

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Gene Sperling and Sally Katzen to POTUS re: Bankruptcy Reform Legislation (7 pages)	ca. June, 1998	P5
002. memo	Gene Sperling and Sally Katzen re: Bankruptcy Reform Legislation (7 pages)	ca. June, 1998	P5
003. memo	Gene Sperling and Sally Katzen re: Bankruptcy Reform Legislation (7 pages)	ca. June, 1998	P5
004. memo	Gene Sperling and Sally Katzen to POTUS re: Bankruptcy Reform Legislation (8 pages)	ca. June, 1998	P5
005. memo	Gene Sperling to POTUS re: Bankruptcy Reform Legislation (7 pages)	ca. June, 1998	P5
006. memo	Gene Sperling to POTUS re: Bankruptcy Reform Legislation (4 pages)	09/22/98	P5
007. report	Bankruptcy Issue (2 pages)	ca. June, 1998	P5
008. report	Bankruptcy Issue (1 page)	ca. June, 1988	P5

### COLLECTION:

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

### FOLDER TITLE:

Child Support-Bankruptcy Bill [2]

rx8

### RESTRICTION CODES

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

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

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

What are the possible ways in which NEC's potential compromise could be seen as reversing our strong position to date on child support?

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

cc Cynthia -

Cynthia - Here is the  
HHS bankruptcy draft  
paper we discussed.

But the cover page

(this page) is something  
I did to understand where  
we are on the miner side,

- Diana



**FACSIMILE TRANSMISSION**

**ADMINISTRATION FOR CHILDREN AND FAMILIES  
OFFICE OF THE ASSISTANT SECRETARY  
370 L'ENFANT PROMENADE, S.W.  
WASHINGTON, D.C. 20447**

*OCSE + ASPE  
white paper*

**DATE:**

**Name:** *Diana Fortuna*  
**Telephone:** *456 5570*  
**Fax:** *456 7431 (fax)*  
**Number of Pages (excluding cover):**

**FROM: JAIME KENDALL**

**Telephone:** (202) 401-9227  
**Fax:** (202) 401-4678

**MESSAGE:**

*Hi Diana,  
John Monahan asked me to follow up  
w/you on the new bankruptcy reform  
legislation and impacts on child support.  
Attached is a draft document - give me a  
call if you'd like to discuss.*

*Thanks -  
Jaime*

JUN-25-1998 10:23 FRUIT

**DRAFT**

6/24/1998

## **The New Bankruptcy Reform Legislation and Child Support**

### **Background**

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

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

### **Proposed Bankruptcy Legislation**

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

Another proposed change in the House bill would require certain debtors who meet income and discretionary income thresholds -- and thus have the ability to repay part or all of their debts -- to file a Chapter 13 bankruptcy (a consumer repayment plan bankruptcy) rather than a

Chapter 7 bankruptcy (a traditional liquidation bankruptcy). The Senate bill addresses this issue by giving bankruptcy courts more authority to dismiss Chapter 7 petitions for abuse, i.e. an ability to repay.

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

### **House and Senate Amendments**

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

Child support is given the first priority in payment during the pendency of the bankruptcy proceeding.

Child support is given first priority in line for payment in Chapter 13 plans.

A special exemption from the automatic stay for wage withholding and certain other child support enforcement actions is added.

Child support debts due after filing must be paid before a Chapter 13 plan can be confirmed and child support debts must be paid before discharge of a Chapter 13 plan.

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

### **Impact on CSE**

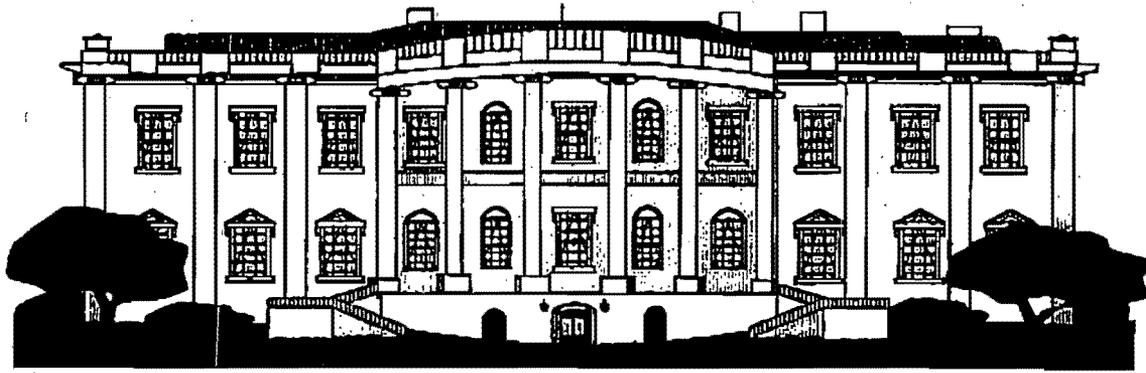
1. The Bankruptcy bills, even as amended, do not change the argument that more debts, such as credit card debts, will survive bankruptcy and therefore, arguably, compete with child support. However, the impact on child support collections of more debts surviving bankruptcy will be mitigated by the priority given to child support debt and the wide variety of enforcement tools available to child support obligees that are not available to other creditors.

