “(1) for an initial probationary period under  
24                  subsection (b)(3) if the course will provide at a min-  
25                  imum—

1           “(A) trained personnel with adequate expe-  
2           rience and training in providing effective in-  
3           struction and services;

4           “(B) learning materials and teaching  
5           methodologies designed to assist debtors in un-  
6           derstanding personal financial management and  
7           that are consistent with stated objectives di-  
8           rectly related to the goals of such instructional  
9           course;

10          “(C) adequate facilities situated in reason-  
11          ably convenient locations at which such instruc-  
12          tional course is offered, except that such facili-  
13          ties may include the provision of such instruc-  
14          tional course by telephone or through the Inter-  
15          net, if such instructional course is effective;

16          “(D) the preparation and retention of rea-  
17          sonable records (which shall include the debt-  
18          or’s bankruptcy case number) to permit evalua-  
19          tion of the effectiveness of such instructional  
20          course, including any evaluation of satisfaction  
21          of instructional course requirements for each  
22          debtor attending such instructional course,  
23          which shall be available for inspection and eval-  
24          uation by the Executive Office for United  
25          States Trustees, the United States trustee (or

1 the bankruptcy administrator, if any), or the  
2 chief bankruptcy judge for the district in which  
3 such instructional course is offered; and

4 “(E) if a fee is charged for the instructional  
5 course, charge a reasonable fee, and provide services  
6 without regard to ability to pay the fee.

7 “(2) for any 1-year period if the provider there-  
8 of has demonstrated that the course meets the  
9 standards of paragraph (1) and, in addition—

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

13 “(B) is otherwise likely to increase sub-  
14 stantially the debtor’s understanding of per-  
15 sonal financial management.

16 “(e) The district court may, at any time, investigate  
17 the qualifications of a nonprofit budget and credit coun-  
18 seling agency referred to in subsection (a), and request  
19 production of documents to ensure the integrity and effec-  
20 tiveness of such agency. The district court may, at any  
21 time, remove from the approved list under subsection (a)  
22 a nonprofit budget and credit counseling agency upon  
23 finding such agency does not meet the qualifications of  
24 subsection (b).

1           “(f) The United States trustee (or the bankruptcy ad-  
2 ministrator, if any) shall notify the clerk that a nonprofit  
3 budget and credit counseling agency or an instructional  
4 course is no longer approved, in which case the clerk shall  
5 remove it from the list maintained under subsection (a).

6           “(g)(1) No nonprofit budget and credit counseling  
7 agency may provide to a credit reporting agency informa-  
8 tion concerning whether a debtor has received or sought  
9 instruction concerning personal financial management  
10 from such agency.

11           “(2) A nonprofit budget and credit counseling agency  
12 that willfully or negligently fails to comply with any re-  
13 quirement under this title with respect to a debtor shall  
14 be liable for damages in an amount equal to the sum of—

15           “(A) any actual damages sustained by the debt-  
16 or as a result of the violation; and

17           “(B) any court costs or reasonable attorneys’  
18 fees (as determined by the court) incurred in an ac-  
19 tion to recover those damages.”.

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

“111. Nonprofit budget and credit counseling agencies; financial management  
instructional courses.”.

1 (f) LIMITATION.—Section 362 of title 11, United  
2 States Code, is amended by adding at the end the fol-  
3 lowing:

4 “(i) If a case commenced under chapter 7, 11, or 13  
5 is dismissed due to the creation of a debt repayment plan,  
6 for purposes of subsection (c)(3), any subsequent case  
7 commenced by the debtor under any such chapter shall  
8 not be presumed to be filed not in good faith.

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

12 **SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY**  
13 **EXPENSES.**

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

1                   **TITLE II—ENHANCED**  
2                   **CONSUMER PROTECTION**  
3           **Subtitle A—Penalties for Abusive**  
4                   **Creditor Practices**

5   **SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLU-**  
6                   **TION.**

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

10           “(k)(1) The court, on the motion of the debtor and  
11   after a hearing, may reduce a claim filed under this sec-  
12   tion based in whole on an unsecured consumer debt by  
13   not more than 20 percent of the claim, if—

14                   “(A) the claim was filed by a creditor who un-  
15                   reasonably refused to negotiate a reasonable alter-  
16                   native repayment schedule proposed on behalf of the  
17                   debtor by an approved nonprofit budget and credit  
18                   counseling agency described in section 111;

19                   “(B) the offer of the debtor under subpara-  
20                   graph (A)—

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

23                           “(ii) provided for payment of at least 60  
24                           percent of the amount of the debt over a period

1 not to exceed the repayment period of the loan,  
2 or a reasonable extension thereof; and

3 “(C) no part of the debt under the alternative  
4 repayment schedule is nondischargeable.

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

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

9 “(B) the proposed alternative repayment sched-  
10 ule was made prior to expiration of the 60-day pe-  
11 riod specified in paragraph (1)(B)(i).”.

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

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

20 **SEC. 202. EFFECT OF DISCHARGE.**

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

23 “(i) The willful failure of a creditor to credit pay-  
24 ments received under a plan confirmed under this title,  
25 unless the order confirming the plan is revoked, the plan



1 is in default, or the creditor has not received payments  
 2 required to be made under the plan in the manner re-  
 3 quired by the plan (including crediting the amounts re-  
 4 quired under the plan), shall constitute a violation of an  
 5 injunction under subsection (a)(2) if the act of the creditor  
 6 to collect and failure to credit payments in the manner  
 7 required by the plan caused material injury to the debtor.

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

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

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

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

20 **SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION**  
 21 **AGREEMENT PRACTICES.**

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

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

1           “(2) the debtor received the disclosures de-  
2           scribed in subsection (k) at or before the time at  
3           which the debtor signed the agreement;” and

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

5           “(k)(1) The disclosures required under subsection  
6 (c)(2) shall consist of the disclosure statement described  
7 in paragraph (3), completed as required in that para-  
8 graph, together with the agreement specified in subsection  
9 (c), statement, declaration, motion and order described,  
10 respectively, in paragraphs (4) through (8), and shall be  
11 the only disclosures required in connection with entering  
12 into such agreement.

13          “(2) Disclosures made under paragraph (1) shall be  
14 made clearly and conspicuously and in writing. The terms  
15 ‘Amount Reaffirmed’ and ‘Annual Percentage Rate’ shall  
16 be disclosed more conspicuously than other terms, data or  
17 information provided in connection with this disclosure,  
18 except that the phrases ‘Before agreeing to reaffirm a  
19 debt, review these important disclosures’ and ‘Summary  
20 of Reaffirmation Agreement’ may be equally conspicuous.  
21 Disclosures may be made in a different order and may  
22 use terminology different from that set forth in para-  
23 graphs (2) through (8), except that the terms ‘Amount  
24 Reaffirmed’ and ‘Annual Percentage Rate’ must be used  
25 where indicated.

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

3           “(A) The statement: ‘Part A: Before agreeing  
4 to reaffirm a debt, review these important disclo-  
5 sures.’;

6           “(B) Under the heading ‘Summary of Reaffir-  
7 mation Agreement’, the statement: ‘This Summary  
8 is made pursuant to the requirements of the Bank-  
9 ruptcy Code’;

10          “(C) The ‘Amount Reaffirmed’, using that  
11 term, which shall be—

12           “(i) the total amount of debt that the debt-  
13 or agrees to reaffirm by entering into an agree-  
14 ment of the kind specified in subsection (c), and

15           “(ii) the total of any fees and costs ac-  
16 crued as of the date of the disclosure statement,  
17 related to such total amount.

18          “(D) In conjunction with the disclosure of the  
19 ‘Amount Reaffirmed’, the statements—

20           “(i) ‘The amount of debt you have agreed  
21 to reaffirm’; and

22           “(ii) ‘Your credit agreement may obligate  
23 you to pay additional amounts which may come  
24 due after the date of this disclosure. Consult  
25 your credit agreement.’.

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

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

8           “(I) the annual percentage rate deter-  
9 mined under paragraphs (5) and (6) of  
10 section 127(b) of the Truth in Lending  
11 Act, as applicable, as disclosed to the debt-  
12 or in the most recent periodic statement  
13 prior to entering into an agreement of the  
14 kind specified in subsection (c) or, if no  
15 such periodic statement has been given to  
16 the debtor during the prior 6 months, the  
17 annual percentage rate as it would have  
18 been so disclosed at the time the disclosure  
19 statement is given to the debtor, or to the  
20 extent this annual percentage rate is not  
21 readily available or not applicable, then

22           “(II) the simple interest rate applica-  
23 ble to the amount reaffirmed as of the date  
24 the disclosure statement is given to the  
25 debtor, or if different simple interest rates

1 apply to different balances, the simple in-  
2 terest rate applicable to each such balance,  
3 identifying the amount of each such bal-  
4 ance included in the amount reaffirmed, or

5 “(III) if the entity making the disclo-  
6 sure elects, to disclose the annual percent-  
7 age rate under subclause (I) and the sim-  
8 ple interest rate under subclause (II); or

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

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

1 to the extent this annual percentage rate is  
2 not readily available or not applicable, then

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

11 “(III) if the entity making the disclo-  
12 sure elects, to disclose the annual percent-  
13 age rate under (I) and the simple interest  
14 rate under (II).

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

22 “(G) If the debt is secured by a security inter-  
23 est which has not been waived in whole or in part  
24 or determined to be void by a final order of the  
25 court at the time of the disclosure, by disclosing that

1 a security interest or lien in goods or property is as-  
2 serted over some or all of the debts the debtor is re-  
3 affirming and listing the items and their original  
4 purchase price that are subject to the asserted secu-  
5 rity interest, or if not a purchase-money security in-  
6 terest then listing by items or types and the original  
7 amount of the loan.

8 “(H) At the election of the creditor, a state-  
9 ment of the repayment schedule using 1 or a com-  
10 bination of the following—

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

18 “(ii) by making the statement: ‘Your pay-  
19 ment schedule will be:’, and describing the re-  
20 payment schedule with the number, amount,  
21 and due dates or period of payments scheduled  
22 to repay the debts reaffirmed to the extent then  
23 known by the disclosing party; or

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

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

16          “(J)(i) The following additional statements:  
17          “‘Reaffirming a debt is a serious financial decision.  
18          The law requires you to take certain steps to make sure  
19          the decision is in your best interest. If these steps are not  
20          completed, the reaffirmation agreement is not effective,  
21          even though you have signed it.

22          “‘1. Read the disclosures in this Part A care-  
23          fully. Consider the decision to reaffirm carefully.  
24          Then, if you want to reaffirm, sign the reaffirmation



1 agreement in Part B (or you may use a separate  
2 agreement you and your creditor agree on).

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

8 “3. If you were represented by an attorney  
9 during the negotiation of your reaffirmation agree-  
10 ment, the attorney must have signed the certification  
11 in Part C.

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

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

19 “6. If you were represented by an attorney  
20 during the negotiation of your reaffirmation agree-  
21 ment, your reaffirmation agreement becomes effec-  
22 tive upon filing with the court unless the reaffirma-  
23 tion is presumed to be an undue hardship as ex-  
24 plained in Part 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 ap-  
4 proves it. The court will notify you of the hearing on  
5 your reaffirmation agreement. You must attend this  
6 hearing in bankruptcy court where the judge will re-  
7 view your reaffirmation agreement. The bankruptcy  
8 court must approve your reaffirmation agreement as  
9 consistent with your best interests, except that no  
10 court approval is required if your reaffirmation  
11 agreement is for a consumer debt secured by a mort-  
12 gage, deed of trust, security deed, or other lien on  
13 your real 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 agree-  
19 ment is filed with the court, whichever occurs later. To  
20 rescind (cancel) your reaffirmation agreement, you must  
21 notify the creditor that your reaffirmation agreement is  
22 rescinded (or 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  
2 bankruptcy case is over, your creditor may be able to take  
3 your property or your wages. Otherwise, your obligations  
4 will be determined by the reaffirmation agreement which  
5 may have changed the terms of the original agreement.  
6 For example, if you are reaffirming an open end credit  
7 agreement, the creditor may be permitted by that agree-  
8 ment or applicable law to change the terms of that agree-  
9 ment in the future under certain conditions.

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

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

1 To redeem, you make a single payment to the creditor  
2 equal to the current value of the security property, as  
3 agreed by the parties or determined by the court.’.

4 “(ii) In the case of a reaffirmation under sub-  
5 section (m)(2), numbered paragraph 6 in the disclo-  
6 sures required by clause (i) of this subparagraph  
7 shall read as follows:

8 “‘6. If you were represented by an attorney  
9 during the negotiation of your reaffirmation agree-  
10 ment, your reaffirmation agreement becomes effec-  
11 tive upon filing with the court.’.

12 “(4) The form of such agreement required under this  
13 paragraph shall consist of the following:

14 “‘Part B: Reaffirmation Agreement. I (we) agree to  
15 reaffirm the debts arising under the credit agreement de-  
16 scribed below.

17 “‘Brief description of credit agreement:

18 “‘Description of any changes to the credit agreement  
19 made as part of this reaffirmation agreement:

20 “‘Signature: Date:

21 “‘Borrower:

22 “‘Co-borrower, if also reaffirming these debts:

23 “‘Accepted by creditor:

24 “‘Date of creditor acceptance:’.

25 “(5) The declaration shall consist of the following:

1           “(A) The following certification:

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

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

11           “‘Signature of Debtor’s Attorney:           Date:’.

12           “(B) If a presumption of undue hardship has  
13 been established with respect to such agreement,  
14 such certification shall state that in the opinion of  
15 the attorney, the debtor is able to make the pay-  
16 ment.

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

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

22           “‘Part D: Debtor’s Statement in Support of Reaffir-  
23 mation Agreement.

24           “‘1. I believe this reaffirmation agreement will not  
25 impose an undue hardship on my dependents or me. I can

1 afford to make the payments on the reaffirmed debt be-  
2 cause my monthly income (take home pay plus any other  
3 income received) is \$\_\_\_\_\_, and my actual current  
4 monthly expenses including monthly payments on post-  
5 bankruptcy debt and other reaffirmation agreements total  
6 \$\_\_\_\_\_, leaving \$\_\_\_\_\_ to make the required payments  
7 on this reaffirmed debt. I understand that if my income  
8 less my monthly expenses does not leave enough to make  
9 the payments, this reaffirmation agreement is presumed  
10 to be an undue hardship on me and must be reviewed by  
11 the court. However, this presumption may be overcome if  
12 I explain to the satisfaction of the court how I can afford  
13 to make the payments here: \_\_\_\_\_.

14 “2. I received a copy of the Reaffirmation Disclosure  
15 Statement in Part A and a completed and signed reaffir-  
16 mation agreement.’.

17 “(B) Where the debtor is represented by an attorney  
18 and is reaffirming a debt owed to a creditor defined in  
19 section 19(b)(1)(A)(iv) of the Federal Reserve Act, the  
20 statement of support of the reaffirmation agreement,  
21 which the debtor shall sign and date prior to filing with  
22 the court, shall consist of the following:

23 “I believe this reaffirmation agreement is in my fi-  
24 nancial interest. I can afford to make the payments on  
25 the reaffirmed debt. I received a copy of the Reaffirmation

1 Disclosure Statement in Part A and a completed and  
2 signed reaffirmation agreement.’.

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

7 “‘Part E: Motion for Court Approval (To be com-  
8 pleted only if the debtor is not represented by an attor-  
9 ney.). I (we), the debtor(s), affirm the following to be true  
10 and correct:

11 “‘I am not represented by an attorney in connection  
12 with this reaffirmation agreement.

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

18 “‘Therefore, I ask the court for an order approving  
19 this reaffirmation agreement.’.

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

22 “‘Court Order: The court grants the debtor’s motion  
23 and approves the reaffirmation agreement described  
24 above.’.

1           “(l) Notwithstanding any other provision of this title  
2 the following shall apply:

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

6           “(2) A creditor may accept payments from a  
7 debtor under such agreement that the creditor be-  
8 lieves in good faith to be effective.

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

12           “(m)(1) Until 60 days after an agreement of the kind  
13 specified in subsection (c) is filed with the court (or such  
14 additional period as the court, after notice and a hearing  
15 and for cause, orders before the expiration of such period),  
16 it shall be presumed that such agreement is an undue  
17 hardship on the debtor if the debtor’s monthly income less  
18 the debtor’s monthly expenses as shown on the debtor’s  
19 completed and signed statement in support of such agree-  
20 ment required under subsection (k)(6)(A) is less than the  
21 scheduled payments on the reaffirmed debt. This pre-  
22 sumption shall be reviewed by the court. The presumption  
23 may be rebutted in writing by the debtor if the statement  
24 includes an explanation that identifies additional sources  
25 of funds to make the payments as agreed upon under the



1 terms of such agreement. If the presumption is not rebut-  
2 ted to the satisfaction of the court, the court may dis-  
3 approve such agreement. No agreement shall be dis-  
4 approved without notice and a hearing to the debtor and  
5 creditor, and such hearing shall be concluded before the  
6 entry of the debtor's discharge.

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

10 (b) LAW ENFORCEMENT.—

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

14 **“§ 158. Designation of United States attorneys and**  
15 **agents of the Federal Bureau of Inves-**  
16 **tigation to address abusive reaffirma-**  
17 **tions of debt and materially fraudulent**  
18 **statements in bankruptcy schedules**

19 “(a) IN GENERAL.—The Attorney General of the  
20 United States shall designate the individuals described in  
21 subsection (b) to have primary responsibility in carrying  
22 out enforcement activities in addressing violations of sec-  
23 tion 152 or 157 relating to abusive reaffirmations of debt.  
24 In addition to addressing the violations referred to in the  
25 preceding sentence, the individuals described under sub-

1 section (b) shall address violations of section 152 or 157  
2 relating to materially fraudulent statements in bankruptcy  
3 schedules that are intentionally false or intentionally mis-  
4 leading.

5 “(b) UNITED STATES ATTORNEYS AND AGENTS OF  
6 THE FEDERAL BUREAU OF INVESTIGATION.—The indi-  
7 viduals referred to in subsection (a) are—

8 “(1) the United States attorney for each judi-  
9 cial district of the United States; and

10 “(2) an agent of the Federal Bureau of Inves-  
11 tigation for each field office of the Federal Bureau  
12 of Investigation.

13 “(c) BANKRUPTCY INVESTIGATIONS.—Each United  
14 States attorney designated under this section shall, in ad-  
15 dition to any other responsibilities, have primary responsi-  
16 bility for carrying out the duties of a United States attor-  
17 ney under section 3057.

18 “(d) BANKRUPTCY PROCEDURES.—The bankruptcy  
19 courts shall establish procedures for referring any case  
20 that may contain a materially fraudulent statement in a  
21 bankruptcy schedule to the individuals designated under  
22 this section.”.

23 (2) CLERICAL AMENDMENT.—The table of sec-  
24 tions for chapter 9 of title 18, United States Code,  
25 is amended by adding at the end the following:

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

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

3 Section 363 of title 11, United States Code, is  
4 amended—

5 (1) by redesignating subsection (o) as sub-  
6 section (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  
13 of title 16 of the Code of Federal Regulations (January  
14 1, 2004), as amended from time to time), and if such in-  
15 terest is purchased through a sale under this section, then  
16 such person shall remain subject to all claims and defenses  
17 that are related to such consumer credit transaction or  
18 such consumer credit contract, to the same extent as such  
19 person would be subject to such claims and defenses of  
20 the consumer had such interest been purchased at a sale  
21 not under this section.”.

1 **SEC. 205. GAO STUDY AND REPORT ON REAFFIRMATION**  
2 **AGREEMENT PROCESS.**

3 (a) STUDY.—The Comptroller General of the United  
4 States shall conduct a study of the reaffirmation agree-  
5 ment process that occurs under title 11 of the United  
6 States Code, to determine the overall treatment of con-  
7 sumers within the context of such process, and shall in-  
8 clude in such study consideration of—

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

11 (2) whether consumers are fully, fairly, and  
12 consistently informed of their rights pursuant to  
13 such title.

14 (b) REPORT TO THE CONGRESS.—Not later than 18  
15 months after the date of the enactment of this Act, the  
16 Comptroller General shall submit to the President pro  
17 tempore of the Senate and the Speaker of the House of  
18 Representatives a report on the results of the study con-  
19 ducted under subsection (a), together with recommenda-  
20 tions for legislation (if any) to address any abusive or co-  
21 ercive tactics found in connection with the reaffirmation  
22 agreement process that occurs under title 11 of the United  
23 States Code.

## 1 **Subtitle B—Priority Child Support**

### 2 **SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGA-** 3 **TION.**

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

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

7 (2) by inserting after paragraph (14) the fol-  
8 lowing:

9 “(14A) ‘domestic support obligation’ means a  
10 debt that accrues before, on, or after the date of the  
11 order for relief in a case under this title, including  
12 interest that accrues on that debt as provided under  
13 applicable nonbankruptcy law notwithstanding any  
14 other provision of this title, that is—

15 “(A) owed to or recoverable by—

16 “(i) a spouse, former spouse, or child  
17 of the debtor or such child’s parent, legal  
18 guardian, or responsible relative; or

19 “(ii) a governmental unit;

20 “(B) in the nature of alimony, mainte-  
21 nance, or support (including assistance provided  
22 by a governmental unit) of such spouse, former  
23 spouse, or child of the debtor or such child’s  
24 parent, without regard to whether such debt is  
25 expressly so designated;

1           “(C) established or subject to establish-  
 2           ment before, on, or after the date of the order  
 3           for relief in a case under this title, by reason  
 4           of applicable provisions of—

5                   “(i) a separation agreement, divorce  
 6                   decree, or property settlement agreement;

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

8                   “(iii) a determination made in accord-  
 9                   ance with applicable nonbankruptcy law by  
 10                  a governmental unit; and

11           “(D) not assigned to a nongovernmental  
 12           entity, unless that obligation is assigned volun-  
 13           tarily by the spouse, former spouse, child of the  
 14           debtor, or such child’s parent, legal guardian,  
 15           or responsible relative for the purpose of col-  
 16           lecting the debt;”.

17 **SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUP-**  
 18 **PORT OBLIGATIONS.**

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

21                   (1) by striking paragraph (7);

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

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

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

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

4 (A) by striking “Third” and inserting  
5 “Fourth”; and

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

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

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

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

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

16 “(1) First:

17 “(A) Allowed unsecured claims for domes-  
18 tic support obligations that, as of the date of  
19 the filing of the petition in a case under this  
20 title, are owed to or recoverable by a spouse,  
21 former spouse, or child of the debtor, or such  
22 child’s parent, legal guardian, or responsible  
23 relative, without regard to whether the claim is  
24 filed by such person or is filed by a govern-  
25 mental unit on behalf of such person, on the

1 condition that funds received under this para-  
2 graph by a governmental unit under this title  
3 after the date of the filing of the petition shall  
4 be applied and distributed in accordance with  
5 applicable nonbankruptcy law.

6 “(B) Subject to claims under subpara-  
7 graph (A), allowed unsecured claims for domes-  
8 tic support obligations that, as of the date of  
9 the filing of the petition, are assigned by a  
10 spouse, former spouse, child of the debtor, or  
11 such child’s parent, legal guardian, or respon-  
12 sible relative to a governmental unit (unless  
13 such obligation is assigned voluntarily by the  
14 spouse, former spouse, child, parent, legal  
15 guardian, or responsible relative of the child for  
16 the purpose of collecting the debt) or are owed  
17 directly to or recoverable by a governmental  
18 unit under applicable nonbankruptcy law, on  
19 the condition that funds received under this  
20 paragraph by a governmental unit under this  
21 title after the date of the filing of the petition  
22 be applied and distributed in accordance with  
23 applicable nonbankruptcy law.

24 “(C) If a trustee is appointed or elected  
25 under section 701, 702, 703, 1104, 1202, or



1           1302, the administrative expenses of the trustee  
2           allowed under paragraphs (1)(A), (2), and (6)  
3           of section 503(b) shall be paid before payment  
4           of claims under subparagraphs (A) and (B), to  
5           the extent that the trustee administers assets  
6           that are otherwise available for the payment of  
7           such claims.”.

8 **SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND**  
9                                   **DISCHARGE IN CASES INVOLVING DOMESTIC**  
10                                  **SUPPORT OBLIGATIONS.**

11           Title 11, United States Code, is amended—

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

14                           “(14) If the debtor is required by a judicial or  
15           administrative order, or by statute, to pay a domes-  
16           tic support obligation, the debtor has paid all  
17           amounts payable under such order or such statute  
18           for such obligation that first become payable after  
19           the date of the filing of the petition.”;

20                   (2) in section 1208(c)—

21                           (A) in paragraph (8), by striking “or” at  
22           the end;

23                           (B) in paragraph (9), by striking the pe-  
24           riod at the end and inserting “; and”; and

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

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

4           (3) in section 1222(a)—

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

7           (B) in paragraph (3), by striking the pe-  
8 riod at the end and inserting “; and”; and

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

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

18           (4) in section 1222(b)—

19           (A) in paragraph (10), by striking “and”  
20 at the end;

21           (B) by redesignating paragraph (11) as  
22 paragraph (12); and

23           (C) by inserting after paragraph (10) the  
24 following:

1           “(11) provide for the payment of interest accru-  
2           ing after the date of the filing of the petition on un-  
3           secured claims that are nondischargeable under sec-  
4           tion 1228(a), except that such interest may be paid  
5           only to the extent that the debtor has disposable in-  
6           come available to pay such interest after making  
7           provision for full payment of all allowed claims;  
8           and”;

9           (5) in section 1225(a)—

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

12           (B) in paragraph (6), by striking the pe-  
13           riod at the end and inserting “; and”; and

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

15           “(7) the debtor has paid all amounts that are  
16           required to be paid under a domestic support obliga-  
17           tion and that first become payable after the date of  
18           the filing of the petition if the debtor is required by  
19           a judicial or administrative order, or by statute, to  
20           pay such domestic support obligation.”;

21           (6) in section 1228(a), in the matter preceding  
22           paragraph (1), by inserting “, and in the case of a  
23           debtor who is required by a judicial or administra-  
24           tive order, or by statute, to pay a domestic support  
25           obligation, after such debtor certifies that all

1 amounts payable under such order or such statute  
2 that are due on or before the date of the certifi-  
3 cation (including amounts due before the petition  
4 was filed, but only to the extent provided for by the  
5 plan) have been paid” after “completion by the debt-  
6 or of all payments under the plan”;

7 (7) in section 1307(c)—

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

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

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

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

16 (8) in section 1322(a)—

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

19 (B) in paragraph (3), by striking the pe-  
20 riod at the end and inserting “; and”; and

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

22 “(4) notwithstanding any other provision of this  
23 section, a plan may provide for less than full pay-  
24 ment of all amounts owed for a claim entitled to pri-  
25 ority under section 507(a)(1)(B) only if the plan

1 provides that all of the debtor’s projected disposable  
2 income for a 5-year period beginning on the date  
3 that the first payment is due under the plan will be  
4 applied to make payments under the plan.”;

5 (9) in section 1322(b)—

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

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

10 (C) inserting after paragraph (9) the fol-  
11 lowing:

12 “(10) provide for the payment of interest accru-  
13 ing after the date of the filing of the petition on un-  
14 secured claims that are nondischargeable under sec-  
15 tion 1328(a), except that such interest may be paid  
16 only to the extent that the debtor has disposable in-  
17 come available to pay such interest after making  
18 provision for full payment of all allowed claims;  
19 and”;

20 (10) in section 1325(a), as amended by section  
21 102, by inserting after paragraph (7) the following:

22 “(8) the debtor has paid all amounts that are  
23 required to be paid under a domestic support obliga-  
24 tion and that first become payable after the date of  
25 the filing of the petition if the debtor is required by

1 a judicial or administrative order, or by statute, to  
 2 pay such domestic support obligation; and”;

3 (11) in section 1328(a), in the matter preceding  
 4 paragraph (1), by inserting “, and in the case of a  
 5 debtor who is required by a judicial or administra-  
 6 tive order, or by statute, to pay a domestic support  
 7 obligation, after such debtor certifies that all  
 8 amounts payable under such order or such statute  
 9 that are due on or before the date of the certifi-  
 10 cation (including amounts due before the petition  
 11 was filed, but only to the extent provided for by the  
 12 plan) have been paid” after “completion by the debt-  
 13 or of all payments under the plan”.

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

16 Section 362(b) of title 11, United States Code, is  
 17 amended by striking paragraph (2) and inserting the fol-  
 18 lowing:

19 “(2) under subsection (a)—

20 “(A) of the commencement or continuation  
 21 of a civil action or proceeding—

22 “(i) for the establishment of paternity;

23 “(ii) for the establishment or modi-  
 24 fication of an order for domestic support  
 25 obligations;

1                   “(iii) concerning child custody or visi-  
2                   tation;

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

7                   “(v) regarding domestic violence;

8                   “(B) of the collection of a domestic sup-  
9                   port obligation from property that is not prop-  
10                  erty of the estate;

11                  “(C) with respect to the withholding of in-  
12                  come that is property of the estate or property  
13                  of the debtor for payment of a domestic support  
14                  obligation under a judicial or administrative  
15                  order or a statute;

16                  “(D) of the withholding, suspension, or re-  
17                  striction of a driver’s license, a professional or  
18                  occupational license, or a recreational license,  
19                  under State law, as specified in section  
20                  466(a)(16) of the Social Security Act;

21                  “(E) of the reporting of overdue support  
22                  owed by a parent to any consumer reporting  
23                  agency as specified in section 466(a)(7) of the  
24                  Social Security Act;

1           “(F) of the interception of a tax refund, as  
 2           specified in sections 464 and 466(a)(3) of the  
 3           Social Security Act or under an analogous State  
 4           law; or

5           “(G) of the enforcement of a medical obli-  
 6           gation, as specified under title IV of the Social  
 7           Security Act;”.

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

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

12           (1) in subsection (a)—

13               (A) by striking paragraph (5) and insert-  
 14               ing the following:

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

16               (B) by striking paragraph (18);

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

19           (3) in paragraph (15), as added by Public Law  
 20           103–394 (108 Stat. 4133)—

21               (A) by inserting “to a spouse, former  
 22               spouse, or child of the debtor and” before “not  
 23               of the kind”;

24               (B) by inserting “or” after “court of  
 25               record,”; and



1 (C) by striking “unless—” and all that fol-  
2 lows through the end of the paragraph and in-  
3 serting a semicolon.

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

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

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

9 “(1) a debt of a kind specified in paragraph (1)  
10 or (5) of section 523(a) (in which case, notwith-  
11 standing any provision of applicable nonbankruptcy  
12 law to the contrary, such property shall be liable for  
13 a debt of a kind specified in section 523(a)(5));”;

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

18 (3) in subsection (g)(2), by striking “subsection  
19 (f)(2)” and inserting “subsection (f)(1)(B)”.

20 **SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS**  
21 **AGAINST PREFERENTIAL TRANSFER MO-**  
22 **TIONS.**

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

1           “(7) to the extent such transfer was a bona fide  
2           payment of a debt for a domestic support obliga-  
3           tion;”.

4 **SEC. 218. DISPOSABLE INCOME DEFINED.**

5           Section 1225(b)(2)(A) of title 11, United States  
6           Code, is amended by inserting “or for a domestic support  
7           obligation that first becomes payable after the date of the  
8           filing of the petition” after “dependent of the debtor”.

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

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

13                 (1) in subsection (a)—

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

16                         (B) in paragraph (9), by striking the pe-  
17                         riod and inserting a semicolon; and

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

19                                 “(10) if with respect to the debtor there is a  
20                                 claim for a domestic support obligation, provide the  
21                                 applicable notice specified in subsection (c); and”;  
22                                 and

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

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

1           “(A)(i) provide written notice to the holder of  
2           the claim described in subsection (a)(10) of such  
3           claim and of the right of such holder to use the serv-  
4           ices of the State child support enforcement agency  
5           established under sections 464 and 466 of the Social  
6           Security Act for the State in which such holder re-  
7           sides, for assistance in collecting child support dur-  
8           ing and after the case under this title;

9           “(ii) include in the notice provided under clause  
10          (i) the address and telephone number of such State  
11          child support enforcement agency; and

12          “(iii) include in the notice provided under  
13          clause (i) an explanation of the rights of such holder  
14          to payment of such claim under this chapter;

15          “(B)(i) provide written notice to such State  
16          child 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  
21          discharge under section 727, provide written notice  
22          to such holder and to such State child support en-  
23          forcement agency of—

24                  “(i) the granting of the discharge;

1           “(ii) 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  
6 a claim that—

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

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

12           “(2)(A) The holder of a claim described in subsection  
13 (a)(10) or the State child support enforcement agency of  
14 the State in which such holder resides may request from  
15 a creditor described in paragraph (1)(C)(iv) the last  
16 known address of the debtor.

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

22           (b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—  
23 Section 1106 of title 11, United States Code, is amend-  
24 ed—

25                   (1) in subsection (a)—

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

3 (B) in paragraph (7), by striking the pe-  
4 riod and inserting “; and”; and

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

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

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

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

12 “(A)(i) provide written notice to the holder of  
13 the claim described in subsection (a)(8) of such  
14 claim and of the right of such holder to use the serv-  
15 ices of the State child support enforcement agency  
16 established under sections 464 and 466 of the Social  
17 Security Act for the State in which such holder re-  
18 sides, for assistance in collecting child support dur-  
19 ing and after the case under this title; and

20 “(ii) include in the notice required by clause (i)  
21 the address and telephone number of such State  
22 child support enforcement agency;

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

1           “(ii) include in the notice required by clause (i)  
2           the name, address, and telephone number of such  
3           holder; and

4           “(C) at such time as the debtor is granted a  
5           discharge under section 1141, provide written notice  
6           to such holder and to such State child support en-  
7           forcement agency of—

8                   “(i) the granting of the discharge;

9                   “(ii) the last recent known address of the  
10           debtor;

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

13                   “(iv) the name of each creditor that holds  
14           a claim that—

15                           “(I) is not discharged under para-  
16                           graph (2), (4), or (14A) of section 523(a);

17                           or

18                           “(II) was reaffirmed by the debtor  
19                           under section 524(c).

20           “(2)(A) The holder of a claim described in subsection  
21           (a)(8) or the State child enforcement support agency of  
22           the State in which such holder resides may request from  
23           a creditor described in paragraph (1)(C)(iv) the last  
24           known address of the debtor.

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

6       (c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—  
7 Section 1202 of title 11, United States Code, is amend-  
8 ed—

9           (1) in subsection (b)—

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

12               (B) in paragraph (5), by striking the pe-  
13 riod and inserting “; and”; and

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

15           “(6) if with respect to the debtor there is a  
16 claim for a domestic support obligation, provide the  
17 applicable notice specified in subsection (e).”; and

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

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

21               “(A)(i) provide written notice to the holder of  
22 the claim described in subsection (b)(6) of such  
23 claim and of the right of such holder to use the serv-  
24 ices of the State child support enforcement agency  
25 established under sections 464 and 466 of the Social

1 Security Act for the State in which such holder re-  
2 sides, for assistance in collecting child support dur-  
3 ing and after the case under this title; and

4 “(ii) include in the notice provided under clause  
5 (i) the address and telephone number of such State  
6 child support enforcement agency;

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

9 “(ii) include in the notice provided under clause  
10 (i) the name, address, and telephone number of such  
11 holder; and

12 “(C) at such time as the debtor is granted a  
13 discharge under section 1228, provide written notice  
14 to such holder and to such State child support en-  
15 forcement agency of—

16 “(i) the granting of the discharge;

17 “(ii) the last recent known address of the  
18 debtor;

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

21 “(iv) the name of each creditor that holds  
22 a claim that—

23 “(I) is not discharged under para-  
24 graph (2), (4), or (14A) of section 523(a);

25 or



1                   “(II) was reaffirmed by the debtor  
2                   under section 524(c).

3           “(2)(A) The holder of a claim described in subsection  
4 (b)(6) or the State child support enforcement agency of  
5 the State in which such holder resides may request from  
6 a creditor described in paragraph (1)(C)(iv) the last  
7 known address of the debtor.

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

13           (d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—  
14 Section 1302 of title 11, United States Code, is amend-  
15 ed—

16                   (1) in subsection (b)—

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

19                           (B) in paragraph (5), by striking the pe-  
20                   riod and inserting “; and”; and

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

22                           “(6) if with respect to the debtor there is a  
23                   claim for a domestic support obligation, provide the  
24                   applicable notice specified in subsection (d).”; and

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

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

3 “(A)(i) provide written notice to the holder of  
4 the claim described in subsection (b)(6) of such  
5 claim and of the right of such holder to use the serv-  
6 ices of the State child support enforcement agency  
7 established under sections 464 and 466 of the Social  
8 Security Act for the State in which such holder re-  
9 sides, for assistance in collecting child support dur-  
10 ing and after the case under this title; and

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

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

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

19 “(C) at such time as the debtor is granted a  
20 discharge under section 1328, provide written notice  
21 to such holder and to such State child support en-  
22 forcement agency of—

23 “(i) the granting of the discharge;

24 “(ii) the last recent known address of the  
25 debtor;

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

3           “(iv) the name of each creditor that holds  
4           a claim that—

5                   “(I) is not discharged under para-  
6                   graph (2) or (4) of section 523(a); or

7                   “(II) was reaffirmed by the debtor  
8                   under section 524(c).

9           “(2)(A) The holder of a claim described in subsection  
10 (b)(6) or the State child support enforcement agency of  
11 the State in which such holder resides may request from  
12 a creditor described in paragraph (1)(C)(iv) the last  
13 known address of the debtor.

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

19 **SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDU-**  
20 **CATIONAL BENEFITS AND LOANS.**

21           Section 523(a) of title 11, United States Code, is  
22 amended by striking paragraph (8) and inserting the fol-  
23 lowing:

24                   “(8) unless excepting such debt from discharge  
25                   under this paragraph would impose an undue hard-

1 ship on the debtor and the debtor’s dependents,  
2 for—

3 “(A)(i) an educational benefit overpayment  
4 or loan made, insured, or guaranteed by a gov-  
5 ernmental unit, or made under any program  
6 funded in whole or in part by a governmental  
7 unit or nonprofit institution; or

8 “(ii) an obligation to repay funds received  
9 as an educational benefit, scholarship, or sti-  
10 pend; or

11 “(B) any other educational loan that is a  
12 qualified education loan, as defined in section  
13 221(d)(1) of the Internal Revenue Code of  
14 1986, incurred by a debtor who is an indi-  
15 vidual;”.

## 16 **Subtitle C—Other Consumer** 17 **Protections**

### 18 **SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANK-** 19 **RUPTCY FILINGS.**

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

22 (1) in subsection (a)(1), by striking “or an em-  
23 ployee of an attorney” and inserting “for the debtor  
24 or an employee of such attorney under the direct su-  
25 pervision of such attorney”;

1 (2) in subsection (b)—

2 (A) in paragraph (1), by adding at the end  
3 the following: “If a bankruptcy petition pre-  
4 parer is not an individual, then an officer, prin-  
5 cipal, responsible person, or partner of the  
6 bankruptcy petition preparer shall be required  
7 to—

8 “(A) sign the document for filing; and

9 “(B) print on the document the name and ad-  
10 dress of that officer, principal, responsible person, or  
11 partner.”; and

12 (B) by striking paragraph (2) and insert-  
13 ing the following:

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

20 “(B) The notice under subparagraph (A)—

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

24 “(ii) may contain a description of examples of  
25 legal advice that a bankruptcy petition preparer is

1 not authorized to give, in addition to any advice that  
2 the preparer may not give by reason of subsection  
3 (e)(2); and

4 “(iii) shall—

5 “(I) be signed by the debtor and, under  
6 penalty of perjury, by the bankruptcy petition  
7 preparer; and

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

10 (3) in subsection (c)—

11 (A) in paragraph (2)—

12 (i) by striking “(2) For purposes” and  
13 inserting “(2)(A) Subject to subparagraph  
14 (B), for purposes”; and

15 (ii) by adding at the end the fol-  
16 lowing:

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

22 (B) by striking paragraph (3);

23 (4) in subsection (d)—

24 (A) by striking “(d)(1)” and inserting  
25 “(d)”; and

1 (B) by striking paragraph (2);

2 (5) in subsection (e)—

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

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

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

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

10 “(i) whether—

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

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

14 “(ii) whether the debtor’s debts will be dis-  
15 charged in a case under this title;

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

19 “(iv) concerning—

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

22 “(II) the dischargeability of tax claims;

23 “(v) whether the debtor may or should promise  
24 to repay debts to a creditor or enter into a reaffir-  
25 mation agreement with a creditor to reaffirm a debt;

1           “(vi) concerning how to characterize the nature  
2 of the debtor’s interests in property or the debtor’s  
3 debts; or

4           “(vii) concerning bankruptcy procedures and  
5 rights.”;

6           (6) in subsection (f)—

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

9                 (B) by striking paragraph (2);

10          (7) in subsection (g)—

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

13                 (B) by striking paragraph (2);

14          (8) in subsection (h)—

15                 (A) by redesignating paragraphs (1)  
16 through (4) as paragraphs (2) through (5), re-  
17 spectively;

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

20           “(1) The Supreme Court may promulgate rules under  
21 section 2075 of title 28, or the Judicial Conference of the  
22 United States may prescribe guidelines, for setting a max-  
23 imum allowable fee chargeable by a bankruptcy petition  
24 preparer. A bankruptcy petition preparer shall notify the  
25 debtor of any such maximum amount before preparing any



1 document for filing for a debtor or accepting any fee from  
2 the debtor.”;

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

4 (i) by striking “Within 10 days after  
5 the date of the filing of a petition, a bank-  
6 ruptcy petition preparer shall file a” and  
7 inserting “A”;

8 (ii) by inserting “by the bankruptcy  
9 petition preparer shall be filed together  
10 with the petition,” after “perjury”; and

11 (iii) by adding at the end the fol-  
12 lowing: “If rules or guidelines setting a  
13 maximum fee for services have been pro-  
14 mulgated or prescribed under paragraph  
15 (1), the declaration under this paragraph  
16 shall include a certification that the bank-  
17 ruptcy petition preparer complied with the  
18 notification requirement under paragraph  
19 (1).”;

20 (D) by striking paragraph (3), as so redesi-  
21 gnated, and inserting the following:

22 “(3)(A) The court shall disallow and order the imme-  
23 diate turnover to the bankruptcy trustee any fee referred  
24 to in paragraph (2) found to be in excess of the value  
25 of any services—

1           “(i) rendered by the bankruptcy petition pre-  
2           parer during the 12-month period immediately pre-  
3           ceding the date of the filing of the petition; or

4           “(ii) found to be in violation of any rule or  
5           guideline promulgated or prescribed under para-  
6           graph (1).

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

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

13                       (E) in paragraph (4), as so redesignated,  
14                       by striking “or the United States trustee” and  
15                       inserting “the United States trustee (or the  
16                       bankruptcy administrator, if any) or the court,  
17                       on the initiative of the court,”;

18           (9) in subsection (i)(1), by striking the matter  
19           preceding subparagraph (A) and inserting the fol-  
20           lowing:

21           “(i)(1) If a bankruptcy petition preparer violates this  
22           section or commits any act that the court finds to be  
23           fraudulent, unfair, or deceptive, on the motion of the debt-  
24           or, trustee, United States trustee (or the bankruptcy ad-  
25           ministrator, if any), and after notice and a hearing, the

1 court shall order the bankruptcy petition preparer to pay  
2 to the debtor—”;

3 (10) in subsection (j)—

4 (A) in paragraph (2)—

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

8 (ii) in subparagraph (B)—

9 (I) by striking “or has not paid  
10 a penalty” and inserting “has not  
11 paid a penalty”; and

12 (II) by inserting “or failed to dis-  
13 gorge all fees ordered by the court”  
14 after “a penalty imposed under this  
15 section,”;

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

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

20 “(3) The court, as part of its contempt power, may  
21 enjoin a bankruptcy petition preparer that has failed to  
22 comply with a previous order issued under this section.  
23 The injunction under this paragraph may be issued on the  
24 motion of the court, the trustee, or the United States  
25 trustee (or the bankruptcy administrator, if any).”; and

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

2 “(1)(1) A bankruptcy petition preparer who fails to  
3 comply with any provision of subsection (b), (c), (d), (e),  
4 (f), (g), or (h) may be fined not more than \$500 for each  
5 such failure.

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

9 “(A) advised the debtor to exclude assets or in-  
10 come that should have been included on applicable  
11 schedules;

12 “(B) advised the debtor to use a false Social  
13 Security account number;

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

16 “(D) prepared a document for filing in a man-  
17 ner that failed to disclose the identity of the bank-  
18 ruptcy petition preparer.

19 “(3) A debtor, trustee, creditor, or United States  
20 trustee (or the bankruptcy administrator, if any) may file  
21 a motion for an order imposing a fine on the bankruptcy  
22 petition preparer for any violation of this section.

23 “(4)(A) Fines imposed under this subsection in judi-  
24 cial districts served by United States trustees shall be paid  
25 to the United States trustee, who shall deposit an amount

1 equal to such fines in a special account of the United  
2 States Trustee System Fund referred to in section  
3 586(e)(2) of title 28. Amounts deposited under this sub-  
4 paragraph shall be available to fund the enforcement of  
5 this section on a national basis.

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

14 **SEC. 222. SENSE OF CONGRESS.**

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

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

20 Section 507(a) of title 11, United States Code, as  
21 amended by section 212, is amended by inserting after  
22 paragraph (9) the following:

23 “(10) Tenth, allowed claims for death or per-  
24 sonal injury resulting from the operation of a motor  
25 vehicle or vessel if such operation was unlawful be-

1       cause the debtor was intoxicated from using alcohol,  
2       a drug, or another substance.”.

3   **SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANK-**  
4                   **RUPTCY.**

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

7           (1) in subsection (b)—

8               (A) in paragraph (2)—

9                   (i) in subparagraph (A), by striking  
10                   “and” at the end;

11                   (ii) in subparagraph (B), by striking  
12                   the period at the end and inserting “;  
13                   and”;

14                   (iii) by adding at the end the fol-  
15                   lowing:

16                   “(C) retirement funds to the extent that those  
17                   funds are in a fund or account that is exempt from  
18                   taxation under section 401, 403, 408, 408A, 414,  
19                   457, or 501(a) of the Internal Revenue Code of  
20                   1986.”; and

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

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

24                   “(A) any property”;

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

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

7 (C) by striking “(b) Notwithstanding” and  
8 inserting “(b)(1) Notwithstanding”;

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

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

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

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

15 “(4) For purposes of paragraph (3)(C) and sub-  
16 section (d)(12), the following shall apply:

17 “(A) If the retirement funds are in a retirement  
18 fund that has received a favorable determination  
19 under section 7805 of the Internal Revenue Code of  
20 1986, and that determination is in effect as of the  
21 date of the filing of the petition in a case under this  
22 title, those funds shall be presumed to be exempt  
23 from the estate.

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

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

3 “(i) no prior determination to the contrary  
4 has been made by a court or the Internal Rev-  
5 enue Service; and

6 “(ii)(I) the retirement fund is in substan-  
7 tial compliance with the applicable requirements  
8 of the Internal Revenue Code of 1986; or

9 “(II) the retirement fund fails to be in  
10 substantial compliance with the applicable re-  
11 quirements of the Internal Revenue Code of  
12 1986 and the debtor is not materially respon-  
13 sible for that failure.

14 “(C) A direct transfer of retirement funds from  
15 1 fund or account that is exempt from taxation  
16 under section 401, 403, 408, 408A, 414, 457, or  
17 501(a) of the Internal Revenue Code of 1986, under  
18 section 401(a)(31) of the Internal Revenue Code of  
19 1986, or otherwise, shall not cease to qualify for ex-  
20 emption under paragraph (3)(C) or subsection  
21 (d)(12) by reason of such direct transfer.

22 “(D)(i) Any distribution that qualifies as an eli-  
23 gible rollover distribution within the meaning of sec-  
24 tion 402(c) of the Internal Revenue Code of 1986 or  
25 that is described in clause (ii) shall not cease to



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

3 “(ii) A distribution described in this clause is  
4 an amount that—

5 “(I) has been distributed from a fund or  
6 account that is exempt from taxation under sec-  
7 tion 401, 403, 408, 408A, 414, 457, or 501(a)  
8 of the Internal Revenue Code of 1986; and

9 “(II) to the extent allowed by law, is de-  
10 posited in such a fund or account not later than  
11 60 days after the distribution of such amount.”;  
12 and

13 (2) in subsection (d)—

14 (A) in the matter preceding paragraph (1),  
15 by striking “subsection (b)(1)” and inserting  
16 “subsection (b)(2)”; and

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

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

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

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

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

5           (3) by inserting after paragraph (18) the fol-  
6           lowing:

7           “(19) under subsection (a), of withholding of  
8           income from a debtor’s wages and collection of  
9           amounts withheld, under the debtor’s agreement au-  
10          thorizing that withholding and collection for the ben-  
11          efit of a pension, profit-sharing, stock bonus, or  
12          other plan established under section 401, 403, 408,  
13          408A, 414, 457, or 501(c) of the Internal Revenue  
14          Code of 1986, that is sponsored by the employer of  
15          the debtor, or an affiliate, successor, or predecessor  
16          of such employer—

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

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

1 title 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  
7 of 1986 constitutes a claim or a debt under this  
8 title;”.

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

13 “(18) owed to a pension, profit-sharing, stock  
14 bonus, or other plan established under section 401,  
15 403, 408, 408A, 414, 457, or 501(c) of the Internal  
16 Revenue Code of 1986, under—

17 “(A) a loan permitted under section  
18 408(b)(1) of the Employee Retirement Income  
19 Security Act of 1974, or subject to section  
20 72(p) of the Internal Revenue Code of 1986; or

21 “(B) a loan from a thrift savings plan per-  
22 mitted under subchapter III of chapter 84 of  
23 title 5, that satisfies the requirements of section  
24 8433(g) of such title;

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

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

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

14 (e) ASSET LIMITATION.—

15 (1) LIMITATION.—Section 522 of title 11,  
16 United States Code, is amended by adding at the  
17 end the following:

18 “(n) For assets in individual retirement accounts de-  
19 scribed in section 408 or 408A of the Internal Revenue  
20 Code of 1986, other than a simplified employee pension  
21 under section 408(k) of such Code or a simple retirement  
22 account under section 408(p) of such Code, the aggregate  
23 value of such assets exempted under this section, without  
24 regard to amounts attributable to rollover contributions  
25 under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and

1 403(b)(8) of the Internal Revenue Code of 1986, and  
2 earnings thereon, shall not exceed \$1,000,000 in a case  
3 filed by a debtor who is an individual, except that such  
4 amount may be increased if the interests of justice so re-  
5 quire.”.

6 (2) ADJUSTMENT OF DOLLAR AMOUNTS.—  
7 Paragraphs (1) and (2) of section 104(b) of title 11,  
8 United States Code, are amended by inserting  
9 “522(n),” after “522(d),”.

10 **SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANK-**  
11 **RUPTCY.**

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

14 (1) in subsection (b)—

15 (A) in paragraph (4), by striking “or” at  
16 the end;

17 (B) by redesignating paragraph (5) as  
18 paragraph (9); and

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

21 “(5) funds placed in an education individual re-  
22 tirement account (as defined in section 530(b)(1) of  
23 the Internal Revenue Code of 1986) not later than  
24 365 days before the date of the filing of the petition  
25 in a case under this title, but—

1           “(A) only if the designated beneficiary of  
2 such account was a child, stepchild, grandchild,  
3 or stepgrandchild of the debtor for the taxable  
4 year for which funds were placed in such ac-  
5 count;

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

7               “(i) are not pledged or promised to  
8 any entity in connection with any extension  
9 of credit; and

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

13           “(C) in the case of funds placed in all such  
14 accounts having the same designated bene-  
15 ficiary not earlier than 720 days nor later than  
16 365 days before such date, only so much of  
17 such funds as does not exceed \$5,000;

18           “(6) funds used to purchase a tuition credit or  
19 certificate or contributed to an account in accord-  
20 ance with section 529(b)(1)(A) of the Internal Rev-  
21 enue Code of 1986 under a qualified State tuition  
22 program (as defined in section 529(b)(1) of such  
23 Code) not later than 365 days before the date of the  
24 filing of the petition in a case under this title, but—

1           “(A) only if the designated beneficiary of  
2 the amounts paid or contributed to such tuition  
3 program was a child, stepchild, grandchild, or  
4 stepgrandchild of the debtor for the taxable  
5 year for which funds were paid or contributed;

6           “(B) with respect to the aggregate amount  
7 paid or contributed to such program having the  
8 same designated beneficiary, only so much of  
9 such amount as does not exceed the total con-  
10 tributions permitted under section 529(b)(7) of  
11 such Code with respect to such beneficiary, as  
12 adjusted beginning on the date of the filing of  
13 the petition in a case under this title by the an-  
14 nual increase or decrease (rounded to the near-  
15 est tenth of 1 percent) in the education expend-  
16 iture category of the Consumer Price Index pre-  
17 pared by the Department of Labor; and

18           “(C) in the case of funds paid or contrib-  
19 uted to such program having the same des-  
20 ignated beneficiary not earlier than 720 days  
21 nor later than 365 days before such date, only  
22 so much of such funds as does not exceed  
23 \$5,000;”;

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

1       “(e) In determining whether any of the relationships  
2 specified in paragraph (5)(A) or (6)(A) of subsection (b)  
3 exists, a legally adopted child of an individual (and a child  
4 who is a member of an individual’s household, if placed  
5 with such individual by an authorized placement agency  
6 for legal adoption by such individual), or a foster child  
7 of an individual (if such child has as the child’s principal  
8 place of abode the home of the debtor and is a member  
9 of the debtor’s household) shall be treated as a child of  
10 such individual by blood.”.

11       (b) DEBTOR’S DUTIES.—Section 521 of title 11,  
12 United States Code, as amended by section 106, is amend-  
13 ed by adding at the end the following:

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

21 **SEC. 226. DEFINITIONS.**

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

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



1           “(3) ‘assisted person’ means any person whose  
2           debts consist primarily of consumer debts and the  
3           value of whose nonexempt property is less than  
4           \$150,000;”;

5           (2) by inserting after paragraph (4) the fol-  
6           lowing:

7           “(4A) ‘bankruptcy assistance’ means any goods  
8           or services sold or otherwise provided to an assisted  
9           person with the express or implied purpose of pro-  
10          viding information, advice, counsel, document prepa-  
11          ration, or filing, or attendance at a creditors’ meet-  
12          ing or appearing in a case or proceeding on behalf  
13          of another or providing legal representation with re-  
14          spect to a case or proceeding under this title;”;

15          (3) by inserting after paragraph (12) the fol-  
16          lowing:

17          “(12A) ‘debt relief agency’ means any person  
18          who provides any bankruptcy assistance to an as-  
19          sisted person in return for the payment of money or  
20          other valuable consideration, or who is a bankruptcy  
21          petition preparer under section 110, but does not in-  
22          clude—

23                  “(A) any person who is an officer, director,  
24                  employee, or agent of a person who provides

1 such assistance or of the bankruptcy petition  
2 preparer;

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

6 “(C) a creditor of such assisted person, to  
7 the extent that the creditor is assisting such as-  
8 sisted person to restructure any debt owed by  
9 such assisted person to the creditor;

10 “(D) a depository institution (as defined in  
11 section 3 of the Federal Deposit Insurance Act)  
12 or any Federal credit union or State credit  
13 union (as those terms are defined in section  
14 101 of the Federal Credit Union Act), or any  
15 affiliate or subsidiary of such depository institu-  
16 tion or credit union; or

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

20 (b) CONFORMING AMENDMENT.—Section 104(b) of  
21 title 11, United States Code, is amended by inserting  
22 “101(3),” after “sections” each place it appears.

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

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

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

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

7 “(1) fail to perform any service that such agen-  
8 cy informed an assisted person or prospective as-  
9 sisted person it would provide in connection with a  
10 case or proceeding under this title;

11 “(2) make any statement, or counsel or advise  
12 any assisted person or prospective assisted person to  
13 make a statement in a document filed in a case or  
14 proceeding under this title, that is untrue and mis-  
15 leading, or that upon the exercise of reasonable care,  
16 should have been known by such agency to be untrue  
17 or misleading;

18 “(3) misrepresent to any assisted person or pro-  
19 spective assisted person, directly or indirectly, af-  
20 firmatively or by material omission, with respect  
21 to—

22 “(A) the services that such agency will pro-  
23 vide to such person; or

24 “(B) the benefits and risks that may result  
25 if such person becomes a debtor in a case under  
26 this title; or

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

8           “(b) Any waiver by any assisted person of any protec-  
9           tion or right provided under this section shall not be en-  
10          forceable against the debtor by any Federal or State court  
11          or any other person, but may be enforced against a debt  
12          relief agency.

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

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

1           “(A) intentionally or negligently failed to com-  
2           ply with any provision of this section, section 527,  
3           or section 528 with respect to a case or proceeding  
4           under this title for such assisted person;

5           “(B) provided bankruptcy assistance to an as-  
6           sisted person in a case or proceeding under this title  
7           that is dismissed or converted to a case under an-  
8           other chapter of this title because of such agency’s  
9           intentional or negligent failure to file any required  
10          document including those specified in section 521; or

11          “(C) intentionally or negligently disregarded the  
12          material requirements of this title or the Federal  
13          Rules of Bankruptcy Procedure applicable to such  
14          agency.

15          “(3) In addition to such other remedies as are pro-  
16          vided under State law, whenever the chief law enforcement  
17          officer of a State, or an official or agency designated by  
18          a State, has reason to believe that any person has violated  
19          or is violating this section, the State—

20                 “(A) may bring an action to enjoin such viola-  
21                 tion;

22                 “(B) may bring an action on behalf of its resi-  
23                 dents to recover the actual damages of assisted per-  
24                 sons arising from such violation, including any liabil-  
25                 ity under paragraph (2); and

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

5           “(4) The district courts of the United States for dis-  
6           tricts located in the State shall have concurrent jurisdic-  
7           tion of any action under subparagraph (A) or (B) of para-  
8           graph (3).

9           “(5) Notwithstanding any other provision of Federal  
10          law and in addition to any other remedy provided under  
11          Federal or State law, if the court, on its own motion or  
12          on the motion of the United States trustee or the debtor,  
13          finds that a person intentionally violated this section, or  
14          engaged in a clear and consistent pattern or practice of  
15          violating this section, the court may—

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

17                 “(B) impose an appropriate civil penalty  
18                 against such person.

19           “(d) No provision of this section, section 527, or sec-  
20          tion 528 shall—

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

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

3           “(A) of a State or subdivision or instru-  
4 mentality thereof, to determine and enforce  
5 qualifications for the practice of law under the  
6 laws of that State; or

7           “(B) of a Federal court to determine and  
8 enforce the qualifications for the practice of law  
9 before that court.”.

10       (b) CONFORMING AMENDMENT.—The table of sec-  
11 tions for chapter 5 of title 11, United States Code, is  
12 amended by inserting after the item relating to section  
13 525, the following:

“526. Restrictions on debt relief agencies.”.

14 **SEC. 228. DISCLOSURES.**

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

18 **“§ 527. Disclosures**

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

21           “(1) the written notice required under section  
22 342(b)(1); and

23           “(2) to the extent not covered in the written no-  
24 tice described in paragraph (1), and not later than  
25 3 business days after the first date on which a debt

1 relief agency first offers to provide any bankruptcy  
2 assistance services to an assisted person, a clear and  
3 conspicuous written notice advising assisted persons  
4 that—

5 “(A) all information that the assisted per-  
6 son is required to provide with a petition and  
7 thereafter during a case under this title is re-  
8 quired to be complete, accurate, and truthful;

9 “(B) all assets and all liabilities are re-  
10 quired to be completely and accurately disclosed  
11 in the documents filed to commence the case,  
12 and the replacement value of each asset as de-  
13 fined in section 506 must be stated in those  
14 documents where requested after reasonable in-  
15 quiry to establish such value;

16 “(C) current monthly income, the amounts  
17 specified in section 707(b)(2), and, in a case  
18 under chapter 13 of this title, disposable income  
19 (determined in accordance with section  
20 707(b)(2)), are required to be stated after rea-  
21 sonable inquiry; and

22 “(D) information that an assisted person  
23 provides during their case may be audited pur-  
24 suant to this title, and that failure to provide  
25 such information may result in dismissal of the



1 case under this title or other sanction, including  
2 a criminal sanction.

3 “(b) A debt relief agency providing bankruptcy assist-  
4 ance to an assisted person shall provide each assisted per-  
5 son at the same time as the notices required under sub-  
6 section (a)(1) the following statement, to the extent appli-  
7 cable, or one substantially similar. The statement shall be  
8 clear and conspicuous and shall be in a single document  
9 separate from other documents or notices provided to the  
10 assisted person:

11 “‘IMPORTANT INFORMATION ABOUT BANK-  
12 RUPTCY ASSISTANCE SERVICES FROM AN AT-  
13 TORNEY OR BANKRUPTCY PETITION PRE-  
14 PARER.

15 “‘If you decide to seek bankruptcy relief, you can  
16 represent yourself, you can hire an attorney to represent  
17 you, or you can get help in some localities from a bank-  
18 ruptcy petition preparer who is not an attorney. THE  
19 LAW REQUIRES AN ATTORNEY OR BANKRUPTCY  
20 PETITION PREPARER TO GIVE YOU A WRITTEN  
21 CONTRACT SPECIFYING WHAT THE ATTORNEY  
22 OR BANKRUPTCY PETITION PREPARER WILL DO  
23 FOR YOU AND HOW MUCH IT WILL COST. Ask to  
24 see the contract before you hire anyone.

1           “‘The following information helps you understand  
2 what must be done in a routine bankruptcy case to help  
3 you evaluate how much service you need. Although bank-  
4 ruptcy can be complex, many cases are routine.

5           “‘Before filing a bankruptcy case, either you or your  
6 attorney should analyze your eligibility for different forms  
7 of debt relief available under the Bankruptcy Code and  
8 which form of relief is most likely to be beneficial for you.  
9 Be sure you understand the relief you can obtain and its  
10 limitations. To file a bankruptcy case, documents called  
11 a Petition, Schedules and Statement of Financial Affairs,  
12 as well as in some cases a Statement of Intention need  
13 to be prepared correctly and filed with the bankruptcy  
14 court. You will have to pay a filing fee to the bankruptcy  
15 court. Once your case starts, you will have to attend the  
16 required first meeting of creditors where you may be ques-  
17 tioned by a court official called a ‘trustee’ and by credi-  
18 tors.

19           “‘If you choose to file a chapter 7 case, you may  
20 be asked by a creditor to reaffirm a debt. You may want  
21 help deciding whether to do so. A creditor is not permitted  
22 to coerce you into reaffirming your debts.

23           “‘If you choose to file a chapter 13 case in which  
24 you repay your creditors what you can afford over 3 to  
25 5 years, you may also want help with preparing your chap-

1 ter 13 plan and with the confirmation hearing on your  
2 plan which will be before a bankruptcy judge.

3 “If you select another type of relief under the Bank-  
4 ruptcy Code other than chapter 7 or chapter 13, you will  
5 want to find out what should be done from someone famil-  
6 iar with that type of relief.

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

11 “(c) Except to the extent the debt relief agency pro-  
12 vides the required information itself after reasonably dili-  
13 gent inquiry of the assisted person or others so as to ob-  
14 tain such information reasonably accurately for inclusion  
15 on the petition, schedules or statement of financial affairs,  
16 a debt relief agency providing bankruptcy assistance to an  
17 assisted person, to the extent permitted by nonbankruptcy  
18 law, shall provide each assisted person at the time re-  
19 quired for the notice required under subsection (a)(1) rea-  
20 sonably sufficient information (which shall be provided in  
21 a clear and conspicuous writing) to the assisted person  
22 on how to provide all the information the assisted person  
23 is required to provide under this title pursuant to section  
24 521, including—

1           “(1) how to value assets at replacement value,  
2           determine current monthly income, the amounts  
3           specified in section 707(b)(2) and, in a chapter 13  
4           case, how to determine disposable income in accord-  
5           ance with section 707(b)(2) and related calculations;

6           “(2) how to complete the list of creditors, in-  
7           cluding how to determine what amount is owed and  
8           what address for the creditor should be shown; and

9           “(3) how to determine what property is exempt  
10          and how to value exempt property at replacement  
11          value as defined in section 506.

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

16          (b) CONFORMING AMENDMENT.—The table of sec-  
17          tions for chapter 5 of title 11, United States Code, as  
18          amended by section 227, is amended by inserting after the  
19          item relating to section 526 the following:

“527. Disclosures.”.

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

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

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

25          “(a) A debt relief agency shall—

1           “(1) not later than 5 business days after the  
2 first date on which such agency provides any bank-  
3 ruptcy assistance services to an assisted person, but  
4 prior to such assisted person’s petition under this  
5 title being filed, execute a written contract with such  
6 assisted person that explains clearly and conspicu-  
7 ously—

8           “(A) the services such agency will provide  
9 to such assisted person; and

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

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

14           “(3) clearly and conspicuously disclose in any  
15 advertisement of bankruptcy assistance services or of  
16 the benefits of bankruptcy directed to the general  
17 public (whether in general media, seminars or spe-  
18 cific mailings, telephonic or electronic messages, or  
19 otherwise) that the services or benefits are with re-  
20 spect to bankruptcy relief under this title; and

21           “(4) clearly and conspicuously use the following  
22 statement in such advertisement: ‘We are a debt re-  
23 lief agency. We help people file for bankruptcy relief  
24 under the Bankruptcy Code.’ or a substantially simi-  
25 lar statement.

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

4 “(A) descriptions of bankruptcy assistance in  
5 connection with a chapter 13 plan whether or not  
6 chapter 13 is specifically mentioned in such adver-  
7 tisement; and

8 “(B) statements such as ‘federally supervised  
9 repayment plan’ or ‘Federal debt restructuring help’  
10 or other similar statements that could lead a reason-  
11 able consumer to believe that debt counseling was  
12 being offered when in fact the services were directed  
13 to providing bankruptcy assistance with a chapter  
14 13 plan or other form of bankruptcy relief under  
15 this title.

16 “(2) An advertisement, directed to the general public,  
17 indicating that the debt relief agency provides assistance  
18 with respect to credit defaults, mortgage foreclosures, evic-  
19 tion proceedings, excessive debt, debt collection pressure,  
20 or inability to pay any consumer debt shall—

21 “(A) disclose clearly and conspicuously in such  
22 advertisement that the assistance may involve bank-  
23 ruptcy relief under this title; and

24 “(B) include the following statement: ‘We are a  
25 debt relief agency. We help people file for bank-

1       ruptcy relief under the Bankruptcy Code.’ or a sub-  
2       stantially similar statement.”.

3       (b) CONFORMING AMENDMENT.—The table of sec-  
4       tions for chapter 5 of title 11, United States Code, as  
5       amended by section 227 and 228, is amended by inserting  
6       after the item relating to section 527, the following:

      “528. Requirements for debt relief agencies.”.

7       **SEC. 230. GAO STUDY.**

8       (a) STUDY.—Not later than 270 days after the date  
9       of enactment of this Act, the Comptroller General of the  
10      United States shall conduct a study of the feasibility, ef-  
11      fectiveness, and cost of requiring trustees appointed under  
12      title 11, United States Code, or the bankruptcy courts,  
13      to provide to the Office of Child Support Enforcement  
14      promptly after the commencement of cases by debtors who  
15      are individuals under such title, the names and social secu-  
16      rity account numbers of such debtors for the purposes of  
17      allowing such Office to determine whether such debtors  
18      have outstanding obligations for child support (as deter-  
19      mined on the basis of information in the Federal Case  
20      Registry or other national database).

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

1 **SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE IN-**  
2 **FORMATION.**

3 (a) LIMITATION.—Section 363(b)(1) of title 11,  
4 United States Code, is amended by striking the period at  
5 the end and inserting the following:

6 “, except that if the debtor in connection with offering  
7 a product or a service discloses to an individual a policy  
8 prohibiting the transfer of personally identifiable informa-  
9 tion about individuals to persons that are not affiliated  
10 with the debtor and if such policy is in effect on the date  
11 of the commencement of the case, then the trustee may  
12 not sell or lease personally identifiable information to any  
13 person unless—

14 “(A) such sale or such lease is consistent with  
15 such policy; or

16 “(B) after appointment of a consumer privacy  
17 ombudsman in accordance with section 332, and  
18 after notice and a hearing, the court approves such  
19 sale or such lease—

20 “(i) giving due consideration to the facts,  
21 circumstances, and conditions of such sale or  
22 such lease; and

23 “(ii) finding that no showing was made  
24 that such sale or such lease would violate appli-  
25 cable nonbankruptcy law.”.



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

4 “(41A) ‘personally identifiable information’  
5 means—

6 “(A) if provided by an individual to the  
7 debtor in connection with obtaining a product  
8 or a service from the debtor primarily for per-  
9 sonal, family, or household purposes—

10 “(i) the first name (or initial) and last  
11 name of such individual, whether given at  
12 birth or time of adoption, or resulting from  
13 a lawful change of name;

14 “(ii) the geographical address of a  
15 physical place of residence of such indi-  
16 vidual;

17 “(iii) an electronic address (including  
18 an e-mail address) of such individual;

19 “(iv) a telephone number dedicated to  
20 contacting such individual at such physical  
21 place of residence;

22 “(v) a social security account number  
23 issued to such individual; or

24 “(vi) the account number of a credit  
25 card issued to such individual; or

1           “(B) if identified in connection with 1 or  
2           more of the items of information specified in  
3           subparagraph (A)—

4                   “(i) a birth date, the number of a cer-  
5                   tificate of birth or adoption, or a place of  
6                   birth; or

7                   “(ii) any other information concerning  
8                   an identified individual that, if disclosed,  
9                   will result in contacting or identifying such  
10                  individual physically or electronically;”.

11 **SEC. 232. CONSUMER PRIVACY OMBUDSMAN.**

12           (a) CONSUMER PRIVACY OMBUDSMAN.—Title 11 of  
13 the United States Code is amended by inserting after sec-  
14 tion 331 the following:

15 **“§ 332. Consumer privacy ombudsman**

16           “(a) If a hearing is required under section  
17 363(b)(1)(B), the court shall order the United States  
18 trustee to appoint, not later than 5 days before the com-  
19 mencement of the hearing, 1 disinterested person (other  
20 than the United States trustee) to serve as the consumer  
21 privacy ombudsman in the case and shall require that no-  
22 tice of such hearing be timely given to such ombudsman.

23           “(b) The consumer privacy ombudsman may appear  
24 and be heard at such hearing and shall provide to the  
25 court information to assist the court in its consideration

1 of the facts, circumstances, and conditions of the proposed  
2 sale or lease of personally identifiable information under  
3 section 363(b)(1)(B). Such information may include pres-  
4 entation of—

5 “(1) the debtor’s privacy policy;

6 “(2) the potential losses or gains of privacy to  
7 consumers if such sale or such lease is approved by  
8 the court;

9 “(3) the potential costs or benefits to con-  
10 sumers if such sale or such lease is approved by the  
11 court; and

12 “(4) the potential alternatives that would miti-  
13 gate potential privacy losses or potential costs to  
14 consumers.

15 “(c) A consumer privacy ombudsman shall not dis-  
16 close any personally identifiable information obtained by  
17 the ombudsman under this title.”.

18 (b) COMPENSATION OF CONSUMER PRIVACY OM-  
19 BUDSMAN.—Section 330(a)(1) of title 11, United States  
20 Code, is amended in the matter preceding subparagraph  
21 (A), by inserting “a consumer privacy ombudsman ap-  
22 pointed under section 332,” before “an examiner”.

23 (c) CONFORMING AMENDMENT.—The table of sec-  
24 tions for subchapter II of chapter 3 of title 11, United

1 States Code, is amended by adding at the end the fol-  
2 lowing:

“332. Consumer privacy ombudsman.”.

3 **SEC. 233. PROHIBITION ON DISCLOSURE OF NAME OF**  
4 **MINOR CHILDREN.**

5 (a) PROHIBITION.—Title 11 of the United States  
6 Code, as amended by section 106, is amended by inserting  
7 after section 111 the following:

8 **“§ 112. Prohibition on disclosure of name of minor**  
9 **children**

10 “The debtor may be required to provide information  
11 regarding a minor child involved in matters under this title  
12 but may not be required to disclose in the public records  
13 in the case the name of such minor child. The debtor may  
14 be required to disclose the name of such minor child in  
15 a nonpublic record that is maintained by the court and  
16 made available by the court for examination by the United  
17 States trustee, the trustee, and the auditor (if any) serving  
18 under section 586(f) of title 28, in the case. The court,  
19 the United States trustee, the trustee, and such auditor  
20 shall not disclose the name of such minor child maintained  
21 in such nonpublic record.”.

22 (b) CLERICAL AMENDMENT.—The table of sections  
23 for chapter 1 of title 11, United States Code, as amended

1 by section 106, is amended by inserting after the item re-  
2 lating to section 111 the following:

“112. Prohibition on disclosure of name of minor children.”.

3 (c) CONFORMING AMENDMENT.—Section 107(a) of  
4 title 11, United States Code, is amended by inserting “and  
5 subject to section 112” after “section”.

6 **SEC. 234. PROTECTION OF PERSONAL INFORMATION.**

7 (a) RESTRICTION OF PUBLIC ACCESS TO CERTAIN  
8 INFORMATION CONTAINED IN BANKRUPTCY CASE  
9 FILES.—Section 107 of title 11, United States Code, is  
10 amended by adding at the end the following:

11 “(c)(1) The bankruptcy court, for cause, may protect  
12 an individual, with respect to the following types of infor-  
13 mation to the extent the court finds that disclosure of such  
14 information would create undue risk of identity theft or  
15 other unlawful injury to the individual or the individual’s  
16 property:

17 “(A) Any means of identification (as defined in  
18 section 1028(d) of title 18) contained in a paper  
19 filed, or to be filed, in a case under this title.

20 “(B) Other information contained in a paper  
21 described in subparagraph (A).

22 “(2) Upon ex parte application demonstrating cause,  
23 the court shall provide access to information protected  
24 pursuant to paragraph (1) to an entity acting pursuant

1 to the police or regulatory power of a domestic govern-  
2 mental unit.

3 “(3) The United States trustee, bankruptcy adminis-  
4 trator, trustee, and any auditor serving under section  
5 586(f) of title 28—

6 “(A) shall have full access to all information  
7 contained in any paper filed or submitted in a case  
8 under this title; and

9 “(B) shall not disclose information specifically  
10 protected by the court under this title.”.

11 (b) SECURITY OF SOCIAL SECURITY ACCOUNT NUM-  
12 BER OF DEBTOR IN NOTICE TO CREDITOR.—Section  
13 342(c) of title 11, United States Code, is amended—

14 (1) by inserting “last 4 digits of the” before  
15 “taxpayer identification number”; and

16 (2) by adding at the end the following: “If the  
17 notice concerns an amendment that adds a creditor  
18 to the schedules of assets and liabilities, the debtor  
19 shall include the full taxpayer identification number  
20 in the notice sent to that creditor, but the debtor  
21 shall include only the last 4 digits of the taxpayer  
22 identification number in the copy of the notice filed  
23 with the court.”.

1 (c) CONFORMING AMENDMENT.—Section 107(a) of  
2 title 11, United States Code, is amended by striking “sub-  
3 section (b),” and inserting “subsections (b) and (c),”.

4 **TITLE III—DISCOURAGING**  
5 **BANKRUPTCY ABUSE**

6 **SEC. 301. TECHNICAL AMENDMENTS.**

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

9 (1) by striking “by a court” and inserting “on  
10 a prisoner by any court”;

11 (2) by striking “section 1915(b) or (f)” and in-  
12 serting “subsection (b) or (f)(2) of section 1915”;

13 and

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

16 **SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.**

17 Section 362(e) of title 11, United States Code, is  
18 amended—

19 (1) in paragraph (1), by striking “and” at the  
20 end;

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

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

24 “(3) if a single or joint case is filed by or  
25 against debtor who is an individual in a case under

1 chapter 7, 11, or 13, and if a single or joint case  
2 of the debtor was pending within the preceding 1-  
3 year period but was dismissed, other than a case  
4 refiled under a chapter other than chapter 7 after  
5 dismissal under section 707(b)—

6 “(A) the stay under subsection (a) with re-  
7 spect to any action taken with respect to a debt  
8 or property securing such debt or with respect  
9 to any lease shall terminate with respect to the  
10 debtor on the 30th day after the filing of the  
11 later case;

12 “(B) on the motion of a party in interest  
13 for continuation of the automatic stay and upon  
14 notice and a hearing, the court may extend the  
15 stay in particular cases as to any or all credi-  
16 tors (subject to such conditions or limitations  
17 as the court may then impose) after notice and  
18 a hearing completed before the expiration of the  
19 30-day period only if the party in interest dem-  
20 onstrates that the filing of the later case is in  
21 good faith as to the creditors to be stayed; and

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



1 “(i) as to all creditors, if—

2 “(I) more than 1 previous case  
3 under any of chapters 7, 11, and 13  
4 in which the individual was a debtor  
5 was pending within the preceding 1-  
6 year period;

7 “(II) a previous case under any  
8 of chapters 7, 11, and 13 in which the  
9 individual was a debtor was dismissed  
10 within such 1-year period, after the  
11 debtor failed to—

12 “(aa) file or amend the peti-  
13 tion or other documents as re-  
14 quired by this title or the court  
15 without substantial excuse (but  
16 mere inadvertence or negligence  
17 shall not be a substantial excuse  
18 unless the dismissal was caused  
19 by the negligence of the debtor’s  
20 attorney);

21 “(bb) provide adequate pro-  
22 tection as ordered by the court;  
23 or

24 “(cc) perform the terms of a  
25 plan confirmed by the court; or

1                   “(III) there has not been a sub-  
2                   stantial change in the financial or per-  
3                   sonal affairs of the debtor since the  
4                   dismissal of the next most previous  
5                   case under chapter 7, 11, or 13 or  
6                   any other reason to conclude that the  
7                   later case will be concluded—

8                               “(aa) if a case under chap-  
9                               ter 7, with a discharge; or

10                              “(bb) if a case under chap-  
11                             ter 11 or 13, with a confirmed  
12                             plan that will be fully performed;  
13                             and

14                           “(ii) as to any creditor that com-  
15                           menced an action under subsection (d) in  
16                           a previous case in which the individual was  
17                           a debtor if, as of the date of dismissal of  
18                           such case, that action was still pending or  
19                           had been resolved by terminating, condi-  
20                           tioning, or limiting the stay as to actions  
21                           of such creditor; and

22                           “(4)(A)(i) if a single or joint case is filed by or  
23                           against a debtor who is an individual under this  
24                           title, and if 2 or more single or joint cases of the  
25                           debtor were pending within the previous year but

1 were dismissed, other than a case refiled under sec-  
2 tion 707(b), the stay under subsection (a) shall not  
3 go into effect upon the filing of the later case; and

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

7 “(B) if, within 30 days after the filing of the  
8 later case, a party in interest requests the court may  
9 order the stay to take effect in the case as to any  
10 or all creditors (subject to such conditions or limita-  
11 tions as the court may impose), after notice and a  
12 hearing, only if the party in interest demonstrates  
13 that the filing of the later case is in good faith as  
14 to the creditors to be stayed;

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

18 “(D) for purposes of subparagraph (B), a case  
19 is presumptively filed not in good faith (but such  
20 presumption may be rebutted by clear and con-  
21 vincing evidence to the contrary)—

22 “(i) as to all creditors if—

23 “(I) 2 or more previous cases under  
24 this title in which the individual was a

1 debtor were pending within the 1-year pe-  
2 riod;

3 “(II) a previous case under this title  
4 in which the individual was a debtor was  
5 dismissed within the time period stated in  
6 this paragraph after the debtor failed to  
7 file or amend the petition or other docu-  
8 ments as required by this title or the court  
9 without substantial excuse (but mere inad-  
10 vertence or negligence shall not be sub-  
11 stantial excuse unless the dismissal was  
12 caused by the negligence of the debtor’s at-  
13 torney), failed to provide adequate protec-  
14 tion as ordered by the court, or failed to  
15 perform the terms of a plan confirmed by  
16 the court; or

17 “(III) there has not been a substan-  
18 tial change in the financial or personal af-  
19 fairs of the debtor since the dismissal of  
20 the next most previous case under this  
21 title, or any other reason to conclude that  
22 the later case will not be concluded, if a  
23 case under chapter 7, with a discharge,  
24 and if a case under chapter 11 or 13, with

1 a confirmed plan that will be fully per-  
2 formed; or

3 “(ii) as to any creditor that commenced an  
4 action under subsection (d) in a previous case  
5 in which the individual was a debtor if, as of  
6 the date of dismissal of such case, such action  
7 was still pending or had been resolved by termi-  
8 nating, conditioning, or limiting the stay as to  
9 such action of such creditor.”.

10 **SEC. 303. CURBING ABUSIVE FILINGS.**

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

13 (1) in paragraph (2), by striking “or” at the  
14 end;

15 (2) in paragraph (3), by striking the period at  
16 the end and inserting “; or”; and

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

18 “(4) with respect to a stay of an act against  
19 real property under subsection (a), by a creditor  
20 whose claim is secured by an interest in such real  
21 property, if the court finds that the filing of the pe-  
22 tition was part of a scheme to delay, hinder, and de-  
23 fraud creditors that involved either—

24 “(A) transfer of all or part ownership of,  
25 or other interest in, such real property without

1           the consent of the secured creditor or court ap-  
2           proval; or

3                   “(B) multiple bankruptcy filings affecting  
4           such real property.

5 If recorded in compliance with applicable State laws gov-  
6 erning notices of interests or liens in real property, an  
7 order entered under paragraph (4) shall be binding in any  
8 other case under this title purporting to affect such real  
9 property filed not later than 2 years after the date of the  
10 entry of such order by the court, except that a debtor in  
11 a subsequent case under this title may move for relief from  
12 such order based upon changed circumstances or for good  
13 cause shown, after notice and a hearing. Any Federal,  
14 State, or local governmental unit that accepts notices of  
15 interests or liens in real property shall accept any certified  
16 copy of an order described in this subsection for indexing  
17 and recording.”.

18           (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
19 United States Code, as amended by section 224, is amend-  
20 ed by inserting after paragraph (19), the following:

21                   “(20) under subsection (a), of any act to en-  
22           force any lien against or security interest in real  
23           property following entry of the order under sub-  
24           section (d)(4) as to such real property in any prior  
25           case under this title, for a period of 2 years after

1 the date of the entry of such an order, except that  
 2 the debtor, in a subsequent case under this title,  
 3 may move for relief from such order based upon  
 4 changed circumstances or for other good cause  
 5 shown, after notice and a hearing;

6 “(21) under subsection (a), of any act to en-  
 7 force any lien against or security interest in real  
 8 property—

9 “(A) if the debtor is ineligible under sec-  
 10 tion 109(g) to be a debtor in a case under this  
 11 title; or

12 “(B) if the case under this title was filed  
 13 in violation of a bankruptcy court order in a  
 14 prior case under this title prohibiting the debtor  
 15 from being a debtor in another case under this  
 16 title;”.

17 **SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY**  
 18 **SECURITY.**

19 Title 11, United States Code, is amended—

20 (1) in section 521(a), as so designated by sec-  
 21 tion 106—

22 (A) in paragraph (4), by striking “, and”  
 23 at the end and inserting a semicolon;

24 (B) in paragraph (5), by striking the pe-  
 25 riod at the end and inserting “; and”; and

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

2 “(6) in a case under chapter 7 of this title in  
3 which the debtor is an individual, not retain posses-  
4 sion of personal property as to which a creditor has  
5 an allowed claim for the purchase price secured in  
6 whole or in part by an interest in such personal  
7 property unless the debtor, not later than 45 days  
8 after the first meeting of creditors under section  
9 341(a), either—

10 “(A) enters into an agreement with the  
11 creditor pursuant to section 524(c) with respect  
12 to the claim secured by such property; or

13 “(B) redeems such property from the secu-  
14 rity interest pursuant to section 722.

15 If the debtor fails to so act within the 45-day period re-  
16 ferred to in paragraph (6), the stay under section 362(a)  
17 is terminated with respect to the personal property of the  
18 estate or of the debtor which is affected, such property  
19 shall no longer be property of the estate, and the creditor  
20 may take whatever action as to such property as is per-  
21 mitted by applicable nonbankruptcy law, unless the court  
22 determines on the motion of the trustee filed before the  
23 expiration of such 45-day period, and after notice and a  
24 hearing, that such property is of consequential value or  
25 benefit to the estate, orders appropriate adequate protec-



1 tion of the creditor’s interest, and orders the debtor to  
 2 deliver any collateral in the debtor’s possession to the  
 3 trustee.”; and

4 (2) in section 722, by inserting “in full at the  
 5 time of redemption” before the period at the end.

6 **SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE**  
 7 **DEBTOR DOES NOT COMPLETE INTENDED**  
 8 **SURRENDER OF CONSUMER DEBT COLLAT-**  
 9 **ERAL.**

10 Title 11, United States Code, is amended—

11 (1) in section 362, as amended by section  
 12 106—

13 (A) in subsection (e), by striking “(e), and  
 14 (f)” and inserting “(e), (f), and (h)”;

15 (B) by redesignating subsection (h) as sub-  
 16 section (k) and transferring such subsection so  
 17 as to insert it after subsection (j) as added by  
 18 section 106; and

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

21 “(h)(1) In a case in which the debtor is an individual,  
 22 the stay provided by subsection (a) is terminated with re-  
 23 spect to personal property of the estate or of the debtor  
 24 securing in whole or in part a claim, or subject to an unex-  
 25 pired lease, and such personal property shall no longer be

1 property of the estate if the debtor fails within the applica-  
2 ble time set by section 521(a)(2)—

3           “(A) to file timely any statement of intention  
4           required under section 521(a)(2) with respect to  
5           such personal property or to indicate in such state-  
6           ment that the debtor will either surrender such per-  
7           sonal property or retain it and, if retaining such per-  
8           sonal property, either redeem such personal property  
9           pursuant to section 722, enter into an agreement of  
10          the kind specified in section 524(c) applicable to the  
11          debt secured by such personal property, or assume  
12          such unexpired lease pursuant to section 365(p) if  
13          the trustee does not do so, as applicable; and

14          “(B) to take timely the action specified in such  
15          statement, as it may be amended before expiration  
16          of the period for taking action, unless such state-  
17          ment specifies the debtor’s intention to reaffirm such  
18          debt on the original contract terms and the creditor  
19          refuses to agree to the reaffirmation on such terms.

20          “(2) Paragraph (1) does not apply if the court deter-  
21          mines, on the motion of the trustee filed before the expira-  
22          tion of the applicable time set by section 521(a)(2), after  
23          notice and a hearing, that such personal property is of  
24          consequential value or benefit to the estate, and orders  
25          appropriate adequate protection of the creditor’s interest,

1 and orders the debtor to deliver any collateral in the debt-  
2 or's possession to the trustee. If the court does not so de-  
3 termine, the stay provided by subsection (a) shall termi-  
4 nate upon the conclusion of the hearing on the motion.”;  
5 and

6 (2) in section 521, as amended by sections 106  
7 and 225—

8 (A) in subsection (a)(2) by striking “con-  
9 sumer”;

10 (B) in subsection (a)(2)(B)—

11 (i) by striking “forty-five days after  
12 the filing of a notice of intent under this  
13 section” and inserting “30 days after the  
14 first date set for the meeting of creditors  
15 under section 341(a)”;

16 (ii) by striking “forty-five day” and  
17 inserting “30-day”;

18 (C) in subsection (a)(2)(C) by inserting “,  
19 except as provided in section 362(h)” before the  
20 semicolon; and

21 (D) by adding at the end the following:

22 “(d) If the debtor fails timely to take the action speci-  
23 fied in subsection (a)(6) of this section, or in paragraphs  
24 (1) and (2) of section 362(h), with respect to property  
25 which a lessor or bailor owns and has leased, rented, or

1 bailed to the debtor or as to which a creditor holds a secu-  
 2 rity interest not otherwise voidable under section 522(f),  
 3 544, 545, 547, 548, or 549, nothing in this title shall pre-  
 4 vent or limit the operation of a provision in the underlying  
 5 lease or agreement that has the effect of placing the debt-  
 6 or in default under such lease or agreement by reason of  
 7 the occurrence, pendency, or existence of a proceeding  
 8 under this title or the insolvency of the debtor. Nothing  
 9 in this subsection shall be deemed to justify limiting such  
 10 a provision in any other circumstance.”.

11 **SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT**

12 **IN CHAPTER 13.**

13 (a) IN GENERAL.—Section 1325(a)(5)(B)(i) of title  
 14 11, United States Code, is amended to read as follows:

15 “(i) the plan provides that—

16 “(I) the holder of such claim retain  
 17 the lien securing such claim until the ear-  
 18 lier of—

19 “(aa) the payment of the under-  
 20 lying debt determined under nonbank-  
 21 ruptcy law; or

22 “(bb) discharge under section  
 23 1328; and

24 “(II) if the case under this chapter is  
 25 dismissed or converted without completion

1 of the plan, such lien shall also be retained  
2 by such holder to the extent recognized by  
3 applicable nonbankruptcy law; and”.

4 (b) RESTORING THE FOUNDATION FOR SECURED  
5 CREDIT.—Section 1325(a) of title 11, United States Code,  
6 is amended by adding at the end the following:  
7 “For purposes of paragraph (5), section 506 shall not  
8 apply to a claim described in that paragraph if the creditor  
9 has a purchase money security interest securing the debt  
10 that is the subject of the claim, the debt was incurred  
11 within the 910-day preceding the date of the filing of the  
12 petition, and the collateral for that debt consists of a  
13 motor vehicle (as defined in section 30102 of title 49) ac-  
14 quired for the personal use of the debtor, or if collateral  
15 for that debt consists of any other thing of value, if the  
16 debt was incurred during the 1-year period preceding that  
17 filing.”.

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

20 (1) by inserting after paragraph (13) the fol-  
21 lowing:

22 “(13A) ‘debtor’s principal residence’—

23 “(A) means a residential structure, includ-  
24 ing incidental property, without regard to

1           whether that structure is attached to real prop-  
2           erty; and

3           “(B) includes an individual condominium  
4           or cooperative unit, a mobile or manufactured  
5           home, or trailer;” and

6           (2) by inserting after paragraph (27), the fol-  
7           lowing:

8           “(27A) ‘incidental property’ means, with re-  
9           spect to a debtor’s principal residence—

10           “(A) property commonly conveyed with a  
11           principal residence in the area where the real  
12           property is located;

13           “(B) all easements, rights, appurtenances,  
14           fixtures, rents, royalties, mineral rights, oil or  
15           gas rights or profits, water rights, escrow  
16           funds, or insurance proceeds; and

17           “(C) all replacements or additions;”.

18 **SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.**

19           Section 522(b)(3) of title 11, United States Code, as  
20           so designated by section 106, is amended—

21           (1) in subparagraph (A)—

22           (A) by striking “180 days” and inserting  
23           “730 days”; and

24           (B) by striking “, or for a longer portion  
25           of such 180-day period than in any other place”

1 and inserting “or if the debtor’s domicile has  
2 not been located at a single State for such 730-  
3 day period, the place in which the debtor’s  
4 domicile was located for 180 days immediately  
5 preceding the 730-day period or for a longer  
6 portion of such 180-day period than in any  
7 other place”; and

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

9 “If the effect of the domiciliary requirement under sub-  
10 paragraph (A) is to render the debtor ineligible for any  
11 exemption, the debtor may elect to exempt property that  
12 is specified under subsection (d).”.

13 **SEC. 308. REDUCTION OF HOMESTEAD EXEMPTION FOR**  
14 **FRAUD.**

15 Section 522 of title 11, United States Code, as  
16 amended by section 224, is amended—

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

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

21 “(o) For purposes of subsection (b)(3)(A), and not-  
22 withstanding subsection (a), the value of an interest in—

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

1           “(2) a cooperative that owns property that the  
2           debtor or a dependent of the debtor uses as a resi-  
3           dence;

4           “(3) a burial plot for the debtor or a dependent  
5           of the debtor; or

6           “(4) real or personal property that the debtor  
7           or a dependent of the debtor claims as a homestead;  
8           shall be reduced to the extent that such value is attrib-  
9           utable to any portion of any property that the debtor dis-  
10          posed of in the 10-year period ending on the date of the  
11          filing of the petition with the intent to hinder, delay, or  
12          defraud a creditor and that the debtor could not exempt,  
13          or that portion that the debtor could not exempt, under  
14          subsection (b), if on such date the debtor had held the  
15          property so disposed of.”.

16 **SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER**  
17 **13 CASES.**

18          (a) STOPPING ABUSIVE CONVERSIONS FROM CHAP-  
19          TER 13.—Section 348(f)(1) of title 11, United States  
20          Code, is amended—

21                 (1) in subparagraph (A), by striking “and” at  
22                 the end;

23                 (2) in subparagraph (B)—

24                         (A) by striking “in the converted case,  
25                         with allowed secured claims” and inserting



1 “only in a case converted to a case under chap-  
2 ter 11 or 12, but not in a case converted to a  
3 case under chapter 7, with allowed secured  
4 claims in cases under chapters 11 and 12”; and

5 (B) by striking the period and inserting “;  
6 and”; and

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

8 “(C) with respect to cases converted from chap-  
9 ter 13—

10 “(i) the claim of any creditor holding secu-  
11 rity as of the date of the petition shall continue  
12 to be secured by that security unless the full  
13 amount of such claim determined under appli-  
14 cable nonbankruptcy law has been paid in full  
15 as of the date of conversion, notwithstanding  
16 any valuation or determination of the amount  
17 of an allowed secured claim made for the pur-  
18 poses of the case under chapter 13; and

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

24 (b) GIVING DEBTORS THE ABILITY TO KEEP  
25 LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section

1 365 of title 11, United States Code, is amended by adding  
2 at the end the following:

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

7 “(2)(A) If the debtor in a case under chapter 7 is  
8 an individual, the debtor may notify the creditor in writing  
9 that the debtor desires to assume the lease. Upon being  
10 so notified, the creditor may, at its option, notify the debt-  
11 or that it is willing to have the lease assumed by the debt-  
12 or and may condition such assumption on cure of any out-  
13 standing default on terms set by the contract.

14 “(B) If, not later than 30 days after notice is pro-  
15 vided under subparagraph (A), the debtor notifies the les-  
16 sor in writing that the lease is assumed, the liability under  
17 the lease will be assumed by the debtor and not by the  
18 estate.

19 “(C) The stay under section 362 and the injunction  
20 under section 524(a)(2) shall not be violated by notifica-  
21 tion of the debtor and negotiation of cure under this sub-  
22 section.

23 “(3) In a case under chapter 11 in which the debtor  
24 is an individual and in a case under chapter 13, if the  
25 debtor is the lessee with respect to personal property and

1 the lease is not assumed in the plan confirmed by the  
2 court, the lease is deemed rejected as of the conclusion  
3 of the hearing on confirmation. If the lease is rejected,  
4 the stay under section 362 and any stay under section  
5 1301 is automatically terminated with respect to the prop-  
6 erty subject to the lease.”.

7 (c) ADEQUATE PROTECTION OF LESSORS AND PUR-  
8 CHASE MONEY SECURED CREDITORS.—

9 (1) CONFIRMATION OF PLAN.—Section  
10 1325(a)(5)(B) of title 11, United States Code, as  
11 amended by section 306, is amended—

12 (A) in clause (i), by striking “and” at the  
13 end;

14 (B) in clause (ii), by striking “or” at the  
15 end and inserting “and”; and

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

17 “(iii) if—

18 “(I) property to be distributed pursu-  
19 ant to this subsection is in the form of  
20 periodic payments, such payments shall be  
21 in equal monthly amounts; and

22 “(II) the holder of the claim is se-  
23 cured by personal property, the amount of  
24 such payments shall not be less than an  
25 amount sufficient to provide to the holder

1 of such claim adequate protection during  
2 the period of the plan; or”.

3 (2) PAYMENTS.—Section 1326(a) of title 11,  
4 United States Code, is amended to read as follows:

5 “(a)(1) Unless the court orders otherwise, the debtor  
6 shall commence making payments not later than 30 days  
7 after the date of the filing of the plan or the order for  
8 relief, whichever is earlier, in the amount—

9 “(A) proposed by the plan to the trustee;

10 “(B) scheduled in a lease of personal property  
11 directly to the lessor for that portion of the obliga-  
12 tion that becomes due after the order for relief, re-  
13 ducing the payments under subparagraph (A) by the  
14 amount so paid and providing the trustee with evi-  
15 dence of such payment, including the amount and  
16 date of payment; and

17 “(C) that provides adequate protection directly  
18 to a creditor holding an allowed claim secured by  
19 personal property to the extent the claim is attrib-  
20 utable to the purchase of such property by the debt-  
21 or for that portion of the obligation that becomes  
22 due after the order for relief, reducing the payments  
23 under subparagraph (A) by the amount so paid and  
24 providing the trustee with evidence of such payment,  
25 including the amount and date of payment.

1           “(2) A payment made under paragraph (1)(A) shall  
2 be retained by the trustee until confirmation or denial of  
3 confirmation. If a plan is confirmed, the trustee shall dis-  
4 tribute any such payment in accordance with the plan as  
5 soon as is practicable. If a plan is not confirmed, the trust-  
6 ee shall return any such payments not previously paid and  
7 not yet due and owing to creditors pursuant to paragraph  
8 (3) to the debtor, after deducting any unpaid claim al-  
9 lowed under section 503(b).

10           “(3) Subject to section 363, the court may, upon no-  
11 tice and a hearing, modify, increase, or reduce the pay-  
12 ments required under this subsection pending confirma-  
13 tion of a plan.

14           “(4) Not later than 60 days after the date of filing  
15 of a case under this chapter, a debtor retaining possession  
16 of personal property subject to a lease or securing a claim  
17 attributable in whole or in part to the purchase price of  
18 such property shall provide the lessor or secured creditor  
19 reasonable evidence of the maintenance of any required  
20 insurance coverage with respect to the use or ownership  
21 of such property and continue to do so for so long as the  
22 debtor retains possession of such property.”.

23 **SEC. 310. LIMITATION ON LUXURY GOODS.**

24           Section 523(a)(2)(C) of title 11, United States Code,  
25 is amended to read as follows:

1           “(C)(i) for purposes of subparagraph  
2           (A)—

3           “(I) consumer debts owed to a single  
4           creditor and aggregating more than \$500  
5           for luxury goods or services incurred by an  
6           individual debtor on or within 90 days be-  
7           fore the order for relief under this title are  
8           presumed to be nondischargeable; and

9           “(II) cash advances aggregating more  
10          than \$750 that are extensions of consumer  
11          credit under an open end credit plan ob-  
12          tained by an individual debtor on or within  
13          70 days before the order for relief under  
14          this title, are presumed to be non-  
15          dischargeable; and

16          “(ii) for purposes of this subparagraph—

17                 “(I) the terms ‘consumer’, ‘credit’,  
18                 and ‘open end credit plan’ have the same  
19                 meanings as in section 103 of the Truth in  
20                 Lending Act; and

21                 “(II) the term ‘luxury goods or serv-  
22                 ices’ does not include goods or services rea-  
23                 sonably necessary for the support or main-  
24                 tenance of the debtor or a dependent of the  
25                 debtor.”.

1 **SEC. 311. AUTOMATIC STAY.**

2 (a) IN GENERAL.—Section 362(b) of title 11, United  
3 States Code, as amended by sections 224 and 303, is  
4 amended by inserting after paragraph (21), the following:

5 “(22) subject to subsection (l), under subsection  
6 (a)(3), of the continuation of any eviction, unlawful  
7 detainer action, or similar proceeding by a lessor  
8 against a debtor involving residential property in  
9 which the debtor resides as a tenant under a lease  
10 or rental agreement and with respect to which the  
11 lessor has obtained before the date of the filing of  
12 the bankruptcy petition, a judgment for possession  
13 of such property against the debtor;

14 “(23) subject to subsection (m), under sub-  
15 section (a)(3), of an eviction action that seeks pos-  
16 session of the residential property in which the debt-  
17 or resides as a tenant under a lease or rental agree-  
18 ment based on endangerment of such property or  
19 the illegal use of controlled substances on such prop-  
20 erty, but only if the lessor files with the court, and  
21 serves upon the debtor, a certification under penalty  
22 of perjury that such an eviction action has been  
23 filed, or that the debtor, during the 30-day period  
24 preceding the date of the filing of the certification,  
25 has endangered property or illegally used or allowed  
26 to be used a controlled substance on the property;

1           “(24) under subsection (a), of any transfer that  
2           is not avoidable under section 544 and that is not  
3           avoidable under section 549;”.

4           (b) LIMITATIONS.—Section 362 of title 11, United  
5 States Code, as amended by sections 106 and 305, is  
6 amended by adding at the end the following:

7           “(1)(1) Except as otherwise provided in this sub-  
8 section, subsection (b)(22) shall apply on the date that  
9 is 30 days after the date on which the bankruptcy petition  
10 is filed, if the debtor files with the petition and serves upon

11 the lessor a certification under penalty of perjury that—

12           “(A) under nonbankruptcy law applicable in the  
13 jurisdiction, there are circumstances under which the  
14 debtor would be permitted to cure the entire mone-  
15 tary default that gave rise to the judgment for pos-  
16 session, after that judgment for possession was en-  
17 tered; and

18           “(B) the debtor (or an adult dependent of the  
19 debtor) has deposited with the clerk of the court,  
20 any rent that would become due during the 30-day  
21 period after the filing of the bankruptcy petition.

22           “(2) If, within the 30-day period after the filing of  
23 the bankruptcy petition, the debtor (or an adult dependent  
24 of the debtor) complies with paragraph (1) and files with  
25 the court and serves upon the lessor a further certification



1 under penalty of perjury that the debtor (or an adult de-  
2 pendent of the debtor) has cured, under nonbankruptcy  
3 law applicable in the jurisdiction, the entire monetary de-  
4 fault that gave rise to the judgment under which posses-  
5 sion is sought by the lessor, subsection (b)(22) shall not  
6 apply, unless ordered to apply by the court under para-  
7 graph (3).

8       “(3)(A) If the lessor files an objection to any certifi-  
9 cation filed by the debtor under paragraph (1) or (2), and  
10 serves such objection upon the debtor, the court shall hold  
11 a hearing within 10 days after the filing and service of  
12 such objection to determine if the certification filed by the  
13 debtor under paragraph (1) or (2) is true.

14       “(B) If the court upholds the objection of the lessor  
15 filed under subparagraph (A)—

16               “(i) subsection (b)(22) shall apply immediately  
17 and relief from the stay provided under subsection  
18 (a)(3) shall not be required to enable the lessor to  
19 complete the process to recover full possession of the  
20 property; and

21               “(ii) the clerk of the court shall immediately  
22 serve upon the lessor and the debtor a certified copy  
23 of the court’s order upholding the lessor’s objection.

24       “(4) If a debtor, in accordance with paragraph (5),  
25 indicates on the petition that there was a judgment for

1 possession of the residential rental property in which the  
2 debtor resides and does not file a certification under para-  
3 graph (1) or (2)—

4           “(A) subsection (b)(22) shall apply immediately  
5           upon failure to file such certification, and relief from  
6           the stay provided under subsection (a)(3) shall not  
7           be required to enable the lessor to complete the  
8           process to recover full possession of the property;  
9           and

10           “(B) the clerk of the court shall immediately  
11           serve upon the lessor and the debtor a certified copy  
12           of the docket indicating the absence of a filed certifi-  
13           cation and the applicability of the exception to the  
14           stay under subsection (b)(22).

15           “(5)(A) Where a judgment for possession of residen-  
16           tial property in which the debtor resides as a tenant under  
17           a lease or rental agreement has been obtained by the les-  
18           sor, the debtor shall so indicate on the bankruptcy petition  
19           and shall provide the name and address of the lessor that  
20           obtained that pre-petition judgment on the petition and  
21           on any certification filed under this subsection.

22           “(B) The form of certification filed with the petition,  
23           as specified in this subsection, shall provide for the debtor  
24           to certify, and the debtor shall certify—

1           “(i) whether a judgment for possession of resi-  
2           dential rental housing in which the debtor resides  
3           has been obtained against the debtor before the date  
4           of the filing of the petition; and

5           “(ii) whether the debtor is claiming under para-  
6           graph (1) that under nonbankruptcy law applicable  
7           in the jurisdiction, there are circumstances under  
8           which the debtor would be permitted to cure the en-  
9           tire monetary default that gave rise to the judgment  
10          for possession, after that judgment of possession was  
11          entered, and has made the appropriate deposit with  
12          the court.

13          “(C) The standard forms (electronic and otherwise)  
14          used in a bankruptcy proceeding shall be amended to re-  
15          flect the requirements of this subsection.

16          “(D) The clerk of the court shall arrange for the  
17          prompt transmittal of the rent deposited in accordance  
18          with paragraph (1)(B) to the lessor.

19          “(m)(1) Except as otherwise provided in this sub-  
20          section, subsection (b)(23) shall apply on the date that  
21          is 15 days after the date on which the lessor files and  
22          serves a certification described in subsection (b)(23).

23          “(2)(A) If the debtor files with the court an objection  
24          to the truth or legal sufficiency of the certification de-  
25          scribed in subsection (b)(23) and serves such objection

1 upon the lessor, subsection (b)(23) shall not apply, unless  
2 ordered to apply by the court under this subsection.

3 “(B) If the debtor files and serves the objection under  
4 subparagraph (A), the court shall hold a hearing within  
5 10 days after the filing and service of such objection to  
6 determine if the situation giving rise to the lessor’s certifi-  
7 cation under paragraph (1) existed or has been remedied.

8 “(C) If the debtor can demonstrate to the satisfaction  
9 of the court that the situation giving rise to the lessor’s  
10 certification under paragraph (1) did not exist or has been  
11 remedied, the stay provided under subsection (a)(3) shall  
12 remain in effect until the termination of the stay under  
13 this section.

14 “(D) If the debtor cannot demonstrate to the satis-  
15 faction of the court that the situation giving rise to the  
16 lessor’s certification under paragraph (1) did not exist or  
17 has been remedied—

18 “(i) relief from the stay provided under sub-  
19 section (a)(3) shall not be required to enable the les-  
20 sor to proceed with the eviction; and

21 “(ii) the clerk of the court shall immediately  
22 serve upon the lessor and the debtor a certified copy  
23 of the court’s order upholding the lessor’s certifi-  
24 cation.

1 “(3) If the debtor fails to file, within 15 days, an  
2 objection under paragraph (2)(A)—

3 “(A) subsection (b)(23) shall apply immediately  
4 upon such failure and relief from the stay provided  
5 under subsection (a)(3) shall not be required to en-  
6 able the lessor to complete the process to recover full  
7 possession of the property; and

8 “(B) the clerk of the court shall immediately  
9 serve upon the lessor and the debtor a certified copy  
10 of the docket indicating such failure.”.

11 **SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY**

12 **DISCHARGES.**

13 Title 11, United States Code, is amended—

14 (1) in section 727(a)(8), by striking “six” and  
15 inserting “8”; and

16 (2) in section 1328, by inserting after sub-  
17 section (e) the following:

18 “(f) Notwithstanding subsections (a) and (b), the  
19 court shall not grant a discharge of all debts provided for  
20 in the plan or disallowed under section 502, if the debtor  
21 has received a discharge—

22 “(1) in a case filed under chapter 7, 11, or 12  
23 of this title during the 4-year period preceding the  
24 date of the order for relief under this chapter, or

1           “(2) in a case filed under chapter 13 of this  
2           title during the 2-year period preceding the date of  
3           such order.”.

4 **SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND AN-**  
5 **TIQUES.**

6           (a) DEFINITION.—Section 522(f) of title 11, United  
7 States Code, is amended by adding at the end the fol-  
8 lowing:

9           “(4)(A) Subject to subparagraph (B), for purposes  
10 of paragraph (1)(B), the term ‘household goods’ means—

11           “(i) clothing;

12           “(ii) furniture;

13           “(iii) appliances;

14           “(iv) 1 radio;

15           “(v) 1 television;

16           “(vi) 1 VCR;

17           “(vii) linens;

18           “(viii) china;

19           “(ix) crockery;

20           “(x) kitchenware;

21           “(xi) educational materials and educational  
22 equipment primarily for the use of minor dependent  
23 children of the debtor;

24           “(xii) medical equipment and supplies;

1           “(xiii) furniture exclusively for the use of minor  
2 children, or elderly or disabled dependents of the  
3 debtor;

4           “(xiv) personal effects (including the toys and  
5 hobby equipment of minor dependent children and  
6 wedding rings) of the debtor and the dependents of  
7 the debtor; and

8           “(xv) 1 personal computer and related equip-  
9 ment.

10          “(B) The term ‘household goods’ does not include—

11           “(i) works of art (unless by or of the debtor, or  
12 any relative of the debtor);

13           “(ii) electronic entertainment equipment with a  
14 fair market value of more than \$500 in the aggre-  
15 gate (except 1 television, 1 radio, and 1 VCR);

16           “(iii) items acquired as antiques with a fair  
17 market value of more than \$500 in the aggregate;

18           “(iv) jewelry with a fair market value of more  
19 than \$500 in the aggregate (except wedding rings);  
20 and

21           “(v) a computer (except as otherwise provided  
22 for in this section), motor vehicle (including a trac-  
23 tor or lawn tractor), boat, or a motorized rec-  
24 reational device, conveyance, vehicle, watercraft, or  
25 aircraft.”.

1 (b) STUDY.—Not later than 2 years after the date  
2 of enactment of this Act, the Director of the Executive  
3 Office for United States Trustees shall submit a report  
4 to the Committee on the Judiciary of the Senate and the  
5 Committee on the Judiciary of the House of Representa-  
6 tives containing its findings regarding utilization of the  
7 definition of household goods, as defined in section  
8 522(f)(4) of title 11, United States Code, as added by sub-  
9 section (a), with respect to the avoidance of nonpossessory,  
10 nonpurchase money security interests in household goods  
11 under section 522(f)(1)(B) of title 11, United States Code,  
12 and the impact such section 522(f)(4) has had on debtors  
13 and on the bankruptcy courts. Such report may include  
14 recommendations for amendments to such section  
15 522(f)(4) consistent with the Director’s findings.

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  
23 nondischargeable under paragraph (1);”.

24 (b) DISCHARGE UNDER CHAPTER 13.—Section  
25 1328(a) of title 11, United States Code, is amended by



1 striking paragraphs (1) through (3) and inserting the fol-  
 2 lowing:

3 “(1) provided for under section 1322(b)(5);

4 “(2) of the kind specified in paragraph (2), (3),  
 5 (4), (5), (8), or (9) of section 523(a);

6 “(3) for restitution, or a criminal fine, included  
 7 in a sentence on the debtor’s conviction of a crime;  
 8 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  
 21 notice to contain such information shall not in-  
 22 validate 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

1 in at least 2 communications sent to the debtor with the  
2 current account number of the debtor and the address at  
3 which such creditor requests to receive correspondence,  
4 then any notice required by this title to be sent by the  
5 debtor to such creditor shall be sent to such address and  
6 shall include such 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  
10 the debtor in the last 2 communications with the current  
11 account number of the debtor and the address at which  
12 such creditor requests to receive correspondence, then any  
13 notice required by this title to be sent by the debtor to  
14 such creditor shall be sent to such address and shall in-  
15 clude such account 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  
20 notice of address to be used to provide notice in such case  
21 to such 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  
24 days after the court and the debtor receive such creditor’s  
25 notice 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  
5 to such entity in all cases under chapters 7 and 13 pend-  
6 ing in the courts with respect to which such notice is filed,  
7 in which such entity is a creditor.

8           “(2) In any case filed under chapter 7 or 13, any  
9 notice required to be provided by a court with respect to  
10 which a notice is filed under paragraph (1), to such entity  
11 later than 30 days after the filing of such notice under  
12 paragraph (1) shall be provided to such address unless  
13 with respect to a particular case a different address is  
14 specified in a notice filed and served in accordance with  
15 subsection (e).

16           “(3) A notice filed under paragraph (1) may be with-  
17 drawn by such entity.

18           “(g)(1) Notice provided to a creditor by the debtor  
19 or the court other than in accordance with this section  
20 (excluding this subsection) shall not be effective notice  
21 until such notice is brought to the attention of such cred-  
22 itor. If such creditor designates a person or an organiza-  
23 tional subdivision of such creditor to be responsible for  
24 receiving notices under this title and establishes reason-  
25 able procedures so that such notices receivable by such

1 creditor are to be delivered to such person or such subdivi-  
2 sion, then a notice provided to such creditor other than  
3 in accordance with this section (excluding this subsection)  
4 shall not be considered to have been brought to the atten-  
5 tion of such creditor until such notice is received by such  
6 person or such subdivision.

7 “(2) A monetary penalty may not be imposed on a  
8 creditor for a violation of a stay in effect under section  
9 362(a) (including a monetary penalty imposed under sec-  
10 tion 362(k)) or for failure to comply with section 542 or  
11 543 unless the conduct that is the basis of such violation  
12 or of such failure occurs after such creditor receives notice  
13 effective under this section of the order for relief.”.

14 (b) DEBTOR’S DUTIES.—Section 521 of title 11,  
15 United States Code, as amended by sections 106, 225, and  
16 305, is amended—

17 (1) in subsection (a), as so designated by sec-  
18 tion 106, by amending paragraph (1) to read as fol-  
19 lows:

20 “(1) file—

21 “(A) a list of creditors; and

22 “(B) unless the court orders otherwise—

23 “(i) a schedule of assets and liabil-  
24 ities;

1           “(ii) a schedule of current income and  
2           current expenditures;

3           “(iii) a statement of the debtor’s fi-  
4           nancial affairs and, if section 342(b) ap-  
5           plies, a certificate—

6                       “(I) of an attorney whose name  
7                       is indicated on the petition as the at-  
8                       torney for the debtor, or a bankruptcy  
9                       petition preparer signing the petition  
10                      under section 110(b)(1), indicating  
11                      that such attorney or the bankruptcy  
12                      petition preparer delivered to the  
13                      debtor the notice required by section  
14                      342(b); or

15                     “(II) if no attorney is so indi-  
16                     cated, and no bankruptcy petition pre-  
17                     parer signed the petition, of the debt-  
18                     or that such notice was received and  
19                     read by the debtor;

20                    “(iv) copies of all payment advices or  
21                    other evidence of payment received within  
22                    60 days before the date of the filing of the  
23                    petition, by the debtor from any employer  
24                    of the debtor;

1           “(v) a statement of the amount of  
2           monthly net income, itemized to show how  
3           the amount is calculated; and

4           “(vi) a statement disclosing any rea-  
5           sonably anticipated increase in income or  
6           expenditures over the 12-month period fol-  
7           lowing the date of the filing of the peti-  
8           tion;”); and

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

10          “(e)(1) If the debtor in a case under chapter 7 or  
11          13 is an individual and if a creditor files with the court  
12          at any time a request to receive a copy of the petition,  
13          schedules, and statement of financial affairs filed by the  
14          debtor, then the court shall make such petition, such  
15          schedules, and such statement available to such creditor.