Most importantly, child support will continue to have a priority for wage garnishment, the primary means of collection. Also, nothing in the proposed bankruptcy legislation will affect the special status given to child support in collection actions provided by law outside the Bankruptcy Code. For example, child support obligees can continue to collect child support arrears through the Federal Income Tax Refund Offset Program. This is a program not available to other creditors and which collected over \$1.1 billion in 1996. In addition, child support obligations can be enforced through a wide variety of other enforcement mechanisms such as contempt, criminal prosecution, automatic liens, and license revocations that are not available to other creditors.

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

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

4. There may be no way to entirely satisfy some of the women's groups concerns relating to the bankruptcy bill's purported impact on child support enforcement without making major changes to the bankruptcy reforms by deleting the new exceptions to discharge and deleting all means tests or other provisions which would limit Chapter 7 filings. Without these types of major deletions, there appears to be little more that can be done to protect child support that has not already been addressed in the bills. It may be possible to strengthen the provision in the House bill (Shaw amendment) which attempts to give child support priority protection post-discharge. However, such provisions raise many practical implementation concerns and therefore may not be feasible.



**The White House**  
**National Economic Council**

*Cynthia*

To: See Distribution List

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

From: Sonyia Matthews

Phone: (202) 456-5351 Fax: (202) 456-2223

Pages including cover sheet: 9

Comments: \_\_\_\_\_

The next bankruptcy working group meeting with Sarah Rosen will take place on Tuesday, July 28th at 3:30 pm in room 239 to discuss legislative developments or lack thereof and Senator Dianne Feinstein's Creditworthiness Amendment

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



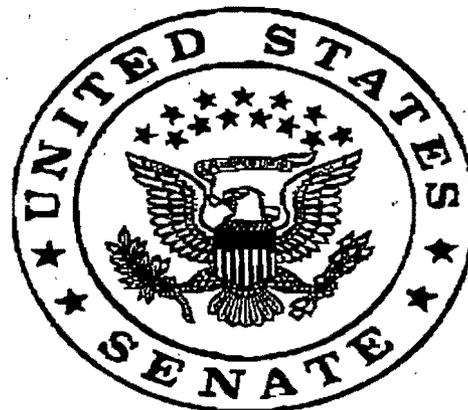
Thanks

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**Senator Dianne Feinstein**  
**Ranking Minority Member**  
*Senate Judiciary Committee*  
**Technology, Terrorism and Government**  
**Information Subcommittee**  
**Hart 807**  
**Washington, D.C. 20510**  
**Tel # (202) 224-4933 Fax # 228-0466**



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**Facsimile Cover Sheet**

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**TO: Roger Ballantine**

**July 21, 1998**

**12:53 pm**

**FAX NUMBER: 456-6468**

**PHONE NUMBER:**

**FROM: Richard Pfohl**  
**(202) 224-6443**

**SUBJECT: Outline of Feinstein Creditworthiness Bankruptcy**  
**Amendment**

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

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

**COMMENTS:**

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

**Richard**

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# **Feinstein Creditworthiness Amendment Summary**

## **Limitations on Extensions of Credit Which Contribute to Bankruptcy**

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

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

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

### **Section 2. Duty to Inquire. (New Section: 15 U.S.C. § 1649?)**

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

### **Section 3. Designation of Extension of Credit as High Debt to Income Ratio Loan.**

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

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

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

- a. provide information to the consumer in a form designed by the Federal Reserve Board concerning the risks and consequences of becoming overextended on credit;
- b. inform the consumer that the loan has been designated a high debt to income ratio loan;
- c. report to the Federal Reserve Board on an annual basis the number of such loans made, the median interest rate on such loans, and the total amount of credit extended on such loans.

### **Section 5. Prohibition of Penalty Rates.**

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

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

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

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

A creditor making a high debt to income ratio loan shall not be entitled to raise claims in bankruptcy under 11 U.S.C. § 523(a)(2), 707, 727, or 1328.

**Section 8. Bankruptcy Claims for Prepetition Interest Due May be Disallowed at the Discretion of the Court.**

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

(1) caused the borrower to file bankruptcy, or

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

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

**Section 9. Penalties**

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

## **FEINSTEIN CREDITWORTHINESS AMENDMENT FACT SHEET**

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

- **Studies by the Congressional Budget Office, the Federal Deposit Insurance Corporation, and independent economists link the rise in bankruptcy filings directly to the rise in consumer debt. In 1975 total household debt was 24% of aggregate household income. Today, total household debt is more than 104% of aggregate household income. There is greater potential for financial problems and bankruptcy, because more families owe more money.**
- **In 1997, the credit industry mailed more than three billion credit card solicitations to American families.**
- **The credit industry increasingly searches for risky borrowers because it is hungry for debtors that will carry big balances and pay the most interest. Many credit card lenders now cancel borrowing privileges or impose fees on borrowers who pay their balance in full each month.**
- **Lending to a family who already pays more than 40% of its income to credit cards is a major contributing factor to bankruptcy. Sophisticated marketing techniques, not unlike those of the cigarette industry, have been designed to encourage families to accept and use more credit than ever before. Families get sucked in, for example, by low minimum payments. Many families do not understand that making minimum payments causes the loan balance to increase.**
- **The typical family that filed for bankruptcy in 1997 owed more than one and a half times its annual income in short-term, high interest debt. This means that a family earning \$24,000 had an average of \$36,000 in credit card or other similar debt.**

## **THE FEINSTEIN AMENDMENT LIMITS IRRESPONSIBLE BEHAVIOR THAT CONTRIBUTES TO BANKRUPTCY**

- **The amendment would require lenders to ask the borrower, before extending new credit, how much the borrower is already paying on existing credit card debts. This will help borrowers determine whether they are already overextended. It will also help lenders determine the risk of making a new loan.**
- **If the borrower is already spending more than 40% of monthly income on credit card debt, the lender would be required to send educational information about the risk of becoming overextended, before extending new credit.**
- **The amendment requires lenders to report the the Federal Reserve Board on risky loans extended (i.e., credit cards issued). This will help protect lenders and their depositors and investors from risks associated with excessive imprudent lending.**
- **The amendment would require that consumers pay a minimum monthly balance on risky loans, so that substantial new balances do not accumulate over time and contribute to bankruptcy.**
- **The amendment would protect careful lenders, such as credit unions, from the risk associated with lenders who make expensive new loans to families that are already struggling.**
- **If a risky loan causes a family to file bankruptcy, the lender would share responsibility for that filing, because it would have made the loan with full information that the borrower was already overextended.**

**THE FEINSTEIN AMENDMENT PROTECTS RESPONSIBLE CREDIT CARD COMPANIES AND DOES NOT RESTRICT ACCESS TO CREDIT BY CONSUMERS WHO NEED IT.**

- **The Feinstein amendment: 1) reduces needless bankruptcies due to inappropriately extended credit, and 2) benefits responsible companies that check credit history, don't extend risky credit, and don't engage in deceptive consumer "come on's."**
- **Nothing in the amendment would impose expensive new requirements on lenders making loans to families that are not already paying more than 40% of their income on credit cards. All of the information required to be gathered by this amendment can be included on the debtor's credit application. The information required is also subject to easy verification on credit reports.**
- **The amendment does not deny any American consumer access to credit. Nothing in the amendment precludes a lender from granting credit to any family on whatever terms the market will bear. However, whenever new credit is granted to a family already paying more than 40% of its income to credit cards, special care will be necessary.**

*"Proposed amendments would give child support creditors an enormous advantage over other creditors during bankruptcy and greatly aid us in the discharge of our support enforcement responsibilities."*

- Jonathan Burris, President, California Family Support Council

Reforming our flawed bankruptcy code and strengthening child support enforcement go hand-in-hand in reinforcing personal responsibility.