16          “(2)(A) The debtor shall provide—

17                 “(i) not later than 7 days before the date first  
18                 set for the first meeting of creditors, to the trustee  
19                 a copy of the Federal income tax return required  
20                 under applicable law (or at the election of the debt-  
21                 or, a transcript of such return) for the most recent  
22                 tax year ending immediately before the commence-  
23                 ment of the case and for which a Federal income tax  
24                 return was filed; and

1           “(ii) at the same time the debtor complies with  
2           clause (i), a copy of such return (or if elected under  
3           clause (i), such transcript) to any creditor that time-  
4           ly requests such copy.

5           “(B) If the debtor fails to comply with clause (i) or  
6           (ii) of subparagraph (A), the court shall dismiss the case  
7           unless the debtor demonstrates that the failure to so com-  
8           ply is due to circumstances beyond the control of the debt-  
9           or.

10          “(C) If a creditor requests a copy of such tax return  
11          or such transcript and if the debtor fails to provide a copy  
12          of such tax return or such transcript to such creditor at  
13          the time the debtor provides such tax return or such tran-  
14          script to the trustee, then the court shall dismiss the case  
15          unless the debtor demonstrates that the failure to provide  
16          a copy of such tax return or such transcript is due to cir-  
17          cumstances beyond the control of the debtor.

18          “(3) If a creditor in a case under chapter 13 files  
19          with the court at any time a request to receive a copy  
20          of the plan filed by the debtor, then the court shall make  
21          available to such creditor a copy of the plan—

22                  “(A) at a reasonable cost; and

23                  “(B) not later than 5 days after such request  
24          is filed.

1       “(f) At the request of the court, the United States  
2 trustee, or any party in interest in a case under chapter  
3 7, 11, or 13, a debtor who is an individual shall file with  
4 the court—

5           “(1) at the same time filed with the taxing au-  
6 thority, a copy of each Federal income tax return re-  
7 quired under applicable law (or at the election of the  
8 debtor, a transcript of such tax return) with respect  
9 to each tax year of the debtor ending while the case  
10 is pending under such chapter;

11           “(2) at the same time filed with the taxing au-  
12 thority, each Federal income tax return required  
13 under applicable law (or at the election of the debt-  
14 or, a transcript of such tax return) that had not  
15 been filed with such authority as of the date of the  
16 commencement of the case and that was subse-  
17 quently filed for any tax year of the debtor ending  
18 in the 3-year period ending on the date of the com-  
19 mencement of the case;

20           “(3) a copy of each amendment to any Federal  
21 income tax return or transcript filed with the court  
22 under paragraph (1) or (2); and

23           “(4) in a case under chapter 13—

24           “(A) on the date that is either 90 days  
25 after the end of such tax year or 1 year after



1 the date of the commencement of the case,  
2 whichever is later, if a plan is not confirmed be-  
3 fore such later date; and

4 “(B) annually after the plan is confirmed  
5 and until the case is closed, not later than the  
6 date that is 45 days before the anniversary of  
7 the confirmation of the plan;

8 a statement, under penalty of perjury, of the income  
9 and expenditures of the debtor during the tax year  
10 of the debtor most recently concluded before such  
11 statement is filed under this paragraph, and of the  
12 monthly income of the debtor, that shows how in-  
13 come, expenditures, and monthly income are cal-  
14 culated.

15 “(g)(1) A statement referred to in subsection (f)(4)  
16 shall disclose—

17 “(A) the amount and sources of the income of  
18 the debtor;

19 “(B) the identity of any person responsible with  
20 the debtor for the support of any dependent of the  
21 debtor; and

22 “(C) the identity of any person who contrib-  
23 uted, and the amount contributed, to the household  
24 in which the debtor resides.

1       “(2) The tax returns, amendments, and statement of  
2 income and expenditures described in subsections  
3 (e)(2)(A) and (f) shall be available to the United States  
4 trustee (or the bankruptcy administrator, if any), the  
5 trustee, and any party in interest for inspection and copy-  
6 ing, subject to the requirements of section 315(c) of the  
7 Bankruptcy Abuse Prevention and Consumer Protection  
8 Act of 2005.

9       “(h) If requested by the United States trustee or by  
10 the trustee, the debtor shall provide—

11               “(1) a document that establishes the identity of  
12 the debtor, including a driver’s license, passport, or  
13 other document that contains a photograph of the  
14 debtor; or

15               “(2) such other personal identifying information  
16 relating to the debtor that establishes the identity of  
17 the debtor.”.

18       (c)(1) Not later than 180 days after the date of the  
19 enactment of this Act, the Director of the Administrative  
20 Office of the United States Courts shall establish proce-  
21 dures for safeguarding the confidentiality of any tax infor-  
22 mation required to be provided under this section.

23       (2) The procedures under paragraph (1) shall include  
24 restrictions on creditor access to tax information that is  
25 required to be provided under this section.

1           (3) Not later than 540 days after the date of enact-  
2 ment of this Act, the Director of the Administrative Office  
3 of the United States Courts shall prepare and submit to  
4 the President pro tempore of the Senate and the Speaker  
5 of the House of Representatives a report that—

6           (A) assesses the effectiveness of the procedures  
7 established under paragraph (1); and

8           (B) if appropriate, includes proposed legislation  
9 to—

10           (i) further protect the confidentiality of tax  
11 information; and

12           (ii) provide penalties for the improper use  
13 by any person of the tax information required  
14 to be provided under this section.

15 **SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHED-**  
16 **ULES OR PROVIDE REQUIRED INFORMATION.**

17           Section 521 of title 11, United States Code, as  
18 amended by sections 106, 225, 305, and 315, is amended  
19 by adding at the end the following:

20           “(i)(1) Subject to paragraphs (2) and (4) and not-  
21 withstanding section 707(a), if an individual debtor in a  
22 voluntary case under chapter 7 or 13 fails to file all of  
23 the information required under subsection (a)(1) within  
24 45 days after the date of the filing of the petition, the

1 case shall be automatically dismissed effective on the 46th  
2 day after the date of the filing of the petition.

3 “(2) Subject to paragraph (4) and with respect to  
4 a case described in paragraph (1), any party in interest  
5 may request the court to enter an order dismissing the  
6 case. If requested, the court shall enter an order of dis-  
7 missal not later than 5 days after such request.

8 “(3) Subject to paragraph (4) and upon request of  
9 the debtor made within 45 days after the date of the filing  
10 of the petition described in paragraph (1), the court may  
11 allow the debtor an additional period of not to exceed 45  
12 days to file the information required under subsection  
13 (a)(1) if the court finds justification for extending the pe-  
14 riod for the filing.

15 “(4) Notwithstanding any other provision of this sub-  
16 section, on the motion of the trustee filed before the expi-  
17 ration of the applicable period of time specified in para-  
18 graph (1), (2), or (3), and after notice and a hearing, the  
19 court may decline to dismiss the case if the court finds  
20 that the debtor attempted in good faith to file all the infor-  
21 mation required by subsection (a)(1)(B)(iv) and that the  
22 best interests of creditors would be served by administra-  
23 tion of the case.”.

1 **SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON**  
2 **CONFIRMATION OF THE PLAN.**

3 Section 1324 of title 11, United States Code, is  
4 amended—

5 (1) by striking “After” and inserting the fol-  
6 lowing:

7 “(a) Except as provided in subsection (b) and after”;  
8 and

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

10 “(b) The hearing on confirmation of the plan may  
11 be held not earlier than 20 days and not later than 45  
12 days after the date of the meeting of creditors under sec-  
13 tion 341(a), unless the court determines that it would be  
14 in the best interests of the creditors and the estate to hold  
15 such hearing at an earlier date and there is no objection  
16 to such earlier date.”.

17 **SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION**  
18 **IN CERTAIN CASES.**

19 Title 11, United States Code, is amended—

20 (1) by amending section 1322(d) to read as fol-  
21 lows:

22 “(d)(1) If the current monthly income of the debtor  
23 and the debtor’s spouse combined, when multiplied by 12,  
24 is not less than—

1           “(A) in the case of a debtor in a household of  
2           1 person, the median family income of the applicable  
3           State for 1 earner;

4           “(B) in the case of a debtor in a household of  
5           2, 3, or 4 individuals, the highest median family in-  
6           come of the applicable State for a family of the same  
7           number or fewer individuals; or

8           “(C) in the case of a debtor in a household ex-  
9           ceeding 4 individuals, the highest median family in-  
10          come of the applicable State for a family of 4 or  
11          fewer individuals, plus \$525 per month for each in-  
12          dividual in excess of 4,

13 the plan may not provide for payments over a period that  
14 is longer than 5 years.

15          “(2) If the current monthly income of the debtor and  
16 the debtor’s spouse combined, when multiplied by 12, is  
17 less than—

18           “(A) in the case of a debtor in a household of  
19           1 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  
22           2, 3, or 4 individuals, the highest median family in-  
23           come of the applicable State for a family of the same  
24           number 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  
4           fewer individuals, plus \$525 per month for each in-  
5           dividual in excess of 4,  
6           the plan may not provide for payments over a period that  
7           is longer than 3 years, unless the court, for cause, ap-  
8           proves a longer period, but the court may not approve a  
9           period that is longer than 5 years.”;

10           (2) in section 1325(b)(1)(B), by striking  
11           “three-year period” and inserting “applicable com-  
12           mitment period”; and

13           (3) in section 1325(b), as amended by section  
14           102, by adding at the end the following:

15           “(4) For purposes of this subsection, the ‘applicable  
16           commitment period’—

17           “(A) subject to subparagraph (B), shall be—

18           “(i) 3 years; or

19           “(ii) not less than 5 years, if the current  
20           monthly income of the debtor and the debtor’s  
21           spouse combined, when multiplied by 12, is not  
22           less than—

23           “(I) in the case of a debtor in a  
24           household of 1 person, the median family

1 income of the applicable State for 1 earn-  
2 er;

3 “(II) in the case of a debtor in a  
4 household of 2, 3, or 4 individuals, the  
5 highest median family income of the appli-  
6 cable State for a family of the same num-  
7 ber or fewer individuals; or

8 “(III) in the case of a debtor in a  
9 household exceeding 4 individuals, the  
10 highest median family income of the appli-  
11 cable State for a family of 4 or fewer indi-  
12 viduals, plus \$525 per month for each indi-  
13 vidual in excess of 4; and

14 “(B) may be less than 3 or 5 years, whichever  
15 is applicable under subparagraph (A), but only if the  
16 plan provides for payment in full of all allowed unse-  
17 cured claims over a shorter period.”; and

18 (4) in section 1329(c), by striking “three  
19 years” and inserting “the applicable commitment pe-  
20 riod under section 1325(b)(1)(B)”.

21 **SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF**  
22 **RULE 9011 OF THE FEDERAL RULES OF BANK-**  
23 **RUPTCY PROCEDURE.**

24 It is the sense of Congress that rule 9011 of the Fed-  
25 eral Rules of Bankruptcy Procedure (11 U.S.C. App.)



1 should be modified to include a requirement that all docu-  
2 ments (including schedules), signed and unsigned, sub-  
3 mitted to the court or to a trustee by debtors who rep-  
4 resent themselves and debtors who are represented by at-  
5 torneys be submitted only after the debtors or the debtors’  
6 attorneys have made reasonable inquiry to verify that the  
7 information contained in such documents is—

8 (1) well grounded in fact; and

9 (2) warranted by existing law or a good faith  
10 argument for the extension, modification, or reversal  
11 of existing law.

12 **SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL**  
13 **CASES.**

14 Section 362(e) of title 11, United States Code, is  
15 amended—

16 (1) by inserting “(1)” after “(e)”; and

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

18 “(2) Notwithstanding paragraph (1), in a case under  
19 chapter 7, 11, or 13 in which the debtor is an individual,  
20 the stay under subsection (a) shall terminate on the date  
21 that is 60 days after a request is made by a party in inter-  
22 est under subsection (d), unless—

23 “(A) a final decision is rendered by the court  
24 during the 60-day period beginning on the date of  
25 the request; or

1           “(B) such 60-day period is extended—  
2                   “(i) by agreement of all parties in interest;  
3           or  
4                   “(ii) by the court for such specific period  
5           of time as the court finds is required for good  
6           cause, as described in findings made by the  
7           court.”.

8 **SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.**

9           (a) PROPERTY OF THE ESTATE.—

10           (1) IN GENERAL.—Subchapter I of chapter 11  
11           of title 11, United States Code, is amended by add-  
12           ing at the end the following:

13 **“§ 1115. Property of the estate**

14           “(a) In a case in which the debtor is an individual,  
15           property of the estate includes, in addition to the property  
16           specified in section 541—

17                   “(1) all property of the kind specified in section  
18           541 that the debtor acquires after the commence-  
19           ment of the case but before the case is closed, dis-  
20           missed, or converted to a case under chapter 7, 12,  
21           or 13, whichever occurs first; and

22                   “(2) earnings from services performed by the  
23           debtor after the commencement of the case but be-  
24           fore the case is closed, dismissed, or converted to a

1 case under chapter 7, 12, or 13, whichever occurs  
2 first.

3 “(b) Except as provided in section 1104 or a con-  
4 firmed plan or order confirming a plan, the debtor shall  
5 remain in possession of all property of the estate.”.

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

“1115. Property of the estate.”.

10 (b) CONTENTS OF PLAN.—Section 1123(a) of title  
11 11, United States Code, is amended—

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

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

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

17 “(8) in a case in which the debtor is an indi-  
18 vidual, provide for the payment to creditors under  
19 the plan of all or such portion of earnings from per-  
20 sonal services performed by the debtor after the  
21 commencement of the case or other future income of  
22 the debtor as is necessary for the execution of the  
23 plan.”.

24 (c) CONFIRMATION OF PLAN.—

1           (1) REQUIREMENTS RELATING TO VALUE OF  
2 PROPERTY.—Section 1129(a) of title 11, United  
3 States Code, as amended by section 213, is amended  
4 by adding at the end the following:

5           “(15) In a case in which the debtor is an indi-  
6 vidual and in which the holder of an allowed unse-  
7 cured claim objects to the confirmation of the plan—

8           “(A) the value, as of the effective date of  
9 the plan, of the property to be distributed  
10 under the plan on account of such claim is not  
11 less than the amount of such claim; or

12           “(B) the value of the property to be dis-  
13 tributed under the plan is not less than the pro-  
14 jected disposable income of the debtor (as de-  
15 fined in section 1325(b)(2)) to be received dur-  
16 ing the 5-year period beginning on the date that  
17 the first payment is due under the plan, or dur-  
18 ing the period for which the plan provides pay-  
19 ments, whichever is longer.”.

20           (2) REQUIREMENT RELATING TO INTERESTS IN  
21 PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11,  
22 United States Code, is amended by inserting before  
23 the period at the end the following: “, except that  
24 in a case in which the debtor is an individual, the  
25 debtor may retain property included in the estate

1 under section 1115, subject to the requirements of  
2 subsection (a)(14) of this section”.

3 (d) EFFECT OF CONFIRMATION.—Section 1141(d) of  
4 title 11, United States Code, is amended—

5 (1) in paragraph (2), by striking “The con-  
6 firmation of a plan does not discharge an individual  
7 debtor” and inserting “A discharge under this chap-  
8 ter does not discharge a debtor who is an indi-  
9 vidual”; and

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

11 “(5) In a case in which the debtor is an individual—

12 “(A) unless after notice and a hearing the court  
13 orders otherwise for cause, confirmation of the plan  
14 does not discharge any debt provided for in the plan  
15 until the court grants a discharge on completion of  
16 all payments under the plan;

17 “(B) at any time after the confirmation of the  
18 plan, and after notice and a hearing, the court may  
19 grant a discharge to the debtor who has not com-  
20 pleted payments under the plan if—

21 “(i) the value, as of the effective date of  
22 the plan, of property actually distributed under  
23 the plan on account of each allowed unsecured  
24 claim is not less than the amount that would  
25 have been paid on such claim if the estate of

1 the debtor had been liquidated under chapter 7  
2 on such date; and

3 “(ii) modification of the plan under section  
4 1127 is not practicable; and”.

5 (e) MODIFICATION OF PLAN.—Section 1127 of title  
6 11, United States Code, is amended by adding at the end  
7 the following:

8 “(e) If the debtor is an individual, the plan may be  
9 modified at any time after confirmation of the plan but  
10 before the completion of payments under the plan, whether  
11 or not the plan has been substantially consummated, upon  
12 request of the debtor, the trustee, the United States trust-  
13 ee, or the holder of an allowed unsecured claim, to—

14 “(1) increase or reduce the amount of payments  
15 on claims of a particular class provided for by the  
16 plan;

17 “(2) extend or reduce the time period for such  
18 payments; or

19 “(3) alter the amount of the distribution to a  
20 creditor whose claim is provided for by the plan to  
21 the extent necessary to take account of any payment  
22 of such claim made other than under the plan.

23 “(f)(1) Sections 1121 through 1128 and the require-  
24 ments of section 1129 apply to any modification under  
25 subsection (a).

1       “(2) The plan, as modified, shall become the plan  
2 only after there has been disclosure under section 1125  
3 as the court may direct, notice and a hearing, and such  
4 modification is approved.”.

5 **SEC. 322. LIMITATIONS ON HOMESTEAD EXEMPTION.**

6       (a) EXEMPTIONS.—Section 522 of title 11, United  
7 States Code, as amended by sections 224 and 308, is  
8 amended by adding at the end the following:

9       “(p)(1) Except as provided in paragraph (2) of this  
10 subsection and sections 544 and 548, as a result of elect-  
11 ing under subsection (b)(3)(A) to exempt property under  
12 State or local law, a debtor may not exempt any amount  
13 of interest that was acquired by the debtor during the  
14 1215-day period preceding the date of the filing of the  
15 petition that exceeds in the aggregate \$125,000 in value  
16 in—

17               “(A) real or personal property that the debtor  
18 or a dependent of the debtor uses as a residence;

19               “(B) a cooperative that owns property that the  
20 debtor or a dependent of the debtor uses as a resi-  
21 dence;

22               “(C) a burial plot for the debtor or a dependent  
23 of the debtor; or

24               “(D) real or personal property that the debtor  
25 or dependent of the debtor claims as a homestead.

1       “(2)(A) The limitation under paragraph (1) shall not  
2 apply to an exemption claimed under subsection (b)(3)(A)  
3 by a family farmer for the principal residence of such  
4 farmer.

5       “(B) For purposes of paragraph (1), any amount of  
6 such interest does not include any interest transferred  
7 from a debtor’s previous principal residence (which was  
8 acquired prior to the beginning of such 1215-day period)  
9 into the debtor’s current principal residence, if the debt-  
10 or’s previous and current residences are located in the  
11 same State.

12       “(q)(1) As a result of electing under subsection  
13 (b)(3)(A) to exempt property under State or local law, a  
14 debtor may not exempt any amount of an interest in prop-  
15 erty described in subparagraphs (A), (B), (C), and (D)  
16 of subsection (p)(1) which exceeds in the aggregate  
17 \$125,000 if—

18               “(A) the court determines, after notice and a  
19 hearing, that the debtor has been convicted of a fel-  
20 ony (as defined in section 3156 of title 18), which  
21 under the circumstances, demonstrates that the fil-  
22 ing of the case was an abuse of the provisions of this  
23 title; or

24               “(B) the debtor owes a debt arising from—



1           “(i) any violation of the Federal securities  
2 laws (as defined in section 3(a)(47) of the Secu-  
3 rities Exchange Act of 1934), any State securi-  
4 ties laws, or any regulation or order issued  
5 under Federal securities laws or State securities  
6 laws;

7           “(ii) fraud, deceit, or manipulation in a fi-  
8 duciary capacity or in connection with the pur-  
9 chase or sale of any security registered under  
10 section 12 or 15(d) of the Securities Exchange  
11 Act of 1934 or under section 6 of the Securities  
12 Act of 1933;

13           “(iii) any civil remedy under section 1964  
14 of title 18; or

15           “(iv) any criminal act, intentional tort, or  
16 willful or reckless misconduct that caused seri-  
17 ous physical injury or death to another indi-  
18 vidual in the preceding 5 years.

19           “(2) Paragraph (1) shall not apply to the extent the  
20 amount of an interest in property described in subpara-  
21 graphs (A), (B), (C), and (D) of subsection (p)(1) is rea-  
22 sonably necessary for the support of the debtor and any  
23 dependent of the debtor.”.

24           (b) ADJUSTMENT OF DOLLAR AMOUNTS.—Para-  
25 graphs (1) and (2) of section 104(b) of title 11, United

1 States Code, as amended by section 224, are amended by  
2 inserting “522(p), 522(q),” after “522(n),”.

3 **SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICI-**  
4 **PANT CONTRIBUTIONS AND OTHER PROP-**  
5 **ERTY FROM THE ESTATE.**

6 Section 541(b) of title 11, United States Code, as  
7 amended by section 225, is amended by adding after para-  
8 graph (6), as added by section 225(a)(1)(C), the following:

9 “(7) any amount—

10 “(A) withheld by an employer from the  
11 wages of employees for payment as contribu-  
12 tions—

13 “(i) to—

14 “(I) an employee benefit plan  
15 that is subject to title I of the Em-  
16 ployee Retirement Income Security  
17 Act of 1974 or under an employee  
18 benefit plan which is a governmental  
19 plan under section 414(d) of the In-  
20 ternal Revenue Code of 1986;

21 “(II) a deferred compensation  
22 plan under section 457 of the Internal  
23 Revenue Code of 1986; or

1           “(III) a tax-deferred annuity  
2           under section 403(b) of the Internal  
3           Revenue Code of 1986;

4           except that such amount under this sub-  
5           paragraph shall not constitute disposable  
6           income as defined in section 1325(b)(2); or

7           “(ii) to a health insurance plan regu-  
8           lated by State law whether or not subject  
9           to such title; or

10          “(B) received by an employer from employ-  
11          ees for payment as contributions—

12           “(i) to—

13           “(I) an employee benefit plan  
14           that is subject to title I of the Em-  
15           ployee Retirement Income Security  
16           Act of 1974 or under an employee  
17           benefit plan which is a governmental  
18           plan under section 414(d) of the In-  
19           ternal Revenue Code of 1986;

20           “(II) a deferred compensation  
21           plan under section 457 of the Internal  
22           Revenue Code of 1986; or

23           “(III) a tax-deferred annuity  
24           under section 403(b) of the Internal  
25           Revenue Code of 1986;

1           except that such amount under this sub-  
2           paragraph shall not constitute disposable  
3           income, as defined in section 1325(b)(2);  
4           or

5                   “(ii) to a health insurance plan regu-  
6           lated by State law whether or not subject  
7           to such title;”.

8   **SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLV-**  
9                   **ING BANKRUPTCY PROFESSIONALS.**

10       (a) IN GENERAL.—Section 1334 of title 28, United  
11 States Code, is amended—

12           (1) in subsection (b), by striking “Notwith-  
13       standing” and inserting “Except as provided in sub-  
14       section (e)(2), and notwithstanding”; and

15           (2) by striking subsection (e) and inserting the  
16       following:

17       “(e) The district court in which a case under title  
18       11 is commenced or is pending shall have exclusive juris-  
19       diction—

20           “(1) of all the property, wherever located, of the  
21       debtor as of the commencement of such case, and of  
22       property of the estate; and

23           “(2) over all claims or causes of action that in-  
24       volve construction of section 327 of title 11, United

1 States Code, or rules relating to disclosure require-  
2 ments under section 327.”.

3 (b) APPLICABILITY.—This section shall only apply to  
4 cases filed after the date of enactment of this Act.

5 **SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE**  
6 **INCREASE.**

7 (a) ACTIONS UNDER CHAPTER 7, 11, OR 13 OF  
8 TITLE 11, UNITED STATES CODE.—Section 1930(a) of  
9 title 28, United States Code, is amended—

10 (1) by striking paragraph (1) and inserting the  
11 following:

12 “(1) For a case commenced under—

13 “(A) chapter 7 of title 11, \$200; and

14 “(B) chapter 13 of title 11, \$150.”; and

15 (2) in paragraph (3), by striking “\$800” and  
16 inserting “\$1000”.

17 (b) UNITED STATES TRUSTEE SYSTEM FUND.—Sec-  
18 tion 589a(b) of title 28, United States Code, is amended—

19 (1) by striking paragraph (1) and inserting the  
20 following:

21 “(1)(A) 40.63 percent of the fees collected  
22 under section 1930(a)(1)(A) of this title; and

23 “(B) 70.00 percent of the fees collected under  
24 section 1930(a)(1)(B);”;

1           (2) in paragraph (2), by striking “one-half”  
2           and inserting “75 percent”; and

3           (3) in paragraph (4), by striking “one-half”  
4           and inserting “100 percent”.

5           (c) COLLECTION AND DEPOSIT OF MISCELLANEOUS  
6 BANKRUPTCY FEES.—Section 406(b) of the Judiciary Ap-  
7 propriations Act, 1990 (28 U.S.C. 1931 note) is amended  
8 by striking “pursuant to 28 U.S.C. section 1930(b)” and  
9 all that follows through “28 U.S.C. section 1931” and in-  
10 sserting “under section 1930(b) of title 28, United States  
11 Code, 31.25 of the fees collected under section  
12 1930(a)(1)(A) of that title, 30.00 percent of the fees col-  
13 lected under section 1930(a)(1)(B) of that title, and 25  
14 percent of the fees collected under section 1930(a)(3) of  
15 that title shall be deposited as offsetting receipts to the  
16 fund established under section 1931 of that title”.

17           (d) SUNSET DATE.—The amendments made by sub-  
18 sections (b) and (c) shall be effective during the 2-year  
19 period beginning on the date of enactment of this Act.

20           (e) USE OF INCREASED RECEIPTS.—

21           (1) JUDGES’ SALARIES AND BENEFITS.—The  
22 amount of fees collected under paragraphs (1) and  
23 (3) of section 1930(a) of title 28, United States  
24 Code, during the 5-year period beginning on the  
25 date of enactment of this Act, that is greater than

1 the amount that would have been collected if the  
2 amendments made by subsection (a) had not taken  
3 effect shall be used, to the extent necessary, to pay  
4 the salaries and benefits of the judges appointed  
5 pursuant to section 1223 of this Act.

6 (2) REMAINDER.—Any amount described in  
7 paragraph (1), which is not used for the purpose de-  
8 scribed in paragraph (1), shall be deposited into the  
9 Treasury of the United States to the extent nec-  
10 essary to offset the decrease in governmental re-  
11 ceipts resulting from the amendments made by sub-  
12 sections (b) and (c).

13 **SEC. 326. SHARING OF COMPENSATION.**

14 Section 504 of title 11, United States Code, is  
15 amended by adding at the end the following:

16 “(c) This section shall not apply with respect to shar-  
17 ing, or agreeing to share, compensation with a bona fide  
18 public service attorney referral program that operates in  
19 accordance with non-Federal law regulating attorney re-  
20 ferral services and with rules of professional responsibility  
21 applicable to attorney acceptance of referrals.”.

22 **SEC. 327. FAIR VALUATION OF COLLATERAL.**

23 Section 506(a) of title 11, United States Code, is  
24 amended by—

25 (1) inserting “(1)” after “(a)”; and

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

2 “(2) If the debtor is an individual in a case under  
3 chapter 7 or 13, such value with respect to personal prop-  
4 erty securing an allowed claim shall be determined based  
5 on the replacement value of such property as of the date  
6 of the filing of the petition without deduction for costs  
7 of sale or marketing. With respect to property acquired  
8 for personal, family, or household purposes, replacement  
9 value shall mean the price a retail merchant would charge  
10 for property of that kind considering the age and condition  
11 of the property at the time value is determined.”.

12 **SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGA-**  
13 **TIONS.**

14 (a) EXECUTORY CONTRACTS AND UNEXPIRED  
15 LEASES.—Section 365 of title 11, United States Code, is  
16 amended—

17 (1) in subsection (b)—

18 (A) in paragraph (1)(A), by striking the  
19 semicolon at the end and inserting the fol-  
20 lowing: “other than a default that is a breach  
21 of a provision relating to the satisfaction of any  
22 provision (other than a penalty rate or penalty  
23 provision) relating to a default arising from any  
24 failure to perform nonmonetary obligations  
25 under an unexpired lease of real property, if it



1 is impossible for the trustee to cure such de-  
2 fault by performing nonmonetary acts at and  
3 after the time of assumption, except that if  
4 such default arises from a failure to operate in  
5 accordance with a nonresidential real property  
6 lease, then such default shall be cured by per-  
7 formance at and after the time of assumption  
8 in accordance with such lease, and pecuniary  
9 losses resulting from such default shall be com-  
10 pensated in accordance with the provisions of  
11 this paragraph;” and

12 (B) in paragraph (2)(D), by striking “pen-  
13 alty rate or provision” and inserting “penalty  
14 rate or penalty provision”;

15 (2) in subsection (c)—

16 (A) in paragraph (2), by inserting “or” at  
17 the end;

18 (B) in paragraph (3), by striking “; or” at  
19 the end and inserting a period; and

20 (C) by striking paragraph (4);

21 (3) in subsection (d)—

22 (A) by striking paragraphs (5) through  
23 (9); and

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

1           (4) in subsection (f)(1) by striking “; except  
2           that” and all that follows through the end of the  
3           paragraph and inserting a period.

4           (b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Sec-  
5           tion 1124(2) of title 11, United States Code, is amend-  
6           ed—

7           (1) in subparagraph (A), by inserting “or of a  
8           kind that section 365(b)(2) expressly does not re-  
9           quire to be cured” before the semicolon at the end;

10          (2) in subparagraph (C), by striking “and” at  
11          the end;

12          (3) by redesignating subparagraph (D) as sub-  
13          paragraph (E); and

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

16                 “(D) if such claim or such interest arises  
17                 from any failure to perform a nonmonetary ob-  
18                 ligation, other than a default arising from fail-  
19                 ure to operate a nonresidential real property  
20                 lease subject to section 365(b)(1)(A), com-  
21                 pensates the holder of such claim or such inter-  
22                 est (other than the debtor or an insider) for any  
23                 actual pecuniary loss incurred by such holder as  
24                 a result of such failure; and”.

1 **SEC. 329. CLARIFICATION OF POSTPETITION WAGES AND**  
2 **BENEFITS.**

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

5 “(A) the actual, necessary costs and expenses of pre-  
6 serving the estate including—

7 “(i) wages, salaries, and commissions for  
8 services rendered after the commencement of  
9 the case; and

10 “(ii) wages and benefits awarded pursuant  
11 to a judicial proceeding or a proceeding of the  
12 National Labor Relations Board as back pay  
13 attributable to any period of time occurring  
14 after commencement of the case under this  
15 title, as a result of a violation of Federal or  
16 State law by the debtor, without regard to the  
17 time of the occurrence of unlawful conduct on  
18 which such award is based or to whether any  
19 services were rendered, if the court determines  
20 that payment of wages and benefits by reason  
21 of the operation of this clause will not substan-  
22 tially increase the probability of layoff or termi-  
23 nation of current employees, or of nonpayment  
24 of domestic support obligations, during the case  
25 under this title;”.

1 **SEC. 330. DELAY OF DISCHARGE DURING PENDENCY OF**  
2 **CERTAIN PROCEEDINGS.**

3 (a) CHAPTER 7.—Section 727(a) of title 11, United  
4 States Code, as amended by section 106, is amended—

5 (1) in paragraph (10), by striking “or” at the  
6 end;

7 (2) in paragraph (11) by striking the period at  
8 the end and inserting “; or”; and

9 (3) by inserting after paragraph (11) the fol-  
10 lowing:

11 “(12) the court after notice and a hearing held  
12 not more than 10 days before the date of the entry  
13 of the order granting the discharge finds that there  
14 is reasonable cause to believe that—

15 “(A) section 522(q)(1) may be applicable  
16 to the debtor; and

17 “(B) there is pending any proceeding in  
18 which the debtor may be found guilty of a fel-  
19 ony of the kind described in section  
20 522(q)(1)(A) or liable for a debt of the kind de-  
21 scribed in section 522(q)(1)(B).”.

22 (b) CHAPTER 11.—Section 1141(d) of title 11,  
23 United States Code, as amended by section 321, is amend-  
24 ed by adding at the end the following:

25 “(C) unless after notice and a hearing held not  
26 more than 10 days before the date of the entry of

1 the order granting the discharge, the court finds  
2 that there is no reasonable cause to believe that—

3 “(i) section 522(q)(1) may be applicable to  
4 the debtor; and

5 “(ii) there is pending any proceeding in  
6 which the debtor may be found guilty of a fel-  
7 ony of the kind described in section  
8 522(q)(1)(A) or liable for a debt of the kind de-  
9 scribed in section 522(q)(1)(B).”.

10 (c) CHAPTER 12.—Section 1228 of title 11, United  
11 States Code, is amended—

12 (1) in subsection (a) by striking “As” and in-  
13 sserting “Subject to subsection (d), as”,

14 (2) in subsection (b) by striking “At” and in-  
15 sserting “Subject to subsection (d), at”, and

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

17 “(f) The court may not grant a discharge under this  
18 chapter unless the court after notice and a hearing held  
19 not more than 10 days before the date of the entry of  
20 the order granting the discharge finds that there is no rea-  
21 sonable cause to believe that—

22 “(1) section 522(q)(1) may be applicable to the  
23 debtor; and

24 “(2) there is pending any proceeding in which  
25 the debtor may be found guilty of a felony of the

1 kind described in section 522(q)(1)(A) or liable for  
2 a debt of the kind described in section  
3 522(q)(1)(B).”.

4 (d) CHAPTER 13.—Section 1328 of title 11, United  
5 States Code, as amended by section 106, is amended—

6 (1) in subsection (a) by striking “As” and in-  
7 serting “Subject to subsection (d), as”,

8 (2) in subsection (b) by striking “At” and in-  
9 serting “Subject to subsection (d), at”, and

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

11 “(h) The court may not grant a discharge under this  
12 chapter unless the court after notice and a hearing held  
13 not more than 10 days before the date of the entry of  
14 the order granting the discharge finds that there is no rea-  
15 sonable cause to believe that—

16 “(1) section 522(q)(1) may be applicable to the  
17 debtor; and

18 “(2) there is pending any proceeding in which  
19 the debtor may be found guilty of a felony of the  
20 kind described in section 522(q)(1)(A) or liable for  
21 a debt of the kind described in section  
22 522(q)(1)(B).”.

1 **SEC. 331. LIMITATION ON RETENTION BONUSES, SEVER-**  
2 **ANCE PAY, AND CERTAIN OTHER PAYMENTS.**

3 Section 503 of title 11, United States Code, is  
4 amended by adding at the end the following:

5 “(c) Notwithstanding subsection (b), there shall nei-  
6 ther be allowed, nor paid—

7 “(1) a transfer made to, or an obligation in-  
8 curred for the benefit of, an insider of the debtor for  
9 the purpose of inducing such person to remain with  
10 the debtor’s business, absent a finding by the court  
11 based on evidence in the record that—

12 “(A) the transfer or obligation is essential  
13 to retention of the person because the individual  
14 has a bona fide job offer from another business  
15 at the same or greater rate of compensation;

16 “(B) the services provided by the person  
17 are essential to the survival of the business; and

18 “(C) either—

19 “(i) the amount of the transfer made  
20 to, or obligation incurred for the benefit of,  
21 the person is not greater than an amount  
22 equal to 10 times the amount of the mean  
23 transfer or obligation of a similar kind  
24 given to nonmanagement employees for  
25 any purpose during the calendar year in

1           which the transfer is made or the obliga-  
2           tion is incurred; or

3           “(ii) if no such similar transfers were  
4           made to, or obligations were incurred for  
5           the benefit of, such nonmanagement em-  
6           ployees during such calendar year, the  
7           amount of the transfer or obligation is not  
8           greater than an amount equal to 25 per-  
9           cent of the amount of any similar transfer  
10          or obligation made to or incurred for the  
11          benefit of such insider for any purpose  
12          during the calendar year before the year in  
13          which such transfer is made or obligation  
14          is incurred;

15          “(2) a severance payment to an insider of the  
16          debtor, unless—

17                 “(A) the payment is part of a program  
18                 that is generally applicable to all full-time em-  
19                 ployees; and

20                 “(B) the amount of the payment is not  
21                 greater than 10 times the amount of the mean  
22                 severance pay given to nonmanagement employ-  
23                 ees during the calendar year in which the pay-  
24                 ment is made; or



1           “(3) other transfers or obligations that are out-  
2           side the ordinary course of business and not justified  
3           by the facts and circumstances of the case, including  
4           transfers made to, or obligations incurred for the  
5           benefit of, officers, managers, or consultants hired  
6           after the date of the filing of the petition.”.

7 **SEC. 332. FRAUDULENT INVOLUNTARY BANKRUPTCY.**

8           (a) **SHORT TITLE.**—This section may be cited as the  
9           “**Involuntary Bankruptcy Improvement Act of 2005**”.

10          (b) **INVOLUNTARY CASES.**—Section 303 of title 11,  
11          United States Code, is amended by adding at the end the  
12          following:

13           “(l)(1) If—

14                   “(A) the petition under this section is false or  
15                   contains any materially false, fictitious, or fraudu-  
16                   lent statement;

17                   “(B) the debtor is an individual; and

18                   “(C) the court dismisses such petition,

19          the court, upon the motion of the debtor, shall seal all  
20          the records of the court relating to such petition, and all  
21          references to such petition.

22           “(2) If the debtor is an individual and the court dis-  
23          misses a petition under this section, the court may enter  
24          an order prohibiting all consumer reporting agencies (as  
25          defined in section 603(f) of the Fair Credit Reporting Act

1 (15 U.S.C. 1681a(f)) from making any consumer report  
 2 (as defined in section 603(d) of that Act) that contains  
 3 any information relating to such petition or to the case  
 4 commenced by the filing of such petition.

5 “(3) Upon the expiration of the statute of limitations  
 6 described in section 3282 of title 18, for a violation of  
 7 section 152 or 157 of such title, the court, upon the mo-  
 8 tion of the debtor and for good cause, may expunge any  
 9 records relating to a petition filed under this section.”.

10 (c) BANKRUPTCY FRAUD.—Section 157 of title 18,  
 11 United States Code, is amended by inserting “, including  
 12 a fraudulent involuntary bankruptcy petition under sec-  
 13 tion 303 of such title” after “title 11”.

14 **TITLE IV—GENERAL AND SMALL**  
 15 **BUSINESS BANKRUPTCY PRO-**  
 16 **VISIONS**

17 **Subtitle A—General Business**  
 18 **Bankruptcy Provisions**

19 **SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.**

20 (a) DEFINITION.—Section 101 of title 11, United  
 21 States Code, is amended by inserting after paragraph (48)  
 22 the following:

23 “(48A) ‘securities self regulatory organization’  
 24 means either a securities association registered with  
 25 the Securities and Exchange Commission under sec-

1       tion 15A of the Securities Exchange Act of 1934 or  
2       a national securities exchange registered with the  
3       Securities and Exchange Commission under section  
4       6 of the Securities Exchange Act of 1934;”.

5       (b) AUTOMATIC STAY.—Section 362(b) of title 11,  
6       United States Code, as amended by sections 224, 303, and  
7       311, is amended by inserting after paragraph (24) the fol-  
8       lowing:

9               “(25) under subsection (a), of—

10               “(A) the commencement or continuation of  
11               an investigation or action by a securities self  
12               regulatory organization to enforce such organi-  
13               zation’s regulatory power;

14               “(B) the enforcement of an order or deci-  
15               sion, other than for monetary sanctions, ob-  
16               tained in an action by such securities self regu-  
17               latory organization to enforce such organiza-  
18               tion’s regulatory power; or

19               “(C) any act taken by such securities self  
20               regulatory organization to delist, delete, or  
21               refuse to permit quotation of any stock that  
22               does not meet applicable regulatory require-  
23               ments;”.

1 **SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY**  
2 **HOLDERS.**

3 Section 341 of title 11, United States Code, is  
4 amended by adding at the end the following:

5 “(e) Notwithstanding subsections (a) and (b), the  
6 court, on the request of a party in interest and after notice  
7 and a hearing, for cause may order that the United States  
8 trustee not convene a meeting of creditors or equity secu-  
9 rity holders if the debtor has filed a plan as to which the  
10 debtor solicited acceptances prior to the commencement  
11 of the case.”.

12 **SEC. 403. PROTECTION OF REFINANCE OF SECURITY IN-**  
13 **TEREST.**

14 Subparagraphs (A), (B), and (C) of section 547(e)(2)  
15 of title 11, United States Code, are each amended by strik-  
16 ing “10” each place it appears and inserting “30”.

17 **SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED**  
18 **LEASES.**

19 (a) IN GENERAL.—Section 365(d)(4) of title 11,  
20 United States Code, is amended to read as follows:

21 “(4)(A) Subject to subparagraph (B), an unexpired  
22 lease of nonresidential real property under which the debt-  
23 or is the lessee shall be deemed rejected, and the trustee  
24 shall immediately surrender that nonresidential real prop-  
25 erty to the lessor, if the trustee does not assume or reject  
26 the unexpired lease by the earlier of—



1 of creditors or equity security holders. The court may  
2 order the United States trustee to increase the number  
3 of members of a committee to include a creditor that is  
4 a small business concern (as described in section 3(a)(1)  
5 of the Small Business Act), if the court determines that  
6 the creditor holds claims (of the kind represented by the  
7 committee) the aggregate amount of which, in comparison  
8 to the annual gross revenue of that creditor, is dispropor-  
9 tionately large.”.

10 (b) INFORMATION.—Section 1102(b) of title 11,  
11 United States Code, is amended by adding at the end the  
12 following:

13 “(3) A committee appointed under subsection (a)  
14 shall—

15 “(A) provide access to information for creditors  
16 who—

17 “(i) hold claims of the kind represented by  
18 that committee; and

19 “(ii) are not appointed to the committee;

20 “(B) solicit and receive comments from the  
21 creditors described in subparagraph (A); and

22 “(C) be subject to a court order that compels  
23 any additional report or disclosure to be made to the  
24 creditors described in subparagraph (A).”.

1 **SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11,**  
2 **UNITED STATES CODE.**

3 Section 546 of title 11, United States Code, is  
4 amended—

5 (1) by redesignating the second subsection (g)  
6 (as added by section 222(a) of Public Law 103–394)  
7 as subsection (h);

8 (2) in subsection (h), as so redesignated, by in-  
9 serting “and subject to the prior rights of holders of  
10 security interests in such goods or the proceeds of  
11 such goods” after “consent of a creditor”; and

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

13 “(i)(1) Notwithstanding paragraphs (2) and (3) of  
14 section 545, the trustee may not avoid a warehouseman’s  
15 lien for storage, transportation, or other costs incidental  
16 to the storage and handling of goods.

17 “(2) The prohibition under paragraph (1) shall be ap-  
18 plied in a manner consistent with any State statute appli-  
19 cable to such lien that is similar to section 7–209 of the  
20 Uniform Commercial Code, as in effect on the date of en-  
21 actment of the Bankruptcy Abuse Prevention and Con-  
22 sumer Protection Act of 2005, or any successor to such  
23 section 7–209.”.

1 **SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11,**  
2 **UNITED STATES CODE.**

3 Section 330(a) of title 11, United States Code, is  
4 amended—

5 (1) in paragraph (3)—

6 (A) by striking “(A) In” and inserting  
7 “In”; and

8 (B) by inserting “to an examiner, trustee  
9 under chapter 11, or professional person” after  
10 “awarded”; and

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

12 “(7) In determining the amount of reasonable com-  
13 pensation to be awarded to a trustee, the court shall treat  
14 such compensation as a commission, based on section  
15 326.”.

16 **SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.**

17 Section 1125 of title 11, United States Code, is  
18 amended by adding at the end the following:

19 “(g) Notwithstanding subsection (b), an acceptance  
20 or rejection of the plan may be solicited from a holder  
21 of a claim or interest if such solicitation complies with ap-  
22 plicable nonbankruptcy law and if such holder was solie-  
23 ited before the commencement of the case in a manner  
24 complying with applicable nonbankruptcy law.”.



1 **SEC. 409. PREFERENCES.**

2 Section 547(c) of title 11, United States Code, is  
3 amended—

4 (1) by striking paragraph (2) and inserting the  
5 following:

6 “(2) to the extent that such transfer was in  
7 payment of a debt incurred by the debtor in the or-  
8 dinary course of business or financial affairs of the  
9 debtor and the transferee, and such transfer was—

10 “(A) made in the ordinary course of busi-  
11 ness or financial affairs of the debtor and the  
12 transferee; or

13 “(B) made according to ordinary business  
14 terms;”;

15 (2) in paragraph (8), by striking the period at  
16 the end and inserting “; or”; and

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

18 “(9) if, in a case filed by a debtor whose debts  
19 are not primarily consumer debts, the aggregate  
20 value of all property that constitutes or is affected  
21 by such transfer is less than \$5,000.”.

22 **SEC. 410. VENUE OF CERTAIN PROCEEDINGS.**

23 Section 1409(b) of title 28, United States Code, is  
24 amended by inserting “, or a debt (excluding a consumer  
25 debt) against a noninsider of less than \$10,000,” after  
26 “\$5,000”. Section 1409(b) of title 28, United States Code,

1 is further amended by striking “\$5,000” and inserting  
2 “\$15,000”.

3 **SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

4 Section 1121(d) of title 11, United States Code, is  
5 amended—

6 (1) by striking “On” and inserting “(1) Subject  
7 to paragraph (2), on”; and

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

9 “(2)(A) The 120-day period specified in paragraph  
10 (1) may not be extended beyond a date that is 18 months  
11 after the date of the order for relief under this chapter.

12 “(B) The 180-day period specified in paragraph (1)  
13 may not be extended beyond a date that is 20 months after  
14 the date of the order for relief under this chapter.”.

15 **SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP IN-**  
16 **TERESTS.**

17 Section 523(a)(16) of title 11, United States Code,  
18 is amended—

19 (1) by striking “dwelling” the first place it ap-  
20 pears;

21 (2) by striking “ownership or” and inserting  
22 “ownership,”;

23 (3) by striking “housing” the first place it ap-  
24 pears; and

1           (4) by striking “but only” and all that follows  
2           through “such period,” and inserting “or a lot in a  
3           homeowners association, for as long as the debtor or  
4           the trustee has a legal, equitable, or possessory own-  
5           ership interest in such unit, such corporation, or  
6           such lot,”.

7   **SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING**  
8                           **OF CREDITORS.**

9           Section 341(c) of title 11, United States Code, is  
10          amended by inserting at the end the following: “Notwith-  
11          standing any local court rule, provision of a State constitu-  
12          tion, any otherwise applicable nonbankruptcy law, or any  
13          other requirement that representation at the meeting of  
14          creditors under subsection (a) be by an attorney, a cred-  
15          itor holding a consumer debt or any representative of the  
16          creditor (which may include an entity or an employee of  
17          an entity and may be a representative for more than 1  
18          creditor) shall be permitted to appear at and participate  
19          in the meeting of creditors in a case under chapter 7 or  
20          13, either alone or in conjunction with an attorney for the  
21          creditor. Nothing in this subsection shall be construed to  
22          require any creditor to be represented by an attorney at  
23          any meeting of creditors.”.

1 **SEC. 414. DEFINITION OF DISINTERESTED PERSON.**

2 Section 101(14) of title 11, United States Code, is  
3 amended to read as follows:

4 “(14) ‘disinterested person’ means a person  
5 that—

6 “(A) is not a creditor, an equity security  
7 holder, or an insider;

8 “(B) is not and was not, within 2 years be-  
9 fore the date of the filing of the petition, a di-  
10 rector, officer, or employee of the debtor; and

11 “(C) does not have an interest materially  
12 adverse to the interest of the estate or of any  
13 class of creditors or equity security holders, by  
14 reason of any direct or indirect relationship to,  
15 connection with, or interest in, the debtor, or  
16 for any other reason;”.

17 **SEC. 415. FACTORS FOR COMPENSATION OF PROFES-**  
18 **SIONAL PERSONS.**

19 Section 330(a)(3) of title 11, United States Code, is  
20 amended—

21 (1) in subparagraph (D), by striking “and” at  
22 the end;

23 (2) by redesignating subparagraph (E) as sub-  
24 paragraph (F); and

25 (3) by inserting after subparagraph (D) the fol-  
26 lowing:

1           “(E) with respect to a professional person,  
2           whether the person is board certified or otherwise  
3           has demonstrated skill and experience in the bank-  
4           ruptcy field; and”.

5 **SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.**

6           Section 1104(b) of title 11, United States Code, is  
7 amended—

8           (1) by inserting “(1)” after “(b)”; and

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

10          “(2)(A) If an eligible, disinterested trustee is elected  
11 at a meeting of creditors under paragraph (1), the United  
12 States trustee shall file a report certifying that election.

13          “(B) Upon the filing of a report under subparagraph  
14 (A)—

15           “(i) the trustee elected under paragraph (1)  
16 shall be considered to have been selected and ap-  
17 pointed for purposes of this section; and

18           “(ii) the service of any trustee appointed under  
19 subsection (d) shall terminate.

20          “(C) The court shall resolve any dispute arising out  
21 of an election described in subparagraph (A).”.

22 **SEC. 417. UTILITY SERVICE.**

23           Section 366 of title 11, United States Code, is  
24 amended—

1           (1) in subsection (a), by striking “subsection  
2           (b)” and inserting “subsections (b) and (c)”; and

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

4           “(c)(1)(A) For purposes of this subsection, the term  
5 ‘assurance of payment’ means—

6           “(i) a cash deposit;

7           “(ii) a letter of credit;

8           “(iii) a certificate of deposit;

9           “(iv) a surety bond;

10           “(v) a prepayment of utility consumption; or

11           “(vi) another form of security that is mutually  
12           agreed on between the utility and the debtor or the  
13           trustee.

14           “(B) For purposes of this subsection an administra-  
15           tive expense priority shall not constitute an assurance of  
16           payment.

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

24           “(3)(A) On request of a party in interest and after  
25           notice and a hearing, the court may order modification

1 of the amount of an assurance of payment under para-  
2 graph (2).

3 “(B) In making a determination under this para-  
4 graph whether an assurance of payment is adequate, the  
5 court may not consider—

6 “(i) the absence of security before the date of  
7 the filing of the petition;

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

11 “(iii) the availability of an administrative ex-  
12 pense priority.

13 “(4) Notwithstanding any other provision of law, with  
14 respect to a case subject to this subsection, a utility may  
15 recover or set off against a security deposit provided to  
16 the utility by the debtor before the date of the filing of  
17 the petition without notice or order of the court.”.

18 **SEC. 418. BANKRUPTCY FEES.**

19 Section 1930 of title 28, United States Code, is  
20 amended—

21 (1) in subsection (a), by striking “Notwith-  
22 standing section 1915 of this title, the” and insert-  
23 ing “The”; and

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

1           “(f)(1) Under the procedures prescribed by the Judi-  
2 cial Conference of the United States, the district court or  
3 the bankruptcy court may waive the filing fee in a case  
4 under chapter 7 of title 11 for an individual if the court  
5 determines that such individual has income less than 150  
6 percent of the income official poverty line (as defined by  
7 the Office of Management and Budget, and revised annu-  
8 ally in accordance with section 673(2) of the Omnibus  
9 Budget Reconciliation Act of 1981) applicable to a family  
10 of the size involved and is unable to pay that fee in install-  
11 ments. For purposes of this paragraph, the term ‘filing  
12 fee’ means the filing fee required by subsection (a), or any  
13 other fee prescribed by the Judicial Conference under sub-  
14 sections (b) and (c) that is payable to the clerk upon the  
15 commencement of a case under chapter 7.

16           “(2) The district court or the bankruptcy court may  
17 waive for such debtors other fees prescribed under sub-  
18 sections (b) and (c).

19           “(3) This subsection does not restrict the district  
20 court or the bankruptcy court from waiving, in accordance  
21 with Judicial Conference policy, fees prescribed under this  
22 section for other debtors and creditors.”.

23 **SEC. 419. MORE COMPLETE INFORMATION REGARDING AS-**  
24 **SETS OF THE ESTATE.**

25           (a) IN GENERAL.—



1           (1) DISCLOSURE.—The Judicial Conference of  
2 the United States, in accordance with section 2075  
3 of title 28 of the United States Code and after con-  
4 sideration of the views of the Director of the Execu-  
5 tive Office for United States Trustees, shall propose  
6 amended Federal Rules of Bankruptcy Procedure  
7 and in accordance with rule 9009 of the Federal  
8 Rules of Bankruptcy Procedure shall prescribe offi-  
9 cial bankruptcy forms directing debtors under chap-  
10 ter 11 of title 11 of United States Code, to disclose  
11 the information described in paragraph (2) by filing  
12 and serving periodic financial and other reports de-  
13 signed to provide such information.

14           (2) INFORMATION.—The information referred  
15 to in paragraph (1) is the value, operations, and  
16 profitability of any closely held corporation, partner-  
17 ship, or of any other entity in which the debtor holds  
18 a substantial or controlling interest.

19           (b) PURPOSE.—The purpose of the rules and reports  
20 under subsection (a) shall be to assist parties in interest  
21 taking steps to ensure that the debtor's interest in any  
22 entity referred to in subsection (a)(2) is used for the pay-  
23 ment of allowed claims against debtor.

1           **Subtitle B—Small Business**  
2           **Bankruptcy Provisions**

3   **SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT**  
4           **AND PLAN.**

5           Section 1125 of title 11, United States Code, is  
6 amended—

7           (1) in subsection (a)(1), by inserting before the  
8 semicolon “and in determining whether a disclosure  
9 statement provides adequate information, the court  
10 shall consider the complexity of the case, the benefit  
11 of additional information to creditors and other par-  
12 ties in interest, and the cost of providing additional  
13 information”; and

14           (2) by striking subsection (f), and inserting the  
15 following:

16           “(f) Notwithstanding subsection (b), in a small busi-  
17 ness case—

18           “(1) the court may determine that the plan  
19 itself provides adequate information and that a sepa-  
20 rate disclosure statement is not necessary;

21           “(2) the court may approve a disclosure state-  
22 ment submitted on standard forms approved by the  
23 court or adopted under section 2075 of title 28; and

1           “(3)(A) the court may conditionally approve a  
2 disclosure statement subject to final approval after  
3 notice and a hearing;

4           “(B) acceptances and rejections of a plan may  
5 be solicited based on a conditionally approved disclo-  
6 sure statement if the debtor provides adequate infor-  
7 mation to each holder of a claim or interest that is  
8 solicited, but a conditionally approved disclosure  
9 statement shall be mailed not later than 25 days be-  
10 fore the date of the hearing on confirmation of the  
11 plan; and

12           “(C) the hearing on the disclosure statement  
13 may be combined with the hearing on confirmation  
14 of a plan.”.

15 **SEC. 432. DEFINITIONS.**

16           (a) DEFINITIONS.—Section 101 of title 11, United  
17 States Code, is amended by striking paragraph (51C) and  
18 inserting the following:

19           “(51C) ‘small business case’ means a case filed  
20 under chapter 11 of this title in which the debtor is  
21 a small business debtor;

22           “(51D) ‘small business debtor’—

23                   “(A) subject to subparagraph (B), means a  
24 person engaged in commercial or business ac-  
25 tivities (including any affiliate of such person

1 that is also a debtor under this title and exclud-  
2 ing a person whose primary activity is the busi-  
3 ness of owning or operating real property or ac-  
4 tivities incidental thereto) that has aggregate  
5 noncontingent liquidated secured and unsecured  
6 debts as of the date of the petition or the date  
7 of the order for relief in an amount not more  
8 than \$2,000,000 (excluding debts owed to 1 or  
9 more affiliates or insiders) for a case in which  
10 the United States trustee has not appointed  
11 under section 1102(a)(1) a committee of unse-  
12 cured creditors or where the court has deter-  
13 mined that the committee of unsecured credi-  
14 tors is not sufficiently active and representative  
15 to provide effective oversight of the debtor; and

16 “(B) does not include any member of a  
17 group of affiliated debtors that has aggregate  
18 noncontingent liquidated secured and unsecured  
19 debts in an amount greater than \$2,000,000  
20 (excluding debt owed to 1 or more affiliates or  
21 insiders);”.

22 (b) CONFORMING AMENDMENT.—Section 1102(a)(3)  
23 of title 11, United States Code, is amended by inserting  
24 “debtor” after “small business”.

1 (c) ADJUSTMENT OF DOLLAR AMOUNTS.—Section  
2 104(b) of title 11, United States Code, as amended by  
3 section 226, is amended by inserting “101(51D),” after  
4 “101(3),” each place it appears.