# VOTE FOR S. 1301

## THE CONSUMER BANKRUPTCY REFORM ACT

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

### NATIONAL TRADE ASSOCIATIONS

Agricultural Retailers Association  
American Bankers Association  
American Financial Services Association  
American Sheep Industry Association  
American Soybean Association  
America's Community Bankers  
Associated Credit Bureaus, Inc.  
Associated Equipment Distributors  
Association of Financial Services Holding Companies

Consumer Bankers Association  
Credit Union National Association  
Equipment Leasing Association  
Financial Services Council  
Independent Bankers Association of America  
MasterCard International Incorporated  
National Apartment Association  
National Association of Wheat Growers  
National Automobile Dealers Association  
National Cattlemen's Beef Association

National Community Pharmacists Association  
National Funeral Directors Association  
National Grange  
National Home Furnishings Association  
National Independent Automobile Dealers Association  
National Lumber & Building Material Dealers Association  
National Multi Housing Council  
National Pork Producers Council

National Retail Federation  
National Retail Hardware Association  
National Ski and Snowboard Retailers Association  
National Sporting Goods Association  
North American Equipment Dealers Association  
North American Retail Dealers Associations  
The Bankers Roundtable  
Visa U.S.A.  
World Floor Covering Association

### STATE AND LOCAL TRADE ASSOCIATIONS

Alabama Bankers Association  
Alabama Financial Services Association  
Alabama Retail Federation  
Arizona Bankers Association  
Arizona Financial Services Association  
Arkansas Bankers Association  
Arkansas Community Bankers  
Associated Oregon Industries Retail Council  
California Bankers Association  
California Financial Services Association  
California Retailers Association  
Colorado Financial Services Association  
Colorado Retail Council  
Community Bank League of New England  
Community Bankers Association of Alabama  
Community Bankers Association of Georgia  
Community Bankers Association of Illinois  
Community Bankers Association of Indiana  
Community Bankers Association of Kansas  
Community Bankers Association of Kentucky, Inc.  
Community Bankers Association of Ohio  
Community Bankers Association of Oklahoma  
Community Bankers of Florida  
Community Bankers of Wisconsin  
Connecticut Retail Merchants Association  
Delaware Bankers Association  
Florida Financial Services Association  
Florida Retail Federation  
Georgia Bankers Association  
Heartland Community Bankers Association  
Idaho Financial Services Association  
Idaho Retailers Association

Illinois Retail Merchants Association  
Independent Bankers Association of New York  
Independent Bankers Association of Texas  
Independent Bankers of Colorado  
Independent Bankers of South Dakota  
Independent Community Bankers of Minnesota  
Independent Community Bankers of New Mexico  
Independent Community Bankers of North Dakota  
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Maryland Retailers Association  
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Massachusetts Independent Bankers Association, Inc.  
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Michigan Financial Services Association  
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Missouri Financial Services Association  
Missouri Independent Bankers Association  
Missouri League of Financial Institutions  
Missouri Retailers Association  
Montana Bankers Association  
Montana Independent Bankers  
Montana Retail Association  
Nebraska Bankers Association  
Nebraska Independent Bankers Association  
Nebraska Retail Federation  
New England Financial Services Association  
New Jersey Bankers Association  
New Jersey Financial Services Association  
New Jersey Retail Merchants Association  
New York Bankers Association  
New York State Consumer Finance Association  
North Carolina Association of Financial Institutions  
North Carolina Bankers Association  
North Carolina Financial Services Association  
North Carolina Retail Merchants Association  
North Dakota Bankers Association  
North Dakota Retail Association  
Ohio Bankers Association  
Ohio Consumer Finance Association  
Ohio Council of Retail Merchants  
Oklahoma Consumer Finance Association  
Oregon Financial Services Association  
Pennsylvania Association of Community Bankers

Pennsylvania Bankers Association  
Pennsylvania Financial Services Association  
Pennsylvania Retailers Association  
Retail Council of New York State  
Retail Federation of Nevada  
Retail Merchants Association of New Hampshire  
Retailers Association of Massachusetts  
Rhode Island Bankers Association  
Rhode Island Retail Federation  
South Carolina Bankers Association  
South Carolina Financial Services Association  
South Dakota Consumer Finance Association  
South Dakota Retailers Association  
Tennessee Bankers Association  
Texas Financial Services Association  
Texas Retailers Association  
Utah Association of Financial Services  
Utah Bankers Association  
Utah Retail Merchants Association  
Vermont Retail Association  
Virginia Association of Community Bankers  
Virginia Bankers Association  
Virginia Retail Merchants Association  
Washington Savings League  
Washington State Financial Services Association  
West Virginia Bankers Association  
West Virginia Consumer Finance Association  
West Virginia Retail Association  
Wisconsin Bankers Association  
Wisconsin Financial Services Association  
Wisconsin Merchants Federation  
Wyoming Retail Merchants Association