5 **SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND**  
6 **PLAN.**

7 Within a reasonable period of time after the date of  
8 enactment of this Act, the Judicial Conference of the  
9 United States shall prescribe in accordance with rule 9009  
10 of the Federal Rules of Bankruptcy Procedure official  
11 standard form disclosure statements and plans of reorga-  
12 nization for small business debtors (as defined in section  
13 101 of title 11, United States Code, as amended by this  
14 Act), designed to achieve a practical balance between—

15 (1) the reasonable needs of the courts, the  
16 United States trustee, creditors, and other parties in  
17 interest for reasonably complete information; and

18 (2) economy and simplicity for debtors.

19 **SEC. 434. UNIFORM NATIONAL REPORTING REQUIRE-**  
20 **MENTS.**

21 (a) REPORTING REQUIRED.—

22 (1) IN GENERAL.—Chapter 3 of title 11, United  
23 States Code, is amended by inserting after section  
24 307 the following:

1 **“§ 308. Debtor reporting requirements**

2 “(a) For purposes of this section, the term ‘profit-  
3 ability’ means, with respect to a debtor, the amount of  
4 money that the debtor has earned or lost during current  
5 and recent fiscal periods.

6 “(b) A small business debtor shall file periodic finan-  
7 cial and other reports containing information including—

8 “(1) the debtor’s profitability;

9 “(2) reasonable approximations of the debtor’s  
10 projected cash receipts and cash disbursements over  
11 a reasonable period;

12 “(3) comparisons of actual cash receipts and  
13 disbursements with projections in prior reports;

14 “(4)(A) whether the debtor is—

15 “(i) in compliance in all material respects  
16 with postpetition requirements imposed by this  
17 title and the Federal Rules of Bankruptcy Pro-  
18 cedure; and

19 “(ii) timely filing tax returns and other re-  
20 quired government filings and paying taxes and  
21 other administrative expenses when due;

22 “(B) if the debtor is not in compliance with the  
23 requirements referred to in subparagraph (A)(i) or  
24 filing tax returns and other required government fil-  
25 ings and making the payments referred to in sub-  
26 paragraph (A)(ii), what the failures are and how, at

1 what cost, and when the debtor intends to remedy  
2 such failures; and

3 “(C) such other matters as are in the best in-  
4 terests of the debtor and creditors, and in the public  
5 interest in fair and efficient procedures under chap-  
6 ter 11 of this title.”.

7 (2) CLERICAL AMENDMENT.—The table of sec-  
8 tions for chapter 3 of title 11, United States Code,  
9 is amended by inserting after the item relating to  
10 section 307 the following:

“308. Debtor reporting requirements.”.

11 (b) EFFECTIVE DATE.—The amendments made by  
12 subsection (a) shall take effect 60 days after the date on  
13 which rules are prescribed under section 2075 of title 28,  
14 United States Code, to establish forms to be used to com-  
15 ply with section 308 of title 11, United States Code, as  
16 added by subsection (a).

17 **SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR**  
18 **SMALL BUSINESS CASES.**

19 (a) PROPOSAL OF RULES AND FORMS.—The Judicial  
20 Conference of the United States shall propose in accord-  
21 ance with section 2073 of title 28 of the United States  
22 Code amended Federal Rules of Bankruptcy Procedure,  
23 and shall prescribe in accordance with rule 9009 of the  
24 Federal Rules of Bankruptcy Procedure official bank-  
25 ruptcy forms, directing small business debtors to file peri-

1 odic financial and other reports containing information,  
2 including information relating to—

3 (1) the debtor's profitability;

4 (2) the debtor's cash receipts and disburse-  
5 ments; and

6 (3) whether the debtor is timely filing tax re-  
7 turns and paying taxes and other administrative ex-  
8 penses when due.

9 (b) PURPOSE.—The rules and forms proposed under  
10 subsection (a) shall be designed to achieve a practical bal-  
11 ance among—

12 (1) the reasonable needs of the bankruptcy  
13 court, the United States trustee, creditors, and other  
14 parties in interest for reasonably complete informa-  
15 tion;

16 (2) a small business debtor's interest that re-  
17 quired reports be easy and inexpensive to complete;  
18 and

19 (3) the interest of all parties that the required  
20 reports help such debtor to understand such debtor's  
21 financial condition and plan the such debtor's fu-  
22 ture.

23 **SEC. 436. DUTIES IN SMALL BUSINESS CASES.**

24 (a) DUTIES IN CHAPTER 11 CASES.—Subchapter I  
25 of chapter 11 of title 11, United States Code, as amended



1 by section 321, is amended by adding at the end the fol-  
2 lowing:

3 **“§ 1116. Duties of trustee or debtor in possession in**  
4 **small business cases**

5 “In a small business case, a trustee or the debtor in  
6 possession, in addition to the duties provided in this title  
7 and as otherwise required by law, shall—

8 “(1) append to the voluntary petition or, in an  
9 involuntary case, file not later than 7 days after the  
10 date of the order for relief—

11 “(A) its most recent balance sheet, state-  
12 ment of operations, cash-flow statement, and  
13 Federal income tax return; or

14 “(B) a statement made under penalty of  
15 perjury that no balance sheet, statement of op-  
16 erations, or cash-flow statement has been pre-  
17 pared and no Federal tax return has been filed;

18 “(2) attend, through its senior management  
19 personnel and counsel, meetings scheduled by the  
20 court or the United States trustee, including initial  
21 debtor interviews, scheduling conferences, and meet-  
22 ings of creditors convened under section 341 unless  
23 the court, after notice and a hearing, waives that re-  
24 quirement upon a finding of extraordinary and com-  
25 pelling circumstances;

1           “(3) timely file all schedules and statements of  
2 financial affairs, unless the court, after notice and a  
3 hearing, grants an extension, which shall not extend  
4 such time period to a date later than 30 days after  
5 the date of the order for relief, absent extraordinary  
6 and compelling circumstances;

7           “(4) file all postpetition financial and other re-  
8 ports required by the Federal Rules of Bankruptcy  
9 Procedure or by local rule of the district court;

10           “(5) subject to section 363(c)(2), maintain in-  
11 surance customary and appropriate to the industry;

12           “(6)(A) timely file tax returns and other re-  
13 quired government filings; and

14           “(B) subject to section 363(c)(2), timely pay all  
15 taxes entitled to administrative expense priority ex-  
16 cept those being contested by appropriate pro-  
17 ceedings being diligently prosecuted; and

18           “(7) allow the United States trustee, or a des-  
19 ignated representative of the United States trustee,  
20 to inspect the debtor’s business premises, books, and  
21 records at reasonable times, after reasonable prior  
22 written notice, unless notice is waived by the debt-  
23 or.”.

24           (b) CLERICAL AMENDMENT.—The table of sections  
25 for chapter 11 of title 11, United States Code, as amended

1 by section 321, is amended by inserting after the item re-  
2 lating to section 1115 the following:

“1116. Duties of trustee or debtor in possession in small business cases.”.

3 **SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.**

4 Section 1121 of title 11, United States Code, is  
5 amended by striking subsection (e) and inserting the fol-  
6 lowing:

7 “(e) In a small business case—

8 “(1) only the debtor may file a plan until after  
9 180 days after the date of the order for relief, unless  
10 that period is—

11 “(A) extended as provided by this sub-  
12 section, after notice and a hearing; or

13 “(B) the court, for cause, orders otherwise;

14 “(2) the plan and a disclosure statement (if  
15 any) shall be filed not later than 300 days after the  
16 date of the order for relief; and

17 “(3) the time periods specified in paragraphs  
18 (1) and (2), and the time fixed in section 1129(e)  
19 within which the plan shall be confirmed, may be ex-  
20 tended only if—

21 “(A) the debtor, after providing notice to  
22 parties in interest (including the United States  
23 trustee), demonstrates by a preponderance of  
24 the evidence that it is more likely than not that

1 the court will confirm a plan within a reason-  
2 able 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  
9 amended 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  
21 “and” at the end;

22 (B) by redesignating subparagraph (H) as  
23 subparagraph (I); and

24 (C) by inserting after subparagraph (G)  
25 the 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  
13           for relief but before the first meeting scheduled  
14           under section 341(a) of title 11, at which time  
15           the United States trustee shall—

16           “(i) begin to investigate the debtor’s  
17           viability;

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 prem-  
5                   ises of the debtor, ascertain the state of the  
6                   debtor’s books and records, and verify that the  
7                   debtor has filed its tax returns; and

8                   “(C) review and monitor diligently the  
9                   debtor’s activities, to identify as promptly as  
10                  possible whether the debtor will be unable to  
11                  confirm a 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  
15                  shall apply promptly after making that finding to  
16                  the 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  
6           amended 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) ap-  
14           plies to the debtor, the recovery under paragraph (1) of  
15           this subsection against such entity shall be limited to ac-  
16           tual damages.”; 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 pend-  
21           ing 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 be-  
24           came final in the 2-year period ending on the date

1 of the order for relief entered with respect to the pe-  
2 tition;

3 “(C) was a debtor in a small business case in  
4 which a plan was confirmed in the 2-year period  
5 ending on the date of the order for relief entered  
6 with respect to the petition; or

7 “(D) is an entity that has acquired substan-  
8 tially all of the assets or business of a small business  
9 debtor described in subparagraph (A), (B), or (C),  
10 unless such entity establishes by a preponderance of  
11 the evidence that such entity acquired substantially  
12 all of the assets or business of such small business  
13 debtor in good faith and not for the purpose of evad-  
14 ing this paragraph.

15 “(2) Paragraph (1) does not apply—

16 “(A) to an involuntary case involving no collu-  
17 sion by the debtor with creditors; or

18 “(B) to the filing of a petition if—

19 “(i) the debtor proves by a preponderance  
20 of the evidence that the filing of the petition re-  
21 sulted from circumstances beyond the control of  
22 the debtor not foreseeable at the time the case  
23 then pending was filed; and

24 “(ii) it is more likely than not that the  
25 court will confirm a feasible plan, but not a liq-



1 updating plan, within a reasonable period of  
2 time.”.

3 **SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CON-**  
4 **VERSION AND APPOINTMENT OF TRUSTEE.**

5 (a) EXPANDED GROUNDS FOR DISMISSAL OR CON-  
6 VERSION.—Section 1112 of title 11, United States Code,  
7 is amended by striking subsection (b) and inserting the  
8 following:

9 “(b)(1) Except as provided in paragraph (2) of this  
10 subsection, subsection (c) of this section, and section  
11 1104(a)(3), on request of a party in interest, and after  
12 notice and a hearing, absent unusual circumstances spe-  
13 cifically identified by the court that establish that the re-  
14 quested conversion or dismissal is not in the best interests  
15 of creditors and the estate, the court shall convert a case  
16 under this chapter to a case under chapter 7 or dismiss  
17 a case under this chapter, whichever is in the best inter-  
18 ests of creditors and the estate, if the movant establishes  
19 cause.

20 “(2) The relief provided in paragraph (1) shall not  
21 be granted absent unusual circumstances specifically iden-  
22 tified by the court that establish that such relief is not  
23 in the best interests of creditors and the estate, if the  
24 debtor or another party in interest objects and establishes  
25 that—

1           “(A) there is a reasonable likelihood that a plan  
2 will be confirmed within the timeframes established  
3 in sections 1121(e) and 1129(e) of this title, or if  
4 such sections do not apply, within a reasonable pe-  
5 riod of time; and

6           “(B) the grounds for granting such relief in-  
7 clude an act or omission of the debtor other than  
8 under paragraph (4)(A)—

9                   “(i) for which there exists a reasonable  
10 justification for the act or omission; and

11                   “(ii) that will be cured within a reasonable  
12 period of time fixed by the court.

13           “(3) The court shall commence the hearing on a mo-  
14 tion under this subsection not later than 30 days after  
15 filing of the motion, and shall decide the motion not later  
16 than 15 days after commencement of such hearing, unless  
17 the movant expressly consents to a continuance for a spe-  
18 cific period of time or compelling circumstances prevent  
19 the court from meeting the time limits established by this  
20 paragraph.

21           “(4) For purposes of this subsection, the term ‘cause’  
22 includes—

23                   “(A) substantial or continuing loss to or dimi-  
24 nution of the estate and the absence of a reasonable  
25 likelihood of rehabilitation;

- 1           “(B) gross mismanagement of the estate;
- 2           “(C) failure to maintain appropriate insurance  
3 that poses a risk to the estate or to the public;
- 4           “(D) unauthorized use of cash collateral sub-  
5 stantially harmful to 1 or more creditors;
- 6           “(E) failure to comply with an order of the  
7 court;
- 8           “(F) unexcused failure to satisfy timely any fil-  
9 ing or reporting requirement established by this title  
10 or by any rule applicable to a case under this chap-  
11 ter;
- 12           “(G) failure to attend the meeting of creditors  
13 convened under section 341(a) or an examination or-  
14 dered under rule 2004 of the Federal Rules of  
15 Bankruptcy Procedure without good cause shown by  
16 the debtor;
- 17           “(H) failure timely to provide information or  
18 attend meetings reasonably requested by the United  
19 States trustee (or the bankruptcy administrator, if  
20 any);
- 21           “(I) failure timely to pay taxes owed after the  
22 date of the order for relief or to file tax returns due  
23 after the date of the order for relief;

1           “(J) failure to file a disclosure statement, or to  
2           file or confirm a plan, within the time fixed by this  
3           title or by order of the court;

4           “(K) failure to pay any fees or charges required  
5           under chapter 123 of title 28;

6           “(L) revocation of an order of confirmation  
7           under section 1144;

8           “(M) inability to effectuate substantial con-  
9           summation of a confirmed plan;

10           “(N) material default by the debtor with re-  
11           spect to a confirmed plan;

12           “(O) termination of a confirmed plan by reason  
13           of the occurrence of a condition specified in the plan;  
14           and

15           “(P) failure of the debtor to pay any domestic  
16           support obligation that first becomes payable after  
17           the date of the filing of the petition.”.

18           (b) ADDITIONAL GROUNDS FOR APPOINTMENT OF  
19 TRUSTEE.—Section 1104(a) of title 11, United States  
20 Code, is amended—

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

23           (2) in paragraph (2), by striking the period at  
24           the end and inserting “; or”; and

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

1           “(3) if grounds exist to convert or dismiss the  
2           case under section 1112, but the court determines  
3           that the appointment of a trustee or an examiner is  
4           in the best interests of creditors and the estate.”.

5 **SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED**  
6                   **STATES CODE, WITH RESPECT TO SMALL**  
7                   **BUSINESSES.**

8           Not later than 2 years after the date of enactment  
9           of this Act, the Administrator of the Small Business Ad-  
10          ministration, in consultation with the Attorney General,  
11          the Director of the Executive Office for United States  
12          Trustees, and the Director of the Administrative Office  
13          of the United States Courts, shall—

14               (1) conduct a study to determine—

15                   (A) the internal and external factors that  
16                   cause small businesses, especially sole propri-  
17                   etorships, to become debtors in cases under title  
18                   11, United States Code, and that cause certain  
19                   small businesses to successfully complete cases  
20                   under chapter 11 of such title; and

21                   (B) how Federal laws relating to bank-  
22                   ruptcy may be made more effective and efficient  
23                   in assisting small businesses to remain viable;  
24                   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 para-  
9           graph, whichever is later” after “90-day period”;  
10          and

11          (2) by striking subparagraph (B) and inserting  
12          the following:

13                 “(B) the debtor has commenced monthly  
14                 payments that—

15                         “(i) may, in the debtor’s sole discre-  
16                         tion, notwithstanding section 363(c)(2), be  
17                         made from rents or other income generated  
18                         before, on, or after the date of the com-  
19                         mencement of the case by or from the  
20                         property to each creditor whose claim is se-  
21                         cured by such real estate (other than a  
22                         claim secured by a judgment lien or by an  
23                         unmatured statutory lien); and

24                         “(ii) are in an amount equal to inter-  
25                         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,  
13           and subsequently rejected, a sum equal to all mone-  
14           tary obligations due, excluding those arising from or  
15           relating to a failure to operate or a penalty provi-  
16           sion, for the period of 2 years following the later of  
17           the rejection date or the date of actual turnover of  
18           the premises, without reduction or setoff for any  
19           reason whatsoever except for sums actually received  
20           or to be received from an entity other than the debt-  
21           or, and the claim for remaining sums due for the  
22           balance of the term of the lease shall be a claim  
23           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  
6 amended—

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 des-  
18 ignated by the debtor) served as such adminis-  
19 trator.”.

20 (b) DUTIES OF TRUSTEES.—Section 704(a) of title  
21 11, United States Code, as amended by sections 102 and  
22 219, is amended—

23 (1) in paragraph (10), by striking “and” at the  
24 end; and

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



1           “(11) if, at the time of the commencement of  
2 the case, the debtor (or any entity designated by the  
3 debtor) served as the administrator (as defined in  
4 section 3 of the Employee Retirement Income Secu-  
5 rity Act of 1974) of an employee benefit plan, con-  
6 tinue to perform the obligations required of the ad-  
7 ministrator; and”.

8           (c) CONFORMING AMENDMENT.—Section 1106(a)(1)  
9 of title 11, United States Code, is amended to read as  
10 follows:

11           “(1) perform the duties of the trustee, as speci-  
12 fied in paragraphs (2), (5), (7), (8), (9), (10), and  
13 (11) of section 704;”.

14 **SEC. 447. APPOINTMENT OF COMMITTEE OF RETIRED EM-**  
15 **PLOYEES.**

16           Section 1114(d) of title 11, United States Code, is  
17 amended—

18           (1) by striking “appoint” and inserting “order  
19 the appointment of”, and

20           (2) by adding at the end the following: “The  
21 United States trustee shall appoint any such com-  
22 mittee.”.

1                   **TITLE V—MUNICIPAL**  
2                   **BANKRUPTCY PROVISIONS**

3   **SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETI-**  
4                   **TION.**

5           (a) TECHNICAL AMENDMENT RELATING TO MUNICI-  
6 PALITIES.—Section 921(d) of title 11, United States  
7 Code, is amended by inserting “notwithstanding section  
8 301(b)” before the period at the end.

9           (b) CONFORMING AMENDMENT.—Section 301 of title  
10 11, United States Code, is amended—

11           (1) by inserting “(a)” before “A voluntary”;  
12           and

13           (2) by striking the last sentence and inserting  
14           the following:

15           “(b) The commencement of a voluntary case under  
16 a chapter of this title constitutes an order for relief under  
17 such chapter.”.

18   **SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAP-**  
19                   **TER 9.**

20           Section 901(a) of title 11, United States Code, is  
21 amended—

22           (1) by inserting “555, 556,” after “553,”; and

23           (2) by inserting “559, 560, 561, 562,” after  
24           “557,”.

# 1     **TITLE VI—BANKRUPTCY DATA**

## 2     **SEC. 601. IMPROVED BANKRUPTCY STATISTICS.**

3           (a) IN GENERAL.—apter 6 of title 28, United States  
4 Code, is amended by adding at the end the following:

### 5     **“§ 159. Bankruptcy statistics**

6           “(a) The clerk of the district court, or the clerk of  
7 the bankruptcy court if one is certified pursuant to section  
8 156(b) of this title, shall collect statistics regarding debt-  
9 ors who are individuals with primarily consumer debts  
10 seeking relief under chapters 7, 11, and 13 of title 11.  
11 Those statistics shall be in a standardized format pre-  
12 scribed by the Director of the Administrative Office of the  
13 United States Courts (referred to in this section as the  
14 ‘Director’).

15           “(b) The Director shall—

16                 “(1) compile the statistics referred to in sub-  
17 section (a);

18                 “(2) make the statistics available to the public;  
19 and

20                 “(3) not later than July 1, 2008, and annually  
21 thereafter, prepare, and submit to Congress a report  
22 concerning the information collected under sub-  
23 section (a) that contains an analysis of the informa-  
24 tion.

1       “(c) The compilation required under subsection (b)  
2 shall—

3           “(1) be itemized, by chapter, with respect to  
4 title 11;

5           “(2) be presented in the aggregate and for each  
6 district; and

7           “(3) include information concerning—

8               “(A) the total assets and total liabilities of  
9 the debtors described in subsection (a), and in  
10 each category of assets and liabilities, as re-  
11 ported in the schedules prescribed pursuant to  
12 section 2075 of this title and filed by debtors;

13               “(B) the current monthly income, average  
14 income, and average expenses of debtors as re-  
15 ported on the schedules and statements that  
16 each such debtor files under sections 521 and  
17 1322 of title 11;

18               “(C) the aggregate amount of debt dis-  
19 charged in cases filed during the reporting pe-  
20 riod, determined as the difference between the  
21 total amount of debt and obligations of a debtor  
22 reported on the schedules and the amount of  
23 such debt reported in categories which are pre-  
24 dominantly nondischargeable;

1           “(D) the average period of time between  
2 the date of the filing of the petition and the  
3 closing of the case for cases closed during the  
4 reporting period;

5           “(E) for cases closed during the reporting  
6 period—

7                 “(i) the number of cases in which a  
8 reaffirmation agreement was filed; and

9                 “(ii)(I) the total number of reaffirma-  
10 tion agreements filed;

11                 “(II) of those cases in which a reaffir-  
12 mation agreement was filed, the number of  
13 cases in which the debtor was not rep-  
14 resented by an attorney; and

15                 “(III) of those cases in which a reaf-  
16 firmation agreement was filed, the number  
17 of cases in which the reaffirmation agree-  
18 ment was approved by the court;

19           “(F) with respect to cases filed under  
20 chapter 13 of title 11, for the reporting pe-  
21 riod—

22                 “(i)(I) the number of cases in which a  
23 final order was entered determining the  
24 value of property securing a claim in an

1 amount less than the amount of the claim;  
2 and

3 “(II) the number of final orders en-  
4 tered determining the value of property se-  
5 curing a claim;

6 “(ii) the number of cases dismissed,  
7 the number of cases dismissed for failure  
8 to make payments under the plan, the  
9 number of cases refiled after dismissal,  
10 and the number of cases in which the plan  
11 was completed, separately itemized with re-  
12 spect to the number of modifications made  
13 before completion of the plan, if any; and

14 “(iii) the number of cases in which  
15 the debtor filed another case during the 6-  
16 year period preceding the filing;

17 “(G) the number of cases in which credi-  
18 tors were fined for misconduct and any amount  
19 of punitive damages awarded by the court for  
20 creditor misconduct; and

21 “(H) the number of cases in which sanc-  
22 tions under rule 9011 of the Federal Rules of  
23 Bankruptcy Procedure were imposed against  
24 debtor’s attorney or damages awarded under  
25 such Rule.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 for chapter 6 of title 28, United States Code, is amended  
3 by adding at the end the following:

“159. Bankruptcy statistics.”.

4 (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall take effect 18 months after the date of  
6 enactment of this Act.

7 **SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANK-**  
8 **RUPTCY DATA.**

9 (a) AMENDMENT.—Chapter 39 of title 28, United  
10 States Code, is amended by adding at the end the fol-  
11 lowing:

12 **“§ 589b. Bankruptcy data**

13 “(a) RULES.—The Attorney General shall, within a  
14 reasonable time after the effective date of this section,  
15 issue rules requiring uniform forms for (and from time  
16 to time thereafter to appropriately modify and approve)—

17 “(1) final reports by trustees in cases under  
18 chapters 7, 12, and 13 of title 11; and

19 “(2) periodic reports by debtors in possession or  
20 trustees in cases under chapter 11 of title 11.

21 “(b) REPORTS.—Each report referred to in sub-  
22 section (a) shall be designed (and the requirements as to  
23 place and manner of filing shall be established) so as to  
24 facilitate compilation of data and maximum possible ac-  
25 cess of the public, both by physical inspection at one or

1 more central filing locations, and by electronic access  
2 through the Internet or other appropriate media.

3       “(c) REQUIRED INFORMATION.—The information re-  
4 quired to be filed in the reports referred to in subsection  
5 (b) shall be that which is in the best interests of debtors  
6 and creditors, and in the public interest in reasonable and  
7 adequate information to evaluate the efficiency and practi-  
8 cality of the Federal bankruptcy system. In issuing rules  
9 proposing the forms referred to in subsection (a), the At-  
10 torney General shall strike the best achievable practical  
11 balance between—

12               “(1) the reasonable needs of the public for in-  
13 formation about the operational results of the Fed-  
14 eral bankruptcy system;

15               “(2) economy, simplicity, and lack of undue  
16 burden on persons with a duty to file reports; and

17               “(3) appropriate privacy concerns and safe-  
18 guards.

19       “(d) FINAL REPORTS.—The uniform forms for final  
20 reports required under subsection (a) for use by trustees  
21 under chapters 7, 12, and 13 of title 11 shall, in addition  
22 to such other matters as are required by law or as the  
23 Attorney General in the discretion of the Attorney General  
24 shall propose, include with respect to a case under such  
25 title—



1           “(1) information about the length of time the  
2 case was pending;

3           “(2) assets abandoned;

4           “(3) assets exempted;

5           “(4) receipts and disbursements of the estate;

6           “(5) expenses of administration, including for  
7 use under section 707(b), actual costs of admin-  
8 istering cases under chapter 13 of title 11;

9           “(6) claims asserted;

10           “(7) claims allowed; and

11           “(8) distributions to claimants and claims dis-  
12 charged without payment,

13 in each case by appropriate category and, in cases under  
14 chapters 12 and 13 of title 11, date of confirmation of  
15 the plan, each modification thereto, and defaults by the  
16 debtor in performance under the plan.

17           “(e) PERIODIC REPORTS.—The uniform forms for  
18 periodic reports required under subsection (a) for use by  
19 trustees or debtors in possession under chapter 11 of title  
20 11 shall, in addition to such other matters as are required  
21 by law or as the Attorney General in the discretion of the  
22 Attorney General shall propose, include—

23           “(1) information about the industry classifica-  
24 tion, published by the Department of Commerce, for  
25 the businesses conducted by the debtor;

1           “(2) length of time the case has been pending;

2           “(3) number of full-time employees as of the  
3           date of the order for relief and at the end of each  
4           reporting period since the case was filed;

5           “(4) cash receipts, cash disbursements and  
6           profitability of the debtor for the most recent period  
7           and cumulatively since the date of the order for re-  
8           lief;

9           “(5) compliance with title 11, whether or not  
10          tax returns and tax payments since the date of the  
11          order for relief have been timely filed and made;

12          “(6) all professional fees approved by the court  
13          in the case for the most recent period and cumula-  
14          tively since the date of the order for relief (sepa-  
15          rately reported, for the professional fees incurred by  
16          or on behalf of the debtor, between those that would  
17          have been incurred absent a bankruptcy case and  
18          those not); and

19          “(7) plans of reorganization filed and confirmed  
20          and, with respect thereto, by class, the recoveries of  
21          the holders, expressed in aggregate dollar values  
22          and, in the case of claims, as a percentage of total  
23          claims of the class allowed.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 for chapter 39 of title 28, United States Code, is amended  
3 by adding at the end the following:

“589b. Bankruptcy data.”.

4 **SEC. 603. AUDIT PROCEDURES.**

5 (a) IN GENERAL.—

6 (1) ESTABLISHMENT OF PROCEDURES.—The  
7 Attorney General (in judicial districts served by  
8 United States trustees) and the Judicial Conference  
9 of the United States (in judicial districts served by  
10 bankruptcy administrators) shall establish proce-  
11 dures to determine the accuracy, veracity, and com-  
12 pleteness of petitions, schedules, and other informa-  
13 tion that the debtor is required to provide under sec-  
14 tions 521 and 1322 of title 11, United States Code,  
15 and, if applicable, section 111 of such title, in cases  
16 filed under chapter 7 or 13 of such title in which the  
17 debtor is an individual. Such audits shall be in ac-  
18 cordance with generally accepted auditing standards  
19 and performed by independent certified public ac-  
20 countants or independent licensed public account-  
21 ants, provided that the Attorney General and the  
22 Judicial Conference, as appropriate, may develop al-  
23 ternative auditing standards not later than 2 years  
24 after the date of enactment of this Act.

1           (2) PROCEDURES.—Those procedures required  
2           by paragraph (1) shall—

3                   (A) establish a method of selecting appro-  
4                   appropriate qualified persons to contract to perform  
5                   those audits;

6                   (B) establish a method of randomly select-  
7                   ing cases to be audited, except that not less  
8                   than 1 out of every 250 cases in each Federal  
9                   judicial district shall be selected for audit;

10                  (C) require audits of schedules of income  
11                  and expenses that reflect greater than average  
12                  variances from the statistical norm of the dis-  
13                  trict in which the schedules were filed if those  
14                  variances occur by reason of higher income or  
15                  higher expenses than the statistical norm of the  
16                  district in which the schedules were filed; and

17                  (D) establish procedures for providing, not  
18                  less frequently than annually, public informa-  
19                  tion concerning the aggregate results of such  
20                  audits including the percentage of cases, by dis-  
21                  trict, in which a material misstatement of in-  
22                  come or expenditures is reported.

23           (b) AMENDMENTS.—Section 586 of title 28, United  
24           States Code, is amended—

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

3           “(6) make such reports as the Attorney General  
4           directs, including the results of audits performed  
5           under section 603(a) of the Bankruptcy Abuse Pre-  
6           vention and Consumer Protection Act of 2005;”;

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

8           “(f)(1) The United States trustee for each district is  
9           authorized to contract with auditors to perform audits in  
10          cases designated by the United States trustee, in accord-  
11          ance with the procedures established under section 603(a)  
12          of the Bankruptcy Abuse Prevention and Consumer Pro-  
13          tection Act of 2005.

14          “(2)(A) The report of each audit referred to in para-  
15          graph (1) shall be filed with the court and transmitted  
16          to the United States trustee. Each report shall clearly and  
17          conspicuously specify any material misstatement of income  
18          or expenditures or of assets identified by the person per-  
19          forming the audit. In any case in which a material  
20          misstatement of income or expenditures or of assets has  
21          been reported, the clerk of the district court (or the clerk  
22          of the bankruptcy court if one is certified under section  
23          156(b) of this title) shall give notice of the misstatement  
24          to the creditors in the case.

1       “(B) If a material misstatement of income or expend-  
2 itures or of assets is reported, the United States trustee  
3 shall—

4           “(i) report the material misstatement, if appro-  
5 priate, to the United States Attorney pursuant to  
6 section 3057 of title 18; and

7           “(ii) if advisable, take appropriate action, in-  
8 cluding but not limited to commencing an adversary  
9 proceeding to revoke the debtor’s discharge pursuant  
10 to section 727(d) of title 11.”.

11       (c) AMENDMENTS TO SECTION 521 OF TITLE 11,  
12 U.S.C.—Section 521(a) of title 11, United States Code,  
13 as so designated by section 106, is amended in each of  
14 paragraphs (3) and (4) by inserting “or an auditor serving  
15 under section 586(f) of title 28” after “serving in the  
16 case”.

17       (d) AMENDMENTS TO SECTION 727 OF TITLE 11,  
18 U.S.C.—Section 727(d) of title 11, United States Code,  
19 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) the debtor has failed to explain satisfac-  
2           torily—

3                   “(A) a material misstatement in an audit  
4                   referred to in section 586(f) of title 28; or

5                   “(B) a failure to make available for inspec-  
6                   tion all necessary accounts, papers, documents,  
7                   financial records, files, and all other papers,  
8                   things, or property belonging to the debtor that  
9                   are requested for an audit referred to in section  
10                  586(f) of title 28.”.

11          (e) EFFECTIVE DATE.—The amendments made by  
12 this section shall take effect 18 months after the date of  
13 enactment of this Act.

14 **SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY**  
15 **OF BANKRUPTCY DATA.**

16          It is the sense of Congress that—

17                  (1) the national policy of the United States  
18                  should be that all data held by bankruptcy clerks in  
19                  electronic form, to the extent such data reflects only  
20                  public records (as defined in section 107 of title 11,  
21                  United States Code), should be released in a usable  
22                  electronic form in bulk to the public, subject to such  
23                  appropriate privacy concerns and safeguards as Con-  
24                  gress and the Judicial Conference of the United  
25                  States may determine; and

1           (2) there should be established a bankruptcy  
2 data system in which—

3           (A) a single set of data definitions and  
4 forms are used to collect data nationwide; and

5           (B) data for any particular bankruptcy  
6 case are aggregated in the same electronic  
7 record.

8           **TITLE VII—BANKRUPTCY TAX**  
9           **PROVISIONS**

10 **SEC. 701. TREATMENT OF CERTAIN LIENS.**

11           (a) TREATMENT OF CERTAIN LIENS.—Section 724  
12 of title 11, United States Code, is amended—

13           (1) in subsection (b), in the matter preceding  
14 paragraph (1), by inserting “(other than to the ex-  
15 tent that there is a properly perfected unavoidable  
16 tax lien arising in connection with an ad valorem tax  
17 on real or personal property of the estate)” after  
18 “under this title”;

19           (2) in subsection (b)(2), by inserting “(except  
20 that such expenses, other than claims for wages, sal-  
21 aries, or commissions that arise after the date of the  
22 filing of the petition, shall be limited to expenses in-  
23 curred under chapter 7 of this title and shall not in-  
24 clude expenses incurred under chapter 11 of this  
25 title)” after “507(a)(1)”; and



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

2 “(e) Before subordinating a tax lien on real or per-  
3 sonal property of the estate, the trustee shall—

4 “(1) exhaust the unencumbered assets of the  
5 estate; and

6 “(2) in a manner consistent with section  
7 506(c), recover from property securing an allowed  
8 secured claim the reasonable, necessary costs and  
9 expenses of preserving or disposing of such property.

10 “(f) Notwithstanding the exclusion of ad valorem tax  
11 liens under this section and subject to the requirements  
12 of subsection (e), the following may be paid from property  
13 of the estate which secures a tax lien, or the proceeds of  
14 such property:

15 “(1) Claims for wages, salaries, and commis-  
16 sions that are entitled to priority under section  
17 507(a)(4).

18 “(2) Claims for contributions to an employee  
19 benefit plan entitled to priority under section  
20 507(a)(5).”.

21 (b) DETERMINATION OF TAX LIABILITY.—Section  
22 505(a)(2) of title 11, United States Code, is amended—

23 (1) in subparagraph (A), by striking “or” at  
24 the 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 amount or legality of any amount arising  
5 in connection with an ad valorem tax on real or  
6 personal property of the estate, if the applicable period  
7 for contesting or redetermining that amount  
8 under any law (other than a bankruptcy law) has expired.”.

10 **SEC. 702. TREATMENT OF FUEL TAX CLAIMS.**

11 Section 501 of title 11, United States Code, is  
12 amended by adding at the end the following:

13 “(e) A claim arising from the liability of a debtor for  
14 fuel use tax assessed consistent with the requirements of  
15 section 31705 of title 49 may be filed by the base jurisdiction  
16 designated pursuant to the International Fuel Tax  
17 Agreement (as defined in section 31701 of title 49) and,  
18 if so filed, shall be allowed as a single claim.”.

19 **SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF**  
20 **TAXES.**

21 Section 505(b) of title 11, United States Code, is  
22 amended—

23 (1) in the first sentence, by inserting “at the  
24 address and in the manner designated in paragraph  
25 (1)” after “determination of such tax”;

1           (2) by striking “(1) upon payment” and insert-  
2           ing “(A) upon payment”;

3           (3) by striking “(A) such governmental unit”  
4           and inserting “(i) such governmental unit”;

5           (4) by striking “(B) such governmental unit”  
6           and inserting “(ii) such governmental unit”;

7           (5) by striking “(2) upon payment” and insert-  
8           ing “(B) upon payment”;

9           (6) by striking “(3) upon payment” and insert-  
10          ing “(C) upon payment”;

11          (7) by striking “(b)” and inserting “(2)”; and

12          (8) by inserting before paragraph (2), as so  
13          designated, the following:

14          “(b)(1)(A) The clerk shall maintain a list under  
15          which a Federal, State, or local governmental unit respon-  
16          sible for the collection of taxes within the district may—

17                 “(i) designate an address for service of requests  
18                 under this subsection; and

19                 “(ii) describe where further information con-  
20                 cerning additional requirements for filing such re-  
21                 quests may be found.

22          “(B) If such governmental unit does not designate  
23          an address and provide such address to the clerk under  
24          subparagraph (A), any request made under this subsection  
25          may be served at the address for the filing of a tax return

1 or protest with the appropriate taxing authority of such  
2 governmental unit.”.

3 **SEC. 704. RATE OF INTEREST ON TAX CLAIMS.**

4 (a) IN GENERAL.—Subchapter I of chapter 5 of title  
5 11, United States Code, is amended by adding at the end  
6 the following:

7 **“§ 511. Rate of interest on tax claims**

8 “(a) If any provision of this title requires the pay-  
9 ment of interest on a tax claim or on an administrative  
10 expense tax, or the payment of interest to enable a creditor  
11 to receive the present value of the allowed amount of a  
12 tax claim, the rate of interest shall be the rate determined  
13 under applicable nonbankruptcy law.

14 “(b) In the case of taxes paid under a confirmed plan  
15 under this title, the rate of interest shall be determined  
16 as of the calendar month in which the plan is confirmed.”.

17 (b) CLERICAL AMENDMENT.—The table of sections  
18 for subchapter I of chapter 5 of title 11, United States  
19 Code, is amended by adding at the end the following:

“511. Rate of interest on tax claims.”.

20 **SEC. 705. PRIORITY OF TAX CLAIMS.**

21 Section 507(a)(8) of title 11, United States Code, is  
22 amended—

23 (1) in subparagraph (A)—

24 (A) in the matter preceding clause (i), by  
25 inserting “for a taxable year ending on or be-

1 fore the date of the filing of the petition” after  
2 “gross receipts”;

3 (B) in clause (i), by striking “for a taxable  
4 year ending on or before the date of the filing  
5 of the petition”; and

6 (C) by striking clause (ii) and inserting the  
7 following:

8 “(ii) assessed within 240 days before  
9 the date of the filing of the petition, exclu-  
10 sive of—

11 “(I) any time during which an  
12 offer in compromise with respect to  
13 that tax was pending or in effect dur-  
14 ing that 240-day period, plus 30 days;  
15 and

16 “(II) any time during which a  
17 stay of proceedings against collections  
18 was in effect in a prior case under  
19 this title during that 240-day period,  
20 plus 90 days.”; and

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

22 “An otherwise applicable time period specified in  
23 this paragraph shall be suspended for any period  
24 during which a governmental unit is prohibited  
25 under applicable nonbankruptcy law from collecting

1 a tax as a result of a request by the debtor for a  
2 hearing and an appeal of any collection action taken  
3 or proposed against the debtor, plus 90 days; plus  
4 any time during which the stay of proceedings was  
5 in effect in a prior case under this title or during  
6 which collection was precluded by the existence of 1  
7 or more confirmed plans under this title, plus 90  
8 days.”.

9 **SEC. 706. PRIORITY PROPERTY TAXES INCURRED.**

10 Section 507(a)(8)(B) of title 11, United States Code,  
11 is amended by striking “assessed” and inserting “in-  
12 curred”.

13 **SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**  
14 **TER 13.**

15 Section 1328(a)(2) of title 11, United States Code,  
16 as amended by section 314, is amended by striking “para-  
17 graph” and inserting “section 507(a)(8)(C) or in para-  
18 graph (1)(B), (1)(C),”.

19 **SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAP-**  
20 **TER 11.**

21 Section 1141(d) of title 11, United States Code, as  
22 amended by sections 321 and 330, is amended by adding  
23 at the end the following:

1       “(6) Notwithstanding paragraph (1), the confirma-  
2 tion of a plan does not discharge a debtor that is a cor-  
3 poration from any debt—

4               “(A) of a kind specified in paragraph (2)(A) or  
5 (2)(B) of section 523(a) that is owed to a domestic  
6 governmental unit, or owed to a person as the result  
7 of an action filed under subchapter III of chapter 37  
8 of title 31 or any similar State statute; or

9               “(B) for a tax or customs duty with respect to  
10 which the debtor—

11                       “(i) made a fraudulent return; or

12                       “(ii) willfully attempted in any manner to  
13 evade or to defeat such tax or such customs  
14 duty.”.

15 **SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO**  
16 **PREPETITION TAXES.**

17       Section 362(a)(8) of title 11, United States Code, is  
18 amended by striking “the debtor” and inserting “a cor-  
19 porate debtor’s tax liability for a taxable period the bank-  
20 ruptcy court may determine or concerning the tax liability  
21 of a debtor who is an individual for a taxable period end-  
22 ing before the date of the order for relief under this title”.

1 **SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11**  
2 **CASES.**

3 Section 1129(a)(9) of title 11, United States Code,  
4 is amended—

5 (1) in subparagraph (B), by striking “and” at  
6 the end;

7 (2) in subparagraph (C), by striking “deferred  
8 cash payments,” and all that follows through the  
9 end of the subparagraph, and inserting “regular in-  
10 stallment payments in cash—

11 “(i) of a total value, as of the effective  
12 date of the plan, equal to the allowed  
13 amount of such claim;

14 “(ii) over a period ending not later  
15 than 5 years after the date of the order for  
16 relief under section 301, 302, or 303; and

17 “(iii) in a manner not less favorable  
18 than the most favored nonpriority unse-  
19 cured claim provided for by the plan (other  
20 than cash payments made to a class of  
21 creditors under section 1122(b)); and”;  
22 and

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

24 “(D) with respect to a secured claim which  
25 would otherwise meet the description of an un-  
26 secured claim of a governmental unit under sec-



1           tion 507(a)(8), but for the secured status of  
 2           that claim, the holder of that claim will receive  
 3           on account of that claim, cash payments, in the  
 4           same manner and over the same period, as pre-  
 5           scribed in subparagraph (C).”.

6 **SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIB-**  
 7                                   **ITED.**

8           Section 545(2) of title 11, United States Code, is  
 9           amended by inserting before the semicolon at the end the  
 10          following: “, except in any case in which a purchaser is  
 11          a purchaser described in section 6323 of the Internal Rev-  
 12          enue Code of 1986, or in any other similar provision of  
 13          State or local law”.

14 **SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSI-**  
 15                                   **NESS.**

16          (a) PAYMENT OF TAXES REQUIRED.—Section 960 of  
 17          title 28, United States Code, is amended—

18                   (1) by inserting “(a)” before “Any”; and

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

20          “(b) A tax under subsection (a) shall be paid on or  
 21          before the due date of the tax under applicable nonbank-  
 22          ruptcy law, unless—

23                   “(1) the tax is a property tax secured by a lien  
 24                   against property that is abandoned under section  
 25                   554 of title 11, within a reasonable period of time

1 after the lien attaches, by the trustee in a case  
2 under title 11; or

3 “(2) payment of the tax is excused under a spe-  
4 cific provision of title 11.

5 “(c) In a case pending under chapter 7 of title 11,  
6 payment of a tax may be deferred until final distribution  
7 is made under section 726 of title 11, if—

8 “(1) the tax was not incurred by a trustee duly  
9 appointed or elected under chapter 7 of title 11; or

10 “(2) before the due date of the tax, an order of  
11 the court makes a finding of probable insufficiency  
12 of funds of the estate to pay in full the administra-  
13 tive expenses allowed under section 503(b) of title  
14 11 that have the same priority in distribution under  
15 section 726(b) of title 11 as the priority of that  
16 tax.”.

17 (b) PAYMENT OF AD VALOREM TAXES REQUIRED.—  
18 Section 503(b)(1)(B)(i) of title 11, United States Code,  
19 is amended by inserting “whether secured or unsecured,  
20 including property taxes for which liability is in rem, in  
21 personam, or both,” before “except”.

22 (c) REQUEST FOR PAYMENT OF ADMINISTRATIVE  
23 EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of  
24 title 11, United States Code, is amended—

1           (1) in subparagraph (B), by striking “and” at  
2 the end;

3           (2) in subparagraph (C), by adding “and” at  
4 the end; and

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

6           “(D) notwithstanding the requirements of sub-  
7 section (a), a governmental unit shall not be re-  
8 quired to file a request for the payment of an ex-  
9 pense described in subparagraph (B) or (C), as a  
10 condition of its being an allowed administrative ex-  
11 pense;”.

12           (d) PAYMENT OF TAXES AND FEES AS SECURED  
13 CLAIMS.—Section 506 of title 11, United States Code, is  
14 amended—

15           (1) in subsection (b), by inserting “or State  
16 statute” after “agreement”; and

17           (2) in subsection (c), by inserting “, including  
18 the payment of all ad valorem property taxes with  
19 respect to the property” before the period at the  
20 end.

21 **SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.**

22           Section 726(a)(1) of title 11, United States Code, is  
23 amended by striking “before the date on which the trustee  
24 commences distribution under this section;” and inserting  
25 the following: “on or before the earlier of—

1           “(A) the date that is 10 days after the  
2 mailing to creditors of the summary of the  
3 trustee’s final report; or

4           “(B) the date on which the trustee com-  
5 mences final distribution under this section;”.

6 **SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AU-**  
7 **THORITIES.**

8           Section 523(a) of title 11, United States Code, as  
9 amended by sections 215 and 224, is amended—

10           (1) in paragraph (1)(B)—

11                 (A) in the matter preceding clause (i), by  
12 inserting “or equivalent report or notice,” after  
13 “a return,”;

14                 (B) in clause (i), by inserting “or given”  
15 after “filed”; and

16                 (C) in clause (ii)—

17                         (i) by inserting “or given” after  
18 “filed”; and

19                         (ii) by inserting “, report, or notice”  
20 after “return”; and

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

22 “For purposes of this subsection, the term ‘return’ means  
23 a return that satisfies the requirements of applicable non-  
24 bankruptcy law (including applicable filing requirements).

25 Such term includes a return prepared pursuant to section

1 6020(a) of the Internal Revenue Code of 1986, or similar  
2 State or local law, or a written stipulation to a judgment  
3 or a final order entered by a nonbankruptcy tribunal, but  
4 does not include a return made pursuant to section  
5 6020(b) of the Internal Revenue Code of 1986, or a simi-  
6 lar State or local law.”.

7 **SEC. 715. DISCHARGE OF THE ESTATE’S LIABILITY FOR UN-**  
8 **PAID TAXES.**

9 Section 505(b)(2) of title 11, United States Code, as  
10 amended by section 703, is amended by inserting “the es-  
11 tate,” after “misrepresentation,”.

12 **SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CON-**  
13 **FIRM CHAPTER 13 PLANS.**

14 (a) **FILING OF PREPETITION TAX RETURNS RE-**  
15 **QUIRED FOR PLAN CONFIRMATION.**—Section 1325(a) of  
16 title 11, United States Code, as amended by sections 102,  
17 213, and 306, is amended by inserting after paragraph  
18 (8) the following:

19 “(9) the debtor has filed all applicable Federal,  
20 State, and local tax returns as required by section  
21 1308.”.

22 (b) **ADDITIONAL TIME PERMITTED FOR FILING TAX**  
23 **RETURNS.**—

1           (1) IN GENERAL.—Subchapter I of chapter 13  
2           of title 11, United States Code, is amended by add-  
3           ing 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  
8           a tax return under applicable nonbankruptcy law, the  
9           debtor shall file with appropriate tax authorities all tax  
10          returns for all taxable periods ending during the 4-year  
11          period ending on the date of the filing of the petition.

12          “(b)(1) Subject to paragraph (2), if the tax returns  
13          required by subsection (a) have not been filed by the date  
14          on which the meeting of creditors is first scheduled to be  
15          held under section 341(a), the trustee may hold open that  
16          meeting for a reasonable period of time to allow the debtor  
17          an additional period of time to file any unfiled returns,  
18          but such additional period of time shall not extend be-  
19          yond—

20                  “(A) for any return that is past due as of the  
21                  date of the filing of the petition, the date that is 120  
22                  days after the date of that meeting; or

23                  “(B) for any return that is not past due as of  
24                  the date of the filing of the petition, the later of—

1           “(i) the date that is 120 days after the  
2           date of that meeting; or

3           “(ii) the date on which the return is due  
4           under the last automatic extension of time for  
5           filing that return to which the debtor is enti-  
6           tled, and for which request is timely made, in  
7           accordance with applicable nonbankruptcy law.

8           “(2) After notice and a hearing, and order entered  
9           before the tolling of any applicable filing period deter-  
10          mined under this subsection, if the debtor demonstrates  
11          by a preponderance of the evidence that the failure to file  
12          a return as required under this subsection is attributable  
13          to circumstances beyond the control of the debtor, the  
14          court may extend the filing period established by the trust-  
15          ee under this subsection for—

16               “(A) a period of not more than 30 days for re-  
17               turns described in paragraph (1); and

18               “(B) a period not to extend after the applicable  
19               extended due date for a return described in para-  
20               graph (2).

21           “(c) For purposes of this section, the term ‘return’  
22           includes a return prepared pursuant to subsection (a) or  
23           (b) of section 6020 of the Internal Revenue Code of 1986,  
24           or a similar State or local law, or a written stipulation

1 to a judgment or a final order entered by a nonbankruptcy  
2 tribunal.”.

3           (2) CONFORMING AMENDMENT.—The table of  
4 sections for subchapter I of chapter 13 of title 11,  
5 United States Code, is amended by adding at the  
6 end the following:

“1308. Filing of prepetition tax returns.”.

7           (c) DISMISSAL OR CONVERSION ON FAILURE TO  
8 COMPLY.—Section 1307 of title 11, United States Code,  
9 is amended—

10           (1) by redesignating subsections (e) and (f) as  
11 subsections (f) and (g), respectively; and

12           (2) by inserting after subsection (d) the fol-  
13 lowing:

14           “(e) Upon the failure of the debtor to file a tax return  
15 under section 1308, on request of a party in interest or  
16 the United States trustee and after notice and a hearing,  
17 the court shall dismiss a case or convert a case under this  
18 chapter to a case under chapter 7 of this title, whichever  
19 is in the best interest of the creditors and the estate.”.

20           (d) TIMELY FILED CLAIMS.—Section 502(b)(9) of  
21 title 11, United States Code, is amended by inserting be-  
22 fore the period at the end the following: “, and except that  
23 in a case under chapter 13, a claim of a governmental  
24 unit for a tax with respect to a return filed under section  
25 1308 shall be timely if the claim is filed on or before the



1 date that is 60 days after the date on which such return  
2 was filed as required”.

3 (e) RULES FOR OBJECTIONS TO CLAIMS AND TO  
4 CONFIRMATION.—It is the sense of Congress that the Ju-  
5 dicial Conference of the United States should, as soon as  
6 practicable after the date of enactment of this Act, pro-  
7 pose amended Federal Rules of Bankruptcy Procedure  
8 that provide—

9 (1) notwithstanding the provisions of Rule  
10 3015(f), in cases under chapter 13 of title 11,  
11 United States Code, that an objection to the con-  
12 firmation of a plan filed by a governmental unit on  
13 or before the date that is 60 days after the date on  
14 which the debtor files all tax returns required under  
15 sections 1308 and 1325(a)(7) of title 11, United  
16 States Code, shall be treated for all purposes as if  
17 such objection had been timely filed before such con-  
18 firmation; and

19 (2) in addition to the provisions of Rule 3007,  
20 in a case under chapter 13 of title 11, United States  
21 Code, that no objection to a claim for a tax with re-  
22 spect to which a return is required to be filed under  
23 section 1308 of title 11, United States Code, shall  
24 be filed until such return has been filed as required.

1 **SEC. 717. STANDARDS FOR TAX DISCLOSURE.**

2 Section 1125(a)(1) of title 11, United States Code,  
3 is amended—

4 (1) by inserting “including a discussion of the  
5 potential material Federal tax consequences of the  
6 plan to the debtor, any successor to the debtor, and  
7 a hypothetical investor typical of the holders of  
8 claims or interests in the case,” after “records,”;  
9 and

10 (2) by striking “a hypothetical reasonable inves-  
11 tor typical of holders of claims or interests” and in-  
12 serting “such a hypothetical investor”.

13 **SEC. 718. SETOFF OF TAX REFUNDS.**

14 Section 362(b) of title 11, United States Code, as  
15 amended by sections 224, 303, 311, and 401, is amended  
16 by inserting after paragraph (25) the following:

17 “(26) under subsection (a), of the setoff under  
18 applicable nonbankruptcy law of an income tax re-  
19 fund, by a governmental unit, with respect to a tax-  
20 able period that ended before the date of the order  
21 for relief against an income tax liability for a taxable  
22 period that also ended before the date of the order  
23 for relief, except that in any case in which the setoff  
24 of an income tax refund is not permitted under ap-  
25 plicable nonbankruptcy law because of a pending ac-  
26 tion to determine the amount or legality of a tax li-

1 ability, the governmental unit may hold the refund  
 2 pending the resolution of the action, unless the  
 3 court, on the motion of the trustee and after notice  
 4 and a hearing, grants the taxing authority adequate  
 5 protection (within the meaning of section 361) for  
 6 the secured claim of such authority in the setoff  
 7 under section 506(a);”.

8 **SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREAT-**  
 9 **MENT OF STATE AND LOCAL TAXES.**

10 (a) IN GENERAL.—

11 (1) SPECIAL PROVISIONS.—Section 346 of title  
 12 11, United States Code, is amended to read as fol-  
 13 lows:

14 **“§ 346. Special provisions related to the treatment of**  
 15 **State and local taxes**

16 “(a) Whenever the Internal Revenue Code of 1986  
 17 provides that a separate taxable estate or entity is created  
 18 in a case concerning a debtor under this title, and the in-  
 19 come, gain, loss, deductions, and credits of such estate  
 20 shall be taxed to or claimed by the estate, a separate tax-  
 21 able estate is also created for purposes of any State and  
 22 local law imposing a tax on or measured by income and  
 23 such income, gain, loss, deductions, and credits shall be  
 24 taxed to or claimed by the estate and may not be taxed  
 25 to or claimed by the debtor. The preceding sentence shall

1 not apply if the case is dismissed. The trustee shall make  
2 tax returns of income required under any such State or  
3 local law.

4       “(b) Whenever the Internal Revenue Code of 1986  
5 provides that no separate taxable estate shall be created  
6 in a case concerning a debtor under this title, and the in-  
7 come, gain, loss, deductions, and credits of an estate shall  
8 be taxed to or claimed by the debtor, such income, gain,  
9 loss, deductions, and credits shall be taxed to or claimed  
10 by the debtor under a State or local law imposing a tax  
11 on or measured by income and may not be taxed to or  
12 claimed by the estate. The trustee shall make such tax  
13 returns of income of corporations and of partnerships as  
14 are required under any State or local law, but with respect  
15 to partnerships, shall make such returns only to the extent  
16 such returns are also required to be made under such  
17 Code. The estate shall be liable for any tax imposed on  
18 such corporation or partnership, but not for any tax im-  
19 posed on partners or members.

20       “(c) With respect to a partnership or any entity treat-  
21 ed as a partnership under a State or local law imposing  
22 a tax on or measured by income that is a debtor in a case  
23 under this title, any gain or loss resulting from a distribu-  
24 tion of property from such partnership, or any distributive  
25 share of any income, gain, loss, deduction, or credit of a

1 partner or member that is distributed, or considered dis-  
2 tributed, from such partnership, after the commencement  
3 of the case, is gain, loss, income, deduction, or credit, as  
4 the case may be, of the partner or member, and if such  
5 partner or member is a debtor in a case under this title,  
6 shall be subject to tax in accordance with subsection (a)  
7 or (b).

8       “(d) For purposes of any State or local law imposing  
9 a tax on or measured by income, the taxable period of  
10 a debtor in a case under this title shall terminate only  
11 if and to the extent that the taxable period of such debtor  
12 terminates under the Internal Revenue Code of 1986.

13       “(e) The estate in any case described in subsection  
14 (a) shall use the same accounting method as the debtor  
15 used immediately before the commencement of the case,  
16 if such method of accounting complies with applicable non-  
17 bankruptcy tax law.

18       “(f) For purposes of any State or local law imposing  
19 a tax on or measured by income, a transfer of property  
20 from the debtor to the estate or from the estate to the  
21 debtor shall not be treated as a disposition for purposes  
22 of any provision assigning tax consequences to a dispo-  
23 sition, except to the extent that such transfer is treated as  
24 a disposition under the Internal Revenue Code of 1986.

1           “(g) Whenever a tax is imposed pursuant to a State  
2 or local law imposing a tax on or measured by income pur-  
3 suant to subsection (a) or (b), such tax shall be imposed  
4 at rates generally applicable to the same types of entities  
5 under such State or local law.

6           “(h) The trustee shall withhold from any payment of  
7 claims for wages, salaries, commissions, dividends, inter-  
8 est, or other payments, or collect, any amount required  
9 to be withheld or collected under applicable State or local  
10 tax law, and shall pay such withheld or collected amount  
11 to the appropriate governmental unit at the time and in  
12 the manner required by such tax law, and with the same  
13 priority as the claim from which such amount was with-  
14 held or collected was paid.

15           “(i)(1) To the extent that any State or local law im-  
16 posing a tax on or measured by income provides for the  
17 carryover of any tax attribute from one taxable period to  
18 a subsequent taxable period, the estate shall succeed to  
19 such tax attribute in any case in which such estate is sub-  
20 ject to tax under subsection (a).

21           “(2) After such a case is closed or dismissed, the  
22 debtor shall succeed to any tax attribute to which the es-  
23 tate succeeded under paragraph (1) to the extent con-  
24 sistent with the Internal Revenue Code of 1986.