### CORPORATIONS

American General Corporation  
American General Finance  
Amsouth Bank  
AVCO Financial Services  
BANC ONE CORPORATION  
Bank of America  
Bath & Body Works  
Beneficial Management Corporation  
Bosco's Department Stores, Inc.  
Cacique Lingerie  
Capital One Financial Corporation  
Charming Shoppes, Inc.  
Chase Manhattan  
Chevy Chase Bank, FSB  
Circuit City Stores  
Citibank  
Commercial Credit Corporation  
Compagnie Internationale Express  
Compass Bancshares, Inc.  
Crestar Financial Corporation  
Dayton Hudson Corporation

Experian  
Express  
Famous Barr  
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Finance One Corporation  
First American Bank Corp.  
First Maryland Bancorp  
First National Bank of Omaha  
First USA Bank, N.A.  
First Virginia Banks  
FIRSTPLUS Financial Group  
Fleet Financial Group  
Foleys Department Stores  
Fulton Bank  
Gavlan's Trading Company  
GE Capital Corporation  
Gottschalks  
Guaranty Bank, S.S.B.  
Hechts  
Heilig-Meyers  
Henri Bendel  
Household International  
Huntington Bancshares, Inc.  
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Kaufman's  
KeyCorp  
Lane Bryant  
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NationsBank Corporation  
Nordstrom National Bank  
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Pier 1 Imports, Inc.  
PNC Bank Corp.  
Proffitts, Inc.

Provident Financial Corporation  
Regions Financial Corporation  
Rhodes, Inc.  
Sears, Roebuck and Co.  
St. Paul Federal Bank  
Stage Stores, Inc.  
Star Banc Corporation  
Strawbridge  
Structure  
Summit Bancorp  
The Bon-Ton Stores, Inc.  
The Limited  
The Limited too  
The May Department Stores Company  
Travelers Group  
U.S. Bancorp  
Victoria's Secret Stores  
Wachovia Bank, N.A.  
Wells Fargo  
Zale Corporation

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

Paid for by The American Financial Services Association

**If you think insurance, banking  
and securities companies  
are the only ones urging action  
on HR 10, read on.**

**"It is long overdue."**

Editorial The Seattle Times May 13, 1998

**"...the time is right..."**

Editorial The Indianapolis News June 12, 1998

**"...seize this opportunity..."**

Editorial Chicago Tribune May 15, 1998

**"...join the 21st century."**

Editorial The Wall Street Journal June 22, 1998

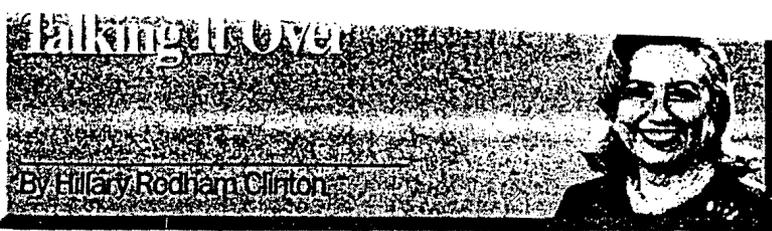
**"We like the bill."**

Editorial The Christian Science Monitor May 18, 1998

**It's time to pass HR 10.**



**American Council of Life Insurance**  
1001 Pennsylvania Avenue, N.W. Washington D.C. 20004



# Bankruptcy shouldn't let parents off the hook

cc Cynthia  
FYI

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

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

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

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

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

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

debt-free.

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

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

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

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

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

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

As members of Congress grapple with bankruptcy reform, they must deal with the problems that face both creditors and debtors.

The Washington Times

★ THURSDAY, MAY 7, 1998

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

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

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

debt-free.

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

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

● To find out more about Hillary Rodham Clinton and read her past columns, visit the Creators Syndicate World Wide Web page ([www.creators.com](http://www.creators.com)).

The Washington Times

★ THURSDAY, MAY 7, 1998

the difference between success and failure of the various bills. DeLay, for instance, has promised to attach amendments highlighting Democratic fundraising abuses to bills such as Shays-Meehan, creating an awkward situation for Democrats who would otherwise vote in favor of the bill. The Rules Committee is expected to meet in June to look at the amendments and decide which are "germane" to the legislation.