1       “(3) The estate may carry back any loss or tax at-  
2 tribute to a taxable period of the debtor that ended before  
3 the date of the order for relief under this title to the extent  
4 that—

5           “(A) applicable State or local tax law provides  
6 for a carryback in the case of the debtor; and

7           “(B) the same or a similar tax attribute may be  
8 carried back by the estate to such a taxable period  
9 of the debtor under the Internal Revenue Code of  
10 1986.

11       “(j)(1) For purposes of any State or local law impos-  
12 ing a tax on or measured by income, income is not realized  
13 by the estate, the debtor, or a successor to the debtor by  
14 reason of discharge of indebtedness in a case under this  
15 title, except to the extent, if any, that such income is sub-  
16 ject to tax under the Internal Revenue Code of 1986.

17       “(2) Whenever the Internal Revenue Code of 1986  
18 provides that the amount excluded from gross income in  
19 respect of the discharge of indebtedness in a case under  
20 this title shall be applied to reduce the tax attributes of  
21 the debtor or the estate, a similar reduction shall be made  
22 under any State or local law imposing a tax on or meas-  
23 ured by income to the extent such State or local law recog-  
24 nizes such attributes. Such State or local law may also  
25 provide for the reduction of other attributes to the extent

1 that the full amount of income from the discharge of in-  
2 debtedness has not been applied.

3 “(k)(1) Except as provided in this section and section  
4 505, the time and manner of filing tax returns and the  
5 items of income, gain, loss, deduction, and credit of any  
6 taxpayer shall be determined under applicable nonbank-  
7 ruptcy law.

8 “(2) For Federal tax purposes, the provisions of this  
9 section are subject to the Internal Revenue Code of 1986  
10 and other applicable Federal nonbankruptcy law.”.

11 (2) CLERICAL AMENDMENT.—The table of sec-  
12 tions for chapter 3 of title 11, United States Code,  
13 is amended by striking the item relating to section  
14 346 and inserting the following:

“346. Special provisions related to the treatment of State and local taxes.”.

15 (b) CONFORMING AMENDMENTS.—Title 11 of the  
16 United States Code is amended—

17 (1) by striking section 728;

18 (2) in the table of sections for chapter 7 by  
19 striking the item relating to section 728;

20 (3) in section 1146—

21 (A) by striking subsections (a) and (b);

22 and

23 (B) by redesignating subsections (c) and

24 (d) as subsections (a) and (b), respectively; and

25 (4) in section 1231—



1 (A) by striking subsections (a) and (b);  
2 and  
3 (B) by redesignating subsections (c) and  
4 (d) as subsections (a) and (b), respectively.

5 **SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX**  
6 **RETURNS.**

7 Section 521 of title 11, United States Code, as  
8 amended by sections 106, 225, 305, 315, and 316, is  
9 amended by adding at the end the following:

10 “(j)(1) Notwithstanding any other provision of this  
11 title, if the debtor fails to file a tax return that becomes  
12 due after the commencement of the case or to properly  
13 obtain an extension of the due date for filing such return,  
14 the taxing authority may request that the court enter an  
15 order converting or dismissing the case.

16 “(2) If the debtor does not file the required return  
17 or obtain the extension referred to in paragraph (1) within  
18 90 days after a request is filed by the taxing authority  
19 under that paragraph, the court shall convert or dismiss  
20 the case, whichever is in the best interests of creditors and  
21 the estate.”.

1       **TITLE VIII—ANCILLARY AND**  
 2       **OTHER CROSS-BORDER CASES**

3       **SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11,**  
 4                               **UNITED STATES CODE.**

5           (a) IN GENERAL.—Title 11, United States Code, is  
 6 amended by inserting after chapter 13 the following:

7       **“CHAPTER 15—ANCILLARY AND OTHER**  
 8                               **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  
4 effective mechanisms for dealing with cases of cross-bor-  
5 der insolvency with the objectives of—

6               “(1) cooperation between—

7                       “(A) courts of the United States, United  
8 States trustees, trustees, examiners, debtors,  
9 and debtors in possession; and

10                      “(B) the courts and other competent au-  
11 thorities of foreign countries involved in cross-  
12 border insolvency cases;

13               “(2) greater legal certainty for trade and in-  
14 vestment;

15               “(3) fair and efficient administration of cross-  
16 border insolvencies that protects the interests of all  
17 creditors, and other interested entities, including the  
18 debtor;

1           “(4) protection and maximization of the value  
2 of the debtor’s assets; and

3           “(5) facilitation of the rescue of financially  
4 troubled businesses, thereby protecting investment  
5 and preserving employment.

6           “(b) This chapter applies where—

7           “(1) assistance is sought in the United States  
8 by a foreign court or a foreign representative in con-  
9 nection with a foreign proceeding;

10           “(2) assistance is sought in a foreign country in  
11 connection with a case under this title;

12           “(3) a foreign proceeding and a case under this  
13 title with respect to the same debtor are pending  
14 concurrently; or

15           “(4) creditors or other interested persons in a  
16 foreign country have an interest in requesting the  
17 commencement of, or participating in, a case or pro-  
18 ceeding under this title.

19           “(c) This chapter does not apply to—

20           “(1) a proceeding concerning an entity, other  
21 than a foreign insurance company, identified by ex-  
22 clusion in section 109(b);

23           “(2) an individual, or to an individual and such  
24 individual’s spouse, who have debts within the limits  
25 specified in section 109(e) and who are citizens of

1 the United States or aliens lawfully admitted for  
2 permanent residence in the United States; or

3 “(3) an entity subject to a proceeding under the  
4 Securities Investor Protection Act of 1970, a stock-  
5 broker subject to subchapter III of chapter 7 of this  
6 title, or a commodity broker subject to subchapter  
7 IV of chapter 7 of this title.

8 “(d) The court may not grant relief under this chap-  
9 ter with respect to any deposit, escrow, trust fund, or  
10 other security required or permitted under any applicable  
11 State insurance law or regulation for the benefit of claim  
12 holders in the United States.

13 “SUBCHAPTER I—GENERAL PROVISIONS

14 “§ 1502. **Definitions**

15 “For the purposes of this chapter, the term—

16 “(1) ‘debtor’ means an entity that is the subject  
17 of a foreign proceeding;

18 “(2) ‘establishment’ means any place of oper-  
19 ations where the debtor carries out a nontransitory  
20 economic activity;

21 “(3) ‘foreign court’ means a judicial or other  
22 authority competent to control or supervise a foreign  
23 proceeding;

1           “(4) ‘foreign main proceeding’ means a foreign  
2 proceeding pending in the country where the debtor  
3 has the center of its main interests;

4           “(5) ‘foreign nonmain proceeding’ means a for-  
5 eign proceeding, other than a foreign main pro-  
6 ceeding, pending in a country where the debtor has  
7 an establishment;

8           “(6) ‘trustee’ includes a trustee, a debtor in  
9 possession in a case under any chapter of this title,  
10 or a debtor under chapter 9 of this title;

11           “(7) ‘recognition’ means the entry of an order  
12 granting recognition of a foreign main proceeding or  
13 foreign nonmain proceeding under this chapter; and

14           “(8) ‘within the territorial jurisdiction of the  
15 United States’, when used with reference to property  
16 of a debtor, refers to tangible property located with-  
17 in the territory of the United States and intangible  
18 property deemed under applicable nonbankruptcy  
19 law to be located within that territory, including any  
20 property subject to attachment or garnishment that  
21 may properly be seized or garnished by an action in  
22 a Federal or State court in the United States.

23 **“§ 1503. International obligations of the United States**

24           “To the extent that this chapter conflicts with an ob-  
25 ligation of the United States arising out of any treaty or

1 other form of agreement to which it is a party with one  
2 or more other countries, the requirements of the treaty  
3 or agreement prevail.

4 **“§ 1504. Commencement of ancillary case**

5 “A case under this chapter is commenced by the filing  
6 of a petition for recognition of a foreign proceeding under  
7 section 1515.

8 **“§ 1505. Authorization to act in a foreign country**

9 “A trustee or another entity (including an examiner)  
10 may be authorized by the court to act in a foreign country  
11 on behalf of an estate created under section 541. An entity  
12 authorized to act under this section may act in any way  
13 permitted by the applicable foreign law.

14 **“§ 1506. Public policy exception**

15 “Nothing in this chapter prevents the court from re-  
16 fusing to take an action governed by this chapter if the  
17 action would be manifestly contrary to the public policy  
18 of the United States.

19 **“§ 1507. Additional assistance**

20 “(a) Subject to the specific limitations stated else-  
21 where in this chapter the court, if recognition is granted,  
22 may provide additional assistance to a foreign representa-  
23 tive under this title or under other laws of the United  
24 States.

1       “(b) In determining whether to provide additional as-  
2       sistance under this title or under other laws of the United  
3       States, the court shall consider whether such additional  
4       assistance, consistent with the principles of comity, will  
5       reasonably assure—

6               “(1) just treatment of all holders of claims  
7       against or interests in the debtor’s property;

8               “(2) protection of claim holders in the United  
9       States against prejudice and inconvenience in the  
10       processing of claims in such foreign proceeding;

11              “(3) prevention of preferential or fraudulent  
12       dispositions of property of the debtor;

13              “(4) distribution of proceeds of the debtor’s  
14       property substantially in accordance with the order  
15       prescribed by this title; and

16              “(5) if appropriate, the provision of an oppor-  
17       tunity for a fresh start for the individual that such  
18       foreign proceeding concerns.

19       **“§ 1508. Interpretation**

20       “‘In interpreting this chapter, the court shall consider  
21       its international origin, and the need to promote an appli-  
22       cation of this chapter that is consistent with the applica-  
23       tion of similar statutes adopted by foreign jurisdictions.



1 “SUBCHAPTER II—ACCESS OF FOREIGN REP-  
2 RESENTATIVES AND CREDITORS TO THE  
3 COURT

4 “§ 1509. Right of direct access

5 “(a) A foreign representative may commence a case  
6 under section 1504 by filing directly with the court a peti-  
7 tion for recognition of a foreign proceeding under section  
8 1515.

9 “(b) If the court grants recognition under section  
10 1517, and subject to any limitations that the court may  
11 impose consistent with the policy of this chapter—

12 “(1) the foreign representative has the capacity  
13 to sue and be sued in a court in the United States;

14 “(2) the foreign representative may apply di-  
15 rectly to a court in the United States for appropriate  
16 relief in that court; and

17 “(3) a court in the United States shall grant  
18 comity or cooperation to the foreign representative.

19 “(c) A request for comity or cooperation by a foreign  
20 representative in a court in the United States other than  
21 the court which granted recognition shall be accompanied  
22 by a certified copy of an order granting recognition under  
23 section 1517.

24 “(d) If the court denies recognition under this chap-  
25 ter, the court may issue any appropriate order necessary

1 to prevent the foreign representative from obtaining com-  
2 ity or cooperation from courts in the United States.

3 “(e) Whether or not the court grants recognition, and  
4 subject to sections 306 and 1510, a foreign representative  
5 is subject to applicable nonbankruptcy law.

6 “(f) Notwithstanding any other provision of this sec-  
7 tion, the failure of a foreign representative to commence  
8 a case or to obtain recognition under this chapter does  
9 not affect any right the foreign representative may have  
10 to sue in a court in the United States to collect or recover  
11 a claim which is the property of the debtor.

12 **“§ 1510. Limited jurisdiction**

13 “The sole fact that a foreign representative files a  
14 petition under section 1515 does not subject the foreign  
15 representative to the jurisdiction of any court in the  
16 United States for any other purpose.

17 **“§ 1511. Commencement of case under section 301 or**  
18 **303**

19 “(a) Upon recognition, a foreign representative may  
20 commence—

21 “(1) an involuntary case under section 303; or

22 “(2) a voluntary case under section 301 or 302,

23 if the foreign proceeding is a foreign main pro-  
24 ceeding.



1 eign revenue claims or other foreign public law claims in  
2 a proceeding under this title.

3 “(B) Allowance and priority as to a foreign tax claim  
4 or other foreign public law claim shall be governed by any  
5 applicable tax treaty of the United States, under the con-  
6 ditions and circumstances specified therein.

7 **“§ 1514. Notification to foreign creditors concerning a**  
8 **case under this title**

9 “(a) Whenever in a case under this title notice is to  
10 be given to creditors generally or to any class or category  
11 of creditors, such notice shall also be given to the known  
12 creditors generally, or to creditors in the notified class or  
13 category, that do not have addresses in the United States.  
14 The court may order that appropriate steps be taken with  
15 a view to notifying any creditor whose address is not yet  
16 known.

17 “(b) Such notification to creditors with foreign ad-  
18 dresses described in subsection (a) shall be given individ-  
19 ually, unless the court considers that, under the cir-  
20 cumstances, some other form of notification would be  
21 more appropriate. No letter or other formality is required.

22 “(c) When a notification of commencement of a case  
23 is to be given to foreign creditors, such notification shall—

1           “(1) indicate the time period for filing proofs of  
2 claim and specify the place for filing such proofs of  
3 claim;

4           “(2) indicate whether secured creditors need to  
5 file proofs of claim; and

6           “(3) contain any other information required to  
7 be included in such notification to creditors under  
8 this title and the orders of the court.

9           “(d) Any rule of procedure or order of the court as  
10 to notice or the filing of a proof of claim shall provide  
11 such additional time to creditors with foreign addresses  
12 as is reasonable under the circumstances.

13           “SUBCHAPTER III—RECOGNITION OF A  
14 FOREIGN PROCEEDING AND RELIEF

15 “§ 1515. **Application for recognition**

16           “(a) A foreign representative applies to the court for  
17 recognition of a foreign proceeding in which the foreign  
18 representative has been appointed by filing a petition for  
19 recognition.

20           “(b) A petition for recognition shall be accompanied  
21 by—

22           “(1) a certified copy of the decision com-  
23 mencing such foreign proceeding and appointing the  
24 foreign representative;

1           “(2) a certificate from the foreign court affirm-  
2           ing the existence of such foreign proceeding and of  
3           the appointment of the foreign representative; or

4           “(3) in the absence of evidence referred to in  
5           paragraphs (1) and (2), any other evidence accept-  
6           able to the court of the existence of such foreign  
7           proceeding and of the appointment of the foreign  
8           representative.

9           “(c) A petition for recognition shall also be accom-  
10          panied by a statement identifying all foreign proceedings  
11          with respect to the debtor that are known to the foreign  
12          representative.

13          “(d) The documents referred to in paragraphs (1)  
14          and (2) of subsection (b) shall be translated into English.  
15          The court may require a translation into English of addi-  
16          tional documents.

17          **“§ 1516. Presumptions concerning recognition**

18          “(a) If the decision or certificate referred to in section  
19          1515(b) indicates that the foreign proceeding is a foreign  
20          proceeding and that the person or body is a foreign rep-  
21          resentative, the court is entitled to so presume.

22          “(b) The court is entitled to presume that documents  
23          submitted in support of the petition for recognition are  
24          authentic, whether or not they have been legalized.

1       “(c) In the absence of evidence to the contrary, the  
2 debtor’s registered office, or habitual residence in the case  
3 of an individual, is presumed to be the center of the debt-  
4 or’s main interests.

5 **“§ 1517. Order granting recognition**

6       “(a) Subject to section 1506, after notice and a hear-  
7 ing, an order recognizing a foreign proceeding shall be en-  
8 tered if—

9               “(1) such foreign proceeding for which recogni-  
10 tion is sought is a foreign main proceeding or for-  
11 eign nonmain proceeding within the meaning of sec-  
12 tion 1502;

13               “(2) the foreign representative applying for rec-  
14 ognition is a person or body; and

15               “(3) the petition meets the requirements of sec-  
16 tion 1515.

17       “(b) Such foreign proceeding shall be recognized—

18               “(1) as a foreign main proceeding if it is pend-  
19 ing in the country where the debtor has the center  
20 of its main interests; or

21               “(2) as a foreign nonmain proceeding if the  
22 debtor has an establishment within the meaning of  
23 section 1502 in the foreign country where the pro-  
24 ceeding is pending.

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

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

13 **“§ 1518. Subsequent information**

14           “From the time of filing the petition for recognition  
15 of a foreign proceeding, the foreign representative shall  
16 file with the court promptly a notice of change of status  
17 concerning—

18                   “(1) any substantial change in the status of  
19 such foreign proceeding or the status of the foreign  
20 representative’s appointment; and

21                   “(2) any other foreign proceeding regarding the  
22 debtor that becomes known to the foreign represent-  
23 ative.



1 **“§ 1519. Relief that may be granted upon filing peti-**  
2 **tion for recognition**

3 “(a) From the time of filing a petition for recognition  
4 until the court rules on the petition, the court may, at  
5 the request of the foreign representative, where relief is  
6 urgently needed to protect the assets of the debtor or the  
7 interests of the creditors, grant relief of a provisional na-  
8 ture, including—

9 “(1) staying execution against the debtor’s as-  
10 sets;

11 “(2) entrusting the administration or realiza-  
12 tion of all or part of the debtor’s assets located in  
13 the United States to the foreign representative or  
14 another person authorized by the court, including an  
15 examiner, in order to protect and preserve the value  
16 of assets that, by their nature or because of other  
17 circumstances, are perishable, susceptible to devalu-  
18 ation or otherwise in jeopardy; and

19 “(3) any relief referred to in paragraph (3),  
20 (4), or (7) of section 1521(a).

21 “(b) Unless extended under section 1521(a)(6), the  
22 relief granted under this section terminates when the peti-  
23 tion for recognition is granted.

24 “(c) It is a ground for denial of relief under this sec-  
25 tion that such relief would interfere with the administra-  
26 tion of a foreign main proceeding.



1           “(3) unless the court orders otherwise, the for-  
2           foreign representative may operate the debtor’s busi-  
3           ness and may exercise the rights and powers of a  
4           trustee under and to the extent provided by sections  
5           363 and 552; and

6           “(4) section 552 applies to property of the debt-  
7           or that is within the territorial jurisdiction of the  
8           United States.

9           “(b) Subsection (a) does not affect the right to com-  
10          mence an individual action or proceeding in a foreign  
11          country to the extent necessary to preserve a claim against  
12          the debtor.

13          “(c) Subsection (a) does not affect the right of a for-  
14          eign representative or an entity to file a petition com-  
15          mencing a case under this title or the right of any party  
16          to file claims or take other proper actions in such a case.

17          **“§ 1521. Relief that may be granted upon recognition**

18          “(a) Upon recognition of a foreign proceeding, wheth-  
19          er main or nonmain, where necessary to effectuate the  
20          purpose of this chapter and to protect the assets of the  
21          debtor or the interests of the creditors, the court may, at  
22          the request of the foreign representative, grant any appro-  
23          priate relief, including—

24                  “(1) staying the commencement or continuation  
25          of an individual action or proceeding concerning the

1 debtor's assets, rights, obligations or liabilities to the  
2 extent they have not been stayed under section  
3 1520(a);

4 “(2) staying execution against the debtor's as-  
5 sets to the extent it has not been stayed under sec-  
6 tion 1520(a);

7 “(3) suspending the right to transfer, encumber  
8 or otherwise dispose of any assets of the debtor to  
9 the extent this right has not been suspended under  
10 section 1520(a);

11 “(4) providing for the examination of witnesses,  
12 the taking of evidence or the delivery of information  
13 concerning the debtor's assets, affairs, rights, obliga-  
14 tions or liabilities;

15 “(5) entrusting the administration or realiza-  
16 tion of all or part of the debtor's assets within the  
17 territorial jurisdiction of the United States to the  
18 foreign representative or another person, including  
19 an examiner, authorized by the court;

20 “(6) extending relief granted under section  
21 1519(a); and

22 “(7) granting any additional relief that may be  
23 available to a trustee, except for relief available  
24 under sections 522, 544, 545, 547, 548, 550, and  
25 724(a).

1       “(b) Upon recognition of a foreign proceeding, wheth-  
2 er main or nonmain, the court may, at the request of the  
3 foreign representative, entrust the distribution of all or  
4 part of the debtor’s assets located in the United States  
5 to the foreign representative or another person, including  
6 an examiner, authorized by the court, provided that the  
7 court is satisfied that the interests of creditors in the  
8 United States are sufficiently protected.

9       “(c) In granting relief under this section to a rep-  
10 resentative of a foreign nonmain proceeding, the court  
11 must be satisfied that the relief relates to assets that,  
12 under the law of the United States, should be adminis-  
13 tered in the foreign nonmain proceeding or concerns infor-  
14 mation required in that proceeding.

15       “(d) The court may not enjoin a police or regulatory  
16 act of a governmental unit, including a criminal action or  
17 proceeding, under this section.

18       “(e) The standards, procedures, and limitations ap-  
19 plicable to an injunction shall apply to relief under para-  
20 graphs (1), (2), (3), and (6) of subsection (a).

21       “(f) The exercise of rights not subject to the stay  
22 arising under section 362(a) pursuant to paragraph (6),  
23 (7), (17), or (27) of section 362(b) or pursuant to section  
24 362(n) shall not be stayed by any order of a court or ad-  
25 ministrative agency in any proceeding under this chapter.

1 **“§ 1522. Protection of creditors and other interested**  
2 **persons**

3 “(a) The court may grant relief under section 1519  
4 or 1521, or may modify or terminate relief under sub-  
5 section (c), only if the interests of the creditors and other  
6 interested entities, including the debtor, are sufficiently  
7 protected.

8 “(b) The court may subject relief granted under sec-  
9 tion 1519 or 1521, or the operation of the debtor’s busi-  
10 ness under section 1520(a)(3), to conditions it considers  
11 appropriate, including the giving of security or the filing  
12 of a bond.

13 “(c) The court may, at the request of the foreign rep-  
14 resentative or an entity affected by relief granted under  
15 section 1519 or 1521, or at its own motion, modify or  
16 terminate such relief.

17 “(d) Section 1104(d) shall apply to the appointment  
18 of an examiner under this chapter. Any examiner shall  
19 comply with the qualification requirements imposed on a  
20 trustee by section 322.

21 **“§ 1523. Actions to avoid acts detrimental to creditors**

22 “(a) Upon recognition of a foreign proceeding, the  
23 foreign representative has standing in a case concerning  
24 the debtor pending under another chapter of this title to  
25 initiate actions under sections 522, 544, 545, 547, 548,  
26 550, 553, and 724(a).

1       “(b) When a foreign proceeding is a foreign nonmain  
2 proceeding, the court must be satisfied that an action  
3 under subsection (a) relates to assets that, under United  
4 States law, should be administered in the foreign nonmain  
5 proceeding.

6       **“§ 1524. Intervention by a foreign representative**

7       “Upon recognition of a foreign proceeding, the for-  
8 eign representative may intervene in any proceedings in  
9 a State or Federal court in the United States in which  
10 the debtor is a party.

11       “SUBCHAPTER IV—COOPERATION WITH FOR-  
12       EIGN COURTS AND FOREIGN REPRESENTA-  
13       TIVES

14       **“§ 1525. Cooperation and direct communication be-  
15                       tween the court and foreign courts or for-  
16                       eign representatives**

17       “(a) Consistent with section 1501, the court shall co-  
18 operate to the maximum extent possible with a foreign  
19 court or a foreign representative, either directly or  
20 through the trustee.

21       “(b) The court is entitled to communicate directly  
22 with, or to request information or assistance directly from,  
23 a foreign court or a foreign representative, subject to the  
24 rights of a party in interest to notice and participation.

1 **“§ 1526. Cooperation and direct communication be-**  
2 **tween the trustee and foreign courts or**  
3 **foreign representatives**

4 “(a) Consistent with section 1501, the trustee or  
5 other person, including an examiner, authorized by the  
6 court, shall, subject to the supervision of the court, cooper-  
7 ate to the maximum extent possible with a foreign court  
8 or a foreign representative.

9 “(b) The trustee or other person, including an exam-  
10 iner, authorized by the court is entitled, subject to the su-  
11 pervision of the court, to communicate directly with a for-  
12 eign court or a foreign representative.

13 **“§ 1527. Forms of cooperation**

14 “Cooperation referred to in sections 1525 and 1526  
15 may be implemented by any appropriate means, includ-  
16 ing—

17 “(1) appointment of a person or body, including  
18 an examiner, to act at the direction of the court;

19 “(2) communication of information by any  
20 means considered appropriate by the court;

21 “(3) coordination of the administration and su-  
22 pervision of the debtor’s assets and affairs;

23 “(4) approval or implementation of agreements  
24 concerning the coordination of proceedings; and

25 “(5) coordination of concurrent proceedings re-  
26 garding the same debtor.



1 “SUBCHAPTER V—CONCURRENT PROCEEDINGS

2 **“§ 1528. Commencement of a case under this title**

3 **after recognition of a foreign main pro-**

4 **ceeding**

5 “After recognition of a foreign main proceeding, a  
6 case under another chapter of this title may be commenced  
7 only if the debtor has assets in the United States. The  
8 effects of such case shall be restricted to the assets of the  
9 debtor that are within the territorial jurisdiction of the  
10 United States and, to the extent necessary to implement  
11 cooperation and coordination under sections 1525, 1526,  
12 and 1527, to other assets of the debtor that are within  
13 the jurisdiction of the court under sections 541(a) of this  
14 title, and 1334(e) of title 28, to the extent that such other  
15 assets are not subject to the jurisdiction and control of  
16 a foreign proceeding that has been recognized under this  
17 chapter.

18 **“§ 1529. Coordination of a case under this title and a**

19 **foreign proceeding**

20 “If a foreign proceeding and a case under another  
21 chapter of this title are pending concurrently regarding  
22 the same debtor, the court shall seek cooperation and co-  
23 ordination under sections 1525, 1526, and 1527, and the  
24 following shall apply:

1           “(1) If the case in the United States pending  
2           at the time the petition for recognition of such for-  
3           eign proceeding is filed—

4                   “(A) any relief granted under section 1519  
5                   or 1521 must be consistent with the relief  
6                   granted in the case in the United States; and

7                   “(B) section 1520 does not apply even if  
8                   such foreign proceeding is recognized as a for-  
9                   eign main proceeding.

10           “(2) If a case in the United States under this  
11           title commences after recognition, or after the date  
12           of the filing of the petition for recognition, of such  
13           foreign proceeding—

14                   “(A) any relief in effect under section  
15                   1519 or 1521 shall be reviewed by the court  
16                   and shall be modified or terminated if incon-  
17                   sistent with the case in the United States; and

18                   “(B) if such foreign proceeding is a foreign  
19                   main proceeding, the stay and suspension re-  
20                   ferred to in section 1520(a) shall be modified or  
21                   terminated if inconsistent with the relief grant-  
22                   ed in the case in the United States.

23           “(3) In granting, extending, or modifying relief  
24           granted to a representative of a foreign nonmain  
25           proceeding, the court must be satisfied that the re-

1        relief relates to assets that, under the laws of the  
2        United States, should be administered in the foreign  
3        nonmain proceeding or concerns information re-  
4        quired in that proceeding.

5            “(4) In achieving cooperation and coordination  
6        under sections 1528 and 1529, the court may grant  
7        any of the relief authorized under section 305.

8        **“§ 1530. Coordination of more than 1 foreign pro-**  
9            **ceeding**

10        “In matters referred to in section 1501, with respect  
11        to more than 1 foreign proceeding regarding the debtor,  
12        the court shall seek cooperation and coordination under  
13        sections 1525, 1526, and 1527, and the following shall  
14        apply:

15            “(1) Any relief granted under section 1519 or  
16        1521 to a representative of a foreign nonmain pro-  
17        ceeding after recognition of a foreign main pro-  
18        ceeding must be consistent with the foreign main  
19        proceeding.

20            “(2) If a foreign main proceeding is recognized  
21        after recognition, or after the filing of a petition for  
22        recognition, of a foreign nonmain proceeding, any  
23        relief in effect under section 1519 or 1521 shall be  
24        reviewed by the court and shall be modified or termi-

1 nated if inconsistent with the foreign main pro-  
2 ceeding.

3 “(3) If, after recognition of a foreign nonmain  
4 proceeding, another foreign nonmain proceeding is  
5 recognized, the court shall grant, modify, or termi-  
6 nate relief for the purpose of facilitating coordina-  
7 tion of the proceedings.

8 **“§ 1531. Presumption of insolvency based on recogni-  
9 tion of a foreign main proceeding**

10 “In the absence of evidence to the contrary, recogni-  
11 tion of a foreign main proceeding is, for the purpose of  
12 commencing a proceeding under section 303, proof that  
13 the debtor is generally not paying its debts as such debts  
14 become due.

15 **“§ 1532. Rule of payment in concurrent proceedings**

16 “Without prejudice to secured claims or rights in  
17 rem, a creditor who has received payment with respect to  
18 its claim in a foreign proceeding pursuant to a law relating  
19 to insolvency may not receive a payment for the same  
20 claim in a case under any other chapter of this title re-  
21 garding the debtor, so long as the payment to other credi-  
22 tors of the same class is proportionately less than the pay-  
23 ment the creditor has already received.”.

1 (b) CLERICAL AMENDMENT.—The table of chapters  
 2 for title 11, United States Code, is amended by inserting  
 3 after the item relating to chapter 13 the following:

“15. Ancillary and Other Cross-Border Cases ..... 1501”.

4 **SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28,**  
 5 **UNITED STATES CODE.**

6 (a) APPLICABILITY OF CHAPTERS.—Section 103 of  
 7 title 11, United States Code, is amended—

8 (1) in subsection (a), by inserting before the pe-  
 9 riod the following: “, and this chapter, sections 307,  
 10 362(n), 555 through 557, and 559 through 562  
 11 apply in a case under chapter 15”; and

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

13 “(k) Chapter 15 applies only in a case under such  
 14 chapter, except that—

15 “(1) sections 1505, 1513, and 1514 apply in all  
 16 cases under this title; and

17 “(2) section 1509 applies whether or not a case  
 18 under this title is pending.”.

19 (b) DEFINITIONS.—Section 101 of title 11, United  
 20 States Code, is amended by striking paragraphs (23) and  
 21 (24) and inserting the following:

22 “(23) ‘foreign proceeding’ means a collective ju-  
 23 dicial or administrative proceeding in a foreign coun-  
 24 try, including an interim proceeding, under a law re-  
 25 lating to insolvency or adjustment of debt in which

1 proceeding the assets and affairs of the debtor are  
2 subject to control or supervision by a foreign court,  
3 for the purpose of reorganization or liquidation;

4 “(24) ‘foreign representative’ means a person  
5 or body, including a person or body appointed on an  
6 interim basis, authorized in a foreign proceeding to  
7 administer the reorganization or the liquidation of  
8 the debtor’s assets or affairs or to act as a rep-  
9 resentative of such foreign proceeding;”.

10 (c) AMENDMENTS TO TITLE 28, UNITED STATES  
11 CODE.—

12 (1) PROCEDURES.—Section 157(b)(2) of title  
13 28, United States Code, is amended—

14 (A) in subparagraph (N), by striking  
15 “and” at the end;

16 (B) in subparagraph (O), by striking the  
17 period at the end and inserting “; and”; and

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

19 “(P) recognition of foreign proceedings  
20 and other matters under chapter 15 of title  
21 11.”.

22 (2) BANKRUPTCY CASES AND PROCEEDINGS.—  
23 Section 1334(c) of title 28, United States Code, is  
24 amended by striking “Nothing in” and inserting

1 “Except with respect to a case under chapter 15 of  
2 title 11, nothing in”.

3 (3) DUTIES OF TRUSTEES.—Section 586(a)(3)  
4 of title 28, United States Code, is amended by strik-  
5 ing “or 13” and inserting “13, or 15”.

6 (4) VENUE OF CASES ANCILLARY TO FOREIGN  
7 PROCEEDINGS.—Section 1410 of title 28, United  
8 States Code, is amended to read as follows:

9 **“§ 1410. Venue of cases ancillary to foreign pro-**  
10 **ceedings**

11 “A case under chapter 15 of title 11 may be com-  
12 menced in the district court of the United States for the  
13 district—

14 “(1) in which the debtor has its principal place  
15 of business or principal assets in the United States;

16 “(2) if the debtor does not have a place of busi-  
17 ness or assets in the United States, in which there  
18 is pending against the debtor an action or pro-  
19 ceeding in a Federal or State court; or

20 “(3) in a case other than those specified in  
21 paragraph (1) or (2), in which venue will be con-  
22 sistent with the interests of justice and the conven-  
23 ience of the parties, having regard to the relief  
24 sought by the foreign representative.”.

1 (d) OTHER SECTIONS OF TITLE 11.—Title 11 of the  
2 United States Code is amended—

3 (1) in section 109(b), by striking paragraph (3)  
4 and inserting the following:

5 “(3)(A) a foreign insurance company, engaged  
6 in such business in the United States; or

7 “(B) a foreign bank, savings bank, cooperative  
8 bank, savings and loan association, building and  
9 loan association, or credit union, that has a branch  
10 or agency (as defined in section 1(b) of the Inter-  
11 national Banking Act of 1978 in the United  
12 States.”;

13 (2) in section 303, by striking subsection (k);

14 (3) by striking section 304;

15 (4) in the table of sections for chapter 3 by  
16 striking the item relating to section 304;

17 (5) in section 306 by striking “, 304,” each  
18 place it appears;

19 (6) in section 305(a) by striking paragraph (2)  
20 and inserting the following:

21 “(2)(A) a petition under section 1515 for rec-  
22 ognition of a foreign proceeding has been granted;  
23 and



1           “(B) the purposes of chapter 15 of this title  
2 would be best served by such dismissal or suspen-  
3 sion.”; and

4           (7) in section 508—

5           (A) by striking subsection (a); and

6           (B) in subsection (b), by striking “(b)”.

7           **TITLE IX—FINANCIAL**  
8           **CONTRACT PROVISIONS**

9           **SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CON-**  
10           **SERVATORS OR RECEIVERS OF INSURED DE-**  
11           **POSITORY INSTITUTIONS.**

12           (a) DEFINITION OF QUALIFIED FINANCIAL CON-  
13 TRACT.—

14           (1) FDIC-INSURED DEPOSITORY INSTITU-  
15 TIONS.—Section 11(e)(8)(D) of the Federal Deposit  
16 Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amend-  
17 ed—

18           (A) by striking “subsection—” and insert-  
19 ing “subsection, the following definitions shall  
20 apply.”; and

21           (B) in clause (i), by inserting “, resolution,  
22 or order” after “any similar agreement that the  
23 Corporation determines by regulation”.

1           (2) INSURED CREDIT UNIONS.—Section  
2           207(e)(8)(D) of the Federal Credit Union Act (12  
3           U.S.C. 1787(e)(8)(D)) is amended—

4                   (A) by striking “subsection—” and insert-  
5                   ing “subsection, the following definitions shall  
6                   apply:”; and

7                   (B) in clause (i), by inserting “, resolution,  
8                   or order” after “any similar agreement that the  
9                   Board determines by regulation”.

10          (b) DEFINITION OF SECURITIES CONTRACT.—

11           (1) FDIC-INSURED DEPOSITORY INSTITU-  
12           TIONS.—Section 11(e)(8)(D)(ii) of the Federal De-  
13           posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is  
14           amended to read as follows:

15                   “(ii) SECURITIES CONTRACT.—The  
16                   term ‘securities contract’—

17                           “(I) means a contract for the  
18                           purchase, sale, or loan of a security, a  
19                           certificate of deposit, a mortgage loan,  
20                           or any interest in a mortgage loan, a  
21                           group or index of securities, certifi-  
22                           cates of deposit, or mortgage loans or  
23                           interests therein (including any inter-  
24                           est therein or based on the value  
25                           thereof) or any option on any of the

1           foregoing, including any option to  
2           purchase or sell any such security,  
3           certificate of deposit, mortgage loan,  
4           interest, group or index, or option,  
5           and including any repurchase or re-  
6           verse repurchase transaction on any  
7           such security, certificate of deposit,  
8           mortgage loan, interest, group or  
9           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 Corporation  
14                   determines by regulation, resolution,  
15                   or order to include any such agree-  
16                   ment within the meaning of such  
17                   term;

18                   “(III) means any option entered  
19                   into on a national securities exchange  
20                   relating to foreign currencies;

21                   “(IV) means the guarantee by or  
22                   to any securities clearing agency of  
23                   any settlement of cash, securities, cer-  
24                   tificates of deposit, mortgage loans or  
25                   interests therein, group or index of se-

1 curities, certificates of deposit, or  
2 mortgage loans or interests therein  
3 (including any interest therein or  
4 based on the value thereof) or option  
5 on any of the foregoing, including any  
6 option to purchase or sell any such se-  
7 curity, certificate of deposit, mortgage  
8 loan, interest, group or index, or op-  
9 tion;

10 “(V) means any margin loan;

11 “(VI) means any other agree-  
12 ment or transaction that is similar to  
13 any agreement or transaction referred  
14 to in this clause;

15 “(VII) means any combination of  
16 the agreements or transactions re-  
17 ferred to in this clause;

18 “(VIII) means any option to  
19 enter into any agreement or trans-  
20 action referred to in this clause;

21 “(IX) means a master agreement  
22 that provides for an agreement or  
23 transaction referred to in subclause  
24 (I), (III), (IV), (V), (VI), (VII), or  
25 (VIII), together with all supplements

1 to any such master agreement, with-  
2 out regard to whether the master  
3 agreement provides for an agreement  
4 or transaction that is not a securities  
5 contract under this clause, except that  
6 the master agreement shall be consid-  
7 ered to be a securities contract under  
8 this clause only with respect to each  
9 agreement or transaction under the  
10 master agreement that is referred to  
11 in subclause (I), (III), (IV), (V), (VI),  
12 (VII), or (VIII); and

13 “(X) means any security agree-  
14 ment or arrangement or other credit  
15 enhancement related to any agree-  
16 ment or transaction referred to in this  
17 clause, including any guarantee or re-  
18 imbursement obligation in connection  
19 with any agreement or transaction re-  
20 ferred to in this clause.”.

21 (2) INSURED CREDIT UNIONS.—Section  
22 207(c)(8)(D)(ii) of the Federal Credit Union Act  
23 (12 U.S.C. 1787(c)(8)(D)(ii)) is amended to read as  
24 follows:

1                   “(ii) SECURITIES CONTRACT.—The  
2                   term ‘securities contract’—

3                   “(I) means a contract for the  
4                   purchase, sale, or loan of a security, a  
5                   certificate of deposit, a mortgage loan,  
6                   or any interest in a mortgage loan, a  
7                   group or index of securities, certifi-  
8                   cates of deposit, or mortgage loans or  
9                   interests therein (including any inter-  
10                  est therein or based on the value  
11                  thereof) or any option on any of the  
12                  foregoing, including any option to  
13                  purchase or sell any such security,  
14                  certificate of deposit, mortgage loan,  
15                  interest, group or index, or option,  
16                  and including any repurchase or re-  
17                  verse repurchase transaction on any  
18                  such security, certificate of deposit,  
19                  mortgage loan, interest, group or  
20                  index, or option;

21                  “(II) does not include any pur-  
22                  chase, sale, or repurchase obligation  
23                  under a participation in a commercial  
24                  mortgage loan unless the Board deter-  
25                  mines by regulation, resolution, or

1 order to include any such agreement  
2 within the meaning of such term;

3 “(III) means any option entered  
4 into on a national securities exchange  
5 relating to foreign currencies;

6 “(IV) means the guarantee by or  
7 to any securities clearing agency of  
8 any settlement of cash, securities, cer-  
9 tificates of deposit, mortgage loans or  
10 interests therein, group or index of se-  
11 curities, certificates of deposit, or  
12 mortgage loans or interests therein  
13 (including any interest therein or  
14 based on the value thereof) or option  
15 on any of the foregoing, including any  
16 option to purchase or sell any such se-  
17 curity, certificate of deposit, mortgage  
18 loan, interest, group or index, or op-  
19 tion;

20 “(V) means any margin loan;

21 “(VI) means any other agree-  
22 ment or transaction that is similar to  
23 any agreement or transaction referred  
24 to in this clause;

1           “(VII) means any combination of  
2           the agreements or transactions re-  
3           ferred to in this clause;

4           “(VIII) means any option to  
5           enter into any agreement or trans-  
6           action referred to in this clause;

7           “(IX) means a master agreement  
8           that provides for an agreement or  
9           transaction referred to in subclause  
10          (I), (III), (IV), (V), (VI), (VII), or  
11          (VIII), together with all supplements  
12          to any such master agreement, with-  
13          out regard to whether the master  
14          agreement provides for an agreement  
15          or transaction that is not a securities  
16          contract under this clause, except that  
17          the master agreement shall be consid-  
18          ered to be a securities contract under  
19          this clause only with respect to each  
20          agreement or transaction under the  
21          master agreement that is referred to  
22          in subclause (I), (III), (IV), (V), (VI),  
23          (VII), or (VIII); and

24          “(X) means any security agree-  
25          ment or arrangement or other credit



1 enhancement related to any agree-  
 2 ment or transaction referred to in this  
 3 clause, including any guarantee or re-  
 4 imbursement obligation in connection  
 5 with any agreement or transaction re-  
 6 ferred to in this clause.”.

7 (c) DEFINITION OF COMMODITY CONTRACT.—

8 (1) FDIC-INSURED DEPOSITORY INSTITU-  
 9 TIONS.—Section 11(e)(8)(D)(iii) of the Federal De-  
 10 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is  
 11 amended to read as follows:

12 “(iii) COMMODITY CONTRACT.—The  
 13 term ‘commodity contract’ means—

14 “(I) with respect to a futures  
 15 commission merchant, a contract for  
 16 the purchase or sale of a commodity  
 17 for future delivery on, or subject to  
 18 the rules of, a contract market or  
 19 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  
 25 transaction;

1           “(IV) with respect to a clearing  
2           organization, a contract for the pur-  
3           chase or sale of a commodity for fu-  
4           ture delivery on, or subject to the  
5           rules of, a contract market or board  
6           of trade that is cleared by such clear-  
7           ing organization, or commodity option  
8           traded on, or subject to the rules of,  
9           a contract market or board of trade  
10          that is cleared by such clearing orga-  
11          nization;

12           “(V) with respect to a commodity  
13          options dealer, a commodity option;

14           “(VI) any other agreement or  
15          transaction that is similar to any  
16          agreement or transaction referred to  
17          in this clause;

18           “(VII) any combination of the  
19          agreements or transactions referred to  
20          in this clause;

21           “(VIII) any option to enter into  
22          any agreement or transaction referred  
23          to in this clause;

24           “(IX) a master agreement that  
25          provides for an agreement or trans-

1 action referred to in subclause (I),  
2 (II), (III), (IV), (V), (VI), (VII), or  
3 (VIII), together with all supplements  
4 to any such master agreement, with-  
5 out regard to whether the master  
6 agreement provides for an agreement  
7 or transaction that is not a com-  
8 modity contract under this clause, ex-  
9 cept that the master agreement shall  
10 be considered to be a commodity con-  
11 tract under this clause only with re-  
12 spect to each agreement or trans-  
13 action under the master agreement  
14 that is referred to in subclause (I),  
15 (II), (III), (IV), (V), (VI), (VII), or  
16 (VIII); or

17 “(X) any security agreement or  
18 arrangement or other credit enhance-  
19 ment related to any agreement or  
20 transaction referred to in this clause,  
21 including any guarantee or reimburse-  
22 ment obligation in connection with  
23 any agreement or transaction referred  
24 to in this clause.”.

1           (2)   INSURED   CREDIT   UNIONS.—Section  
2           207(c)(8)(D)(iii) of the Federal Credit Union Act  
3           (12 U.S.C. 1787(c)(8)(D)(iii)) is amended to read as  
4           follows:

5                   “(iii)   COMMODITY   CONTRACT.—The  
6                   term ‘commodity contract’ means—

7                           “(I) with respect to a futures  
8                           commission merchant, a contract for  
9                           the purchase or sale of a commodity  
10                           for future delivery on, or subject to  
11                           the rules of, a contract market or  
12                           board of trade;

13                           “(II) with respect to a foreign fu-  
14                           tures commission merchant, a foreign  
15                           future;

16                           “(III) with respect to a leverage  
17                           transaction merchant, a leverage  
18                           transaction;

19                           “(IV) with respect to a clearing  
20                           organization, a contract for the pur-  
21                           chase or sale of a commodity for fu-  
22                           ture delivery on, or subject to the  
23                           rules of, a contract market or board  
24                           of trade that is cleared by such clear-  
25                           ing organization, or commodity option

1 traded on, or subject to the rules of,  
2 a contract market or board of trade  
3 that is cleared by such clearing orga-  
4 nization;

5 “(V) with respect to a commodity  
6 options dealer, a commodity option;

7 “(VI) any other agreement or  
8 transaction that is similar to any  
9 agreement or transaction referred to  
10 in this clause;

11 “(VII) any combination of the  
12 agreements or transactions referred to  
13 in this clause;

14 “(VIII) any option to enter into  
15 any agreement or transaction referred  
16 to in this clause;

17 “(IX) a master agreement that  
18 provides for an agreement or trans-  
19 action referred to in subclause (I),  
20 (II), (III), (IV), (V), (VI), (VII), or  
21 (VIII), together with all supplements  
22 to any such master agreement, with-  
23 out regard to whether the master  
24 agreement provides for an agreement  
25 or transaction that is not a com-

1 commodity contract under this clause, ex-  
 2 cept that the master agreement shall  
 3 be considered to be a commodity con-  
 4 tract under this clause only with re-  
 5 spect to each agreement or trans-  
 6 action under the master agreement  
 7 that is referred to in subclause (I),  
 8 (II), (III), (IV), (V), (VI), (VII), or  
 9 (VIII); or

10 “(X) any security agreement or  
 11 arrangement or other credit enhance-  
 12 ment related to any agreement or  
 13 transaction referred to in this clause,  
 14 including any guarantee or reimburse-  
 15 ment obligation in connection with  
 16 any agreement or transaction referred  
 17 to in this clause.”.

18 (d) DEFINITION OF FORWARD CONTRACT.—

19 (1) FDIC-INSURED DEPOSITORY INSTITU-  
 20 TIONS.—Section 11(e)(8)(D)(iv) of the Federal De-  
 21 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is  
 22 amended to read as follows:

23 “(iv) FORWARD CONTRACT.—The  
 24 term ‘forward contract’ means—

1           “(I) a contract (other than a  
2 commodity contract) for the purchase,  
3 sale, or transfer of a commodity or  
4 any similar good, article, service,  
5 right, or interest which is presently or  
6 in the future becomes the subject of  
7 dealing in the forward contract trade,  
8 or product or byproduct thereof, with  
9 a maturity date more than 2 days  
10 after the date the contract is entered  
11 into, including, a repurchase trans-  
12 action, reverse repurchase transaction,  
13 consignment, lease, swap, hedge  
14 transaction, deposit, loan, option, allo-  
15 cated transaction, unallocated trans-  
16 action, or any other similar agree-  
17 ment;

18           “(II) any combination of agree-  
19 ments or transactions referred to in  
20 subclauses (I) and (III);

21           “(III) any option to enter into  
22 any agreement or transaction referred  
23 to in subclause (I) or (II);

24           “(IV) a master agreement that  
25 provides for an agreement or trans-

1 action referred to in subclauses (I),  
2 (II), or (III), together with all supple-  
3 ments to any such master agreement,  
4 without regard to whether the master  
5 agreement provides for an agreement  
6 or transaction that is not a forward  
7 contract under this clause, except that  
8 the master agreement shall be consid-  
9 ered to be a forward contract under  
10 this clause only with respect to each  
11 agreement or transaction under the  
12 master agreement that is referred to  
13 in subclause (I), (II), or (III); or

14 “(V) any security agreement or  
15 arrangement or other credit enhance-  
16 ment related to any agreement or  
17 transaction referred to in subclause  
18 (I), (II), (III), or (IV), including any  
19 guarantee or reimbursement obliga-  
20 tion in connection with any agreement  
21 or transaction referred to in any such  
22 subclause.”.

23 (2) INSURED CREDIT UNIONS.—Section  
24 207(c)(8)(D)(iv) of the Federal Credit Union Act



1 (12 U.S.C. 1787(c)(8)(D)(iv)) is amended to read as  
2 follows:

3 “(iv) FORWARD CONTRACT.—The  
4 term ‘forward contract’ means—

5 “(I) a contract (other than a  
6 commodity contract) for the purchase,  
7 sale, or transfer of a commodity or  
8 any similar good, article, service,  
9 right, or interest which is presently or  
10 in the future becomes the subject of  
11 dealing in the forward contract trade,  
12 or product or byproduct thereof, with  
13 a maturity date more than 2 days  
14 after the date the contract is entered  
15 into, including, a repurchase trans-  
16 action, reverse repurchase transaction,  
17 consignment, lease, swap, hedge  
18 transaction, deposit, loan, option, allo-  
19 cated transaction, unallocated trans-  
20 action, or any other similar agree-  
21 ment;

22 “(II) any combination of agree-  
23 ments or transactions referred to in  
24 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  
18 in 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  
23 (I), (II), (III), or (IV), including any  
24 guarantee or reimbursement obliga-  
25 tion in connection with any agreement

1 or transaction referred to in any such  
2 subclause.”.

3 (e) DEFINITION OF REPURCHASE AGREEMENT.—

4 (1) FDIC-INSURED DEPOSITORY INSTITU-  
5 TIONS.—Section 11(e)(8)(D)(v) of the Federal De-  
6 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is  
7 amended to read as follows:

8 “(v) REPURCHASE AGREEMENT.—The  
9 term ‘repurchase agreement’ (which defini-  
10 tion also applies to a reverse repurchase  
11 agreement)—

12 “(I) means an agreement, includ-  
13 ing related terms, which provides for  
14 the transfer of one or more certifi-  
15 cates of deposit, mortgage-related se-  
16 curities (as such term is defined in  
17 the Securities Exchange Act of 1934),  
18 mortgage loans, interests in mortgage-  
19 related securities or mortgage loans,  
20 eligible bankers’ acceptances, qualified  
21 foreign government securities or secu-  
22 rities that are direct obligations of, or  
23 that are fully guaranteed by, the  
24 United States or any agency of the  
25 United States against the transfer of

1 funds by the transferee of such certifi-  
2 cates of deposit, eligible bankers' ac-  
3 ceptances, securities, mortgage loans,  
4 or interests with a simultaneous  
5 agreement by such transferee to  
6 transfer to the transferor thereof cer-  
7 tificates of deposit, eligible bankers'  
8 acceptances, securities, mortgage  
9 loans, or interests as described above,  
10 at a date certain not later than 1 year  
11 after such transfers or on demand,  
12 against the transfer of funds, or any  
13 other similar agreement;

14 “(II) does not include any repur-  
15 chase obligation under a participation  
16 in a commercial mortgage loan unless  
17 the Corporation determines by regula-  
18 tion, resolution, or order to include  
19 any such participation within the  
20 meaning of such term;

21 “(III) means any combination of  
22 agreements or transactions referred to  
23 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  
7 (I), (III), or (IV), together with all  
8 supplements to any such master  
9 agreement, without regard to whether  
10 the master agreement provides for an  
11 agreement or transaction that is not a  
12 repurchase agreement under this  
13 clause, except that the master agree-  
14 ment shall be considered to be a re-  
15 purchase agreement under this sub-  
16 clause only with respect to each agree-  
17 ment or transaction under the master  
18 agreement that is referred to in sub-  
19 clause (I), (III), or (IV); and

20           “(VI) means any security agree-  
21 ment or arrangement or other credit  
22 enhancement related to any agree-  
23 ment or transaction referred to in  
24 subclause (I), (III), (IV), or (V), in-  
25 cluding any guarantee or reimburse-

1                   ment obligation in connection with  
 2                   any agreement or transaction referred  
 3                   to in any such subclause.

4                   For purposes of this clause, the term  
 5                   ‘qualified foreign government security’  
 6                   means a security that is a direct obligation  
 7                   of, or that is fully guaranteed by, the cen-  
 8                   tral government of a member of the Orga-  
 9                   nization for Economic Cooperation and  
 10                  Development (as determined by regulation  
 11                  or order adopted by the appropriate Fed-  
 12                  eral banking authority).”.

13                  (2)   INSURED   CREDIT   UNIONS.—Section  
 14                  207(c)(8)(D)(v) of the Federal Credit Union Act (12  
 15                  U.S.C. 1787(c)(8)(D)(v)) is amended to read as fol-  
 16                  lows:

17                               “(v) REPURCHASE AGREEMENT.—The  
 18                               term ‘repurchase agreement’ (which defini-  
 19                               tion also applies to a reverse repurchase  
 20                               agreement)—

21                                       “(I) means an agreement, includ-  
 22                                       ing related terms, which provides for  
 23                                       the transfer of one or more certifi-  
 24                                       cates of deposit, mortgage-related se-  
 25                                       curities (as such term is defined in

1 the Securities Exchange Act of 1934),  
2 mortgage loans, interests in mortgage-  
3 related securities or mortgage loans,  
4 eligible bankers' acceptances, qualified  
5 foreign government securities or secu-  
6 rities that are direct obligations of, or  
7 that are fully guaranteed by, the  
8 United States or any agency of the  
9 United States against the transfer of  
10 funds by the transferee of such certifi-  
11 cates of deposit, eligible bankers' ac-  
12 ceptances, securities, mortgage loans,  
13 or interests with a simultaneous  
14 agreement by such transferee to  
15 transfer to the transferor thereof cer-  
16 tificates of deposit, eligible bankers'  
17 acceptances, securities, mortgage  
18 loans, or interests as described above,  
19 at a date certain not later than 1 year  
20 after such transfers or on demand,  
21 against the transfer of funds, or any  
22 other similar agreement;

23 “(II) does not include any repur-  
24 chase obligation under a participation  
25 in a commercial mortgage loan unless

1 the Board determines by regulation,  
2 resolution, or order to include any  
3 such participation within the meaning  
4 of such term;

5 “(III) means any combination of  
6 agreements or transactions referred to  
7 in subclauses (I) and (IV);

8 “(IV) means any option to enter  
9 into any agreement or transaction re-  
10 ferred to in subclause (I) or (III);

11 “(V) means a master agreement  
12 that provides for an agreement or  
13 transaction referred to in subclause  
14 (I), (III), or (IV), together with all  
15 supplements to any such master  
16 agreement, without regard to whether  
17 the master agreement provides for an  
18 agreement or transaction that is not a  
19 repurchase agreement under this  
20 clause, except that the master agree-  
21 ment shall be considered to be a re-  
22 purchase agreement under this sub-  
23 clause only with respect to each agree-  
24 ment or transaction under the master



1 agreement that is referred to in sub-  
2 clause (I), (III), or (IV); and

3 “(VI) means any security agree-  
4 ment or arrangement or other credit  
5 enhancement related to any agree-  
6 ment or transaction referred to in  
7 subclause (I), (III), (IV), or (V), in-  
8 cluding any guarantee or reimburse-  
9 ment obligation in connection with  
10 any agreement or transaction referred  
11 to in any such subclause.

12 For purposes of this clause, the term  
13 ‘qualified foreign government security’  
14 means a security that is a direct obligation  
15 of, or that is fully guaranteed by, the cen-  
16 tral government of a member of the Orga-  
17 nization for Economic Cooperation and  
18 Development (as determined by regulation  
19 or order adopted by the appropriate Fed-  
20 eral banking authority).”.

21 (f) DEFINITION OF SWAP AGREEMENT.—

22 (1) FDIC-INSURED DEPOSITORY INSTITU-  
23 TIONS.—Section 11(e)(8)(D)(vi) of the Federal De-  
24 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is  
25 amended to read as follows:

1                   “(vi) SWAP AGREEMENT.—The term  
2                   ‘swap agreement’ means—  
3                   “(I) any agreement, including the  
4                   terms and conditions incorporated by  
5                   reference in any such agreement,  
6                   which is an interest rate swap, option,  
7                   future, or forward agreement, includ-  
8                   ing a rate floor, rate cap, rate collar,  
9                   cross-currency rate swap, and basis  
10                  swap; a spot, same day-tomorrow, to-  
11                  morrow-next, forward, or other for-  
12                  eign exchange or precious metals  
13                  agreement; a currency swap, option,  
14                  future, or forward agreement; an eq-  
15                  uity index or equity swap, option, fu-  
16                  ture, or forward agreement; a debt  
17                  index or debt swap, option, future, or  
18                  forward agreement; a total return,  
19                  credit spread or credit swap, option,  
20                  future, or forward agreement; a com-  
21                  modity index or commodity swap, op-  
22                  tion, future, or forward agreement; or  
23                  a weather swap, weather derivative, or  
24                  weather option;

1           “(II) any agreement or trans-  
2           action that is similar to any other  
3           agreement or transaction referred to  
4           in this clause and that is of a type  
5           that has been, is presently, or in the  
6           future becomes, the subject of recur-  
7           rent dealings in the swap markets (in-  
8           cluding terms and conditions incor-  
9           porated by reference in such agree-  
10          ment) and that is a forward, swap, fu-  
11          ture, or option on one or more rates,  
12          currencies, commodities, equity securi-  
13          ties or other equity instruments, debt  
14          securities or other debt instruments,  
15          quantitative measures associated with  
16          an occurrence, extent of an occur-  
17          rence, or contingency associated with  
18          a financial, commercial, or economic  
19          consequence, or economic or financial  
20          indices or measures of economic or fi-  
21          nancial risk or value;

22                 “(III) any combination of agree-  
23                 ments or transactions referred to in  
24                 this clause;

1           “(IV) any option to enter into  
2           any agreement or transaction referred  
3           to in this clause;

4           “(V) a master agreement that  
5           provides for an agreement or trans-  
6           action referred to in subclause (I),  
7           (II), (III), or (IV), together with all  
8           supplements to any such master  
9           agreement, without regard to whether  
10          the master agreement contains an  
11          agreement or transaction that is not a  
12          swap agreement under this clause, ex-  
13          cept that the master agreement shall  
14          be considered to be a swap agreement  
15          under this clause only with respect to  
16          each agreement or transaction under  
17          the master agreement that is referred  
18          to in subclause (I), (II), (III), or (IV);  
19          and

20          “(VI) any security agreement or  
21          arrangement or other credit enhance-  
22          ment related to any agreements or  
23          transactions referred to in subclause  
24          (I), (II), (III), (IV), or (V), including  
25          any guarantee or reimbursement obli-

1                   gation in connection with any agree-  
 2                   ment or transaction referred to in any  
 3                   such subclause.

4                   Such term is applicable for purposes of  
 5                   this subsection only and shall not be con-  
 6                   strued or applied so as to challenge or af-  
 7                   fect the characterization, definition, or  
 8                   treatment of any swap agreement under  
 9                   any other statute, regulation, or rule, in-  
 10                  cluding the Securities Act of 1933, the Se-  
 11                  curities Exchange Act of 1934, the Public  
 12                  Utility Holding Company Act of 1935, the  
 13                  Trust Indenture Act of 1939, the Invest-  
 14                  ment Company Act of 1940, the Invest-  
 15                  ment Advisers Act of 1940, the Securities  
 16                  Investor Protection Act of 1970, the Com-  
 17                  modity Exchange Act, the Gramm-Leach-  
 18                  Bliley Act, and the Legal Certainty for  
 19                  Bank Products Act of 2000.”.

20                  (2)   INSURED    CREDIT    UNIONS.—Section  
 21                  207(c)(8)(D) of the Federal Credit Union Act (12  
 22                  U.S.C. 1787(c)(8)(D)) is amended by adding at the  
 23                  end the following new clause:

24                               “(vi) SWAP AGREEMENT.—The term  
 25                               ‘swap agreement’ means—

1           “(I) any agreement, including the  
2 terms and conditions incorporated by  
3 reference in any such agreement,  
4 which is an interest rate swap, option,  
5 future, or forward agreement, includ-  
6 ing a rate floor, rate cap, rate collar,  
7 cross-currency rate swap, and basis  
8 swap; a spot, same day-tomorrow, to-  
9 morrow-next, forward, or other for-  
10 eign exchange or precious metals  
11 agreement; a currency swap, option,  
12 future, or forward agreement; an eq-  
13 uity index or equity swap, option, fu-  
14 ture, or forward agreement; a debt  
15 index or debt swap, option, future, or  
16 forward agreement; a total return,  
17 credit spread or credit swap, option,  
18 future, or forward agreement; a com-  
19 modity index or commodity swap, op-  
20 tion, future, or forward agreement; or  
21 a weather swap, weather derivative, or  
22 weather option;

23           “(II) any agreement or trans-  
24 action that is similar to any other  
25 agreement or transaction referred to

1 in this clause and that is of a type  
2 that has been, is presently, or in the  
3 future becomes, the subject of recur-  
4 rent dealings in the swap markets (in-  
5 cluding terms and conditions incor-  
6 porated by reference in such agree-  
7 ment) and that is a forward, swap, fu-  
8 ture, or option on one or more rates,  
9 currencies, commodities, equity securi-  
10 ties or other equity instruments, debt  
11 securities or other debt instruments,  
12 quantitative measures associated with  
13 an occurrence, extent of an occur-  
14 rence, or contingency associated with  
15 a financial, commercial, or economic  
16 consequence, or economic or financial  
17 indices or measures of economic or fi-  
18 nancial risk or value;

19 “(III) any combination of agree-  
20 ments or transactions referred to in  
21 this clause;

22 “(IV) any option to enter into  
23 any agreement or transaction referred  
24 to in this clause;

1           “(V) a master agreement that  
2           provides for an agreement or trans-  
3           action referred to in subclause (I),  
4           (II), (III), or (IV), together with all  
5           supplements to any such master  
6           agreement, without regard to whether  
7           the master agreement contains an  
8           agreement or transaction that is not a  
9           swap agreement under this clause, ex-  
10          cept that the master agreement shall  
11          be considered to be a swap agreement  
12          under this clause only with respect to  
13          each agreement or transaction under  
14          the master agreement that is referred  
15          to in subclause (I), (II), (III), or (IV);  
16          and

17          “(VI) any security agreement or  
18          arrangement or other credit enhance-  
19          ment related to any agreements or  
20          transactions referred to in subclause  
21          (I), (II), (III), (IV), or (V), including  
22          any guarantee or reimbursement obli-  
23          gation in connection with any agree-  
24          ment or transaction referred to in any  
25          such subclause.



1           Such term is applicable for purposes of  
2           this subsection only and shall not be con-  
3           strued or applied so as to challenge or af-  
4           fect the characterization, definition, or  
5           treatment of any swap agreement under  
6           any other statute, regulation, or rule, in-  
7           cluding the Securities Act of 1933, the Se-  
8           curities Exchange Act of 1934, the Public  
9           Utility Holding Company Act of 1935, the  
10          Trust Indenture Act of 1939, the Invest-  
11          ment Company Act of 1940, the Invest-  
12          ment Advisers Act of 1940, the Securities  
13          Investor Protection Act of 1970, the Com-  
14          modity Exchange Act, the Gramm-Leach-  
15          Bliley Act, and the Legal Certainty for  
16          Bank Products Act of 2000.”.

17          (g) DEFINITION OF TRANSFER.—

18                 (1) FDIC-INSURED DEPOSITORY INSTITU-  
19          TIONS.—Section 11(e)(8)(D)(viii) of the Federal De-  
20          posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii))  
21          is amended to read as follows:

22                         “(viii) TRANSFER.—The term ‘trans-  
23                         fer’ means every mode, direct or indirect,  
24                         absolute or conditional, voluntary or invol-  
25                         untary, of disposing of or parting with

1 property or with an interest in property,  
 2 including retention of title as a security in-  
 3 terest and foreclosure of the depository in-  
 4 stitution's equity of redemption.”.

5 (2) INSURED CREDIT UNIONS.—Section  
 6 207(c)(8)(D) of the Federal Credit Union Act (12  
 7 U.S.C. 1787(c)(8)(D)) (as amended by subsection  
 8 (f) of this section) is amended by adding at the end  
 9 the following new clause:

10 “(viii) TRANSFER.—The term ‘trans-  
 11 fer’ means every mode, direct or indirect,  
 12 absolute or conditional, voluntary or invol-  
 13 untary, of disposing of or parting with  
 14 property or with an interest in property,  
 15 including retention of title as a security in-  
 16 terest and foreclosure of the depository in-  
 17 stitution's equity of redemption.”.

18 (h) TREATMENT OF QUALIFIED FINANCIAL CON-  
 19 TRACTS.—

20 (1) FDIC-INSURED DEPOSITORY INSTITU-  
 21 TIONS.—Section 11(e)(8) of the Federal Deposit In-  
 22 surance Act (12 U.S.C. 1821(e)(8)) is amended—

23 (A) in subparagraph (A)—

24 (i) by striking “paragraph (10)” and  
 25 inserting “paragraphs (9) and (10)”;

1 (ii) in clause (i), by striking “to cause  
2 the termination or liquidation” and insert-  
3 ing “such person has to cause the termi-  
4 nation, liquidation, or acceleration”; and

5 (iii) by striking clause (ii) and insert-  
6 ing the following new clause:

7 “(ii) any right under any security  
8 agreement or arrangement or other credit  
9 enhancement related to one or more quali-  
10 fied financial contracts described in clause  
11 (i);” and

12 (B) in subparagraph (E), by striking  
13 clause (ii) and inserting the following:

14 “(ii) any right under any security  
15 agreement or arrangement or other credit  
16 enhancement related to one or more quali-  
17 fied financial contracts described in clause  
18 (i);”.

19 (2) INSURED CREDIT UNIONS.—Section  
20 207(c)(8) of the Federal Credit Union Act (12  
21 U.S.C. 1787(c)(8)) is amended—

22 (A) in subparagraph (A)—

23 (i) by striking “paragraph (12)” and  
24 inserting “paragraphs (9) and (10)”; and

1 (ii) in clause (i), by striking “to cause  
2 the termination or liquidation” and insert-  
3 ing “such person has to cause the termi-  
4 nation, liquidation, or acceleration”; and

5 (iii) by striking clause (ii) and insert-  
6 ing the following new clause:

7 “(ii) any right under any security  
8 agreement or arrangement or other credit  
9 enhancement related to 1 or more qualified  
10 financial contracts described in clause  
11 (i);” and

12 (B) in subparagraph (E), by striking  
13 clause (ii) and inserting the following new  
14 clause:

15 “(ii) any right under any security  
16 agreement or arrangement or other credit  
17 enhancement related to 1 or more qualified  
18 financial contracts described in clause  
19 (i);”.

20 (i) AVOIDANCE OF TRANSFERS.—

21 (1) FDIC-INSURED DEPOSITORY INSTITU-  
22 TIONS.—Section 11(e)(8)(C)(i) of the Federal De-  
23 posit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is  
24 amended by inserting “section 5242 of the Revised  
25 Statutes of the United States or any other Federal

1 or State law relating to the avoidance of preferential  
2 or fraudulent transfers,” before “the Corporation”.

3 (2) INSURED CREDIT UNIONS.—Section  
4 207(c)(8)(C)(i) of the Federal Credit Union Act (12  
5 U.S.C. 1787(c)(8)(C)(i)) is amended by inserting  
6 “section 5242 of the Revised Statutes of the United  
7 States or any other Federal or State law relating to  
8 the avoidance of preferential or fraudulent trans-  
9 fers,” before “the Board”.

10 **SEC. 902. AUTHORITY OF THE FDIC AND NCUAB WITH RE-**  
11 **SPECT TO FAILED AND FAILING INSTITU-**  
12 **TIONS.**

13 (a) FEDERAL DEPOSIT INSURANCE CORPORATION.—

14 (1) IN GENERAL.—Section 11(e)(8) of the Fed-  
15 eral Deposit Insurance Act (12 U.S.C. 1821(e)(8))  
16 is amended—

17 (A) in subparagraph (E), by striking  
18 “other than paragraph (12) of this subsection,  
19 subsection (d)(9)” and inserting “other than  
20 subsections (d)(9) and (e)(10)”; and

21 (B) by adding at the end the following new  
22 subparagraphs:

23 “(F) CLARIFICATION.—No provision of law  
24 shall be construed as limiting the right or  
25 power of the Corporation, or authorizing any

1 court or agency to limit or delay, in any man-  
2 ner, the right or power of the Corporation to  
3 transfer any qualified financial contract in ac-  
4 cordance with paragraphs (9) and (10) of this  
5 subsection or to disaffirm or repudiate any such  
6 contract in accordance with subsection (e)(1) of  
7 this section.

8 “(G) WALKAWAY CLAUSES NOT EFFEC-  
9 TIVE.—

10 “(i) IN GENERAL.—Notwithstanding  
11 the provisions of subparagraphs (A) and  
12 (E), and sections 403 and 404 of the Fed-  
13 eral Deposit Insurance Corporation Im-  
14 provement Act of 1991, no walkaway  
15 clause shall be enforceable in a qualified fi-  
16 nancial contract of an insured depository  
17 institution in default.

18 “(ii) WALKAWAY CLAUSE DEFINED.—  
19 For purposes of this subparagraph, the  
20 term ‘walkaway clause’ means a provision  
21 in a qualified financial contract that, after  
22 calculation of a value of a party’s position  
23 or an amount due to or from 1 of the par-  
24 ties in accordance with its terms upon ter-  
25 mination, liquidation, or acceleration of the

1 qualified financial contract, either does not  
2 create a payment obligation of a party or  
3 extinguishes a payment obligation of a  
4 party in whole or in part solely because of  
5 such party's status as a nondefaulting  
6 party.”.

7 (2) TECHNICAL AND CONFORMING AMEND-  
8 MENT.—Section 11(e)(12)(A) of the Federal Deposit  
9 Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amend-  
10 ed by inserting “or the exercise of rights or powers  
11 by” after “the appointment of”.

12 (b) NATIONAL CREDIT UNION ADMINISTRATION  
13 BOARD.—

14 (1) IN GENERAL.—Section 207(c)(8) of the  
15 Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is  
16 amended—

17 (A) in subparagraph (E) (as amended by  
18 section 901(h)), by striking “other than para-  
19 graph (12) of this subsection, subsection  
20 (b)(9)” and inserting “other than subsections  
21 (b)(9) and (c)(10)”; and

22 (B) by adding at the end the following new  
23 subparagraphs:

24 “(F) CLARIFICATION.—No provision of law  
25 shall be construed as limiting the right or

1 power of the Board, or authorizing any court or  
2 agency to limit or delay, in any manner, the  
3 right or power of the Board to transfer any  
4 qualified financial contract in accordance with  
5 paragraphs (9) and (10) of this subsection or to  
6 disaffirm or repudiate any such contract in ac-  
7 cordance with subsection (c)(1) of this section.

8 “(G) WALKAWAY CLAUSES NOT EFFEC-  
9 TIVE.—

10 “(i) IN GENERAL.—Notwithstanding  
11 the provisions of subparagraphs (A) and  
12 (E), and sections 403 and 404 of the Fed-  
13 eral Deposit Insurance Corporation Im-  
14 provement Act of 1991, no walkaway  
15 clause shall be enforceable in a qualified fi-  
16 nancial contract of an insured credit union  
17 in default.

18 “(ii) WALKAWAY CLAUSE DEFINED.—  
19 For purposes of this subparagraph, the  
20 term ‘walkaway clause’ means a provision  
21 in a qualified financial contract that, after  
22 calculation of a value of a party’s position  
23 or an amount due to or from 1 of the par-  
24 ties in accordance with its terms upon ter-  
25 mination, liquidation, or acceleration of the



1 qualified financial contract, either does not  
2 create a payment obligation of a party or  
3 extinguishes a payment obligation of a  
4 party in whole or in part solely because of  
5 such party's status as a nondefaulting  
6 party.”.

7 (2) TECHNICAL AND CONFORMING AMEND-  
8 MENT.—Section 207(c)(12)(A) of the Federal Credit  
9 Union Act (12 U.S.C. 1787(c)(12)(A)) is amended  
10 by inserting “or the exercise of rights or powers by”  
11 after “the appointment of”.

12 **SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF**  
13 **QUALIFIED FINANCIAL CONTRACTS.**

14 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

15 (1) TRANSFERS OF QUALIFIED FINANCIAL  
16 CONTRACTS TO FINANCIAL INSTITUTIONS.—Section  
17 11(e)(9) of the Federal Deposit Insurance Act (12  
18 U.S.C. 1821(e)(9)) is amended to read as follows:

19 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
20 TRACTS.—

21 “(A) IN GENERAL.—In making any trans-  
22 fer of assets or liabilities of a depository institu-  
23 tion in default which includes any qualified fi-  
24 nancial contract, the conservator or receiver for  
25 such depository institution shall either—

1           “(i) transfer to one financial institu-  
2           tion, other than a financial institution for  
3           which a conservator, receiver, trustee in  
4           bankruptcy, or other legal custodian has  
5           been appointed or which is otherwise the  
6           subject of a bankruptcy or insolvency pro-  
7           ceeding—

8                   “(I) all qualified financial con-  
9                   tracts between any person or any af-  
10                  filiate of such person and the deposi-  
11                  tory institution in default;

12                  “(II) all claims of such person or  
13                  any affiliate of such person against  
14                  such depository institution under any  
15                  such contract (other than any claim  
16                  which, under the terms of any such  
17                  contract, is subordinated to the claims  
18                  of general unsecured creditors of such  
19                  institution);

20                  “(III) all claims of such deposi-  
21                  tory institution against such person or  
22                  any affiliate of such person under any  
23                  such contract; and

24                  “(IV) all property securing or  
25                  any other credit enhancement for any

1 contract described in subclause (I) or  
2 any claim described in subclause (II)  
3 or (III) under any such contract; or

4 “(ii) transfer none of the qualified fi-  
5 nancial contracts, claims, property or other  
6 credit enhancement referred to in clause (i)  
7 (with respect to such person and any affil-  
8 iate of such person).

9 “(B) TRANSFER TO FOREIGN BANK, FOR-  
10 EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
11 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
12 STITUTION.—In transferring any qualified fi-  
13 nancial contracts and related claims and prop-  
14 erty under subparagraph (A)(i), the conservator  
15 or receiver for the depository institution shall  
16 not make such transfer to a foreign bank, fi-  
17 nancial institution organized under the laws of  
18 a foreign country, or a branch or agency of a  
19 foreign bank or financial institution unless,  
20 under the law applicable to such bank, financial  
21 institution, branch or agency, to the qualified  
22 financial contracts, and to any netting contract,  
23 any security agreement or arrangement or other  
24 credit enhancement related to one or more  
25 qualified financial contracts, the contractual

1 rights of the parties to such qualified financial  
2 contracts, netting contracts, security agree-  
3 ments or arrangements, or other credit en-  
4 hancements are enforceable substantially to the  
5 same extent as permitted under this section.

6 “(C) TRANSFER OF CONTRACTS SUBJECT  
7 TO THE RULES OF A CLEARING ORGANIZA-  
8 TION.—In the event that a conservator or re-  
9 ceiver transfers any qualified financial contract  
10 and related claims, property, and credit en-  
11 hancements pursuant to subparagraph (A)(i)  
12 and such contract is cleared by or subject to the  
13 rules of a clearing organization, the clearing or-  
14 ganization shall not be required to accept the  
15 transferee as a member by virtue of the trans-  
16 fer.

17 “(D) DEFINITIONS.—For purposes of this  
18 paragraph, the term ‘financial institution’  
19 means a broker or dealer, a depository institu-  
20 tion, a futures commission merchant, or any  
21 other institution, as determined by the Corpora-  
22 tion by regulation to be a financial institution,  
23 and the term ‘clearing organization’ has the  
24 same meaning as in section 402 of the Federal

1           Deposit Insurance Corporation Improvement  
2           Act of 1991.”.

3           (2) NOTICE TO QUALIFIED FINANCIAL CON-  
4           TRACT COUNTERPARTIES.—Section 11(e)(10)(A) of  
5           the Federal Deposit Insurance Act (12 U.S.C.  
6           1821(e)(10)(A)) is amended in the material imme-  
7           diately following clause (ii) by striking “the conser-  
8           vator” and all that follows through the period and  
9           inserting the following: “the conservator or receiver  
10          shall notify any person who is a party to any such  
11          contract of such transfer by 5:00 p.m. (eastern time)  
12          on the business day following the date of the ap-  
13          pointment of the receiver in the case of a receiver-  
14          ship, or the business day following such transfer in  
15          the case of a conservatorship.”.

16          (3) RIGHTS AGAINST RECEIVER AND CONSER-  
17          VATOR AND TREATMENT OF BRIDGE BANKS.—Sec-  
18          tion 11(e)(10) of the Federal Deposit Insurance Act  
19          (12 U.S.C. 1821(e)(10)) is amended—

20                 (A) by redesignating subparagraph (B) as  
21                 subparagraph (D); and

22                 (B) by inserting after subparagraph (A)  
23                 the following new subparagraphs:

24                         “(B) CERTAIN RIGHTS NOT ENFORCE-  
25                         ABLE.—

1           “(i) RECEIVERSHIP.—A person who is  
2           a party to a qualified financial contract  
3           with an insured depository institution may  
4           not exercise any right that such person has  
5           to terminate, liquidate, or net such con-  
6           tract under paragraph (8)(A) of this sub-  
7           section or section 403 or 404 of the Fed-  
8           eral Deposit Insurance Corporation Im-  
9           provement Act of 1991, solely by reason of  
10          or incidental to the appointment of a re-  
11          ceiver for the depository institution (or the  
12          insolvency or financial condition of the de-  
13          pository institution for which the receiver  
14          has been appointed)—

15                 “(I) until 5:00 p.m. (eastern  
16                 time) on the business day following  
17                 the date of the appointment of the re-  
18                 ceiver; or

19                 “(II) after the person has re-  
20                 ceived notice that the contract has  
21                 been transferred pursuant to para-  
22                 graph (9)(A).

23           “(ii) CONSERVATORSHIP.—A person  
24           who is a party to a qualified financial con-  
25           tract with an insured depository institution

1           may not exercise any right that such per-  
2           son has to terminate, liquidate, or net such  
3           contract under paragraph (8)(E) of this  
4           subsection or section 403 or 404 of the  
5           Federal Deposit Insurance Corporation  
6           Improvement Act of 1991, solely by reason  
7           of or incidental to the appointment of a  
8           conservator for the depository institution  
9           (or the insolvency or financial condition of  
10          the depository institution for which the  
11          conservator has been appointed).

12           “(iii) NOTICE.—For purposes of this  
13          paragraph, the Corporation as receiver or  
14          conservator of an insured depository insti-  
15          tution shall be deemed to have notified a  
16          person who is a party to a qualified finan-  
17          cial contract with such depository institu-  
18          tion if the Corporation has taken steps  
19          reasonably calculated to provide notice to  
20          such person by the time specified in sub-  
21          paragraph (A).

22           “(C) TREATMENT OF BRIDGE BANKS.—

23          The following institutions shall not be consid-  
24          ered to be a financial institution for which a  
25          conservator, receiver, trustee in bankruptcy, or

1 other legal custodian has been appointed or  
 2 which is otherwise the subject of a bankruptcy  
 3 or insolvency proceeding for purposes of para-  
 4 graph (9):

5 “(i) A bridge bank.

6 “(ii) A depository institution orga-  
 7 nized by the Corporation, for which a con-  
 8 servator is appointed either—

9 “(I) immediately upon the orga-  
 10 nization of the institution; or

11 “(II) at the time of a purchase  
 12 and assumption transaction between  
 13 the depository institution and the Cor-  
 14 poration as receiver for a depository  
 15 institution in default.”.

16 (b) INSURED CREDIT UNIONS.—

17 (1) TRANSFERS OF QUALIFIED FINANCIAL CON-  
 18 TRACTS TO FINANCIAL INSTITUTIONS.—Section  
 19 207(c)(9) of the Federal Credit Union Act (12  
 20 U.S.C. 1787(c)(9)) is amended to read as follows:

21 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
 22 TRACTS.—

23 “(A) IN GENERAL.—In making any trans-  
 24 fer of assets or liabilities of a credit union in  
 25 default which includes any qualified financial



1 contract, the conservator or liquidating agent  
2 for such credit union shall either—

3 “(i) transfer to 1 financial institution,  
4 other than a financial institution for which  
5 a conservator, receiver, trustee in bank-  
6 ruptcy, or other legal custodian has been  
7 appointed or which is otherwise the subject  
8 of a bankruptcy or insolvency proceeding—

9 “(I) all qualified financial con-  
10 tracts between any person or any af-  
11 filiate of such person and the credit  
12 union in default;

13 “(II) all claims of such person or  
14 any affiliate of such person against  
15 such credit union under any such con-  
16 tract (other than any claim which,  
17 under the terms of any such contract,  
18 is subordinated to the claims of gen-  
19 eral unsecured creditors of such credit  
20 union);

21 “(III) all claims of such credit  
22 union against such person or any af-  
23 filiate of such person under any such  
24 contract; and

1                   “(IV) all property securing or  
2                   any other credit enhancement for any  
3                   contract described in subclause (I) or  
4                   any claim described in subclause (II)  
5                   or (III) under any such contract; or

6                   “(ii) transfer none of the qualified fi-  
7                   nancial contracts, claims, property or other  
8                   credit enhancement referred to in clause (i)  
9                   (with respect to such person and any affil-  
10                  iate of such person).

11                  “(B) TRANSFER TO FOREIGN BANK, FOR-  
12                  EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
13                  AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
14                  STITUTION.—In transferring any qualified fi-  
15                  nancial contracts and related claims and prop-  
16                  erty under subparagraph (A)(i), the conservator  
17                  or liquidating agent for the credit union shall  
18                  not make such transfer to a foreign bank, fi-  
19                  nancial institution organized under the laws of  
20                  a foreign country, or a branch or agency of a  
21                  foreign bank or financial institution unless,  
22                  under the law applicable to such bank, financial  
23                  institution, branch or agency, to the qualified  
24                  financial contracts, and to any netting contract,  
25                  any security agreement or arrangement or other

1 credit enhancement related to 1 or more quali-  
2 fied financial contracts, the contractual rights  
3 of the parties to such qualified financial con-  
4 tracts, netting contracts, security agreements or  
5 arrangements, or other credit enhancements are  
6 enforceable substantially to the same extent as  
7 permitted under this section.

8 “(C) TRANSFER OF CONTRACTS SUBJECT  
9 TO THE RULES OF A CLEARING ORGANIZA-  
10 TION.—In the event that a conservator or liqui-  
11 dating agent transfers any qualified financial  
12 contract and related claims, property, and cred-  
13 it enhancements pursuant to subparagraph  
14 (A)(i) and such contract is cleared by or subject  
15 to the rules of a clearing organization, the  
16 clearing organization shall not be required to  
17 accept the transferee as a member by virtue of  
18 the transfer.

19 “(D) DEFINITIONS.—For purposes of this  
20 paragraph—

21 “(i) the term ‘financial institution’  
22 means a broker or dealer, a depository in-  
23 stitution, a futures commission merchant,  
24 a credit union, or any other institution, as

1           determined by the Board by regulation to  
2           be a financial institution; and

3           “(ii) the term ‘clearing organization’  
4           has the same meaning as in section 402 of  
5           the Federal Deposit Insurance Corporation  
6           Improvement Act of 1991.”.

7           (2) NOTICE TO QUALIFIED FINANCIAL CON-  
8           TRACT COUNTERPARTIES.—Section 207(c)(10)(A) of  
9           the Federal Credit Union Act (12 U.S.C.  
10          1787(c)(10)(A)) is amended in the material imme-  
11          diately following clause (ii) by striking “the conser-  
12          vator” and all that follows through the period and  
13          inserting the following: “the conservator or liqui-  
14          dating agent shall notify any person who is a party  
15          to any such contract of such transfer by 5:00 p.m.  
16          (eastern time) on the business day following the date  
17          of the appointment of the liquidating agent in the  
18          case of a liquidation, or the business day following  
19          such transfer in the case of a conservatorship.”.

20          (3) RIGHTS AGAINST LIQUIDATING AGENT AND  
21          CONSERVATOR AND TREATMENT OF BRIDGE  
22          BANKS.—Section 207(c)(10) of the Federal Credit  
23          Union Act (12 U.S.C. 1787(c)(10)) is amended—

24                  (A) by redesignating subparagraph (B) as  
25                  subparagraph (D); and

1 (B) by inserting after subparagraph (A)  
2 the following new subparagraphs:

3 “(B) CERTAIN RIGHTS NOT ENFORCE-  
4 ABLE.—

5 “(i) LIQUIDATION.—A person who is  
6 a party to a qualified financial contract  
7 with an insured credit union may not exer-  
8 cise any right that such person has to ter-  
9minate, liquidate, or net such contract  
10 under paragraph (8)(A) of this subsection  
11 or section 403 or 404 of the Federal De-  
12posit Insurance Corporation Improvement  
13 Act of 1991, solely by reason of or inci-  
14dental to the appointment of a liquidating  
15 agent for the credit union institution (or  
16 the insolvency or financial condition of the  
17 credit union for which the liquidating  
18 agent has been appointed)—

19 “(I) until 5:00 p.m. (eastern  
20 time) on the business day following  
21 the date of the appointment of the liq-  
22uidating agent; or

23 “(II) after the person has re-  
24ceived notice that the contract has

1           been transferred pursuant to para-  
2           graph (9)(A).

3           “(ii) CONSERVATORSHIP.—A person  
4           who is a party to a qualified financial con-  
5           tract with an insured credit union may not  
6           exercise any right that such person has to  
7           terminate, liquidate, or net such contract  
8           under paragraph (8)(E) of this subsection  
9           or section 403 or 404 of the Federal De-  
10          posit Insurance Corporation Improvement  
11          Act of 1991, solely by reason of or inci-  
12          dental to the appointment of a conservator  
13          for the credit union or the insolvency or fi-  
14          nancial condition of the credit union for  
15          which the conservator has been appointed).

16          “(iii) NOTICE.—For purposes of this  
17          paragraph, the Board as conservator or  
18          liquidating agent of an insured credit  
19          union shall be deemed to have notified a  
20          person who is a party to a qualified finan-  
21          cial contract with such credit union if the  
22          Board has taken steps reasonably cal-  
23          culated to provide notice to such person by  
24          the time specified in subparagraph (A).

1           “(C) TREATMENT OF BRIDGE BANKS.—  
 2           The following institutions shall not be consid-  
 3           ered to be a financial institution for which a  
 4           conservator, receiver, trustee in bankruptcy, or  
 5           other legal custodian has been appointed or  
 6           which is otherwise the subject of a bankruptcy  
 7           or insolvency proceeding for purposes of para-  
 8           graph (9):

9                   “(i) A bridge bank.

10                   “(ii) A credit union organized by the  
 11           Board, for which a conservator is ap-  
 12           pointed either—

13                   “(I) immediately upon the orga-  
 14           nization of the credit union; or

15                   “(II) at the time of a purchase  
 16           and assumption transaction between  
 17           the credit union and the Board as re-  
 18           ceiver for a credit union in default.”.

19 **SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR**  
 20 **REPUDIATION OF QUALIFIED FINANCIAL**  
 21 **CONTRACTS.**

22           (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—  
 23           Section 11(e) of the Federal Deposit Insurance Act (12  
 24           U.S.C. 1821(e)) is amended—

1           (1) by redesignating paragraphs (11) through  
2           (15) as paragraphs (12) through (16), respectively;

3           (2) by inserting after paragraph (10) the fol-  
4           lowing new paragraph:

5           “(11) DISAFFIRMANCE OR REPUDIATION OF  
6           QUALIFIED FINANCIAL CONTRACTS.—In exercising  
7           the rights of disaffirmance or repudiation of a con-  
8           servator or receiver with respect to any qualified fi-  
9           nancial contract to which an insured depository in-  
10          stitution is a party, the conservator or receiver for  
11          such institution shall either—

12                   “(A) disaffirm or repudiate all qualified fi-  
13                   nancial contracts between—

14                           “(i) any person or any affiliate of  
15                           such person; and

16                           “(ii) the depository institution in de-  
17                           fault; or

18                   “(B) disaffirm or repudiate none of the  
19                   qualified financial contracts referred to in sub-  
20                   paragraph (A) (with respect to such person or  
21                   any affiliate of such person).”; and

22          (3) by adding at the end the following new  
23          paragraph:

24           “(17) SAVINGS CLAUSE.—The meanings of  
25          terms used in this subsection are applicable for pur-



1 poses of this subsection only, and shall not be con-  
2 strued or applied so as to challenge or affect the  
3 characterization, definition, or treatment of any  
4 similar terms under any other statute, regulation, or  
5 rule, including the Gramm-Leach-Bliley Act, the  
6 Legal Certainty for Bank Products Act of 2000, the  
7 securities laws (as that term is defined in section  
8 3(a)(47) of the Securities Exchange Act of 1934),  
9 and the Commodity Exchange Act.”.

10 (b) INSURED CREDIT UNIONS.—Section 207(c) of  
11 the Federal Credit Union Act (12 U.S.C. 1787(c)) is  
12 amended—

13 (1) by redesignating paragraphs (11), (12), and  
14 (13) as paragraphs (12), (13), and (14), respec-  
15 tively;

16 (2) by inserting after paragraph (10) the fol-  
17 lowing new paragraph:

18 “(11) DISAFFIRMANCE OR REPUDIATION OF  
19 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
20 the rights of disaffirmance or repudiation of a con-  
21 servator or liquidating agent with respect to any  
22 qualified financial contract to which an insured cred-  
23 it union is a party, the conservator or liquidating  
24 agent for such credit union shall either—

1           “(A) disaffirm or repudiate all qualified fi-  
2           nancial contracts between—

3                   “(i) any person or any affiliate of  
4                   such person; and

5                   “(ii) the credit union in default; or

6           “(B) disaffirm or repudiate none of the  
7           qualified financial contracts referred to in sub-  
8           paragraph (A) (with respect to such person or  
9           any affiliate of such person).”]; and

10           (3) by adding at the end the following new  
11           paragraph:

12                   “(15) SAVINGS CLAUSE.—The meanings of  
13                   terms used in this subsection are applicable for pur-  
14                   poses of this subsection only, and shall not be con-  
15                   strued or applied so as to challenge or affect the  
16                   characterization, definition, or treatment of any  
17                   similar terms under any other statute, regulation, or  
18                   rule, including the Gramm-Leach-Bliley Act, the  
19                   Legal Certainty for Bank Products Act of 2000, the  
20                   securities laws (as that term is defined in section  
21                   (a)(47) of the Securities Exchange Act of 1934),  
22                   and the Commodity Exchange Act.”.

1 **SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER**  
2 **AGREEMENTS.**

3 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—  
4 Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance  
5 Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as  
6 follows:

7 “(vii) TREATMENT OF MASTER  
8 AGREEMENT AS ONE AGREEMENT.—Any  
9 master agreement for any contract or  
10 agreement described in any preceding  
11 clause of this subparagraph (or any master  
12 agreement for such master agreement or  
13 agreements), together with all supplements  
14 to such master agreement, shall be treated  
15 as a single agreement and a single quali-  
16 fied financial contract. If a master agree-  
17 ment contains provisions relating to agree-  
18 ments or transactions that are not them-  
19 selves qualified financial contracts, the  
20 master agreement shall be deemed to be a  
21 qualified financial contract only with re-  
22 spect to those transactions that are them-  
23 selves qualified financial contracts.”.

24 (b) INSURED CREDIT UNIONS.—Section  
25 207(e)(8)(D) of the Federal Credit Union Act (12 U.S.C.

1 1787(c)(8)(D)) is amended by inserting after clause (vi)  
2 (as added by section 901(f)) the following new clause:

3                   “(vii) TREATMENT OF MASTER  
4 AGREEMENT AS ONE AGREEMENT.—Any  
5 master agreement for any contract or  
6 agreement described in any preceding  
7 clause of this subparagraph (or any master  
8 agreement for such master agreement or  
9 agreements), together with all supplements  
10 to such master agreement, shall be treated  
11 as a single agreement and a single quali-  
12 fied financial contract. If a master agree-  
13 ment contains provisions relating to agree-  
14 ments or transactions that are not them-  
15 selves qualified financial contracts, the  
16 master agreement shall be deemed to be a  
17 qualified financial contract only with re-  
18 spect to those transactions that are them-  
19 selves qualified financial contracts.”.

20 **SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION**  
21 **IMPROVEMENT ACT OF 1991.**

22           (a) DEFINITIONS.—Section 402 of the Federal De-  
23 posit Insurance Corporation Improvement Act of 1991 (12  
24 U.S.C. 4402) is amended—

25                   (1) in paragraph (2)—

1 (A) in subparagraph (A)(ii), by inserting  
2 before the semicolon “, or is exempt from such  
3 registration by order of the Securities and Ex-  
4 change Commission”; and

5 (B) in subparagraph (B), by inserting be-  
6 fore the period “, that has been granted an ex-  
7 emption under section 4(c)(1) of the Com-  
8 modity Exchange Act, or that is a multilateral  
9 clearing organization (as defined in section 408  
10 of this Act)”;

11 (2) in paragraph (6)—

12 (A) by redesignating subparagraphs (B)  
13 through (D) as subparagraphs (C) through (E),  
14 respectively;

15 (B) by inserting after subparagraph (A)  
16 the following new subparagraph:

17 “(B) an uninsured national bank or an un-  
18 insured State bank that is a member of the  
19 Federal Reserve System, if the national bank or  
20 State member bank is not eligible to make ap-  
21 plication to become an insured bank under sec-  
22 tion 5 of the Federal Deposit Insurance Act;”;  
23 and

24 (C) by amending subparagraph (C), so re-  
25 designated, to read as follows:

1           “(C) a branch or agency of a foreign bank,  
2           a foreign bank and any branch or agency of the  
3           foreign bank, or the foreign bank that estab-  
4           lished the branch or agency, as those terms are  
5           defined in section 1(b) of the International  
6           Banking Act of 1978;”;

7           (3) in paragraph (11), by inserting before the  
8           period “and any other clearing organization with  
9           which such clearing organization has a netting con-  
10          tract”;

11          (4) by amending paragraph (14)(A)(i) to read  
12          as follows:

13                   “(i) means a contract or agreement  
14                   between 2 or more financial institutions,  
15                   clearing organizations, or members that  
16                   provides for netting present or future pay-  
17                   ment obligations or payment entitlements  
18                   (including liquidation or close out values  
19                   relating to such obligations or entitle-  
20                   ments) among the parties to the agree-  
21                   ment; and”;

22          (5) by adding at the end the following new  
23          paragraph:

24                   “(15) PAYMENT.—The term ‘payment’ means a  
25                   payment of United States dollars, another currency,

1 or a composite currency, and a noncash delivery, in-  
2 cluding a payment or delivery to liquidate an  
3 unmatured obligation.”.

4 (b) ENFORCEABILITY OF BILATERAL NETTING CON-  
5 TRACTS.—Section 403 of the Federal Deposit Insurance  
6 Corporation Improvement Act of 1991 (12 U.S.C. 4403)  
7 is amended—

8 (1) by striking subsection (a) and inserting the  
9 following:

10 “(a) GENERAL RULE.—Notwithstanding any other  
11 provision of State or Federal law (other than paragraphs  
12 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
13 Deposit Insurance Act, paragraphs (8)(E), (8)(F), and  
14 (10)(B) of section 207(c) of the Federal Credit Union Act,  
15 or any order authorized under section 5(b)(2) of the Secu-  
16 rities Investor Protection Act of 1970), the covered con-  
17 tractual payment obligations and the covered contractual  
18 payment entitlements between any 2 financial institutions  
19 shall be netted in accordance with, and subject to the con-  
20 ditions of, the terms of any applicable netting contract (ex-  
21 cept as provided in section 561(b)(2) of title 11, United  
22 States Code).”; and

23 (2) by adding at the end the following new sub-  
24 section:

1           “(f) ENFORCEABILITY OF SECURITY AGREE-  
2 MENTS.—The provisions of any security agreement or ar-  
3 rangement or other credit enhancement related to one or  
4 more netting contracts between any 2 financial institu-  
5 tions shall be enforceable in accordance with their terms  
6 (except as provided in section 561(b)(2) of title 11, United  
7 States Code), and shall not be stayed, avoided, or other-  
8 wise limited by any State or Federal law (other than para-  
9 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the  
10 Federal Deposit Insurance Act, paragraphs (8)(E),  
11 (8)(F), and (10)(B) of section 207(c) of the Federal Cred-  
12 it Union Act, and section 5(b)(2) of the Securities Investor  
13 Protection Act of 1970).”.

14           (c) ENFORCEABILITY OF CLEARING ORGANIZATION  
15 NETTING CONTRACTS.—Section 404 of the Federal De-  
16 posit Insurance Corporation Improvement Act of 1991 (12  
17 U.S.C. 4404) is amended—

18                   (1) by striking subsection (a) and inserting the  
19           following:

20           “(a) GENERAL RULE.—Notwithstanding any other  
21 provision of State or Federal law (other than paragraphs  
22 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
23 Deposit Insurance Act, paragraphs (8)(E), (8)(F), and  
24 (10)(B) of section 207(c) of the Federal Credit Union Act,  
25 and any order authorized under section 5(b)(2) of the Se-



1 curities Investor Protection Act of 1970), the covered con-  
2 tractual payment obligations and the covered contractual  
3 payment entitlements of a member of a clearing organiza-  
4 tion to and from all other members of a clearing organiza-  
5 tion shall be netted in accordance with and subject to the  
6 conditions of any applicable netting contract (except as  
7 provided in section 561(b)(2) of title 11, United States  
8 Code).”;

9 (2) by adding at the end the following new sub-  
10 section:

11 “(h) ENFORCEABILITY OF SECURITY AGREE-  
12 MENTS.—The provisions of any security agreement or ar-  
13 rangement or other credit enhancement related to one or  
14 more netting contracts between any 2 members of a clear-  
15 ing organization shall be enforceable in accordance with  
16 their terms (except as provided in section 561(b)(2) of  
17 title 11, United States Code), and shall not be stayed,  
18 avoided, or otherwise limited by any State or Federal law  
19 (other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-  
20 tion 11(e) of the Federal Deposit Insurance Act, para-  
21 graphs (8)(E), (8)(F), and (10)(B) of section 207(c) of  
22 the Federal Credit Union Act, and section 5(b)(2) of the  
23 Securities Investor Protection Act of 1970).”.

24 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-  
25 SURED NATIONAL BANKS, UNINSURED FEDERAL

1 BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE  
2 MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The  
3 Federal Deposit Insurance Corporation Improvement Act  
4 of 1991 (12 U.S.C. 4401 et seq.) is amended—

5 (1) by redesignating section 407 as section  
6 407A; and

7 (2) by inserting after section 406 the following  
8 new section:

9 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**  
10 **NATIONAL BANKS, UNINSURED FEDERAL**  
11 **BRANCHES AND AGENCIES, CERTAIN UNIN-**  
12 **SURED STATE MEMBER BANKS, AND EDGE**  
13 **ACT CORPORATIONS.**

14 “(a) IN GENERAL.—Notwithstanding any other pro-  
15 vision of law, paragraphs (8), (9), (10), and (11) of section  
16 11(e) of the Federal Deposit Insurance Act shall apply  
17 to an uninsured national bank or uninsured Federal  
18 branch or Federal agency, a corporation chartered under  
19 section 25A of the Federal Reserve Act, or an uninsured  
20 State member bank which operates, or operates as, a mul-  
21 tilateral clearing organization pursuant to section 409 of  
22 this Act, except that for such purpose—

23 “(1) any reference to the ‘Corporation as re-  
24 ceiver’ or ‘the receiver or the Corporation’ shall refer  
25 to the receiver appointed by the Comptroller of the

1 Currency in the case of an uninsured national bank  
2 or uninsured Federal branch or agency, or to the re-  
3 ceiver appointed by the Board of Governors of the  
4 Federal Reserve System in the case of a corporation  
5 chartered under section 25A of the Federal Reserve  
6 Act or an uninsured State member bank;

7 “(2) any reference to the ‘Corporation’ (other  
8 than in section 11(e)(8)(D) of such Act), the ‘Cor-  
9 poration, whether acting as such or as conservator  
10 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer  
11 to the receiver or conservator appointed by the  
12 Comptroller of the Currency in the case of an unin-  
13 sured national bank or uninsured Federal branch or  
14 agency, or to the receiver or conservator appointed  
15 by the Board of Governors of the Federal Reserve  
16 System in the case of a corporation chartered under  
17 section 25A of the Federal Reserve Act or an unin-  
18 sured State member bank; and

19 “(3) any reference to an ‘insured depository in-  
20 stitution’ or ‘depository institution’ shall refer to an  
21 uninsured national bank, an uninsured Federal  
22 branch or Federal agency, a corporation chartered  
23 under section 25A of the Federal Reserve Act, or an  
24 uninsured State member bank which operates, or op-

1 erates as, a multilateral clearing organization pursu-  
2 ant to section 409 of this Act.

3 “(b) LIABILITY.—The liability of a receiver or conser-  
4 vator of an uninsured national bank, uninsured Federal  
5 branch or agency, a corporation chartered under section  
6 25A of the Federal Reserve Act, or an uninsured State  
7 member bank which operates, or operates as, a multilat-  
8 eral clearing organization pursuant to section 409 of this  
9 Act, shall be determined in the same manner and subject  
10 to the same limitations that apply to receivers and con-  
11 servators of insured depository institutions under section  
12 11(e) of the Federal Deposit Insurance Act.

13 “(c) REGULATORY AUTHORITY.—

14 “(1) IN GENERAL.—The Comptroller of the  
15 Currency in the case of an uninsured national bank  
16 or uninsured Federal branch or agency and the  
17 Board of Governors of the Federal Reserve System  
18 in the case of a corporation chartered under section  
19 25A of the Federal Reserve Act, or an uninsured  
20 State member bank that operates, or operates as, a  
21 multilateral clearing organization pursuant to sec-  
22 tion 409 of this Act, in consultation with the Fed-  
23 eral Deposit Insurance Corporation, may each pro-  
24 mulgate regulations solely to implement this section.

1           “(2) SPECIFIC REQUIREMENT.—In promul-  
 2           gating regulations, limited solely to implementing  
 3           paragraphs (8), (9), (10), and (11) of section 11(e)  
 4           of the Federal Deposit Insurance Act, the Comp-  
 5           troller of the Currency and the Board of Governors  
 6           of the Federal Reserve System each shall ensure  
 7           that the regulations generally are consistent with the  
 8           regulations and policies of the Federal Deposit In-  
 9           surance Corporation adopted pursuant to the Fed-  
 10          eral Deposit Insurance Act.

11          “(d) DEFINITIONS.—For purposes of this section, the  
 12          terms ‘Federal branch’, ‘Federal agency’, and ‘foreign  
 13          bank’ have the same meanings as in section 1(b) of the  
 14          International Banking Act of 1978.”.

15          **SEC. 907. BANKRUPTCY LAW AMENDMENTS.**

16          (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-  
 17          CHASE AGREEMENT, SECURITIES CLEARING AGENCY,  
 18          SWAP AGREEMENT, COMMODITY CONTRACT, AND SECU-  
 19          RITIES CONTRACT.—Title 11, United States Code, is  
 20          amended—

21                  (1) in section 101—

22                          (A) in paragraph (25)—

23                                  (i) by striking “means a contract”

24                                  and inserting “means—

25                                  “(A) a contract”;

1                   (ii) by striking “, or any combination  
2                   thereof or option thereon;” and inserting  
3                   “, or any other similar agreement;”; and

4                   (iii) by adding at the end the fol-  
5                   lowing:

6                   “(B) any combination of agreements or  
7                   transactions referred to in subparagraphs (A)  
8                   and (C);

9                   “(C) any option to enter into an agreement  
10                  or transaction referred to in subparagraph (A)  
11                  or (B);

12                  “(D) a master agreement that provides for  
13                  an agreement or transaction referred to in sub-  
14                  paragraph (A), (B), or (C), together with all  
15                  supplements to any such master agreement,  
16                  without regard to whether such master agree-  
17                  ment provides for an agreement or transaction  
18                  that is not a forward contract under this para-  
19                  graph, except that such master agreement shall  
20                  be considered to be a forward contract under  
21                  this paragraph only with respect to each agree-  
22                  ment or transaction under such master agree-  
23                  ment that is referred to in subparagraph (A),  
24                  (B), or (C); or

1           “(E) any security agreement or arrange-  
2           ment, or other credit enhancement related to  
3           any agreement or transaction referred to in  
4           subparagraph (A), (B), (C), or (D), including  
5           any guarantee or reimbursement obligation by  
6           or to a forward contract merchant or financial  
7           participant in connection with any agreement or  
8           transaction referred to in any such subpara-  
9           graph, but not to exceed the damages in con-  
10          nection with any such agreement or transaction,  
11          measured in accordance 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  
16          as 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  
22          one or more certificates of deposit, mort-  
23          gage related securities (as defined in sec-  
24          tion 3 of the Securities Exchange Act of  
25          1934), mortgage loans, interests in mort-

1 gage related securities or mortgage loans,  
2 eligible bankers' acceptances, qualified for-  
3 eign government securities (defined as a  
4 security that is a direct obligation of, or  
5 that is fully guaranteed by, the central  
6 government of a member of the Organiza-  
7 tion for Economic Cooperation and Devel-  
8 opment), or securities that are direct obli-  
9 gations of, or that are fully guaranteed by,  
10 the United States or any agency of the  
11 United States against the transfer of funds  
12 by the transferee of such certificates of de-  
13 posit, eligible bankers' acceptances, securi-  
14 ties, mortgage loans, or interests, with a  
15 simultaneous agreement by such transferee  
16 to transfer to the transferor thereof certifi-  
17 cates of deposit, eligible bankers' accept-  
18 ance, securities, mortgage loans, or inter-  
19 ests of the kind described in this clause, at  
20 a date certain not later than 1 year after  
21 such transfer or on demand, against the  
22 transfer of funds;

23 “(ii) any combination of agreements  
24 or transactions referred to in clauses (i)  
25 and (iii);



1           “(iii) an option to enter into an agree-  
2           ment or transaction referred to in clause  
3           (i) or (ii);

4           “(iv) a master agreement that pro-  
5           vides for an agreement or transaction re-  
6           ferred to in clause (i), (ii), or (iii), together  
7           with all supplements to any such master  
8           agreement, without regard to whether such  
9           master agreement provides for an agree-  
10          ment or transaction that is not a repur-  
11          chase agreement under this paragraph, ex-  
12          cept that such master agreement shall be  
13          considered to be a repurchase agreement  
14          under this paragraph only with respect to  
15          each agreement or transaction under the  
16          master agreement that is referred to in  
17          clause (i), (ii), 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

1 any such clause, but not to exceed the  
2 damages in connection with any such  
3 agreement or transaction, measured in ac-  
4 cordance with 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 sec-  
10 tion pursuant to an order of the Securities and  
11 Exchange 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, op-  
20 tion, future, or forward agreement, in-  
21 cluding a rate floor, rate cap, rate col-  
22 lar, cross-currency rate swap, and  
23 basis swap;

24 “(II) a spot, same day-tomorrow,  
25 tomorrow-next, forward, or other for-

1           eign exchange or precious metals  
2           agreement;

3           “(III) a currency swap, option,  
4           future, or forward agreement;

5           “(IV) an equity index or equity  
6           swap, option, future, or forward  
7           agreement;

8           “(V) a debt index or debt swap,  
9           option, future, or forward agreement;

10          “(VI) a total return, credit  
11          spread or credit swap, option, future,  
12          or forward 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,  
24                 the subject of recurrent dealings in  
25                 the swap markets (including terms

1 and conditions incorporated by ref-  
2 erence 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 se-  
7 curities or other debt instruments,  
8 quantitative measures associated with  
9 an occurrence, extent of an occur-  
10 rence, or contingency associated with  
11 a financial, commercial, or economic  
12 consequence, or economic or financial  
13 indices or measures of economic or fi-  
14 nancial 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  
20 this 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  
8 agreement that is referred to in clause (i),  
9 (ii), (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), includ-  
14 ing any guarantee or reimbursement obli-  
15 gation by or to a swap participant or fi-  
16 nancial participant in connection with any  
17 agreement or transaction referred to in  
18 any such clause, but not to exceed the  
19 damages in connection with any such  
20 agreement or transaction, measured in ac-  
21 cordance with section 562; and

22 “(B) is applicable for purposes of this title  
23 only, and shall not be construed or applied so  
24 as to challenge or affect the characterization,  
25 definition, or treatment of any swap agreement

1 under any other statute, regulation, or rule, in-  
2 cluding the Securities Act of 1933, the Securi-  
3 ties Exchange Act of 1934, the Public Utility  
4 Holding Company Act of 1935, the Trust In-  
5 denture Act of 1939, the Investment Company  
6 Act of 1940, the Investment Advisers Act of  
7 1940, the Securities Investor Protection Act of  
8 1970, the Commodity Exchange Act, the  
9 Gramm-Leach-Bliley Act, and the Legal Cer-  
10 tainty for Bank Products 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 de-  
17 posit, a mortgage loan or any interest in a  
18 mortgage loan, a group or index of securi-  
19 ties, certificates of deposit, or mortgage  
20 loans or interests therein (including an in-  
21 terest therein or based on the value there-  
22 of), or option on any of the foregoing, in-  
23 cluding an option to purchase or sell any  
24 such security, certificate of deposit, mort-  
25 gage loan, interest, group or index, or op-

1           tion, and including any repurchase or re-  
2           verse repurchase transaction on any such  
3           security, certificate of deposit, mortgage  
4           loan, interest, group or index, or option;

5           “(ii) any option entered into on a na-  
6           tional securities exchange relating to for-  
7           eign currencies;

8           “(iii) the guarantee by or to any secu-  
9           rities clearing agency of a settlement of  
10          cash, securities, certificates of deposit,  
11          mortgage loans or interests therein, group  
12          or index of securities, or mortgage loans or  
13          interests therein (including any interest  
14          therein or based on the value thereof), or  
15          option on any of the foregoing, including  
16          an option to purchase or sell any such se-  
17          curity, certificate of deposit, mortgage  
18          loan, interest, 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  
6           this 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  
7 in connection with any such agreement or  
8 transaction, measured in accordance with  
9 section 562; and

10 “(B) does not include any purchase, sale,  
11 or repurchase obligation under a participation  
12 in a 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 agree-  
23 ment or transaction referred to in this para-  
24 graph;

1           “(I) a master agreement that provides for  
2           an agreement or transaction referred to in sub-  
3           paragraph (A), (B), (C), (D), (E), (F), (G), or  
4           (H), together with all supplements to such mas-  
5           ter agreement, without regard to whether the  
6           master agreement provides for an agreement or  
7           transaction that is not a commodity contract  
8           under this paragraph, except that the master  
9           agreement shall be considered to be a com-  
10          modity contract under this paragraph only with  
11          respect to each agreement or transaction under  
12          the master agreement that is referred to in sub-  
13          paragraph (A), (B), (C), (D), (E), (F), (G), or  
14          (H); or

15          “(J) any security agreement or arrange-  
16          ment or other credit enhancement related to  
17          any agreement or transaction referred to in this  
18          paragraph, including any guarantee or reim-  
19          bursement obligation by or to a commodity  
20          broker or financial participant in connection  
21          with any agreement or transaction referred to  
22          in this paragraph, but not to exceed the dam-  
23          ages in connection with any such agreement or  
24          transaction, measured in accordance with sec-  
25          tion 562;”.

1 (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-  
2 NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-  
3 CHANT.—Section 101 of title 11, United States Code, is  
4 amended—

5 (1) by striking paragraph (22) and inserting  
6 the following:

7 “(22) ‘financial institution’ means—

8 “(A) a Federal reserve bank, or an entity  
9 (domestic or foreign) that is a commercial or  
10 savings bank, industrial savings bank, savings  
11 and loan association, trust company, federally-  
12 insured credit union, or receiver, liquidating  
13 agent, or conservator for such entity and, when  
14 any such Federal reserve bank, receiver, liqui-  
15 dating agent, conservator or entity is acting as  
16 agent or custodian for a customer in connection  
17 with a securities contract (as defined in section  
18 741) such customer; or

19 “(B) in connection with a securities con-  
20 tract (as defined in section 741) an investment  
21 company registered under the Investment Com-  
22 pany Act of 1940;”;

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

25 “(22A) ‘financial participant’ means—

1           “(A) an entity that, at the time it enters  
2           into a securities contract, commodity contract,  
3           swap agreement, repurchase agreement, or for-  
4           ward contract, or at the time of the date of the  
5           filing of the petition, has one or more agree-  
6           ments or transactions described in paragraph  
7           (1), (2), (3), (4), (5), or (6) of section 561(a)  
8           with the debtor or any other entity (other than  
9           an affiliate) of a total gross dollar value of not  
10          less than \$1,000,000,000 in notional or actual  
11          principal amount outstanding on any day dur-  
12          ing the previous 15-month period, or has gross  
13          mark-to-market positions of not less than  
14          \$100,000,000            (aggregated            across  
15          counterparties) in one or more such agreements  
16          or transactions with the debtor or any other en-  
17          tity (other than an affiliate) on any day during  
18          the previous 15-month period; or

19           “(B) a clearing organization (as defined in  
20          section 402 of the Federal Deposit Insurance  
21          Corporation Improvement Act of 1991);” and  
22          (3) by striking paragraph (26) and inserting  
23          the following:

24           “(26) ‘forward contract merchant’ means a  
25          Federal reserve bank, or an entity the business of

1 which consists in whole or in part of entering into  
2 forward contracts as or with merchants in a com-  
3 modity (as defined in section 761) or any similar  
4 good, article, service, right, or interest which is pres-  
5 ently or in the future becomes the subject of dealing  
6 in the forward contract trade;”.

7 (c) DEFINITION OF MASTER NETTING AGREEMENT  
8 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-  
9 tion 101 of title 11, United States Code, is amended by  
10 inserting after paragraph (38) the following new para-  
11 graphs:

12 “(38A) ‘master netting agreement’—

13 “(A) means an agreement providing for  
14 the exercise of rights, including rights of net-  
15 ting, setoff, liquidation, termination, accelera-  
16 tion, or close out, under or in connection with  
17 one or more contracts that are described in any  
18 one or more of paragraphs (1) through (5) of  
19 section 561(a), or any security agreement or ar-  
20 rangement or other credit enhancement related  
21 to one or more of the foregoing, including any  
22 guarantee or reimbursement obligation related  
23 to 1 or more of the foregoing; and

24 “(B) if the agreement contains provisions  
25 relating to agreements or transactions that are

1 not contracts described in paragraphs (1)  
2 through (5) of section 561(a), shall be deemed  
3 to be a master netting agreement only with re-  
4 spect to those agreements or transactions that  
5 are described in any one or more of paragraphs  
6 (1) through (5) of section 561(a);

7 “(38B) ‘master netting agreement participant’  
8 means an entity that, at any time before the date of  
9 the filing of the petition, is a party to an out-  
10 standing master netting agreement with the debt-  
11 or;”.