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

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

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

- limits non-dischargeability presumption to debts which are "not reasonably necessary for maintenance or support of debtor or dependent thereof; and in the aggregate exceed the amount of \$400 per creditor."
- Amends the FTC definition to include as household goods "those items reasonably necessary for the maintenance or support of a single parent or minor dependent thereof."
- For single parents with a dependent child, the creditor "would have to prove that debtor intentionally paid the non-dischargeable debt with a dischargeable one." If the bankrupt debtor owes child support or alimony, the creditor "would have to prove that debtor intentionally paid the non-dischargeable debt with a dischargeable one."
- Applies the codebtor stay "where the debtor spouse or ex-spouse is required to make the payments as part of a divorce decree or legally binding separation or settlement agreement."
- Confirmation and discharge of a Chapter 13 plan is conditioned on "complete payment of all child support and alimony due."
- All child support and alimony must be paid first before all other obligations of Chapter 13.
- Elevates child support in Chapter 7 from priority 7 to priority 1.
- Makes an automatic stay under bankruptcy laws not applicable to State child support collection authority, "which seeks to impose or enforce a wage order for domestic support obligations."
- Helps women and children "reach exempt property, to collect support payments notwithstanding contrary Federal law."
- Makes "all obligations one ex-spouse owes another non-dischargeable."

**House GOP Leaders Confident Kasich's Budget Will Pass.** House Budget Committee Chairman John Kasich's FY99 budget resolution has been approved by his committee on a party line vote, and a House GOP leadership source said this morning that it will similarly carry the support of the House GOP conference when it comes to the floor the first week after the Memorial Day recess. Asked if Kasich's budget will pass, the leadership source said, "Yes." Asked if members of the conference will vote for it

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Gene Sperling and Sally Katzen to POTUS re: Bankruptcy Reform Legislation (7 pages)	ca. June, 1998	P5

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- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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# The Senate Should Halt NATO Expansion

Knickerbocker

By John Lewis Gaddis

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

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

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

And yet I've had difficulty finding any colleagues who think NATO expansion is a good idea. Indeed, I can recall no other moment when there was less support in our profession for a government policy.

A striking gap has opened, therefore, between those who make grand strategy and those who reflect on it. On this issue, at least, official and accumulated wisdom are pointing in very different directions.

This has happened, I think, because the Clinton Administration has failed to answer a few simple questions:

- Why exclude the Russians? One of the few propositions on which historians tend to agree is that peace settlements work best when they include rather than exclude former adversaries. Within three years after the defeat of Napoleon in 1815, the victors had brought France back within the concert of Europe. Within six years of their surrender in 1945, Germany and

Japan were firmly within American-designed security alliances. Both settlements survived for decades. The post-World War I settlement, however, excluded Germany. The lessons of history on this point seem obvious.

- Who, then, will we include? The

## Remember the Titanic.

Administration has made it clear that expansion will not stop with Poland, Hungary and the Czech Republic. It has mentioned the Baltics and Romania as possible future members. The State Department's Web site claims support for NATO expansion from groups like the Belorussian Congress

Committee of America, the Ukrainian National Association and the Armenian Assembly of America.

The State Department assures us, though, that the Russians view this process with equanimity and that we can expect relations with Moscow to proceed normally while we sort out just who the new members of NATO will be. Perhaps it will next try to tell us that pigs can fly.

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

ment? It doesn't take a rocket scientist — or even a historian — to figure out that actions have consequences.

- What's the objective? Alliances are means to ends, not ends in themselves. NATO served brilliantly as a means of containing the Soviet Union, but the Administration has specified no comparably clear goal that would justify expanding the alliance now that the cold war is over. It speaks vaguely of the need for democratization and stabilization, but if these objectives inform its policy, shouldn't they apply throughout Eastern Europe and in Russia as well?

I heard a very different explanation from influential government and academic figures when I visited one of the proposed new member countries last month. NATO expansion, they boasted, will demonstrate once and for all that the Russians never have been and never will be part of European civilization. Yet Secretary of State Madeleine Albright has told the Senate Foreign Relations Committee that she wants to erase "the line that once so cruelly and arbitrarily divided Europe." It is not at all clear how this policy will produce that result.

- Isn't it too late now to change course? Some argue that even if the decision to expand NATO wasn't the most thoughtful, historically aware way to make policy, the decision has been made and going back on it would be a disaster far greater than the problems NATO expansion itself will bring. This sounds a little like the refusal of the Titanic's captain to cut his ship's speed when told there were icebergs ahead. Consistency is a fine idea most of the time, but there are moments when it's just plain irresponsible.

Only future historians will be able to say whether this is such a moment. But the mood of current historians should not give the Administration — or those senators who plan to vote this week for NATO expansion — very much comfort. □

## Bankrupt? Pay Your Child Support First

By Elizabeth Warren

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

But it is important to recognize the unintended consequences of the changes the industry wants — specifically, their devastating impact on the tens of thousands of women who turn to bankruptcy courts to collect alimo-

*Elizabeth Warren is a law professor at Harvard who specializes in bankruptcy.*

ny and child support from former husbands who have sought bankruptcy protection.

In 1903, Congress declared that child support and other marital obligations were "nondischargeable debts" — meaning that no one who

## A 'reform' that could hurt families.

declares bankruptcy can escape liability for these obligations. Like taxes and student loans, these debts must be repaid in full both during and after a bankruptcy. Congress quite properly declared that child support and alimony were a priority and must be

paid first and in full.

But some proposals before Congress would add to the list of nondischargeable debts. Credit card debt piled up in the 90 days before a bankruptcy filing or incurred when the person did not have "a reasonable expectation or ability to repay" would be included.

This means that even if a debtor declared bankruptcy, credit card bills, with their compounded interest, penalties and collection fees, would survive forever, and have just as much priority as child support payments.

This could be devastating to children. A system in which almost everyone must be paid could very well mean that no one is paid — or, more likely, that only the most aggressive

and powerful creditors are.

Last year, some 300,000 bankruptcy cases involved child support, alimony or another form of family maintenance. In about half of the cases, women were creditors trying to collect court-ordered support from their former spouses. Without such recourse, some families would have to turn to public assistance.

All creditors are victimized by fraudulent debtors. But bankruptcy law already gives creditors effective tools to root out such abuses. Modest changes to the bankruptcy laws, like authorizing routine audits of debtors' petitions, would give creditors even better protection. But one thing should not change: when it comes to paying off debt, women and children should come first. □

THE WHITE HOUSE

CEA - CS experts say ~~get~~ bad  
Q ggs - No

Timing

SARAH ROSEN  
SENIOR ADVISOR  
NATIONAL ECONOMIC COUNCIL  
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Balance  
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NEC Can't coerce  
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② Subordinate  
debt if you a bad  
credit card co? No, had  
subordinate - if no  
revel min pymt.

taxes  
loan  
MSP  
Sec debts

- hard to enforce post-bankruptcy  
- H+S added undue pressure:  
- 6<sup>th</sup> or 7<sup>th</sup> priority Ch 13 - to #1 - Sen  
- stay on lien: off limits for child sp  
One ggs see this enough - CA

Expanding Disch: Not too much shld be dischargeable

NEC: Any luxury non-disch #H+S - use credit cd for non-dis debt  
Necessary res disch - No cap - luxury < 60 days < bankruptcy > 1,000 - current law  
- No on credit card for ND debt - expand to any item by item  
- even necessary right before B

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Jean Veta	205-2689	Education
Shayla Simmons	208-7619	Dept. of Interia
Robert Weiner	61647	
Maria Echaveste	62983	OPL
Alice M. Veenstra	51292	Financial Institutions Branch
Becky Blank	56947	CEA
Audrey Haynes	67311	
Chris Carroll	56809	White House - CEA
Joe Minarik	51198	White House - OMB
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Nicole Rabner	62878	DPC
Elana Kagan	62878	
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# Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. memo	Gene Sperling to POTUS re: Bankruptcy Reform Legislation (7 pages)	ca. June, 1998	P5

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### COLLECTION:

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

### FOLDER TITLE:

Child Support-Bankruptcy Bill [2]

rx8

### RESTRICTION CODES

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

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

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

October 8, 1998

Child Support -

Bankruptcy

Dear Mr. Majority Leader:

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

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

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

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

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

the current authorization for punitive damages against creditors for intentional violations of borrower rights.

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

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

Sincerely,

Jack Lew

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. report	Bankruptcy Issue (2 pages)	ca. June, 1998	P5

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Ronald E. Jones

05/05/99 09:56:17 AM

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*Child Support -  
Bankruptcy*

Record Type: Record

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

cc:

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

The SAP was sent earlier this morning.



hr833final.wp

Message Sent To:

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May 5, 1999  
(House)

**H.R. 833 - Bankruptcy Reform Act of 1999**  
(Gekas (R) Pennsylvania and 106 cosponsors)

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

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

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

Representatives Hyde and Conyers will offer an amendment that also includes a means test but which would use expense standards that are tailored for bankruptcy purposes and that would allow bankruptcy judges limited and appropriate discretion in their application. The Administration could support the Hyde-Conyers amendment (provided that one technical and conforming change is made to make the language of the amendment internally consistent).

The Democratic alternative includes a means test very similar to the Hyde-Conyers amendment that would ensure that debtors who genuinely have the ability to repay a portion of their debts would remain responsible for those debts. Moreover, the Democratic alternative would significantly reduce the administrative and legal burden of means testing by limiting paperwork requirements on low-income debtors with little ability to repay.