12 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
13 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-  
14 CHASE AGREEMENTS, AND MASTER NETTING AGREE-  
15 MENTS UNDER THE AUTOMATIC-STAY.—

16 (1) IN GENERAL.—Section 362(b) of title 11,  
17 United States Code, as amended by sections 224,  
18 303, 311, 401, and 718, is amended—

19 (A) in paragraph (6), by inserting “,  
20 pledged to, under the control of,” after “held  
21 by”;

22 (B) in paragraph (7), by inserting “,  
23 pledged to, under the control of,” after “held  
24 by”;

1 (C) by striking paragraph (17) and insert-  
2 ing the following:

3 “(17) under subsection (a), of the setoff by a  
4 swap participant or financial participant of a mutual  
5 debt and claim under or in connection with one or  
6 more swap agreements that constitutes the setoff of  
7 a claim against the debtor for any payment or other  
8 transfer of property due from the debtor under or in  
9 connection with any swap agreement against any  
10 payment due to the debtor from the swap partici-  
11 pant or financial participant under or in connection  
12 with any swap agreement or against cash, securities,  
13 or other property held by, pledged to, under the con-  
14 trol of, or due from such swap participant or finan-  
15 cial participant to margin, guarantee, secure, or set-  
16 tle any swap agreement;” and

17 (D) by inserting after paragraph (26) the  
18 following:

19 “(27) under subsection (a), of the setoff by a  
20 master netting agreement participant of a mutual  
21 debt and claim under or in connection with one or  
22 more master netting agreements or any contract or  
23 agreement subject to such agreements that con-  
24 stitutes the setoff of a claim against the debtor for  
25 any payment or other transfer of property due from

1 the debtor under or in connection with such agree-  
2 ments or any contract or agreement subject to such  
3 agreements against any payment due to the debtor  
4 from such master netting agreement participant  
5 under or in connection with such agreements or any  
6 contract or agreement subject to such agreements or  
7 against cash, securities, or other property held by,  
8 pledged to, under the control of, or due from such  
9 master netting agreement participant to margin,  
10 guarantee, secure, or settle such agreements or any  
11 contract or agreement subject to such agreements,  
12 to the extent that such participant is eligible to exer-  
13 cise such offset rights under paragraph (6), (7), or  
14 (17) for each individual contract covered by the mas-  
15 ter netting agreement in issue; and”.

16 (2) LIMITATION.—Section 362 of title 11,  
17 United States Code, as amended by sections 106,  
18 305, 311, and 441, is amended by adding at the end  
19 the following:

20 “(o) The exercise of rights not subject to the stay  
21 arising under subsection (a) pursuant to paragraph (6),  
22 (7), (17), or (27) of subsection (b) shall not be stayed  
23 by any order of a court or administrative agency in any  
24 proceeding under this title.”.



1 (e) LIMITATION OF AVOIDANCE POWERS UNDER  
2 MASTER NETTING AGREEMENT.—Section 546 of title 11,  
3 United States Code, is amended—

4 (1) in subsection (g) (as added by section 103  
5 of Public Law 101–311)—

6 (A) by striking “under a swap agreement”;

7 (B) by striking “in connection with a swap  
8 agreement” and inserting “under or in connec-  
9 tion with any swap agreement”; and

10 (C) by inserting “or financial participant”  
11 after “swap participant”; and

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

13 “(j) Notwithstanding sections 544, 545, 547,  
14 548(a)(1)(B), and 548(b) the trustee may not avoid a  
15 transfer made by or to a master netting agreement partici-  
16 pant under or in connection with any master netting  
17 agreement or any individual contract covered thereby that  
18 is made before the commencement of the case, except  
19 under section 548(a)(1)(A) and except to the extent that  
20 the trustee could otherwise avoid such a transfer made  
21 under an individual contract covered by such master net-  
22 ting agreement.”.

23 (f) FRAUDULENT TRANSFERS OF MASTER NETTING  
24 AGREEMENTS.—Section 548(d)(2) of title 11, United  
25 States Code, is amended—

1           (1) in subparagraph (C), by striking “and” at  
2           the end;

3           (2) in subparagraph (D), by striking the period  
4           and inserting “; and”; and

5           (3) by adding at the end the following new sub-  
6           paragraph:

7           “(E) a master netting agreement participant  
8           that receives a transfer in connection with a master  
9           netting agreement or any individual contract covered  
10          thereby takes for value to the extent of such trans-  
11          fer, except that, with respect to a transfer under any  
12          individual contract covered thereby, to the extent  
13          that such master netting agreement participant oth-  
14          erwise did not take (or is otherwise not deemed to  
15          have taken) such transfer for value.”.

16          (g) TERMINATION OR ACCELERATION OF SECURITIES  
17          CONTRACTS.—Section 555 of title 11, United States Code,  
18          is amended—

19                 (1) by amending the section heading to read as  
20                 follows:

21                 “§ 555. **Contractual right to liquidate, terminate, or**  
22                         **accelerate a securities contract”;**

23                 and

1           (2) in the first sentence, by striking “liquida-  
2           tion” and inserting “liquidation, termination, or ac-  
3           celeration”.

4           (h) TERMINATION OR ACCELERATION OF COMMOD-  
5           ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,  
6           United States Code, is amended—

7           (1) by amending the section heading to read as  
8           follows:

9           “§ 556. **Contractual right to liquidate, terminate, or**  
10           **accelerate a commodities contract or for-**  
11           **ward contract”;**

12           (2) in the first sentence, by striking “liquida-  
13           tion” and inserting “liquidation, termination, or ac-  
14           celeration”; and

15           (3) in the second sentence, by striking “As  
16           used” and all that follows through “right,” and in-  
17           serting “As used in this section, the term ‘contract-  
18           tual right’ includes a right set forth in a rule or  
19           bylaw of a derivatives clearing organization (as de-  
20           fined in the Commodity Exchange Act), a multilat-  
21           eral clearing organization (as defined in the Federal  
22           Deposit Insurance Corporation Improvement Act of  
23           1991), a national securities exchange, a national se-  
24           curities association, a securities clearing agency, a  
25           contract market designated under the Commodity

1 Exchange Act, a derivatives transaction execution  
2 facility registered under the Commodity Exchange  
3 Act, or a board of trade (as defined in the Com-  
4modity Exchange Act) or in a resolution of the gov-  
5erning board thereof and a right,”.

6 (i) TERMINATION OR ACCELERATION OF REPUR-  
7CHASE AGREEMENTS.—Section 559 of title 11, United  
8 States Code, is amended—

9 (1) by amending the section heading to read as  
10 follows:

11 **“§ 559. Contractual right to liquidate, terminate, or**  
12 **accelerate a repurchase agreement”;**

13 (2) in the first sentence, by striking “liquida-  
14tion” and inserting “liquidation, termination, or ac-  
15celeration”; and

16 (3) in the third 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-  
20rivatives clearing organization (as defined in the  
21 Commodity Exchange Act), a multilateral clearing  
22 organization (as defined in the Federal Deposit In-  
23surance Corporation Improvement Act of 1991), a  
24 national securities exchange, a national securities as-  
25 sociation, a securities clearing agency, a contract

1 market designated under the Commodity Exchange  
2 Act, a derivatives transaction execution facility reg-  
3 istered under the Commodity Exchange Act, or a  
4 board of trade (as defined in the Commodity Ex-  
5 change Act) or in a resolution of the governing  
6 board thereof and a right,”.

7 (j) LIQUIDATION, TERMINATION, OR ACCELERATION  
8 OF SWAP AGREEMENTS.—Section 560 of title 11, United  
9 States Code, is amended—

10 (1) by amending the section heading to read as  
11 follows:

12 **“§ 560. Contractual right to liquidate, terminate, or**  
13 **accelerate a swap agreement”;**

14 (2) in the first sentence, by striking “termi-  
15 nation of a swap agreement” and inserting “liquida-  
16 tion, termination, or acceleration of one or more  
17 swap agreements”;

18 (3) by striking “in connection with any swap  
19 agreement” and inserting “in connection with the  
20 termination, liquidation, or acceleration of one or  
21 more swap agreements”; and

22 (4) in the second sentence, by striking “As  
23 used” and all that follows through “right,” and in-  
24 serting “As used in this section, the term ‘contrac-  
25 tual right’ includes a right set forth in a rule or

1 bylaw of a derivatives clearing organization (as de-  
2 fined in the Commodity Exchange Act), a multilat-  
3 eral clearing organization (as defined in the Federal  
4 Deposit Insurance Corporation Improvement Act of  
5 1991), a national securities exchange, a national se-  
6 curities association, a securities clearing agency, a  
7 contract market designated under the Commodity  
8 Exchange Act, a derivatives transaction execution  
9 facility registered under the Commodity Exchange  
10 Act, or a board of trade (as defined in the Com-  
11 modity Exchange Act) or in a resolution of the gov-  
12 erning board thereof and a right,”.

13 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR  
14 OFFSET UNDER A MASTER NETTING AGREEMENT AND  
15 ACROSS CONTRACTS.—

16 (1) IN GENERAL.—Title 11, United States  
17 Code, is amended by inserting after section 560 the  
18 following:

19 **“§ 561. Contractual right to terminate, liquidate, ac-**  
20 **celerate, or offset under a master netting**  
21 **agreement and across contracts; pro-**  
22 **ceedings under chapter 15**

23 “(a) Subject to subsection (b), the exercise of any  
24 contractual right, because of a condition of the kind speci-  
25 fied in section 365(e)(1), to cause the termination, liquida-

1 tion, or acceleration of or to offset or net termination val-  
 2 ues, payment amounts, or other transfer obligations aris-  
 3 ing under or in connection with one or more (or the termi-  
 4 nation, liquidation, or acceleration of one or more)—

5           “(1) securities contracts, as defined in section  
 6           741(7);

7           “(2) commodity contracts, as defined in section  
 8           761(4);

9           “(3) forward contracts;

10          “(4) repurchase agreements;

11          “(5) swap agreements; or

12          “(6) master netting agreements,

13 shall not be stayed, avoided, or otherwise limited by oper-  
 14 ation of any provision of this title or by any order of a  
 15 court or administrative agency in any proceeding under  
 16 this title.

17          “(b)(1) A party may exercise a contractual right de-  
 18 scribed in subsection (a) to terminate, liquidate, or accel-  
 19 erate only to the extent that such party could exercise such  
 20 a right under section 555, 556, 559, or 560 for each indi-  
 21 vidual contract covered by the master netting agreement  
 22 in issue.

23          “(2) If a debtor is a commodity broker subject to sub-  
 24 chapter IV of chapter 7—

1           “(A) a party may not net or offset an obligation  
2           to the debtor arising under, or in connection with,  
3           a commodity contract traded on or subject to the  
4           rules of a contract market designated under the  
5           Commodity Exchange Act or a derivatives trans-  
6           action execution facility registered under the Com-  
7           modity Exchange Act against any claim arising  
8           under, or in connection with, other instruments, con-  
9           tracts, or agreements listed in subsection (a) except  
10          to the extent that the party has positive net equity  
11          in the commodity accounts at the debtor, as cal-  
12          culated under such subchapter; and

13          “(B) another commodity broker may not net or  
14          offset an obligation to the debtor arising under, or  
15          in connection with, a commodity contract entered  
16          into or held on behalf of a customer of the debtor  
17          and traded on or subject to the rules of a contract  
18          market designated under the Commodity Exchange  
19          Act or a derivatives transaction execution facility  
20          registered under the Commodity Exchange Act  
21          against any claim arising under, or in connection  
22          with, other instruments, contracts, or agreements  
23          listed in subsection (a).



1       “(3) No provision of subparagraph (A) or (B) of  
2 paragraph (2) shall prohibit the offset of claims and obli-  
3 gations that arise under—

4               “(A) a cross-margining agreement or similar  
5 arrangement that has been approved by the Com-  
6modity Futures Trading Commission or submitted  
7 to the Commodity Futures Trading Commission  
8 under paragraph (1) or (2) of section 5c(e) of the  
9 Commodity Exchange Act and has not been abro-  
10 gated or rendered ineffective by the Commodity Fu-  
11 tures Trading Commission; or

12               “(B) any other netting agreement between a  
13 clearing organization (as defined in section 761) and  
14 another entity that has been approved by the Com-  
15modity Futures Trading Commission.

16       “(c) As used in this section, the term ‘contractual  
17 right’ includes a right set forth in a rule or bylaw of a  
18 derivatives clearing organization (as defined in the Com-  
19modity Exchange Act), a multilateral clearing organiza-  
20 tion (as defined in the Federal Deposit Insurance Cor-  
21poration Improvement Act of 1991), a national securities  
22 exchange, a national securities association, a securities  
23 clearing agency, a contract market designated under the  
24 Commodity Exchange Act, a derivatives transaction execu-  
25 tion facility registered under the Commodity Exchange

1 Act, or a board of trade (as defined in the Commodity  
2 Exchange Act) or in a resolution of the governing board  
3 thereof, and a right, whether or not evidenced in writing,  
4 arising under common law, under law merchant, or by rea-  
5 son of normal business practice.

6 “(d) Any provisions of this title relating to securities  
7 contracts, commodity contracts, forward contracts, repur-  
8 chase agreements, swap agreements, or master netting  
9 agreements shall apply in a case under chapter 15, so that  
10 enforcement of contractual provisions of such contracts  
11 and agreements in accordance with their terms will not  
12 be stayed or otherwise limited by operation of any provi-  
13 sion of this title or by order of a court in any case under  
14 this title, and to limit avoidance powers to the same extent  
15 as in a proceeding under chapter 7 or 11 of this title (such  
16 enforcement not to be limited based on the presence or  
17 absence of assets of the debtor in the United States).”.

18 (2) CONFORMING AMENDMENT.—The table of  
19 sections for chapter 5 of title 11, United States  
20 Code, is amended by inserting after the item relating  
21 to section 560 the following:

“561. Contractual right to terminate, liquidate, accelerate, or offset under a  
master netting agreement and across contracts; proceedings  
under chapter 15.”.

22 (1) COMMODITY BROKER LIQUIDATIONS.—Title 11,  
23 United States Code, is amended by inserting after section  
24 766 the following:

1 **“§ 767. Commodity broker liquidation and forward**  
2 **contract merchants, commodity brokers,**  
3 **stockbrokers, financial institutions, fi-**  
4 **nancial participants, securities clearing**  
5 **agencies, swap participants, repo partici-**  
6 **pants, and master netting agreement par-**  
7 **ticipants**

8 “Notwithstanding any other provision of this title,  
9 the exercise of rights by a forward contract merchant,  
10 commodity broker, stockbroker, financial institution, fi-  
11 nancial participant, securities clearing agency, swap par-  
12 ticipant, repo participant, or master netting agreement  
13 participant under this title shall not affect the priority of  
14 any unsecured claim it may have after the exercise of such  
15 rights.”.

16 (m) STOCKBROKER LIQUIDATIONS.—Title 11,  
17 United States Code, is amended by inserting after section  
18 752 the following:

19 **“§ 753. Stockbroker liquidation and forward contract**  
20 **merchants, commodity brokers, stock-**  
21 **brokers, financial institutions, financial**  
22 **participants, securities clearing agencies,**  
23 **swap participants, repo participants, and**  
24 **master netting agreement participants**

25 “Notwithstanding any other provision of this title,  
26 the exercise of rights by a forward contract merchant,

1 commodity broker, stockbroker, financial institution, fi-  
2 nancial participant, securities clearing agency, swap par-  
3 ticipant, repo participant, or master netting agreement  
4 participant under this title shall not affect the priority of  
5 any unsecured claim it may have after the exercise of such  
6 rights.”.

7 (n) SETOFF.—Section 553 of title 11, United States  
8 Code, is amended—

9 (1) in subsection (a)(2)(B)(ii), by inserting be-  
10 fore the semicolon the following: “(except for a  
11 setoff of a kind described in section 362(b)(6),  
12 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559,  
13 560, or 561)”;

14 (2) in subsection (a)(3)(C), by inserting before  
15 the period the following: “(except for a setoff of a  
16 kind described in section 362(b)(6), 362(b)(7),  
17 362(b)(17), 362(b)(27), 555, 556, 559, 560, or  
18 561)”;

19 (3) in subsection (b)(1), by striking  
20 “362(b)(14),” and inserting “362(b)(17),  
21 362(b)(27), 555, 556, 559, 560, 561.”.

22 (o) SECURITIES CONTRACTS, COMMODITY CON-  
23 TRACTS, AND FORWARD CONTRACTS.—Title 11, United  
24 States Code, is amended—

1           (1) in section 362(b)(6), by striking “financial  
2 institutions,” each place such term appears and in-  
3 sserting “financial institution, financial participant,”;

4           (2) in sections 362(b)(7) and 546(f), by insert-  
5 ing “or financial participant” after “repo partici-  
6 pant” each place such term appears;

7           (3) in section 546(e), by inserting “financial  
8 participant,” after “financial institution,”;

9           (4) in section 548(d)(2)(B), by inserting “fi-  
10 nancial participant,” after “financial institution,”;

11           (5) in section 548(d)(2)(C), by inserting “or fi-  
12 nancial participant” after “repo participant”;

13           (6) in section 548(d)(2)(D), by inserting “or fi-  
14 nancial participant” after “swap participant”;

15           (7) in section 555—

16               (A) by inserting “financial participant,”  
17 after “financial institution,”; and

18               (B) by striking the second sentence and in-  
19 sserting the following: “As used in this section,  
20 the term ‘contractual right’ includes a right set  
21 forth in a rule or bylaw of a derivatives clearing  
22 organization (as defined in the Commodity Ex-  
23 change Act), a multilateral clearing organiza-  
24 tion (as defined in the Federal Deposit Insur-  
25 ance Corporation Improvement Act of 1991), a

1 national securities exchange, a national securi-  
 2 ties association, a securities clearing agency, a  
 3 contract market designated under the Com-  
 4modity Exchange Act, a derivatives transaction  
 5 execution facility registered under the Com-  
 6modity Exchange Act, or a board of trade (as  
 7 defined in the Commodity Exchange Act), or in  
 8 a resolution of the governing board thereof, and  
 9 a right, whether or not in writing, arising under  
 10 common law, under law merchant, or by reason  
 11 of normal business practice.”;

12 (8) in section 556, by inserting “, financial par-  
 13 ticipant,” after “commodity broker”;

14 (9) in section 559, by inserting “or financial  
 15 participant” after “repo participant” each place  
 16 such term appears; and

17 (10) in section 560, by inserting “or financial  
 18 participant” after “swap participant”.

19 (p) CONFORMING AMENDMENTS.—Title 11, United  
 20 States Code, is amended—

21 (1) in the table of sections for chapter 5—

22 (A) by amending the items relating to sec-  
 23 tions 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities con-  
 tract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities con-  
 tract or forward contract.”;

1 and

2 (B) by amending the items relating to sec-  
3 tions 559 and 560 to read as follows:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

“560. Contractual right to liquidate, terminate, or accelerate a swap agreement.”;

4 and

5 (2) in the table of sections for chapter 7—

6 (A) by inserting after the item relating to  
7 section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”;

8 and

9 (B) by inserting after the item relating to  
10 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.”.

11 **SEC. 908. RECORDKEEPING REQUIREMENTS.**

12 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

13 Section 11(e)(8) of the Federal Deposit Insurance Act (12  
14 U.S.C. 1821(e)(8)) is amended by adding at the end the  
15 following new subparagraph:

16 “(H) RECORDKEEPING REQUIREMENTS.—

17 The Corporation, in consultation with the ap-  
18 propriate Federal banking agencies, may pre-  
19 scribe regulations requiring more detailed rec-

1           ordkeeping by any insured depository institu-  
 2           tion with respect to qualified financial contracts  
 3           (including market valuations) only if such in-  
 4           sured depository institution is in a troubled  
 5           condition (as such term is defined by the Cor-  
 6           poration pursuant to section 32).”.

7           (b) INSURED CREDIT UNIONS.—Section 207(c)(8) of  
 8           the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is  
 9           amended by adding at the end the following new subpara-  
 10          graph:

11                       “(H) RECORDKEEPING REQUIREMENTS.—  
 12           The Board, in consultation with the appropriate  
 13           Federal banking agencies, may prescribe regula-  
 14           tions requiring more detailed recordkeeping by  
 15           any insured credit union with respect to quali-  
 16           fied financial contracts (including market valu-  
 17           ations) only if such insured credit union is in  
 18           a troubled condition (as such term is defined by  
 19           the Board pursuant to section 212).”.

20   **SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-**  
 21                       **TION REQUIREMENT.**

22           Section 13(e)(2) of the Federal Deposit Insurance  
 23           Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:



1           “(2) EXEMPTIONS FROM CONTEMPORANEOUS  
2 EXECUTION REQUIREMENT.—An agreement to pro-  
3 vide for the lawful collateralization of—

4           “(A) deposits of, or other credit extension  
5 by, a Federal, State, or local governmental enti-  
6 ty, or of any depositor referred to in section  
7 11(a)(2), including an agreement to provide col-  
8 lateral in lieu of a surety bond;

9           “(B) bankruptcy estate funds pursuant to  
10 section 345(b)(2) of title 11, United States  
11 Code;

12           “(C) extensions of credit, including any  
13 overdraft, from a Federal reserve bank or Fed-  
14 eral home loan bank; or

15           “(D) one or more qualified financial con-  
16 tracts, as defined in section 11(e)(8)(D),  
17 shall not be deemed invalid pursuant to paragraph  
18 (1)(B) solely because such agreement was not exe-  
19 cuted contemporaneously with the acquisition of the  
20 collateral or because of pledges, delivery, or substi-  
21 tution of the collateral made in accordance with such  
22 agreement.”.

23 **SEC. 910. DAMAGE MEASURE.**

24           (a) IN GENERAL.—Title 11, United States Code, is  
25 amended—

1           (1) by inserting after section 561, as added by  
2           section 907, the following:

3   **“§ 562. Timing of damage measurement in connection**  
4                 **with swap agreements, securities con-**  
5                 **tracts, forward contracts, commodity con-**  
6                 **tracts, repurchase agreements, and mas-**  
7                 **ter netting agreements**

8           “(a) If the trustee rejects a swap agreement, securi-  
9           ties contract (as defined in section 741), forward contract,  
10          commodity contract (as defined in section 761), repur-  
11          chase agreement, or master netting agreement pursuant  
12          to section 365(a), or if a forward contract merchant,  
13          stockbroker, financial institution, securities clearing agen-  
14          cy, repo participant, financial participant, master netting  
15          agreement participant, or swap participant liquidates, ter-  
16          minates, or accelerates such contract or agreement, dam-  
17          ages shall be measured as of the earlier of—

18                 “(1) the date of such rejection; or

19                 “(2) the date or dates of such liquidation, ter-  
20          mination, or acceleration.

21           “(b) If there are not any commercially reasonable de-  
22          terminants of value as of any date referred to in para-  
23          graph (1) or (2) of subsection (a), damages shall be meas-  
24          ured as of the earliest subsequent date or dates on which  
25          there are commercially reasonable determinants of value.

1           “(c) For the purposes of subsection (b), if damages  
 2 are not measured as of the date or dates of rejection, liq-  
 3 uidation, termination, or acceleration, and the forward  
 4 contract merchant, stockbroker, financial institution, secu-  
 5 rities clearing agency, repo participant, financial partici-  
 6 pant, master netting agreement participant, or swap par-  
 7 ticipant or the trustee objects to the timing of the meas-  
 8 urement of damages—

9           “(1) the trustee, in the case of an objection by  
 10 a forward contract merchant, stockbroker, financial  
 11 institution, securities clearing agency, repo partici-  
 12 pant, financial participant, master netting agree-  
 13 ment participant, or swap participant; or

14           “(2) the forward contract merchant, stock-  
 15 broker, financial institution, securities clearing agen-  
 16 cy, repo participant, financial participant, master  
 17 netting agreement participant, or swap participant,  
 18 in the case of an objection by the trustee,

19 has the burden of proving that there were no commercially  
 20 reasonable determinants of value as of such date or  
 21 dates.”; and

22           (2) in the table of sections for chapter 5, by in-  
 23 serting after the item relating to section 561 (as  
 24 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.”.

1 (b) CLAIMS ARISING FROM REJECTION.—Section  
2 502(g) of title 11, United States Code, is amended—

3 (1) by inserting “(1)” after “(g)”; and

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

5 “(2) A claim for damages calculated in accordance  
6 with section 562 shall be allowed under subsection (a), (b),  
7 or (c), or disallowed under subsection (d) or (e), as if such  
8 claim had arisen before the date of the filing of the peti-  
9 tion.”.

10 **SEC. 911. SIPC STAY.**

11 Section 5(b)(2) of the Securities Investor Protection  
12 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding  
13 at the end the following new subparagraph:

14 “(C) EXCEPTION FROM STAY.—

15 “(i) Notwithstanding section 362 of  
16 title 11, United States Code, neither the  
17 filing of an application under subsection  
18 (a)(3) nor any order or decree obtained by  
19 SIPC from the court shall operate as a  
20 stay of any contractual rights of a creditor  
21 to liquidate, terminate, or accelerate a se-  
22 curities contract, commodity contract, for-  
23 ward contract, repurchase agreement, swap  
24 agreement, or master netting agreement,  
25 as those terms are defined in sections 101,

1           741, and 761 of title 11, United States  
2           Code, to offset or net termination values,  
3           payment amounts, or other transfer obliga-  
4           tions arising under or in connection with  
5           one or more of such contracts or agree-  
6           ments, or to foreclose on any cash collat-  
7           eral pledged by the debtor, whether or not  
8           with respect to one or more of such con-  
9           tracts or agreements.

10           “(ii) Notwithstanding clause (i), such  
11           application, order, or decree may operate  
12           as a stay of the foreclosure on, or disposi-  
13           tion of, securities collateral pledged by the  
14           debtor, whether or not with respect to one  
15           or more of such contracts or agreements,  
16           securities sold by the debtor under a repur-  
17           chase agreement, or securities lent under a  
18           securities lending agreement.

19           “(iii) As used in this subparagraph,  
20           the term ‘contractual right’ includes a  
21           right set forth in a rule or bylaw of a na-  
22           tional securities exchange, a national secu-  
23           rities association, or a securities clearing  
24           agency, a right set forth in a bylaw of a  
25           clearing organization or contract market or

1 in a resolution of the governing board  
 2 thereof, and a right, whether or not in  
 3 writing, arising under common law, under  
 4 law merchant, or by reason of normal busi-  
 5 ness practice.”.

6 **TITLE X—PROTECTION OF FAM-**  
 7 **ILY FARMERS AND FAMILY**  
 8 **FISHERMEN**

9 **SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.**

10 (a) REENACTMENT.—

11 (1) IN GENERAL.—Chapter 12 of title 11,  
 12 United States Code, as reenacted by section 149 of  
 13 division C of the Omnibus Consolidated and Emer-  
 14 gency Supplemental Appropriations Act, 1999 (Pub-  
 15 lic Law 105–277), and as in effect on June 30,  
 16 2005, is hereby reenacted.

17 (2) EFFECTIVE DATE OF REENACTMENT.—

18 Paragraph (1) shall take effect on July 1, 2005.

19 (b) AMENDMENTS—Chapter 12 of title 11, United  
 20 States Code, as reenacted by subsection (a), is amended  
 21 by this Act.

22 (c) CONFORMING AMENDMENT.—Section 302 of the  
 23 Bankruptcy Judges, United States Trustees, and Family  
 24 Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is  
 25 amended by striking subsection (f).

1 **SEC. 1002. DEBT LIMIT INCREASE.**

2 Section 104(b) of title 11, United States Code, as  
3 amended by section 226, is amended by inserting  
4 “101(18),” after “101(3),” each place it appears.

5 **SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL**  
6 **UNITS.**

7 (a) CONTENTS OF PLAN.—Section 1222(a)(2) of title  
8 11, United States Code, as amended by section 213, is  
9 amended to read as follows:

10 “(2) provide for the full payment, in deferred  
11 cash payments, of all claims entitled to priority  
12 under section 507, unless—

13 “(A) the claim is a claim owed to a govern-  
14 mental unit that arises as a result of the sale,  
15 transfer, exchange, or other disposition of any  
16 farm asset used in the debtor’s farming oper-  
17 ation, in which case the claim shall be treated  
18 as an unsecured claim that is not entitled to  
19 priority under section 507, but the debt shall be  
20 treated in such manner only if the debtor re-  
21 ceives a discharge; or

22 “(B) the holder of a particular claim  
23 agrees to a different treatment of that claim;”.

24 (b) SPECIAL NOTICE PROVISIONS.—Section 1231(b)  
25 of title 11, United States Code, as so designated by section

1 719, is amended by striking “a State or local govern-  
2 mental unit” and inserting “any governmental unit”.

3 (c) EFFECTIVE DATE; APPLICATION OF AMEND-  
4 MENTS.—This section and the amendments made by this  
5 section shall take effect on the date of the enactment of  
6 this Act and shall not apply with respect to cases com-  
7 menced under title 11 of the United States Code before  
8 such date.

9 **SEC. 1004. DEFINITION OF FAMILY FARMER.**

10 Section 101(18) of title 11, United States Code, is  
11 amended—

12 (1) in subparagraph (A)—

13 (A) by striking “\$1,500,000” and inserting  
14 “\$3,237,000”; and

15 (B) by striking “80” and inserting “50”;

16 and

17 (2) in subparagraph (B)(ii)—

18 (A) by striking “\$1,500,000” and inserting  
19 “\$3,237,000”; and

20 (B) by striking “80” and inserting “50”.



1 **SEC. 1005. ELIMINATION OF REQUIREMENT THAT FAMILY**  
 2 **FARMER AND SPOUSE RECEIVE OVER 50 PER-**  
 3 **CENT OF INCOME FROM FARMING OPER-**  
 4 **ATION IN YEAR PRIOR TO BANKRUPTCY.**

5 Section 101(18)(A) of title 11, United States Code,  
 6 is amended by striking “for the taxable year preceding the  
 7 taxable year” and inserting the following:

8 “for—  
 9 “(i) the taxable year preceding; or  
 10 “(ii) each of the 2d and 3d taxable  
 11 years preceding;  
 12 the taxable year”.

13 **SEC. 1006. PROHIBITION OF RETROACTIVE ASSESSMENT OF**  
 14 **DISPOSABLE INCOME.**

15 (a) CONFIRMATION OF PLAN.—Section 1225(b)(1) of  
 16 title 11, United States Code, is amended—

17 (1) in subparagraph (A) by striking “or” at the  
 18 end;

19 (2) in subparagraph (B) by striking the period  
 20 at the end and inserting “; or”; and

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

22 “(C) the value of the property to be distributed  
 23 under the plan in the 3-year period, or such longer  
 24 period as the court may approve under section  
 25 1222(e), beginning on the date that the first dis-  
 26 tribution is due under the plan is not less than the

1 debtor's projected disposable income for such pe-  
2 riod.”.

3 (b) MODIFICATION OF PLAN.—Section 1229 of title  
4 11, United States Code, is amended by adding at the end  
5 the following:

6 “(d) A plan may not be modified under this section—

7 “(1) to increase the amount of any payment  
8 due before the plan as modified becomes the plan;

9 “(2) by anyone except the debtor, based on an  
10 increase in the debtor's disposable income, to in-  
11 crease the amount of payments to unsecured credi-  
12 tors required for a particular month so that the ag-  
13 gregate of such payments exceeds the debtor's dis-  
14 posable income for such month; or

15 “(3) in the last year of the plan by anyone ex-  
16 cept the debtor, to require payments that would  
17 leave the debtor with insufficient funds to carry on  
18 the farming operation after the plan is completed.”.

19 **SEC. 1007. FAMILY FISHERMEN.**

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

22 (1) by inserting after paragraph (7) the fol-  
23 lowing:

24 “(7A) ‘commercial fishing operation’ means—

1           “(A) the catching or harvesting of fish,  
2           shrimp, lobsters, urchins, seaweed, shellfish, or  
3           other aquatic species or products of such spe-  
4           cies; or

5           “(B) for purposes of section 109 and chap-  
6           ter 12, aquaculture activities consisting of rais-  
7           ing for market any species or product described  
8           in subparagraph (A);

9           “(7B) ‘commercial fishing vessel’ means a ves-  
10          sel used by a family fisherman to carry out a com-  
11          mercial fishing operation;” and

12          (2) by inserting after paragraph (19) the fol-  
13          lowing:

14          “(19A) ‘family fisherman’ means—

15                 “(A) an individual or individual and spouse  
16                 engaged in a commercial fishing operation—

17                         “(i) whose aggregate debts do not ex-  
18                         ceed \$1,500,000 and not less than 80 per-  
19                         cent of whose aggregate noncontingent, liq-  
20                         uidated debts (excluding a debt for the  
21                         principal residence of such individual or  
22                         such individual and spouse, unless such  
23                         debt arises out of a commercial fishing op-  
24                         eration), on the date the case is filed, arise  
25                         out of a commercial fishing operation

1 owned or operated by such individual or  
2 such individual and spouse; and

3 “(ii) who receive from such commer-  
4 cial fishing operation more than 50 percent  
5 of such individual’s or such individual’s  
6 and spouse’s gross income for the taxable  
7 year preceding the taxable year in which  
8 the case concerning such individual or such  
9 individual and spouse was filed; or

10 “(B) a corporation or partnership—

11 “(i) in which more than 50 percent of  
12 the outstanding stock or equity is held  
13 by—

14 “(I) 1 family that conducts the  
15 commercial fishing operation; or

16 “(II) 1 family and the relatives  
17 of the members of such family, and  
18 such family or such relatives conduct  
19 the commercial fishing operation; and

20 “(ii)(I) more than 80 percent of the  
21 value of its assets consists of assets related  
22 to the commercial fishing operation;

23 “(II) its aggregate debts do not ex-  
24 ceed \$1,500,000 and not less than 80 per-  
25 cent of its aggregate noncontingent, liq-

1           uidated debts (excluding a debt for 1  
 2           dwelling which is owned by such corpora-  
 3           tion or partnership and which a share-  
 4           holder or partner maintains as a principal  
 5           residence, unless such debt arises out of a  
 6           commercial fishing operation), on the date  
 7           the case is filed, arise out of a commercial  
 8           fishing operation owned or operated by  
 9           such corporation or such partnership; and

10                   “(III) if such corporation issues stock,  
 11                   such stock is not publicly traded;

12                   “(19B) ‘family fisherman with regular annual  
 13           income’ means a family fisherman whose annual in-  
 14           come is sufficiently stable and regular to enable such  
 15           family fisherman to make payments under a plan  
 16           under chapter 12 of this title;”.

17           (b) WHO MAY BE A DEBTOR.—Section 109(f) of title  
 18 11, United States Code, is amended by inserting “or fam-  
 19 ily fisherman” after “family farmer”.

20           (c) CHAPTER 12.—Chapter 12 of title 11, United  
 21 States Code, is amended—

22                   (1) in the chapter heading, by inserting “**OR**  
 23           **FISHERMAN**” after “**FAMILY FARMER**”;

24                   (2) in section 1203, by inserting “or commer-  
 25           cial fishing operation” after “farm”; and

1           (3) in section 1206, by striking “if the property  
2           is farmland or farm equipment” and inserting “if  
3           the property is farmland, farm equipment, or prop-  
4           erty used to carry out a commercial fishing oper-  
5           ation (including a commercial fishing vessel)”.

6           (d) CLERICAL AMENDMENT.—In the table of chap-  
7           ters for title 11, United States Code, the item relating to  
8           chapter 12, is amended to read as follows:

**“12. Adjustments of Debts of a Family Farmer or Family  
Fisherman with Regular Annual Income ..... 1201”.**

9           (e) APPLICABILITY.—Nothing in this section shall  
10          change, affect, or amend the Fishery Conservation and  
11          Management Act of 1976 (16 U.S.C. 1801 et seq.).

## 12       **TITLE XI—HEALTH CARE AND** 13       **EMPLOYEE BENEFITS**

### 14       **SEC. 1101. DEFINITIONS.**

15          (a) HEALTH CARE BUSINESS DEFINED.—Section  
16          101 of title 11, United States Code, as amended by section  
17          306, is amended—

18               (1) by redesignating paragraph (27A) as para-  
19               graph (27B); and

20               (2) by inserting after paragraph (27) the fol-  
21               lowing:

22                       “(27A) ‘health care business’—

23                               “(A) means any public or private entity  
24                               (without regard to whether that entity is orga-

1 nized for profit or not for profit) that is pri-  
2 marily engaged in offering to the general public  
3 facilities and services for—

4 “(i) the diagnosis or treatment of in-  
5 jury, deformity, or disease; and

6 “(ii) surgical, drug treatment, psy-  
7 chiatric, or obstetric care; and

8 “(B) includes—

9 “(i) any—

10 “(I) general or specialized hos-  
11 pital;

12 “(II) ancillary ambulatory, emer-  
13 gency, or surgical treatment facility;

14 “(III) hospice;

15 “(IV) home health agency; and

16 “(V) other health care institution  
17 that is similar to an entity referred to  
18 in subclause (I), (II), (III), or (IV);  
19 and

20 “(ii) any long-term care facility, in-  
21 cluding any—

22 “(I) skilled nursing facility;

23 “(II) intermediate care facility;

24 “(III) assisted living facility;

25 “(IV) home for the aged;

1                   “(V) domiciliary care facility; and  
2                   “(VI) health care institution that  
3                   is related to a facility referred to in  
4                   subclause (I), (II), (III), (IV), or (V),  
5                   if that institution is primarily engaged  
6                   in offering room, board, laundry, or  
7                   personal assistance with activities of  
8                   daily living and incidentals to activi-  
9                   ties of daily living;”.

10           (b) PATIENT AND PATIENT RECORDS DEFINED.—  
11 Section 101 of title 11, United States Code, is amended  
12 by inserting after paragraph (40) the following:

13                   “(40A) ‘patient’ means any individual who ob-  
14                   tains or receives services from a health care busi-  
15                   ness;

16                   “(40B) ‘patient records’ means any written doc-  
17                   ument relating to a patient or a record recorded in  
18                   a magnetic, optical, or other form of electronic me-  
19                   dium;”.

20           (c) RULE OF CONSTRUCTION.—The amendments  
21 made by subsection (a) of this section shall not affect the  
22 interpretation of section 109(b) of title 11, United States  
23 Code.



1 **SEC. 1102. DISPOSAL OF PATIENT RECORDS.**

2 (a) IN GENERAL.—Subchapter III of chapter 3 of  
3 title 11, United States Code, is amended by adding at the  
4 end the following:

5 **“§ 351. Disposal of patient records**

6 “If a health care business commences a case under  
7 chapter 7, 9, or 11, and the trustee does not have a suffi-  
8 cient amount of funds to pay for the storage of patient  
9 records in the manner required under applicable Federal  
10 or State law, the following requirements shall apply:

11 “(1) The trustee shall—

12 “(A) promptly publish notice, in 1 or more  
13 appropriate newspapers, that if patient records  
14 are not claimed by the patient or an insurance  
15 provider (if applicable law permits the insur-  
16 ance provider to make that claim) by the date  
17 that is 365 days after the date of that notifica-  
18 tion, the trustee will destroy the patient  
19 records; and

20 “(B) during the first 180 days of the 365-  
21 day period described in subparagraph (A),  
22 promptly attempt to notify directly each patient  
23 that is the subject of the patient records and  
24 appropriate insurance carrier concerning the  
25 patient records by mailing to the most recent  
26 known address of that patient, or a family

1 member or contact person for that patient, and  
2 to the appropriate insurance carrier an appro-  
3 priate notice regarding the claiming or dis-  
4 posing of patient records.

5 “(2) If, after providing the notification under  
6 paragraph (1), patient records are not claimed dur-  
7 ing the 365-day period described under that para-  
8 graph, the trustee shall mail, by certified mail, at  
9 the end of such 365-day period a written request to  
10 each appropriate Federal agency to request permis-  
11 sion from that agency to deposit the patient records  
12 with that agency, except that no Federal agency is  
13 required to accept patient records under this para-  
14 graph.

15 “(3) If, following the 365-day period described  
16 in paragraph (2) and after providing the notification  
17 under paragraph (1), patient records are not claimed  
18 by a patient or insurance provider, or request is not  
19 granted by a Federal agency to deposit such records  
20 with that agency, the trustee shall destroy those  
21 records by—

22 “(A) if the records are written, shredding  
23 or burning the records; or

24 “(B) if the records are magnetic, optical,  
25 or other electronic records, by otherwise de-

1           stroying those records so that those records  
2           cannot be retrieved.”.

3           (b) CLERICAL AMENDMENT.—The table of sections  
4 for subchapter III of chapter 3 of title 11, United States  
5 Code, is amended by adding at the end the following:

“351. Disposal of patient records.”.

6 **SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS**  
7                           **OF CLOSING A HEALTH CARE BUSINESS AND**  
8                           **OTHER ADMINISTRATIVE EXPENSES.**

9           Section 503(b) of title 11, United States Code, as  
10 amended by section 445, is amended by adding at the end  
11 the following:

12                   “(8) the actual, necessary costs and expenses of  
13 closing a health care business incurred by a trustee  
14 or by a Federal agency (as defined in section 551(1)  
15 of title 5) or a department or agency of a State or  
16 political subdivision thereof, including any cost or  
17 expense incurred—

18                           “(A) in disposing of patient records in ac-  
19 cordance with section 351; or

20                           “(B) in connection with transferring pa-  
21 tients from the health care business that is in  
22 the process of being closed to another health  
23 care business; and”.

1 **SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PA-**  
2 **TIENT ADVOCATE.**

3 (a) OMBUDSMAN TO ACT AS PATIENT ADVOCATE.—

4 (1) APPOINTMENT OF OMBUDSMAN.—Title 11,  
5 United States Code, as amended by section 232, is  
6 amended by inserting after section 332 the fol-  
7 lowing:

8 **“§ 333. Appointment of patient care ombudsman**

9 “(a)(1) If the debtor in a case under chapter 7, 9,  
10 or 11 is a health care business, the court shall order, not  
11 later than 30 days after the commencement of the case,  
12 the appointment of an ombudsman to monitor the quality  
13 of patient care and to represent the interests of the pa-  
14 tients of the health care business unless the court finds  
15 that the appointment of such ombudsman is not necessary  
16 for the protection of patients under the specific facts of  
17 the case.

18 “(2)(A) If the court orders the appointment of an  
19 ombudsman under paragraph (1), the United States trust-  
20 ee shall appoint 1 disinterested person (other than the  
21 United 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  
4 a State Long-Term Care Ombudsman under subpara-  
5 graph (B), the court shall notify the State Long-Term  
6 Care Ombudsman appointed under the Older Americans  
7 Act of 1965 for the State in which the case is pending,  
8 of the name and address of the person who is appointed  
9 under subparagraph (A).

10 “(b) An ombudsman appointed under subsection (a)  
11 shall—

12 “(1) monitor the quality of patient care pro-  
13 vided to patients of the debtor, to the extent nec-  
14 essary under the circumstances, including inter-  
15 viewing patients and physicians;

16 “(2) not later than 60 days after the date of  
17 appointment, and not less frequently than at 60-day  
18 intervals thereafter, report to the court after notice  
19 to the parties in interest, at a hearing or in writing,  
20 regarding 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  
 4 (a) shall maintain any information obtained by such om-  
 5 budsman under this section that relates to patients (in-  
 6 cluding information relating to patient records) as con-  
 7 fidential information. Such ombudsman may not review  
 8 confidential patient records unless the court approves such  
 9 review in advance and imposes restrictions on such om-  
 10 budsman to protect 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 Amer-  
 14 icans 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,  
 18 United States Code, as amended by section 232, is  
 19 amended 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 sec-  
 24 tion 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,  
7 is amended by adding at the end the following:

8           “(12) use all reasonable and best efforts to  
9           transfer patients from a health care business that is  
10          in the process of being closed to an appropriate  
11          health care business that—

12                  “(A) is in the vicinity of the health care  
13          business that is closing;

14                  “(B) provides the patient with services  
15          that are substantially similar to those provided  
16          by the health care business that is in the proc-  
17          ess of being closed; and

18                  “(C) maintains a reasonable quality of  
19          care.”.

20          (b) CONFORMING AMENDMENT.—Section 1106(a)(1)  
21 of title 11, United States Code, as amended by section  
22 446, is amended by striking “and (11)” and inserting  
23 “(11), and (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  
5 by sections 224, 303, 311, 401, 718, and 907, the fol-  
6 lowing:

7 “(28) under subsection (a), of the exclusion by  
8 the Secretary of Health and Human Services of the  
9 debtor from participation in the medicare program  
10 or any other Federal health care program (as de-  
11 fined in section 1128B(f) of the Social Security Act  
12 pursuant to title XI or XVIII of such Act).”.

13 **TITLE XII—TECHNICAL**  
14 **AMENDMENTS**

15 **SEC. 1201. DEFINITIONS.**

16 Section 101 of title 11, United States Code, as  
17 amended by this Act, is further amended—

18 (1) by striking “In this title—” and inserting  
19 “In this title the following definitions shall apply:”;

20 (2) in each paragraph (other than paragraph  
21 (54A)), by inserting “The term” after the paragraph  
22 designation;

23 (3) in paragraph (35)(B), by striking “para-  
24 graphs (21B) and (33)(A)” and inserting “para-  
25 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;  
7                 and

8                 (B) by striking “thereto having aggregate”  
9                 and all that follows through the end of the  
10                paragraph and inserting a semicolon;

11           (6) by striking paragraph (54) and inserting  
12           the following:

13                 “(54) The term ‘transfer’ means—

14                         “(A) the creation of a lien;

15                         “(B) the retention of title as a security in-  
16                         terest;

17                         “(C) the foreclosure of a debtor’s equity of  
18                         redemption; or

19                         “(D) each mode, direct or indirect, abso-  
20                         lute or conditional, voluntary or involuntary, of  
21                         disposing of or parting with—

22                                 “(i) property; or

23                                 “(ii) an interest in property;”;

24           (7) in paragraph (54A)—

1 (A) by striking “the term” and inserting  
2 “The term”; and

3 (B) by indenting the left margin of para-  
4 graph (54A) 2 ems to the right; and

5 (8) in each of paragraphs (1) through (35), in  
6 each of paragraphs (36), (37), (38A), (38B) and  
7 (39A), and in each of paragraphs (40) through (55),  
8 by striking the semicolon at the end and inserting a  
9 period.

10 **SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.**

11 Section 104(b) of title 11, United States Code, as  
12 amended by this Act, is further amended—

13 (1) by inserting “101(19A),” after “101(18),”  
14 each place it appears;

15 (2) by inserting “522(f)(3) and 522(f)(4),”  
16 after “522(d),” each place it appears;

17 (3) by inserting “541(b), 547(c)(9),” after  
18 “523(a)(2)(C),” each place it appears;

19 (4) in paragraph (1), by striking “and  
20 1325(b)(3)” and inserting “1322(d), 1325(b), and  
21 1326(b)(3) of this title and section 1409(b) of title  
22 28”; and

23 (5) in paragraph (2), by striking “and  
24 1325(b)(3) of this title” and inserting “1322(d),

1 1325(b), and 1326(b)(3) of this title and section  
2 1409(b) of title 28”.

3 **SEC. 1203. EXTENSION OF TIME.**

4 Section 108(c)(2) of title 11, United States Code, is  
5 amended by striking “922” and all that follows through  
6 “or”, and inserting “922, 1201, or”.

7 **SEC. 1204. TECHNICAL AMENDMENTS.**

8 Title 11, United States Code, is amended—

9 (1) in section 109(b)(2), by striking “subsection  
10 (c) or (d) of”; and

11 (2) in section 552(b)(1), by striking “product”  
12 each place it appears and inserting “products”.

13 **SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR**  
14 **FRAUDULENTLY PREPARE BANKRUPTCY PE-**  
15 **TITIONS.**

16 Section 110(j)(4) of title 11, United States Code, as  
17 so redesignated by section 221, is amended by striking  
18 “attorney’s” and inserting “attorneys’ ”.

19 **SEC. 1206. LIMITATION ON COMPENSATION OF PROFES-**  
20 **SIONAL PERSONS.**

21 Section 328(a) of title 11, United States Code, is  
22 amended by inserting “on a fixed or percentage fee basis,”  
23 after “hourly basis,”.

1 **SEC. 1207. EFFECT OF CONVERSION.**

2 Section 348(f)(2) of title 11, United States Code, is  
3 amended by inserting “of the estate” after “property” the  
4 first place it appears.

5 **SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

6 Section 503(b)(4) of title 11, United States Code, is  
7 amended by inserting “subparagraph (A), (B), (C), (D),  
8 or (E) of” before “paragraph (3)”.

9 **SEC. 1209. EXCEPTIONS TO DISCHARGE.**

10 Section 523 of title 11, United States Code, as  
11 amended by sections 215 and 314, is amended—

12 (1) by transferring paragraph (15), as added by  
13 section 304(e) of Public Law 103–394 (108 Stat.  
14 4133), so as to insert such paragraph after sub-  
15 section (a)(14A);

16 (2) in subsection (a)(9), by striking “motor ve-  
17 hicle” and inserting “motor vehicle, vessel, or air-  
18 craft”; and

19 (3) in subsection (e), by striking “a insured”  
20 and inserting “an insured”.

21 **SEC. 1210. EFFECT OF DISCHARGE.**

22 Section 524(a)(3) of title 11, United States Code, is  
23 amended by striking “section 523” and all that follows  
24 through “or that” and inserting “section 523, 1228(a)(1),  
25 or 1328(a)(1), or that”.

1 **SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREAT-**  
2 **MENT.**

3 Section 525(e) of title 11, United States Code, is  
4 amended—

5 (1) in paragraph (1), by inserting “student” be-  
6 fore “grant” the second place it appears; and

7 (2) in paragraph (2), by striking “the program  
8 operated under part B, D, or E of” and inserting  
9 “any program operated under”.

10 **SEC. 1212. PROPERTY OF THE ESTATE.**

11 Section 541(b)(4)(B)(ii) of title 11, United States  
12 Code, is amended by inserting “365 or” before “542”.

13 **SEC. 1213. PREFERENCES.**

14 (a) IN GENERAL.—Section 547 of title 11, United  
15 States Code, as amended by section 201, is amended—

16 (1) in subsection (b), by striking “subsection  
17 (c)” and inserting “subsections (c) and (i)”; and

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

19 “(i) If the trustee avoids under subsection (b) a  
20 transfer made between 90 days and 1 year before the date  
21 of the filing of the petition, by the debtor to an entity  
22 that is not an insider for the benefit of a creditor that  
23 is an insider, such transfer shall be considered to be avoid-  
24 ed under this section only with respect to the creditor that  
25 is an insider.”.

1 (b) APPLICABILITY.—The amendments made by this  
2 section shall apply to any case that is pending or com-  
3 menced on or after the date of enactment of this Act.

4 **SEC. 1214. POSTPETITION TRANSACTIONS.**

5 Section 549(e) of title 11, United States Code, is  
6 amended—

7 (1) by inserting “an interest in” after “transfer  
8 of” each place it appears;

9 (2) by striking “such property” and inserting  
10 “such real property”; and

11 (3) by striking “the interest” and inserting  
12 “such interest”.

13 **SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.**

14 Section 726(b) of title 11, United States Code, is  
15 amended by striking “1009,”.

16 **SEC. 1216. GENERAL PROVISIONS.**

17 Section 901(a) of title 11, United States Code, is  
18 amended by inserting “1123(d),” after “1123(b),”.

19 **SEC. 1217. ABANDONMENT OF RAILROAD LINE.**

20 Section 1170(e)(1) of title 11, United States Code,  
21 is amended by striking “section 11347” and inserting  
22 “section 11326(a)”.

1 **SEC. 1218. CONTENTS OF PLAN.**

2 Section 1172(c)(1) of title 11, United States Code,  
3 is amended by striking “section 11347” and inserting  
4 “section 11326(a)”.

5 **SEC. 1219. BANKRUPTCY CASES AND PROCEEDINGS.**

6 Section 1334(d) of title 28, United States Code, is  
7 amended—

8 (1) by striking “made under this subsection”  
9 and inserting “made under subsection (c)”; and

10 (2) by striking “This subsection” and inserting  
11 “Subsection (c) and this subsection”.

12 **SEC. 1220. KNOWING DISREGARD OF BANKRUPTCY LAW OR**  
13 **RULE.**

14 Section 156(a) of title 18, United States Code, is  
15 amended—

16 (1) in the first undesignated paragraph—

17 (A) by inserting “(1) the term” before  
18 “bankruptcy”; and

19 (B) by striking the period at the end and  
20 inserting “; and”; and

21 (2) in the second undesignated paragraph—

22 (A) by inserting “(2) the term” before  
23 “document”; and

24 (B) by striking “this title” and inserting  
25 “title 11”.

1 **SEC. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE**  
2 **CORPORATIONS.**

3 (a) SALE OF PROPERTY OF ESTATE.—Section 363(d)  
4 of title 11, United States Code, is amended by striking  
5 “only” and all that follows through the end of the sub-  
6 section and inserting “only—

7 “(1) in accordance with applicable nonbank-  
8 ruptcy law that governs the transfer of property by  
9 a corporation or trust that is not a moneyed, busi-  
10 ness, or commercial corporation or trust; and

11 “(2) to the extent not inconsistent with any re-  
12 lief granted under subsection (c), (d), (e), or (f) of  
13 section 362.”.

14 (b) CONFIRMATION OF PLAN OF REORGANIZA-  
15 TION.—Section 1129(a) of title 11, United States Code,  
16 as amended by sections 213 and 321, is amended by add-  
17 ing at the end the following:

18 “(16) All transfers of property of the plan shall  
19 be made in accordance with any applicable provi-  
20 sions of nonbankruptcy law that govern the transfer  
21 of property by a corporation or trust that is not a  
22 moneyed, business, or commercial corporation or  
23 trust.”.

24 (c) TRANSFER OF PROPERTY.—Section 541 of title  
25 11, United States Code, as amended by section 225, is  
26 amended by adding at the end the following:



1       “(f) Notwithstanding any other provision of this title,  
2 property that is held by a debtor that is a corporation de-  
3 scribed in section 501(c)(3) of the Internal Revenue Code  
4 of 1986 and exempt from tax under section 501(a) of such  
5 Code may be transferred to an entity that is not such a  
6 corporation, but only under the same conditions as would  
7 apply if the debtor had not filed a case under this title.”.

8       (d) APPLICABILITY.—The amendments made by this  
9 section shall apply to a case pending under title 11, United  
10 States Code, on the date of enactment of this Act, or filed  
11 under that title on or after that date of enactment, except  
12 that the court shall not confirm a plan under chapter 11  
13 of title 11, United States Code, without considering  
14 whether this section would substantially affect the rights  
15 of a party in interest who first acquired rights with respect  
16 to the debtor after the date of the filing of the petition.  
17 The parties who may appear and be heard in a proceeding  
18 under this section include the attorney general of the State  
19 in which the debtor is incorporated, was formed, or does  
20 business.

21       (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
22 tion shall be construed to require the court in which a  
23 case under chapter 11 of title 11, United States Code, is  
24 pending to remand or refer any proceeding, issue, or con-

1 troversy to any other court or to require the approval of  
2 any other court for the transfer of property.

3 **SEC. 1222. PROTECTION OF VALID PURCHASE MONEY SE-**  
4 **CURITY INTERESTS.**

5 Section 547(c)(3)(B) of title 11, United States Code,  
6 is amended by striking “20” and inserting “30”.

7 **SEC. 1223. BANKRUPTCY JUDGESHIPS.**

8 (a) **SHORT TITLE.**—This section may be cited as the  
9 “Bankruptcy Judgeship Act of 2005”.

10 (b) **TEMPORARY JUDGESHIPS.**—

11 (1) **APPOINTMENTS.**—The following bankruptcy  
12 judges shall be appointed in the manner prescribed  
13 in section 152(a)(1) of title 28, United States Code,  
14 for the appointment of bankruptcy judges provided  
15 for in section 152(a)(2) of such title:

16 (A) One additional bankruptcy judge for  
17 the eastern district of California.

18 (B) Three additional bankruptcy judges for  
19 the central district of California.

20 (C) Four additional bankruptcy judges for  
21 the district of Delaware.

22 (D) Two additional bankruptcy judges for  
23 the southern district of Florida.

24 (E) One additional bankruptcy judge for  
25 the southern district of Georgia.

1           (F) Three additional bankruptcy judges for  
2 the district of Maryland.

3           (G) One additional bankruptcy judge for  
4 the eastern district of Michigan.

5           (H) One additional bankruptcy judge for  
6 the southern district of Mississippi.

7           (I) One additional bankruptcy judge for  
8 the district of New Jersey.

9           (J) One additional bankruptcy judge for  
10 the eastern district of New York.

11          (K) One additional bankruptcy judge for  
12 the northern district of New York.

13          (L) One additional bankruptcy judge for  
14 the southern district of New York.

15          (M) One additional bankruptcy judge for  
16 the eastern district of North Carolina.

17          (N) One additional bankruptcy judge for  
18 the eastern district of Pennsylvania.

19          (O) One additional bankruptcy judge for  
20 the middle district of Pennsylvania.

21          (P) One additional bankruptcy judge for  
22 the district of Puerto Rico.

23          (Q) One additional bankruptcy judge for  
24 the western district of Tennessee.

1           (R) One additional bankruptcy judge for  
2 the eastern district of Virginia.

3           (S) One additional bankruptcy judge for  
4 the district of South Carolina.

5           (T) One additional bankruptcy judge for  
6 the district of Nevada.

7           (2) VACANCIES.—

8           (A) DISTRICTS WITH SINGLE APPOINT-  
9 MENTS.—Except as provided in subparagraphs  
10 (B), (C), (D), and (E), the first vacancy occur-  
11 ring in the office of bankruptcy judge in each  
12 of the judicial districts set forth in paragraph  
13 (1)—

14                   (i) occurring 5 years or more after the  
15 appointment date of the bankruptcy judge  
16 appointed under paragraph (1) to such of-  
17 fice; and

18                   (ii) resulting from the death, retire-  
19 ment, resignation, or removal of a bank-  
20 ruptcy judge;

21 shall not be filled.

22           (B) CENTRAL DISTRICT OF CALIFORNIA.—  
23 The 1st, 2d, and 3d vacancies in the office of  
24 bankruptcy judge in the central district of Cali-  
25 fornia—

1 (i) occurring 5 years or more after the  
2 respective 1st, 2d, and 3d appointment  
3 dates of the bankruptcy judges appointed  
4 under paragraph (1)(B); and

5 (ii) resulting from the death, retire-  
6 ment, resignation, or removal of a bank-  
7 ruptcy judge;

8 shall not be filled.

9 (C) DISTRICT OF DELAWARE.—The 1st,  
10 2d, 3d, and 4th vacancies in the office of bank-  
11 ruptcy judge in the district of Delaware—

12 (i) occurring 5 years or more after the  
13 respective 1st, 2d, 3d, and 4th appoint-  
14 ment dates of the bankruptcy judges ap-  
15 pointed under paragraph (1)(F); and

16 (ii) resulting from the death, retire-  
17 ment, resignation, or removal of a bank-  
18 ruptcy judge;

19 shall not be filled.

20 (D) SOUTHERN DISTRICT OF FLORIDA.—  
21 The 1st and 2d vacancies in the office of bank-  
22 ruptcy judge in the southern district of Flor-  
23 ida—

24 (i) occurring 5 years or more after the  
25 respective 1st and 2d appointment dates of

1 the bankruptcy judges appointed under  
2 paragraph (1)(D); and

3 (ii) resulting from the death, retire-  
4 ment, resignation, or removal of a bank-  
5 ruptcy judge;

6 shall not be filled.

7 (E) DISTRICT OF MARYLAND.—The 1st,  
8 2d, and 3d vacancies in the office of bankruptcy  
9 judge in the district of Maryland—

10 (i) occurring 5 years or more after the  
11 respective 1st, 2d, and 3d appointment  
12 dates of the bankruptcy judges appointed  
13 under paragraph (1)(F); and

14 (ii) resulting from the death, retire-  
15 ment, resignation, or removal of a bank-  
16 ruptcy judge;

17 shall not be filled.

18 (c) EXTENSIONS.—

19 (1) IN GENERAL.—The temporary office of  
20 bankruptcy judges authorized for the northern dis-  
21 trict of Alabama, the district of Delaware, the dis-  
22 trict of Puerto Rico, and the eastern district of Ten-  
23 nessee under paragraphs (1), (3), (7), and (9) of  
24 section 3(a) of the Bankruptcy Judgeship Act of  
25 1992 (28 U.S.C. 152 note) are extended until the

1 first vacancy occurring in the office of a bankruptcy  
2 judge in the applicable district resulting from the  
3 death, retirement, resignation, or removal of a bank-  
4 ruptcy judge and occurring 5 years after the date of  
5 the enactment of this Act.

6 (2) APPLICABILITY OF OTHER PROVISIONS.—  
7 All other provisions of section 3 of the Bankruptcy  
8 Judgeship Act of 1992 (28 U.S.C. 152 note) remain  
9 applicable to the temporary office of bankruptcy  
10 judges referred to in this subsection.

11 (d) TECHNICAL AMENDMENTS.—Section 152(a) of  
12 title 28, United States Code, is amended—

13 (1) in paragraph (1), by striking the first sen-  
14 tence and inserting the following: “Each bankruptcy  
15 judge to be appointed for a judicial district, as pro-  
16 vided in paragraph (2), shall be appointed by the  
17 court of appeals of the United States for the circuit  
18 in which such district is located.”; and

19 (2) in paragraph (2)—

20 (A) in the item relating to the middle dis-  
21 trict of Georgia, by striking “2” and inserting  
22 “3”; and

23 (B) in the collective item relating to the  
24 middle and southern districts of Georgia, by  
25 striking “Middle and Southern . . . . . 1”.

1 (e) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on the date of the enactment  
3 of this Act.

4 **SEC. 1224. COMPENSATING TRUSTEES.**

5 Section 1326 of title 11, United States Code, is  
6 amended—

7 (1) in subsection (b)—

8 (A) in paragraph (1), by striking “and”;

9 (B) in paragraph (2), by striking the pe-  
10 riod at the end and inserting “; and”; and

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

12 “(3) if a chapter 7 trustee has been allowed  
13 compensation due to the conversion or dismissal of  
14 the debtor’s prior case pursuant to section 707(b),  
15 and some portion of that compensation remains un-  
16 paid in a case converted to this chapter or in the  
17 case dismissed under section 707(b) and refiled  
18 under this chapter, the amount of any such unpaid  
19 compensation, which shall be paid monthly—

20 “(A) by prorating such amount over the  
21 remaining duration of the plan; and

22 “(B) by monthly payments not to exceed  
23 the greater of—

24 “(i) \$25; or



1           “(ii) the amount payable to unsecured  
2           nonpriority creditors, as provided by the  
3           plan, multiplied by 5 percent, and the re-  
4           sult divided by the number of months in  
5           the plan.”; and

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

7           “(d) Notwithstanding any other provision of this  
8 title—

9           “(1) compensation referred to in subsection  
10          (b)(3) is payable and may be collected by the trustee  
11          under that paragraph, even if such amount has been  
12          discharged in a prior case under this title; and

13          “(2) such compensation is payable in a case  
14          under this chapter only to the extent permitted by  
15          subsection (b)(3).”.

16 **SEC. 1225. AMENDMENT TO SECTION 362 OF TITLE 11,**  
17 **UNITED STATES CODE.**

18          Section 362(b)(18) of title 11, United States Code,  
19 is amended to read as follows:

20          “(18) under subsection (a) of the creation or  
21          perfection of a statutory lien for an ad valorem  
22          property tax, or a special tax or special assessment  
23          on real property whether or not ad valorem, imposed  
24          by a governmental unit, if such tax or assessment

1 comes due after the date of the filing of the peti-  
2 tion;”.

3 **SEC. 1226. JUDICIAL EDUCATION.**

4 The Director of the Federal Judicial Center, in con-  
5 sultation with the Director of the Executive Office for  
6 United States Trustees, shall develop materials and con-  
7 duct such training as may be useful to courts in imple-  
8 menting this Act and the amendments made by this Act,  
9 including the requirements relating to the means test  
10 under section 707(b), and reaffirmation agreements under  
11 section 524, of title 11 of the United States Code, as  
12 amended by this Act.

13 **SEC. 1227. RECLAMATION.**

14 (a) RIGHTS AND POWERS OF THE TRUSTEE.—Sec-  
15 tion 546(c) of title 11, United States Code, is amended  
16 to read as follows:

17 “(c)(1) Except as provided in subsection (d) of this  
18 section and in section 507(c), and subject to the prior  
19 rights of a holder of a security interest in such goods or  
20 the proceeds thereof, the rights and powers of the trustee  
21 under sections 544(a), 545, 547, and 549 are subject to  
22 the right of a seller of goods that has sold goods to the  
23 debtor, in the ordinary course of such seller’s business,  
24 to reclaim such goods if the debtor has received such goods  
25 while insolvent, within 45 days before the date of the com-

1 mencement of a case under this title, but such seller may  
2 not reclaim such goods unless such seller demands in writ-  
3 ing reclamation of such goods—

4 “(A) not later than 45 days after the date of  
5 receipt of such goods by the debtor; or

6 “(B) not later than 20 days after the date of  
7 commencement of the case, if the 45-day period ex-  
8 pires after the commencement of the case.

9 “(2) If a seller of goods fails to provide notice in the  
10 manner described in paragraph (1), the seller still may  
11 assert the rights contained in section 503(b)(9).”.

12 (b) ADMINISTRATIVE EXPENSES.—Section 503(b) of  
13 title 11, United States Code, as amended by sections 445  
14 and 1103, is amended by adding at the end the following:

15 “(9) the value of any goods received by the  
16 debtor within 20 days before the date of commence-  
17 ment of a case under this title in which the goods  
18 have been sold to the debtor in the ordinary course  
19 of such debtor’s business.”.

20 **SEC. 1228. PROVIDING REQUESTED TAX DOCUMENTS TO**  
21 **THE COURT.**

22 (a) CHAPTER 7 CASES.—The court shall not grant  
23 a discharge in the case of an individual who is a debtor  
24 in a case under chapter 7 of title 11, United States Code,

1 unless requested tax documents have been provided to the  
2 court.

3 (b) CHAPTER 11 AND CHAPTER 13 CASES.—The  
4 court shall not confirm a plan of reorganization in the case  
5 of an individual under chapter 11 or 13 of title 11, United  
6 States Code, unless requested tax documents have been  
7 filed with the court.

8 (c) DOCUMENT RETENTION.—The court shall de-  
9 stroy documents submitted in support of a bankruptcy  
10 claim not sooner than 3 years after the date of the conclu-  
11 sion of a case filed by an individual under chapter 7, 11,  
12 or 13 of title 11, United States Code. In the event of a  
13 pending audit or enforcement action, the court may extend  
14 the time for destruction of such requested tax documents.

15 **SEC. 1229. ENCOURAGING CREDITWORTHINESS.**

16 (a) SENSE OF THE CONGRESS.—It is the sense of the  
17 Congress that—

18 (1) certain lenders may sometimes offer credit  
19 to consumers indiscriminately, without taking steps  
20 to ensure that consumers are capable of repaying  
21 the resulting debt, and in a manner which may en-  
22 courage certain consumers to accumulate additional  
23 debt; and

24 (2) resulting consumer debt may increasingly be  
25 a major contributing factor to consumer insolvency.

1 (b) STUDY REQUIRED.—The Board of Governors of  
2 the Federal Reserve System (hereafter in this section re-  
3 ferred to as the “Board”) shall conduct a study of—

4 (1) consumer credit industry practices of solie-  
5 iting and extending credit—

6 (A) indiscriminately;

7 (B) without taking steps to ensure that  
8 consumers are capable of repaying the resulting  
9 debt; and

10 (C) in a manner that encourages con-  
11 sumers to accumulate additional debt; and

12 (2) the effects of such practices on consumer  
13 debt and insolvency.

14 (c) REPORT AND REGULATIONS.—Not later than 12  
15 months after the date of enactment of this Act, the  
16 Board—

17 (1) shall make public a report on its findings  
18 with respect to the indiscriminate solicitation and  
19 extension of credit by the credit industry;

20 (2) may issue regulations that would require  
21 additional disclosures to consumers; and

22 (3) may take any other actions, consistent with  
23 its existing statutory authority, that the Board finds  
24 necessary to ensure responsible industrywide prac-

1 tices and to prevent resulting consumer debt and in-  
2 solvency.

3 **SEC. 1230. PROPERTY NO LONGER SUBJECT TO REDEMP-**  
4 **TION.**

5 Section 541(b) of title 11, United States Code, as  
6 amended by sections 225 and 323, is amended by adding  
7 after paragraph (7), as added by section 323, the fol-  
8 lowing:

9 “(8) subject to subchapter III of chapter 5, any  
10 interest of the debtor in property where the debtor  
11 pledged or sold tangible personal property (other  
12 than securities or written or printed evidences of in-  
13 debtedness or title) as collateral for a loan or ad-  
14 vance of money given by a person licensed under law  
15 to make such loans or advances, where—

16 “(A) the tangible personal property is in  
17 the possession of the pledgee or transferee;

18 “(B) the debtor has no obligation to repay  
19 the money, redeem the collateral, or buy back  
20 the property at a stipulated price; and

21 “(C) neither the debtor nor the trustee  
22 have exercised any right to redeem provided  
23 under the contract or State law, in a timely  
24 manner as provided under State law and sec-  
25 tion 108(b); or”.

1 **SEC. 1231. TRUSTEES.**

2 (a) SUSPENSION AND TERMINATION OF PANEL  
3 TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of  
4 title 28, United States Code, is amended—

5 (1) by inserting “(1)” after “(d)”; and

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

7 “(2) A trustee whose appointment under subsection  
8 (a)(1) or under subsection (b) is terminated or who ceases  
9 to be assigned to cases filed under title 11, United States  
10 Code, may obtain judicial review of the final agency deci-  
11 sion by commencing an action in the district court of the  
12 United States for the district for which the panel to which  
13 the trustee is appointed under subsection (a)(1), or in the  
14 district court of the United States for the district in which  
15 the trustee is appointed under subsection (b) resides, after  
16 first exhausting all available administrative remedies,  
17 which if the trustee so elects, shall also include an admin-  
18 istrative hearing on the record. Unless the trustee elects  
19 to have an administrative hearing on the record, the trust-  
20 ee shall be deemed to have exhausted all administrative  
21 remedies for purposes of this paragraph if the agency fails  
22 to make a final agency decision within 90 days after the  
23 trustee requests administrative remedies. The Attorney  
24 General shall prescribe procedures to implement this para-  
25 graph. The decision of the agency shall be affirmed by  
26 the district court unless it is unreasonable and without

1 cause based on the administrative record before the agen-  
2 cy.”.

3 (b) **EXPENSES OF STANDING TRUSTEES.**—Section  
4 586(e) of title 28, United States Code, is amended by add-  
5 ing at the end the following:

6 “(3) After first exhausting all available administra-  
7 tive remedies, an individual appointed under subsection  
8 (b) may obtain judicial review of final agency action to  
9 deny a claim of actual, necessary expenses under this sub-  
10 section by commencing an action in the district court of  
11 the United States for the district where the individual re-  
12 sides. The decision of the agency shall be affirmed by the  
13 district court unless it is unreasonable and without cause  
14 based upon the administrative record before the agency.

15 “(4) The Attorney General shall prescribe procedures  
16 to implement this subsection.”.

17 **SEC. 1232. BANKRUPTCY FORMS.**

18 Section 2075 of title 28, United States Code, is  
19 amended by adding at the end the following:

20 “The bankruptcy rules promulgated under this sec-  
21 tion shall prescribe a form for the statement required  
22 under section 707(b)(2)(C) of title 11 and may provide  
23 general rules on the content of such statement.”.



1 **SEC. 1233. DIRECT APPEALS OF BANKRUPTCY MATTERS TO**  
2 **COURTS OF APPEALS.**

3 (a) APPEALS.—Section 158 of title 28, United States  
4 Code, is amended—

5 (1) in subsection (c)(1), by striking “Subject to  
6 subsection (b),” and inserting “Subject to sub-  
7 sections (b) and (d)(2),”; and

8 (2) in subsection (d)—

9 (A) by inserting “(1)” after “(d)”; and

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

11 “(2)(A) The appropriate court of appeals shall have  
12 jurisdiction of appeals described in the first sentence of  
13 subsection (a) if the bankruptcy court, the district court,  
14 or the bankruptcy appellate panel involved, acting on its  
15 own motion or on the request of a party to the judgment,  
16 order, or decree described in such first sentence, or all the  
17 appellants and appellees (if any) acting jointly, certify  
18 that—

19 “(i) the judgment, order, or decree involves a  
20 question of law as to which there is no controlling  
21 decision of the court of appeals for the circuit or of  
22 the Supreme Court of the United States, or involves  
23 a matter of public importance;

24 “(ii) the judgment, order, or decree involves a  
25 question of law requiring resolution of conflicting de-  
26 cisions; or

1           “(iii) an immediate appeal from the judgment,  
2           order, or decree may materially advance the progress  
3           of the case or proceeding in which the appeal is  
4           taken;  
5           and if the court of appeals authorizes the direct appeal  
6           of the judgment, order, or decree.

7           “(B) If the bankruptcy court, the district court, or  
8           the bankruptcy appellate panel—

9           “(i) on its own motion or on the request of a  
10          party, determines that a circumstance specified in  
11          clause (i), (ii), or (iii) of subparagraph (A) exists; or

12          “(ii) receives a request made by a majority of  
13          the appellants and a majority of appellees (if any)  
14          to make the certification described in subparagraph  
15          (A);

16          then the bankruptcy court, the district court, or the bank-  
17          ruptcy appellate panel shall make the certification de-  
18          scribed in subparagraph (A).

19          “(C) The parties may supplement the certification  
20          with a short statement of the basis for the certification.

21          “(D) An appeal under this paragraph does not stay  
22          any proceeding of the bankruptcy court, the district court,  
23          or the bankruptcy appellate panel from which the appeal  
24          is taken, unless the respective bankruptcy court, district  
25          court, or bankruptcy appellate panel, or the court of ap-

1 peals in which the appeal is pending, issues a stay of such  
2 proceeding pending the appeal.

3 “(E) Any request under subparagraph (B) for certifi-  
4 cation shall be made not later than 60 days after the entry  
5 of the judgment, order, or decree.”.

6 (b) PROCEDURAL RULES.—

7 (1) TEMPORARY APPLICATION.—A provision of  
8 this subsection shall apply to appeals under section  
9 158(d)(2) of title 28, United States Code, until a  
10 rule of practice and procedure relating to such provi-  
11 sion and such appeals is promulgated or amended  
12 under chapter 131 of such title.

13 (2) CERTIFICATION.—A district court, a bank-  
14 ruptcy court, or a bankruptcy appellate panel may  
15 make a certification under section 158(d)(2) of title  
16 28, United States Code, only with respect to matters  
17 pending in the respective bankruptcy court, district  
18 court, or bankruptcy appellate panel.

19 (3) PROCEDURE.—Subject to any other provi-  
20 sion of this subsection, an appeal authorized by the  
21 court of appeals under section 158(d)(2)(A) of title  
22 28, United States Code, shall be taken in the man-  
23 ner prescribed in subdivisions (a)(1), (b), (c), and  
24 (d) of rule 5 of the Federal Rules of Appellate Pro-

1 cedure. For purposes of subdivision (a)(1) of rule  
2 5—

3 (A) a reference in such subdivision to a  
4 district court shall be deemed to include a ref-  
5 erence to a bankruptcy court and a bankruptcy  
6 appellate panel, as appropriate; and

7 (B) a reference in such subdivision to the  
8 parties requesting permission to appeal to be  
9 served with the petition shall be deemed to in-  
10 clude a reference to the parties to the judg-  
11 ment, order, or decree from which the appeal is  
12 taken.

13 (4) FILING OF PETITION WITH ATTACHMENT.—

14 A petition requesting permission to appeal, that is  
15 based on a certification made under subparagraph  
16 (A) or (B) of section 158(d)(2) shall—

17 (A) be filed with the circuit clerk not later  
18 than 10 days after the certification is entered  
19 on the docket of the bankruptcy court, the dis-  
20 trict court, or the bankruptcy appellate panel  
21 from which the appeal is taken; and

22 (B) have attached a copy of such certifi-  
23 cation.

1           (5) REFERENCES IN RULE 5.—For purposes of  
2 rule 5 of the Federal Rules of Appellate Proce-  
3 dure—

4           (A) a reference in such rule to a district  
5 court shall be deemed to include a reference to  
6 a bankruptcy court and to a bankruptcy appel-  
7 late panel; and

8           (B) a reference in such rule to a district  
9 clerk shall be deemed to include a reference to  
10 a clerk of a bankruptcy court and to a clerk of  
11 a bankruptcy appellate panel.

12           (6) APPLICATION OF RULES.—The Federal  
13 Rules of Appellate Procedure shall apply in the  
14 courts of appeals with respect to appeals authorized  
15 under section 158(d)(2)(A), to the extent relevant  
16 and as if such appeals were taken from final judg-  
17 ments, orders, or decrees of the district courts or  
18 bankruptcy appellate panels exercising appellate ju-  
19 risdiction under subsection (a) or (b) of section 158  
20 of title 28, United States Code.

21 **SEC. 1234. INVOLUNTARY CASES.**

22           (a) AMENDMENTS.—Section 303 of title 11, United  
23 States Code, is amended—

24           (1) in subsection (b)(1), by—

1 (A) inserting “as to liability or amount”  
2 after “bona fide dispute”; and

3 (B) striking “if such claims” and inserting  
4 “if such noncontingent, undisputed claims”;  
5 and

6 (2) in subsection (h)(1), by inserting “as to li-  
7 ability or amount” before the semicolon at the end.

8 (b) EFFECTIVE DATE; APPLICATION OF AMEND-  
9 MENTS.—This section and the amendments made by this  
10 section shall take effect on the date of the enactment of  
11 this Act and shall apply with respect to cases commenced  
12 under title 11 of the United States Code before, on, and  
13 after such date.

14 **SEC. 1235. FEDERAL ELECTION LAW FINES AND PENALTIES**  
15 **AS NONDISCHARGEABLE DEBT.**

16 Section 523(a) of title 11, United States Code, as  
17 amended by section 314, is amended by inserting after  
18 paragraph (14A) the following:

19 “(14B) incurred to pay fines or penalties im-  
20 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, lo-  
12 cated on the front of the billing statement, disclosed  
13 clearly and conspicuously: ‘Minimum Payment  
14 Warning: Making only the minimum payment will  
15 increase the interest you pay and the time it takes  
16 to repay your balance. For example, making only the  
17 typical 2% minimum monthly payment on a balance  
18 of \$1,000 at an interest rate of 17% would take 88  
19 months to repay the balance in full. For an estimate  
20 of the time it would take to repay your balance,  
21 making only minimum payments, call this toll-free  
22 number: \_\_\_\_\_.’ (the blank space to be  
23 filled in by the creditor).

24 “(B) In the case of an open end credit plan  
25 that requires a minimum monthly payment of more

1 than 4 percent of the balance on which finance  
2 charges are accruing, the following statement, in a  
3 prominent location on the front of the billing state-  
4 ment, disclosed clearly and conspicuously: ‘Minimum  
5 Payment Warning: Making only the required min-  
6 imum payment will increase the interest you pay and  
7 the time it takes to repay your balance. Making a  
8 typical 5% minimum monthly payment on a balance  
9 of \$300 at an interest rate of 17% would take 24  
10 months to repay the balance in full. For an estimate  
11 of the time it would take to repay your balance,  
12 making only minimum monthly payments, call this  
13 toll-free number: \_\_\_\_\_.’ (the blank space to  
14 be filled in 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 exam-  
24 ple, making only the typical 5% minimum monthly  
25 payment on a balance of \$300 at an interest rate of



1 17% would take 24 months to repay the balance in  
2 full. For an estimate of the time it would take to  
3 repay your balance, making only minimum monthly  
4 payments, call the Federal Trade Commission at  
5 this toll-free number: \_\_\_\_\_.’ (the blank  
6 space to be filled in by the creditor). A creditor who  
7 is subject to this subparagraph shall not be subject  
8 to subparagraph (A) or (B).

9 “(D) Notwithstanding subparagraph (A), (B),  
10 or (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  
13 creditor that is subject to subparagraph (B) may  
14 elect to provide the disclosure required under sub-  
15 paragraph (A) in lieu of the disclosure required  
16 under subparagraph (B).

17 “(E) The Board shall, by rule, periodically re-  
18 calculate, as necessary, the interest rate and repay-  
19 ment 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  
22 under subparagraph (A), (B), or (G), as appro-  
23 priate, may be a toll-free telephone number estab-  
24 lished and maintained by the creditor or the Federal  
25 Trade Commission, as appropriate, or may be a toll-

1 free telephone number established and maintained  
2 by a third party for use by the creditor or multiple  
3 creditors or the Federal Trade Commission, as ap-  
4 propriate. The toll-free telephone number may con-  
5 nect consumers to an automated device through  
6 which consumers may obtain information described  
7 in subparagraph (A), (B), or (C), by inputting infor-  
8 mation using a touch-tone telephone or similar de-  
9 vice, if consumers whose telephones are not equipped  
10 to use such automated device are provided the op-  
11 portunity to be connected to an individual from  
12 whom the information described in subparagraph  
13 (A), (B), or (C), as applicable, may be obtained. A  
14 person that receives a request for information de-  
15 scribed in subparagraph (A), (B), or (C) from an ob-  
16 ligor through the toll-free telephone number dis-  
17 closed under subparagraph (A), (B), or (C), as ap-  
18 plicable, shall disclose in response to such request  
19 only the information set forth in the table promul-  
20 gated by the Board under subparagraph (H)(i).

21 “(ii)(I) The Board shall establish and maintain  
22 for a period not to exceed 24 months following the  
23 effective date of the Bankruptcy Abuse Prevention  
24 and Consumer Protection Act of 2005, a toll-free  
25 telephone number, or provide a toll-free telephone

1 number established and maintained by a third party,  
2 for use by creditors that are depository institutions  
3 (as defined in section 3 of the Federal Deposit In-  
4 surance Act), including a Federal credit union or  
5 State credit union (as defined in section 101 of the  
6 Federal Credit Union Act), with total assets not ex-  
7 ceeding \$250,000,000. The toll-free telephone num-  
8 ber may connect consumers to an automated device  
9 through which consumers may obtain information  
10 described in subparagraph (A) or (B), as applicable,  
11 by inputting information using a touch-tone tele-  
12 phone or similar device, if consumers whose tele-  
13 phones are not equipped to use such automated de-  
14 vice are provided the opportunity to be connected to  
15 an individual from whom the information described  
16 in subparagraph (A) or (B), as applicable, may be  
17 obtained. A person that receives a request for infor-  
18 mation described in subparagraph (A) or (B) from  
19 an obligor through the toll-free telephone number  
20 disclosed under subparagraph (A) or (B), as applica-  
21 ble, shall disclose in response to such request only  
22 the information set forth in the table promulgated  
23 by the Board under subparagraph (H)(i). The dollar  
24 amount contained in this subclause shall be adjusted

1 according to an indexing mechanism established by  
2 the Board.

3 “(II) Not later than 6 months prior to the expi-  
4 ration of the 24-month period referenced in sub-  
5 clause (I), the Board shall submit to the Committee  
6 on Banking, Housing, and Urban Affairs of the Sen-  
7 ate and the Committee on Financial Services of the  
8 House of Representatives a report on the program  
9 described in subclause (I).

10 “(G) The Federal Trade Commission shall es-  
11 tablish and maintain a toll-free number for the pur-  
12 pose of providing to consumers the information re-  
13 quired to be disclosed under subparagraph (C).

14 “(H) The Board shall—

15 “(i) establish a detailed table illustrating  
16 the approximate number of months that it  
17 would take to repay an outstanding balance if  
18 a consumer pays only the required minimum  
19 monthly payments and if no other advances are  
20 made, which table shall clearly present stand-  
21 ardized information to be used to disclose the  
22 information required to be disclosed under sub-  
23 paragraph (A), (B), or (C), as applicable;

24 “(ii) establish the table required under  
25 clause (i) by assuming—

1           “(I) a significant number of different  
2           annual percentage rates;

3           “(II) a significant number of different  
4           account balances;

5           “(III) a significant number of dif-  
6           ferent minimum payment amounts; and

7           “(IV) that only minimum monthly  
8           payments are made and no additional ex-  
9           tensions of credit are obtained; and

10          “(iii) promulgate regulations that provide  
11          instructional guidance regarding the manner in  
12          which the information contained in the table es-  
13          tablished under clause (i) should be used in re-  
14          sponding to the request of an obligor for any  
15          information required to be disclosed under sub-  
16          paragraph (A), (B), or (C).

17          “(I) The disclosure requirements of this para-  
18          graph do not apply to any charge card account, the  
19          primary purpose of which is to require payment of  
20          charges in full each month.

21          “(J) A creditor that maintains a toll-free tele-  
22          phone number for the purpose of providing cus-  
23          tomers with the actual number of months that it will  
24          take to repay the customer’s outstanding balance is

1 not subject to the requirements of subparagraph (A)  
2 or (B).

3 “(K) A creditor that maintains a toll-free tele-  
4 phone number for the purpose of providing cus-  
5 tomers with the actual number of months that it will  
6 take to repay an outstanding balance shall include  
7 the following statement on each billing statement:  
8 ‘Making only the minimum payment will increase  
9 the interest you pay and the time it takes to repay  
10 your balance. For more information, call this toll-  
11 free number: \_\_\_\_\_.’ (the blank space to be filled  
12 in by the creditor).”.

13 (b) REGULATORY IMPLEMENTATION.—

14 (1) IN GENERAL.—The Board of Governors of  
15 the Federal Reserve System (hereafter in this title  
16 referred to as the “Board”) shall promulgate regula-  
17 tions implementing the requirements of section  
18 127(b)(11) of the Truth in Lending Act, as added  
19 by subsection (a) of this section.

20 (2) EFFECTIVE DATE.—Section 127(b)(11) of  
21 the Truth in Lending Act, as added by subsection  
22 (a) of this section, and the regulations issued under  
23 paragraph (1) of this subsection shall not take effect  
24 until the later of—

1 (A) 18 months after the date of enactment  
2 of this Act; or

3 (B) 12 months after the publication of  
4 such final regulations by the Board.

5 (c) STUDY OF FINANCIAL DISCLOSURES.—

6 (1) IN GENERAL.—The Board may conduct a  
7 study to determine the types of information available  
8 to potential borrowers from consumer credit lending  
9 institutions regarding factors qualifying potential  
10 borrowers for credit, repayment requirements, and  
11 the consequences of default.

12 (2) FACTORS FOR CONSIDERATION.—In con-  
13 ducting a study under paragraph (1), the Board  
14 should, in consultation with the other Federal bank-  
15 ing agencies (as defined in section 3 of the Federal  
16 Deposit Insurance Act), the National Credit Union  
17 Administration, and the Federal Trade Commission,  
18 consider the extent to which—

19 (A) consumers, in establishing new credit  
20 arrangements, are aware of their existing pay-  
21 ment obligations, the need to consider those ob-  
22 ligations in deciding to take on new credit, and  
23 how taking on excessive credit can result in fi-  
24 nancial difficulty;

1 (B) minimum periodic payment features  
 2 offered in connection with open end credit plans  
 3 impact consumer default rates;

4 (C) consumers make only the required  
 5 minimum payment under open end credit plans;

6 (D) consumers are aware that making only  
 7 required minimum payments will increase the  
 8 cost and repayment period of an open end cred-  
 9 it obligation; and

10 (E) the availability of low minimum pay-  
 11 ment options is a cause of consumers experi-  
 12 encing financial difficulty.

13 (3) REPORT TO CONGRESS.—Findings of the  
 14 Board in connection with any study conducted under  
 15 this subsection shall be submitted to Congress. Such  
 16 report shall also include recommendations for legis-  
 17 lative initiatives, if any, of the Board, based on its  
 18 findings.

19 **SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTEN-**  
 20 **SIONS SECURED BY A DWELLING.**

21 (a) OPEN END CREDIT EXTENSIONS.—

22 (1) CREDIT APPLICATIONS.—Section  
 23 127A(a)(13) of the Truth in Lending Act (15  
 24 U.S.C. 1637a(a)(13)) is amended—



1 (A) by striking “CONSULTATION OF TAX  
2 ADVISER.—A statement that the” and inserting  
3 the following: “TAX DEDUCTIBILITY.—A state-  
4 ment that—

5 “(A) the”; and

6 (B) by striking the period at the end and  
7 inserting the following: “; and

8 “(B) in any case in which the extension of  
9 credit exceeds the fair market value (as defined  
10 under the Internal Revenue Code of 1986) of  
11 the dwelling, the interest on the portion of the  
12 credit extension that is greater than the fair  
13 market value of the dwelling is not tax deduct-  
14 ible for Federal income tax purposes.”.

15 (2) CREDIT ADVERTISEMENTS.—Section 147(b)  
16 of the Truth in Lending Act (15 U.S.C. 1665b(b))  
17 is amended—

18 (A) by striking “If any” and inserting the  
19 following:

20 “(1) IN GENERAL.—If any”; and

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

22 “(2) CREDIT IN EXCESS OF FAIR MARKET  
23 VALUE.—Each advertisement described in subsection  
24 (a) that relates to an extension of credit that may  
25 exceed the fair market value of the dwelling, and

1 which advertisement is disseminated in paper form  
2 to the public or through the Internet, as opposed to  
3 by radio or television, shall include a clear and con-  
4 spicuous statement that—

5 “(A) the interest on the portion of the  
6 credit extension that is greater than the fair  
7 market value of the dwelling is not tax deduct-  
8 ible for Federal income tax purposes; and

9 “(B) the consumer should consult a tax  
10 adviser for further information regarding the  
11 deductibility of interest and charges.”.

12 (b) NON-OPEN END CREDIT EXTENSIONS.—

13 (1) CREDIT APPLICATIONS.—Section 128 of the  
14 Truth in Lending Act (15 U.S.C. 1638) is amend-  
15 ed—

16 (A) in subsection (a), by adding at the end  
17 the following:

18 “(15) In the case of a consumer credit trans-  
19 action that is secured by the principal dwelling of  
20 the consumer, in which the extension of credit may  
21 exceed the fair market value of the dwelling, a clear  
22 and conspicuous statement that—

23 “(A) the interest on the portion of the  
24 credit extension that is greater than the fair

1 market value of the dwelling is not tax deduct-  
2 ible for Federal income tax purposes; and

3 “(B) the consumer should consult a tax  
4 adviser for further information regarding the  
5 deductibility of interest and charges.”; and

6 (B) in subsection (b), by adding at the end  
7 the following:

8 “(3) In the case of a credit transaction described in  
9 paragraph (15) of subsection (a), disclosures required by  
10 that paragraph shall be made to the consumer at the time  
11 of application for such extension of credit.”.

12 (2) CREDIT ADVERTISEMENTS.—Section 144 of  
13 the Truth in Lending Act (15 U.S.C. 1664) is  
14 amended by adding at the end the following:

15 “(e) Each advertisement to which this section applies  
16 that relates to a consumer credit transaction that is se-  
17 cured by the principal dwelling of a consumer in which  
18 the extension of credit may exceed the fair market value  
19 of the dwelling, and which advertisement is disseminated  
20 in paper form to the public or through the Internet, as  
21 opposed to by radio or television, shall clearly and con-  
22 spicuously state that—

23 “(1) the interest on the portion of the credit ex-  
24 tension that is greater than the fair market value of

1 the dwelling is not tax deductible for Federal income  
2 tax purposes; and

3 “(2) the consumer should consult a tax adviser  
4 for further information regarding the deductibility of  
5 interest and charges.”.

6 (c) REGULATORY IMPLEMENTATION.—

7 (1) IN GENERAL.—The Board shall promulgate  
8 regulations implementing the amendments made by  
9 this section.

10 (2) EFFECTIVE DATE.—Regulations issued  
11 under paragraph (1) shall not take effect until the  
12 later of—

13 (A) 12 months after the date of enactment  
14 of this Act; or

15 (B) 12 months after the date of publica-  
16 tion of such final regulations by the Board.

17 **SEC. 1303. DISCLOSURES RELATED TO “INTRODUCTORY**  
18 **RATES”.**

19 (a) INTRODUCTORY RATE DISCLOSURES.—Section  
20 127(e) of the Truth in Lending Act (15 U.S.C. 1637(e))  
21 is amended by adding at the end the following:

22 “(6) ADDITIONAL NOTICE CONCERNING ‘INTRO-  
23 DUCTORY RATES’.—

24 “(A) IN GENERAL.—Except as provided in  
25 subparagraph (B), an application or solicitation

1 to open a credit card account and all pro-  
2 motional materials accompanying such applica-  
3 tion or solicitation for which a disclosure is re-  
4 quired under paragraph (1), and that offers a  
5 temporary annual percentage rate of interest,  
6 shall—

7 “(i) use the term ‘introductory’ in im-  
8 mediate proximity to each listing of the  
9 temporary annual percentage rate applica-  
10 ble to such account, which term shall ap-  
11 pear clearly and conspicuously;

12 “(ii) if the annual percentage rate of  
13 interest that will apply after the end of the  
14 temporary rate period will be a fixed rate,  
15 state in a clear and conspicuous manner in  
16 a prominent location closely proximate to  
17 the first listing of the temporary annual  
18 percentage rate (other than a listing of the  
19 temporary annual percentage rate in the  
20 tabular format described in section  
21 122(c)), the time period in which the intro-  
22 ductory period will end and the annual  
23 percentage rate that will apply after the  
24 end of the introductory period; and

1           “(iii) if the annual percentage rate  
2           that will apply after the end of the tem-  
3           porary rate period will vary in accordance  
4           with an index, state in a clear and con-  
5           spicuous manner in a prominent location  
6           closely proximate to the first listing of the  
7           temporary annual percentage rate (other  
8           than a listing in the tabular format pre-  
9           scribed by section 122(c)), the time period  
10          in which the introductory period will end  
11          and the rate that will apply after that,  
12          based on an annual percentage rate that  
13          was in effect within 60 days before the  
14          date of mailing the application or sollicita-  
15          tion.

16          “(B) EXCEPTION.—Clauses (ii) and (iii) of  
17          subparagraph (A) do not apply with respect to  
18          any listing of a temporary annual percentage  
19          rate on an envelope or other enclosure in which  
20          an application or solicitation to open a credit  
21          card account is mailed.

22          “(C) CONDITIONS FOR INTRODUCTORY  
23          RATES.—An application or solicitation to open  
24          a credit card account for which a disclosure is  
25          required under paragraph (1), and that offers a

1 temporary annual percentage rate of interest  
2 shall, if that rate of interest is revocable under  
3 any circumstance or upon any event, clearly  
4 and conspicuously disclose, in a prominent man-  
5 ner on or with such application or solicitation—

6 “(i) a general description of the cir-  
7 cumstances that may result in the revoca-  
8 tion of the temporary annual percentage  
9 rate; and

10 “(ii) if the annual percentage rate  
11 that will apply upon the revocation of the  
12 temporary annual percentage rate—

13 “(I) will be a fixed rate, the an-  
14 nual percentage rate that will apply  
15 upon the revocation of the temporary  
16 annual percentage rate; or

17 “(II) will vary in accordance with  
18 an index, the rate that will apply after  
19 the temporary rate, based on an an-  
20 nual percentage rate that was in ef-  
21 fect within 60 days before the date of  
22 mailing the application or solicitation.

23 “(D) DEFINITIONS.—In this paragraph—

24 “(i) the terms ‘temporary annual per-  
25 centage rate of interest’ and ‘temporary

1           annual percentage rate’ mean any rate of  
2           interest applicable to a credit card account  
3           for an introductory period of less than 1  
4           year, if that rate is less than an annual  
5           percentage rate that was in effect within  
6           60 days before the date of mailing the ap-  
7           plication or solicitation; and

8           “(ii) the term ‘introductory period’  
9           means the maximum time period for which  
10          the temporary annual percentage rate may  
11          be applicable.

12          “(E) RELATION TO OTHER DISCLOSURE  
13          REQUIREMENTS.—Nothing in this paragraph  
14          may be construed to supersede subsection (a) of  
15          section 122, or any disclosure required by para-  
16          graph (1) or any other provision of this sub-  
17          section.”.

18          (b) REGULATORY IMPLEMENTATION.—

19                (1) IN GENERAL.—The Board shall promulgate  
20                regulations implementing the requirements of section  
21                127(c)(6) of the Truth in Lending Act, as added by  
22                this section.

23                (2) EFFECTIVE DATE.—Section 127(c)(6) of  
24                the Truth in Lending Act, as added by this section,



1 and regulations issued under paragraph (1) of this  
 2 subsection shall not take effect until 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 publica-  
 6 tion of such final regulations by the Board.

7 **SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.**

8 (a) INTERNET-BASED SOLICITATIONS.—Section  
 9 127(e) of the Truth in Lending Act (15 U.S.C. 1637(e))  
 10 is amended by adding at the end the following:

11 “(7) INTERNET-BASED SOLICITATIONS.—

12 “(A) IN GENERAL.—In any solicitation to  
 13 open a credit card account for any person under  
 14 an open end consumer credit plan using the  
 15 Internet or other interactive computer service,  
 16 the person making the solicitation shall clearly  
 17 and conspicuously disclose—

18 “(i) the information described in sub-  
 19 paragraphs (A) and (B) of paragraph (1);  
 20 and

21 “(ii) the information described in  
 22 paragraph (6).

23 “(B) FORM OF DISCLOSURE.—The disclo-  
 24 sures required by subparagraph (A) shall be—

1           “(i) readily accessible to consumers in  
2           close proximity to the solicitation to open  
3           a credit card account; and

4           “(ii) updated regularly to reflect the  
5           current policies, terms, and fee amounts  
6           applicable to the credit card account.

7           “(C) DEFINITIONS.—For purposes of this  
8           paragraph—

9           “(i) the term ‘Internet’ means the  
10           international computer network of both  
11           Federal and non-Federal interoperable  
12           packet switched data networks; and

13           “(ii) the term ‘interactive computer  
14           service’ means any information service,  
15           system, or access software provider that  
16           provides or enables computer access by  
17           multiple users to a computer server, in-  
18           cluding specifically a service or system that  
19           provides access to the Internet and such  
20           systems operated or services offered by li-  
21           braries or educational institutions.”.

22           (b) REGULATORY IMPLEMENTATION.—

23           (1) IN GENERAL.—The Board shall promulgate  
24           regulations implementing the requirements of section

1 127(c)(7) of the Truth in Lending Act, as added by  
2 this section.

3 (2) EFFECTIVE DATE.—The amendment made  
4 by subsection (a) and the regulations issued under  
5 paragraph (1) of this subsection shall not take effect  
6 until the later of—

7 (A) 12 months after the date of enactment  
8 of this Act; or

9 (B) 12 months after the date of publica-  
10 tion of such final regulations by the Board.

11 **SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT**  
12 **DEADLINES AND PENALTIES.**

13 (a) DISCLOSURES RELATED TO LATE PAYMENT  
14 DEADLINES AND PENALTIES.—Section 127(b) of the  
15 Truth in Lending Act (15 U.S.C. 1637(b)) is amended  
16 by adding at the end the following:

17 “(12) If a late payment fee is to be imposed  
18 due to the failure of the obligor to make payment on  
19 or before a required payment due date, the following  
20 shall be stated clearly and conspicuously on the bill-  
21 ing statement:

22 “(A) The date on which that payment is  
23 due or, if different, the earliest date on which  
24 a late payment fee may be charged.

1           “(B) The amount of the late payment fee  
2           to be imposed if payment is made after such  
3           date.”.

4           (b) REGULATORY IMPLEMENTATION.—

5           (1) IN GENERAL.—The Board shall promulgate  
6           regulations implementing the requirements of section  
7           127(b)(12) of the Truth in Lending Act, as added  
8           by this section.

9           (2) EFFECTIVE DATE.—The amendment made  
10          by subsection (a) and regulations issued under para-  
11          graph (1) of this subsection shall not take effect  
12          until the later of—

13                 (A) 12 months after the date of enactment  
14                 of this Act; or

15                 (B) 12 months after the date of publica-  
16                 tion of such final regulations by the Board.

17 **SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAIL-**  
18 **URE TO INCUR FINANCE CHARGES.**

19           (a) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-  
20          URE TO INCUR FINANCE CHARGES.—Section 127 of the  
21          Truth in Lending Act (15 U.S.C. 1637) is amended by  
22          adding at the end the following:

23                 “(h) PROHIBITION ON CERTAIN ACTIONS FOR FAIL-  
24          URE TO INCUR FINANCE CHARGES.—A creditor of an ac-  
25          count under an open end consumer credit plan may not

1 terminate an account prior to its expiration date solely be-  
2 cause the consumer has not incurred finance charges on  
3 the account. Nothing in this subsection shall prohibit a  
4 creditor from terminating an account for inactivity in 3  
5 or more consecutive months.”.

6 (b) REGULATORY IMPLEMENTATION.—

7 (1) IN GENERAL.—The Board shall promulgate  
8 regulations implementing the requirements of section  
9 127(h) of the Truth in Lending Act, as added by  
10 this section.

11 (2) EFFECTIVE DATE.—The amendment made  
12 by subsection (a) and regulations issued under para-  
13 graph (1) of this subsection shall not take effect  
14 until the later of—

15 (A) 12 months after the date of enactment  
16 of this Act; or

17 (B) 12 months after the date of publica-  
18 tion of such final regulations by the Board.

19 **SEC. 1307. DUAL USE DEBIT CARD.**

20 (a) REPORT.—The Board may conduct a study of,  
21 and present to Congress a report containing its analysis  
22 of, consumer protections under existing law to limit the  
23 liability of consumers for unauthorized use of a debit card  
24 or similar access device. Such report, if submitted, shall

1 include recommendations for legislative initiatives, if any,  
2 of the Board, based on its findings.

3 (b) CONSIDERATIONS.—In preparing a report under  
4 subsection (a), the Board may include—

5 (1) the extent to which section 909 of the Elec-  
6 tronic Fund Transfer Act (15 U.S.C. 1693g), as in  
7 effect at the time of the report, and the imple-  
8 menting regulations promulgated by the Board to  
9 carry out that section provide adequate unauthorized  
10 use liability protection for consumers;

11 (2) the extent to which any voluntary industry  
12 rules have enhanced or may enhance the level of pro-  
13 tection afforded consumers in connection with such  
14 unauthorized use liability; and

15 (3) whether amendments to the Electronic  
16 Fund Transfer Act (15 U.S.C. 1693 et seq.), or re-  
17 visions to regulations promulgated by the Board to  
18 carry out that Act, are necessary to further address  
19 adequate protection for consumers concerning unau-  
20 thorized use liability.

21 **SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EX-**  
22 **TENDED TO DEPENDENT STUDENTS.**

23 (a) STUDY.—

24 (1) IN GENERAL.—The Board shall conduct a  
25 study regarding the impact that the extension of

1 credit described in paragraph (2) has on the rate of  
2 cases filed under title 11 of the United States Code.

3 (2) EXTENSION OF CREDIT.—The extension of  
4 credit described in this paragraph is the extension of  
5 credit to individuals who are—

6 (A) claimed as dependents for purposes of  
7 the Internal Revenue Code of 1986; and

8 (B) enrolled within 1 year of successfully  
9 completing all required secondary education re-  
10 quirements and on a full-time basis, in postsec-  
11 ondary educational institutions.

12 (b) REPORT.—Not later than 1 year after the date  
13 of enactment of this Act, the Board shall submit to the  
14 Senate and the House of Representatives a report summa-  
15 rizing the results of the study conducted under subsection  
16 (a).

17 **SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.**

18 (a) REGULATIONS.—Not later than 6 months after  
19 the date of enactment of this Act, the Board, in consulta-  
20 tion with the other Federal banking agencies (as defined  
21 in section 3 of the Federal Deposit Insurance Act), the  
22 National Credit Union Administration Board, and the  
23 Federal Trade Commission, shall promulgate regulations  
24 to provide guidance regarding the meaning of the term  
25 “clear and conspicuous”, as used in subparagraphs (A),

1 (B), and (C) of section 127(b)(11) and clauses (ii) and  
 2 (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

3 (b) EXAMPLES.—Regulations promulgated under  
 4 subsection (a) shall include examples of clear and con-  
 5 spicuous model disclosures for the purposes of disclosures  
 6 required by the provisions of the Truth in Lending Act  
 7 referred to in subsection (a).

8 (c) STANDARDS.—In promulgating regulations under  
 9 this section, the Board shall ensure that the clear and con-  
 10 spicuous standard required for disclosures made under the  
 11 provisions of the Truth in Lending Act referred to in sub-  
 12 section (a) can be implemented in a manner which results  
 13 in disclosures which are reasonably understandable and  
 14 designed to call attention to the nature and significance  
 15 of the information in the notice.

16 **TITLE XIV—PREVENTING COR-**  
 17 **PORATE BANKRUPTCY ABUSE**

18 **SEC. 1401. EMPLOYEE WAGE AND BENEFIT PRIORITIES.**

19 Section 507(a) of title 11, United States Code, as  
 20 amended by section 212, is amended—

21 (1) in paragraph (4) by striking “90” and in-  
 22 serting “180”, and

23 (2) in paragraphs (4) and (5) by striking  
 24 “\$4,000” and inserting “\$10,000”.



1 **SEC. 1402. FRAUDULENT TRANSFERS AND OBLIGATIONS.**

2 Section 548 of title 11, United States Code, is  
3 amended—

4 (1) in subsections (a) and (b) by striking “one  
5 year” and inserting “2 years”,

6 (2) in subsection (a)—

7 (A) by inserting “(including any transfer  
8 to or for the benefit of an insider under an em-  
9 ployment contract)” after “transfer” the 1st  
10 place it appears, and

11 (B) by inserting “(including any obligation  
12 to or for the benefit of an insider under an em-  
13 ployment contract)” after “obligation” the 1st  
14 place it appears, and

15 (3) in subsection (a)(1)(B)(ii)—

16 (A) in subclause (II) by striking “or” at  
17 the end,

18 (B) in subclause (III) by striking the pe-  
19 riod at the end and inserting “; or”, and

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

21 “(IV) made such transfer to or for the benefit  
22 of an insider, or incurred such obligation to or for  
23 the benefit of an insider, under an employment con-  
24 tract and not in the ordinary course of business.”.

25 (4) by adding at the end the following:

1       “(e)(1) In addition to any transfer that the trustee  
2 may otherwise avoid, the trustee may avoid any transfer  
3 of an interest of the debtor in property that was made  
4 on or within 10 years before the date of the filing of the  
5 petition, if—

6           “(A) such transfer was made to a self-settled  
7 trust or similar device;

8           “(B) such transfer was by the debtor;

9           “(C) the debtor is a beneficiary of such trust or  
10 similar device; and

11          “(D) the debtor made such transfer with actual  
12 intent to hinder, delay, or defraud any entity to  
13 which the debtor was or became, on or after the date  
14 that such transfer was made, indebted.

15       “(2) For the purposes of this subsection, a transfer  
16 includes a transfer made in anticipation of any money  
17 judgment, settlement, civil penalty, equitable order, or  
18 criminal fine incurred by, or which the debtor believed  
19 would be incurred by—

20           “(A) any violation of the securities laws (as de-  
21 fined in section 3(a)(47) of the Securities Exchange  
22 Act of 1934 (15 U.S.C. 78c(a)(47))), any State se-  
23 curities laws, or any regulation or order issued  
24 under Federal securities laws or State securities  
25 laws; or

1           “(B) fraud, deceit, or manipulation in a fidu-  
2           ciary capacity or in connection with the purchase or  
3           sale of any security registered under section 12 or  
4           15(d) of the Securities Exchange Act of 1934 (15  
5           U.S.C. 78l and 78o(d)) or under section 6 of the Se-  
6           curities Act of 1933 (15 U.S.C. 77f).”.

7   **SEC. 1403. PAYMENT OF INSURANCE BENEFITS TO RETIRED**  
8                           **EMPLOYEES.**

9           Section 1114 of title 11, United States Code, is  
10   amended—

11           (1) by redesignating subsection (l) as subsection  
12           (m), and

13           (2) by inserting after subsection (k) the fol-  
14           lowing:

15           “(l) If the debtor, during the 180-day period ending  
16           on the date of the filing of the petition—

17           “(1) modified retiree benefits; and

18           “(2) was insolvent on the date such benefits  
19           were modified;

20           the court, on motion of a party in interest, and after notice  
21           and a hearing, shall issue an order reinstating as of the  
22           date the modification was made, such benefits as in effect  
23           immediately before such date unless the court finds that  
24           the balance of the equities clearly favors such modifica-  
25           tion.”.

1 **SEC. 1404. DEBTS NONDISCHARGEABLE IF INCURRED IN**  
2 **VIOLATION OF SECURITIES FRAUD LAWS.**

3 (a) PREPETITION AND POSTPETITION EFFECT.—  
4 Section 523(a)(19)(B) of title 11, United States Code, is  
5 amended by inserting “, before, on, or after the date on  
6 which the petition was filed,” after “results”.

7 (b) EFFECTIVE DATE UPON ENACTMENT OF SAR-  
8 BANES-OXLEY ACT.—The amendment made by subsection  
9 (a) is effective beginning July 30, 2002.

10 **SEC. 1405. APPOINTMENT OF TRUSTEE IN CASES OF SUS-**  
11 **PECTED FRAUD.**

12 Section 1104 of title 11, United States Code, is  
13 amended by adding at the end the following:

14 “(e) The United States trustee shall move for the ap-  
15 pointment of a trustee under subsection (a) if there are  
16 reasonable grounds to suspect that current members of  
17 the governing body of the debtor, the debtor’s chief execu-  
18 tive or chief financial officer, or members of the governing  
19 body who selected the debtor’s chief executive or chief fi-  
20 nancial officer, participated in actual fraud, dishonesty, or  
21 criminal conduct in the management of the debtor or the  
22 debtor’s public financial reporting.”.

23 **SEC. 1406. EFFECTIVE DATE; APPLICATION OF AMEND-**  
24 **MENTS.**

25 (a) EFFECTIVE DATE.—Except as provided in sub-  
26 section (b), this title and the amendments made by this

1 title shall take effect on the date of the enactment of this  
2 Act.

3 (b) APPLICATION OF AMENDMENTS.—

4 (1) IN GENERAL.—cept as provided in para-  
5 graph (2), the amendments made by this title shall  
6 apply only with respect to cases commenced under  
7 title 11 of the United States Code on or after the  
8 date of the enactment of this Act.

9 (2) AVOIDANCE PERIOD.—The amendment  
10 made by section 1402(1) shall apply only with re-  
11 spect to cases commenced under title 11 of the  
12 United States Code more than 1 year after the date  
13 of the enactment of this Act.

14 **TITLE XV—GENERAL EFFECTIVE**  
15 **DATE; APPLICATION OF**  
16 **AMENDMENTS**

17 **SEC. 1501. EFFECTIVE DATE; APPLICATION OF AMEND-**  
18 **MENTS.**

19 (a) EFFECTIVE DATE.—Except as otherwise provided  
20 in this Act, this Act and the amendments made by this  
21 Act shall take effect 180 days after the date of enactment  
22 of this Act.

23 (b) APPLICATION OF AMENDMENTS.—

24 (1) IN GENERAL.—Except as otherwise pro-  
25 vided in this Act and paragraph (2), the amend-

1       ments made by this Act shall not apply with respect  
2       to cases commenced under title 11, United States  
3       Code, before the effective date of this Act.

4               (2) CERTAIN LIMITATIONS APPLICABLE TO  
5       DEBTORS.—The amendments made by sections 308,  
6       322, and 330 shall apply with respect to cases com-  
7       menced under title 11, United States Code, on or  
8       after the date of the enactment of this Act.

9       **SEC. 1502. TECHNICAL CORRECTIONS.**

10       (a) CONFORMING AMENDMENTS TO TITLE 11 OF  
11       THE UNITED STATES CODE.—Title 11 of the United  
12       States Code, as amended by the preceding provisions of  
13       this Act, is amended—

14               (1) in section 507—

15                       (A) in subsection (a)—

16                               (i) in paragraph (5)(B)(ii) by striking  
17                               “paragraph (3)” and inserting “paragraph  
18                               (4)”; and

19                               (ii) in paragraph (8)(D) by striking  
20                               “paragraph (3)” and inserting “paragraph  
21                               (4)”; and

22                       (B) in subsection (b) by striking “sub-  
23       section (a)(1)” and inserting “subsection  
24       (a)(2)”; and

1 (C) in subsection (d) by striking “sub-  
2 section (a)(3)” and inserting “subsection  
3 (a)(1)”;

4 (2) in section 523(a)(1)(A) by striking  
5 “507(a)(2)” and inserting “507(a)(3)”;

6 (3) in section 752(a) by striking “507(a)(1)”  
7 and inserting “507(a)(2)”;

8 (4) in section 766—

9 (A) in subsection (h) by striking  
10 “507(a)(1)” and inserting “507(a)(2)”; and

11 (B) in subsection (i) by striking  
12 “507(a)(1)” each place it appears and inserting  
13 “507(a)(2)”;

14 (5) in section 901(a) by striking “507(a)(1)”  
15 and inserting “507(a)(2)”;

16 (6) in section 943(b)(5) by striking “507(a)(1)”  
17 and inserting “507(a)(2)”;

18 (7) in section 1123(a)(1) by striking  
19 “507(a)(1), 507(a)(2)” and inserting “507(a)(2),  
20 507(a)(3)”;

21 (8) in section 1129(a)(9)—

22 (A) in subparagraph (A) by striking  
23 “507(a)(1) or 507(a)(2)” and inserting  
24 “507(a)(2) or 507(a)(3)”; and

1 (B) in subparagraph (B) by striking  
2 “507(a)(3)” and inserting “507(a)(1)”;

3 (9) in section 1226(b)(1) by striking  
4 “507(a)(1)” and inserting “507(a)(2)”; and

5 (10) in section 1326(b)(1) by striking  
6 “507(a)(1)” and inserting “507(a)(2)”.

7 (b) RELATED CONFORMING AMENDMENT.—Section  
8 6(e) of the Securities Investor Protection Act of 1970 (15  
9 U.S.C. 78fff(e)) is amended by striking “507(a)(1)” and  
10 inserting “507(a)(2)”.





**Union Calendar No. 14**

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 256**

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**AN ACT**

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

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APRIL 8, 2005

Committee on Financial Services discharged; committed  
to the Committee of the Whole House on the State of  
the Union and ordered to be printed