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

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

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

The Administration continues to believe that reform must ensure that debtors are treated fairly and responsibly in the bankruptcy process, recognizing creditors' superior information and bargaining power. The Democratic alternative includes provisions adapted from H.R. 900,

sponsored by Representative LaFalce, that would provide key information to consumers about credit card debt, including clear notice about the expiration of low "teaser" rates and the length of time to pay off a debt if only the minimum payment is made. Better information will help consumers avoid high debt burdens.

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

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

\* \* \* \* \*

**(Do Not Distribute Outside Executive Office of the President)**

This Statement of Administration Policy was developed by the Legislative Reference Division (Jones), in consultation with the: Departments of Justice (Silas), the Treasury (Dorsey, McGivern), Commerce (Clark), Education (Aserkoff), HUD (Block), Labor (Greene), the Interior (Schwartz ), HHS (Wallace), and Veterans Affairs (Simmons); Small Business Administration (Cupp); Farm Credit Administration (McMahon); Consumer Product Safety Commission (Bromme); National Labor Relations Board (Higgins); CEA (Elmendorf); White House Legislative Affairs (Johnson, Wiginton); and National Economic Council (Rosen). Within OMB it was reviewed by Economic Policy (Minarik), HTFD (Rhinesmith, Timberlake, Veenstra, Enger), HRD (Matlack), NRD (Weatherly, Irwin), GC (Aitken), TCJSD (Thompson), VAPD (Hustead), BRCD (Lobron), and BASD (Lee).

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

**OMB/LA Clearance:**

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

**Administration Position to Date**

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

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

**Summary of H.R. 833**

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

- Limit access to Chapter 7 bankruptcy by dismissing, as a presumed abuse of the Bankruptcy Code, petitions from debtors whose monthly income: (1) is greater than the national median monthly income for a family of equal or lesser size; and (2) is sufficient, after deducting living expenses based on IRS guidelines, to permit them to repay at least 25 percent of non-priority unsecured debts or \$6,000 over 60 months.

H.R. 833 would permit a debtor to: exclude from the calculation of income up to \$10,000 in private school expenses; and claim an extra five percent over the food and clothing IRS allowances for "reasonably necessary" expenses in these categories only. Debtors failing this "means test" would be permitted to file for bankruptcy under Chapter 13. (Chapter 7 allows people to liquidate their assets quickly and wipe out most unsecured debts, such as those to credit card issuers. Chapter 13 requires a repayment plan.) H.R. 833 would allow creditors who believe the debtor fails to meet the bill's means test to seek dismissal of Chapter 7 petitions or conversion to Chapter 13 cases.

- abMake nondischargeable any debt, including credit card debt, incurred:
  - to pay an otherwise non-dischargeable debt with the intent to discharge the newly acquired debt; and
  - to pay non-dischargeable debts, without regard to intent, if incurred within 90 days of bankruptcy filing.
- Make debtors repay more debt under Chapter 13 filings by: (1) increasing from three years to five years the minimum term a debtor whose monthly income is greater than the national median monthly income for a family of equal or lesser size has to pay off debts; and (2) eliminating the "superdischarge" of debts (i.e., the discharge of several types of debt, including those for fraud and intentional injuries) that are not discharged in Chapter 7.
- abRequire creditors who seek reaffirmation of wholly unsecured consumer debt to provide a disclosure that the debtor is entitled to a hearing.
- abLimit the ability of a person to obtain successive discharges by making a debtor ineligible for Chapter 7 relief for a period of eight years after receiving a prior Chapter 7 relief and ineligible for Chapter 13 relief for five years after a prior discharge under that chapter.
- Permit the use of State exemptions, rather than Federal exemptions, only if the debtor has lived in the State for two years or more. This would stop debtors from shielding sizable assets by moving to a State with more generous exemptions just prior to filing for bankruptcy.
- Establish a program for the centralized collection and dissemination of bankruptcy data.
- Establish new deadlines for several important events in consumer bankruptcy cases (e.g., changing from 40 days to 90 days the deadline for the first meeting of creditors in Chapter 7 cases).
- abMake permanent chapter 12 of the Bankruptcy Code, which, according to the Report

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

### Pay-As-You-Go Scoring

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

## LEGISLATIVE REFERENCE DIVISION

May 4, 1999 - 3:51 PM

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008. report	Bankruptcy Issue (1 page)	ca. June, 1988	P5

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